

**INTERNATIONAL HUMAN RIGHTS MOVEMENTS AND
PROTECTION OF WOMEN'S RIGHTS**



**THESIS SUBMITTED TO THE COCHIN UNIVERSITY OF SCIENCE
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BY

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UNDER THE SUPERVISION OF

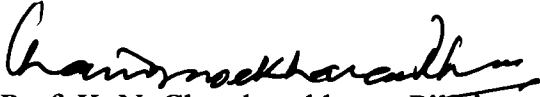
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CERTIFICATE

Certified that to the best of my knowledge this thesis entitled “International Human Rights Movements and Protection of Women’s Rights” is the record of bonafide research work carried out by Smt. Lovely Paulose in the School of Legal Studies, Cochin University of Science and Technology, under my supervision. This thesis, or any part thereof, has not been submitted elsewhere for any other degree.


Cochin,
July, 2004


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DECLARATION

I hereby declare that the Thesis, “International Human Rights Movements and Protection of Women’s Rights” is the record of original research work carried out by me and it has not previously formed the basis for the award of any degree, diploma, fellowship or other similar title or recognition.

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PREFACE

Human rights are those rights, which have inherent in a human person by virtue of his birth as a human being. These rights are highly essential to protect the dignity and worth of the human person and hence to be ensured by the State authorities. They are universal and therefore called Universal Human Rights. Human rights of women constitute the integral and indivisible part of Universal Human Rights.

The principle of equality before law and prohibition of discrimination constitutes the essence of rule of law and fundamental freedoms. Attainment of equality of status and protection of human rights of women are implicit in all the international instruments dealing with human rights.

After the Second World War the international community as a whole was concerned with the protection of human rights especially of women. The international instruments on human rights cast an obligation on the Member States to incorporate the norms into the domestic law.

This thesis is an attempt to explore the problems faced by Indian Women and to examine the ways in which the human rights of women could be better protected in the light of international movements with special reference to national legislation and judicial decisions.

The evolution of human rights from early period to Universal Declaration of Human Rights, 1948 is traced in the first chapter. The second chapter deals with the evolution of human rights in India. The evolution of fundamental rights and directive principles and the role played by the Indian Judiciary in enforcing the human rights enumerated in various international instruments dealing with human rights are also dealt with in this chapter. The rights guaranteed to women under the various international documents have been dealt with in the third chapter.

It is noticed that the international documents have had their impact in India leading to creation of machinery for protection of human rights. Organised violations of women's rights such as prostitution, devadasi system, domestic violence, sexual harassment at workplaces, the evil of dowry, female infanticide etc. have been analysed in the light of existing laws and decisional jurisprudence in the fourth chapter. The fifth chapter analyses the decisions and consensus that emerged from the world conferences on women and their impact on the Indian Society and Judiciary. The constitutional provisions and legislative provisions protecting the rights of women have been critically examined in the sixth chapter. Chapter seven deals with various mechanisms evolved to protect the human rights of women. The eighth chapter contains conclusions and suggestions.

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CHAPTER 1

EVOLUTION OF HUMAN RIGHTS

Rights that inhere in a human being by virtue of his birth as a human being are human rights. Human rights do not depend for their existence on the legal and moral practices of different communities.¹ It is not the particular privilege conferred or granted upon a man by the State but something that due to him or owned by him by reason of his birth. Human Rights are based on mankind's increasing demand for a civilized life in which the inherent dignity of each human being is well respected and protected.² These rights are essential for the spiritual, physical and moral development of the individual. They are associated with the dignity of the individual and it is the enjoyment of these rights that makes a human being worthy of human dignity.

Authors have defined human rights differently. Human right is explained as something due to a person in a social context because he is a human being.³ According to R.J. Vincent human rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature.⁴

¹ Tim Dunne and Nicholas J. Wheeler, "Introduction: Human Rights and Fifty Years' Crisis", in Tim Dunne and Nicholas J. Wheeler (Eds.), *Human Rights in Global Politics*, Press Syndicate of the University of Cambridge, United Kingdom (1999), p.4.

² Justice Anand, "Justice, N.D. Krishna Rao Memorial Lecture 1997", (1997) 7 S.C.C. Jour. 11.

³ Tibor R. Machan, *Human Rights and Human Liberties, A Radical Reconsideration of the American Political Tradition*, Nelson Hall Company, Chicago (1975), p.51.

⁴ R.J. Vincent, *Human Rights and International Relations*, Cambridge University Press, (1986), p.13.

D.D. Basu defined human rights as those rights, which every individual must have against the State or public authority by virtue of his being a member of the human family irrespective of any other considerations.⁵

These rights are inalienable because the enlightened conscience of the community would not permit the surrender of them by any person on his own volition.⁶ These are essential for the development of a human being, to preserve his personality and dignity without which he is reduced to the level of animals. Human rights are not rights which derive from a particular State; they are rights which belong to a man simply because he is a man.⁷ So human rights are the natural, inherent and inalienable rights without which a man cannot exist, and are positive obligations on the part of the State. It is universal, do not differ with geography, history, culture, economic system or stage of development, gender, race, class or status and are to be protected by the State.

The struggle to preserve, protect and promote human rights is as old as human civilization.⁸ The origin and development of human rights can be traced to the very beginning of life in the society. In primitive societies man had a number of limitless freedoms, but in an organized society these freedoms have no meaning because the limitless freedom of some people must have resulted in the miserable suppression of the freedom of another class of people. For

⁵ D.D. Basu, *Human Rights in Constitutional Law*, Prentice hall of India Pvt. Ltd., New Delhi (1994), p.5.

⁶ Dr. D.S. Bajwa, *Human Rights in India, Implementation and Violations*, Anmol publications, New Delhi (1995), p.2.

⁷ Maurice & Crantson, *Human Rights Today*, P.C. Manaktala and Sons Pvt. Ltd., Bombay (1962), p.16.

⁸ Abdul Rahman *et al.* *Perspectives on Human Rights*, Manale publications, New Delhi (1999), p.50.

example, in a feudal society only the rulers, the nobility and the clergy have freedoms and rights, other people have only burdens and duties.

During the 17th and the 18th centuries thoughtful men all over the world became aware of their rights and they began to fight for their rights against feudal despotism.⁹ This movement was augmented by the industrial revolution in Europe.¹⁰ People began to recognize the existence of a higher law. The higher law in the society was termed as 'Jus Naturale' by the Romans and 'Lex Naturales' by the medieval Christian thinkers and was christened as Natural Law by modern Jurists.¹¹ This was Dharma for the ancient Hindus. Modern jurists name it as Natural Law. The basis of natural law is man's natural inclination to right reason that is in accordance with nature, unalterable and eternal.¹² He has a natural tendency to do what according to his reason he considers to be right and wrong. This human instinct is the basis to judge the law. Recognition of natural law leads to the recognition of natural rights as something that belong to all men at all times and were claimed to be inherent, inalienable, immutable and essential to the very existence of human nature. In the modern context such rights or groups of individual rights whether positive or negative, justiciable or non-justiciable are termed as human rights. The rapid industrialization and the demands for higher standards of living need

⁹ Mr. Justice M. Kalju, "The Significance of Human Rights and its Correlation with Judicial Functioning", A.I.R. 2003 Jour. 228.

¹⁰ *ibid.*

¹¹ D.K. Bhat, "Human Rights and Gender Issues: A Socio-Legal Perspective", XXVII (1) Indian Bar Review 24 (2000).

¹² Jerome J. Shstack "The Philosophic Foundations of Human Rights" in Robert Mc Corquodale (Ed.) *International Library of Essays in Law and Legal Theory, Second Series, Human Rights*, Dartmouth Publishing Company, England (2003) p.206.

co-operation and interdependence with other nations and this interdependence of the modern world has made concern for human rights a major international fact.¹³

The Magna Carta of 1215 was the first document dealing with human rights. When the King violated the laws of England his subjects forced him to sign the Magna Carta, which is otherwise known as the Charter of Liberty.¹⁴ It contains a number of rights of the individual. Under this a person can be prosecuted or punished only according to a procedure prescribed by law. The citizen has the right to own and use property free of excessive taxes and property could be taken away from him only through a process of law. The Magna Carta dealt with the established principle of the due process and equality before law and it upheld the dignity and worth of the individual and even prohibited the King from violating the basic rights and freedoms.

In spite of Magna Carta, the rights of the people were violated frequently and the struggle for the rights continued. Edward Coke filed the Petition of Rights before the Parliament in 1628. Later the Bill of Rights was enacted as a statute by the Parliament and it became part of the positive law of England.

Various scholars criticised the natural law theory. To Bentham real rights come from real laws and from imaginary laws like natural law only imaginary rights come. According to him only positive law is real law and

¹³ Moses Moskowitz, *Human Rights and World Order*, Oceana publications, New York (1958), p.88.

¹⁴ T.S. Batra, *Human Rights a Critique*. B.V. Gupta, New Delhi, (1979), p.34.

natural law is not at all law.¹⁵ Thomas Hobbes and John Locke two eminent Political Philosophers of England were of opinion that while living in a state of nature according to natural law of right reason where everyone start enforcing the rights with no authority to control, difficulty and confusion might be created. Hence they advocated the people to live under a common superior or government by surrendering some of their rights with an expectation to protect their rights by the government. Locke believed that the natural rights surrendered to the government are only those rights, which can be exercised collectively for the welfare of the society. The individual retains all other natural rights. These reserved rights constituted the individual's basic liberties. They pertained to human beings by nature and could not therefore be surrendered or controlled or denied by the State.¹⁶ When the State fails to protect these rights or violates these rights there is tendency on the part of the people to resist.

Locke's idea of limited government has become part of the Bill of Rights of 1689.¹⁷ The Habeas Corpus Act and the Bill of Rights were the results of the civil war and the peaceful revolution of the 17th century. The Habeas Corpus Act was enacted for the purpose of protecting the personal liberty of the people. It could be said that the Bill of Right of 1689 was a document consolidating the human rights and liberties of the people.¹⁸

¹⁵ Maurice & Crantson, *Human Rights Today*, *op. cit.* at p.24.

¹⁶ Douglas Hodgson, *Individual Duty within a Human Rights Discourse*, Ashgate Publishing Limited, England (2003) p.16.

¹⁷ T.S. Batra, *Human Rights a Critique*, *op. cit.* at p.36.

¹⁸ *ibid.*

The Bill of Rights proclaimed that all men were free and independent. It also proclaimed that certain rights inherent in man by virtue of his being a human person such as right to life and liberty and the means to lead a happy life by acquiring and possessing property cannot be deprived of by the State. Apart from this, the Bill of rights assured the supremacy of the Parliament, the right to free election, freedom of speech, the right to bail, freedom from cruel and unusual punishment and the right to trial by jury etc.¹⁹ The Bill of Rights had a great influence throughout the world.

As the people of France were suffering under Louis XIV the events in England greatly influenced them.²⁰ The theory of social contract propounded by Rousseau influenced the nations and as a result came the American Declaration of Independence and the French Declaration of Rights of Man in 1789.²¹ In 1791 ten amendments to the Constitution were passed by the congress and it was known as the Bill of Rights. Later this formed part of the Constitution of the United States of America.

These amendments reflect human rights of the people. They include freedom of religion, freedom of speech and press, the right to peaceful assembly and the right to petition the government for redressal of grievances, the right to bear arms, right against unreasonable search and seizure, right

¹⁹ Veena Pany Pandey, *International Perspectives on Human Rights*, Mohit Publication, New Delhi (1999), p.6.

²⁰ *id.* at p.37.

²¹ *ibid.*

against double jeopardy, right against self-incrimination etc.²² It also guaranteed some rights to the accused person such as right to speedy trial, right of trial by independent and impartial jury, right to free legal aid, right to be informed of the nature and cause of his accusation etc. These are some of the rights guaranteed to the citizens among certain other rights such as right to vote, right to equality before law, equal protection of laws etc.

During the second half of the 18th century the French people started struggling for their natural and inalienable rights to life, liberty and pursuit of happiness when the social and economic injustices in France become unbearable.²³ People of France were of the opinion that it was the duty of the government to preserve and protect the natural and inalienable rights and a need was felt by them to document their rights and accordingly the constituent assembly of France issued the Declaration of the Rights of Man and Citizen, 1789 closely following the English and American models. The Declaration proclaimed that all men are born free and entitled to equal rights. It also proclaimed that the purpose of all the political and social institutions was the protection and promotion of the natural and inalienable rights of the man such as liberty, property and resistance to oppression.²⁴ These rights can be limited only for the purpose of protecting the rights of another people and for the purpose of avoiding harm to the society. The Declaration of the Rights of Man

²² William H. Rehnquist, "Historical Perspectives on the United States Constitution" in E.S. Venkitaramiah (Ed.), *Human Rights in the Changing World*, International Law Association, New Delhi, p.193.

²³ Maurice & Crantson, *Human Rights Today*, *op. cit.*, at p.8.

²⁴ *id.* at p.9.

and Citizen guaranteed to all persons freedom of religion, freedom of expression, right of the accused person to be presumed innocent till his guilt is proved etc. More political rights were added in 1793.

Apart from these documents, the increasing struggle for the preservation of peace and freedom from all parts of the country and the pronouncement by various philosophers and politicians influenced the evolution of human rights. But the real development started only during the 19th and the 20th century.

It is normally the exclusive duty of the individual State to see that the rights of its citizens are not violated. It is the State's duty to respect, protect and promote the human rights of its citizens. Other States cannot interfere in matters exclusively within the domestic jurisdiction of the State. But in a situation where there is constant violation of human rights and the condition of the people in a particular State is miserable, the peace-loving nations interfere and decide to lay down an international standard for the behavior of the States for the protection of human rights and for preservation of peace in the society. In States where slavery was in force and the conditions of the slaves were miserable, intervention of the other nations is desirable to abolish slavery and slave trade. The abolition of slavery is the first international measure for the protection of human rights. By the treaty of Paris in 1814 the British and French governments agreed to co-operate in the suppression of traffic in slaves.²⁵ At the Brussels conference in 1890 the Anti-Slavery Act was passed

²⁵ Veena Pany Pandey, *International Perspectives on Human Rights*, op. cit., p.17.

and ratified by 18 States. The Act not only condemned slavery and slave trade but also included measures for implementation.²⁶ Abolition of slavery and slave trade led to the recognition of the basic rights to dignity and equality of all human beings at international levels.

Another important development in the field of human rights is the evolution of humanitarian law of warfare. It is based on the principle that the wounded or sick persons are to be treated in the same way as the soldiers of that particular nation.²⁷ In the Geneva Convention of 1864, there was a requirement that the wounded or sick soldiers, whatever their nationality, may be respected and cared for. The Hague Convention of 1899 and 1907 also established humanitarian rules of warfare.²⁸ It was revised again in the Geneva Convention of 1927 in the light of the experiences of the 1st World War. In fact evolution of humanitarian law contributed to the evolution of human rights.

The present day human rights movements owe a lot to the experiences of human misery and devastation brought out by the world wars. The conditions of the people during the regime of Nazi leaders in Germany were miserable and there was a total suppression and negation of human rights and human values. Hence it was realised by the nations that international peace and security could be maintained only through the restoration of the freedom of the

²⁶ *id.* at p.18.

²⁷ *id.* at p.19.

²⁸ *id.* at p.21.

people.²⁹ At the end of the World War I, the Allied and Associated powers and Germany signed the treaty of peace on 28th June 1919. This dealt with a number of political, legal and humanitarian issues and it was one of the most significant instruments dealing with human rights protection. The object of the peace treaty was to respect the rights of the minorities residing in their territory with regard to equality of civil and political rights and the protection of life and liberty. The League of Nations was an international organisation established after World War I to provide peace and security and to facilitate human co-operation. It shows international concern to human dignity and rights.

According to the treaty, there shall not be any discrimination in admission to matters of public employment on the ground of race, language or religion and it also recognised the right of the minorities to establish and manage charitable, religious or educational institution to conserve their language and religion. But the League of Nations could not do much because it was mainly concerned with the rights of the minorities and was not available to majority groups, whose rights were violated by the State that bound itself by the treaty. The other drawback of the treaty was that it did not bind States other than those against whom the particular treaty was binding.

Article 23 of the League of Nations relates to the fair and human conditions of labour for men and children and also envisaged the establishment of International Labour Organisation to attain that objective. The International

²⁹ Dr. H.O. Agarwal, *Implementation of Human Rights Covenants with Special Reference to India*, Kitab Mahal, Allahabad (1983), p.3.

Labour Organisation was established in 1919. The main object of the organisation was to ensure social justice and gave due respect to human rights and dignity of every individual without any discrimination on the ground of race, sex, place of birth and the promotion and protection of human rights.

In 1944 delegates to the International Labour Conference adopted the Declaration of Philadelphia, which affirmed that Labour is not a commodity, that freedom of expression and association are essential to the progress and that poverty causes danger to the prosperity.

The aims and purposes of the International Labour Organisation contained in the preamble and other articles were restated in the Philadelphia Declaration 1944. The Philadelphia Convention states that all human beings irrespective of race, creed or sex have the right to pursue both their material well being and other spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. Several Labour Conventions protecting and promoting the human rights were passed to promote the object of the International Labour Organisation.

The bitter experience of the Second World War also created a need among the nations for introducing new concepts into international law in order to prevent the recurrence of such events in the future. It was again realised by the Nations that protection of human rights was an essential condition for the

maintenance of peace and security in the world.³⁰ It has also been recognized that States cannot be trusted to treat their citizens properly and humanity has considerable interest in the treatment of people by the governments irrespective of their places.³¹ As a result new intergovernmental organisations such as United Nations, the European Council and the Organisation of American States were established.

The President of the United States of America and the Prime Minister of Great Britain in a Joint Declaration known as Atlantic Charter concluded on 12th August 1941 proclaimed four freedoms. The freedoms include the right of the individuals to choose their government and the right to live with freedom from fear and want.³²

In the year 1944, the governments of the Union of Soviet Socialist Republic, the United Kingdom and United States met at Dumbarton Oaks and envisaged that United Nations should facilitate solutions for international, economic, social and humanitarian problem and promote respect for fundamental freedoms, marked the first agreement among nations to promote and observe human rights and freedom.³³

The Dumbarton Oaks proposals led to the establishment of an international organization, the United Nations with the signing of the U.N.

³⁰ T.S. Batra, *Human Rights Today, op. cit.*, p.3.

³¹ David Feldman, *Civil Liberties and Human Rights in England and Wales* Oxford University Press, New York (1993), p.36.

³² Gaius Ezejiolor, *Protection of Human Rights under the Law*, Butterworths, London (1964), p.54.

³³ James Avery Joyce, *Human Rights International Documents*, Oceana Publications, New York (1978), p.134.

Charter, in 1945 adopted at San Francisco on June 1945, with the objective of the protection and maintenance of international peace and security.³⁴ It was the first agreement among the nations to promote and observe human rights and fundamental freedom for all.³⁵ The Charter itself gave a formal and authoritative expression to the human rights movement that began at the end of second war. Since its birth in 1945, the United Nation has served as a vital institutional spur to the development of the movement, as well as serving as a major forum for many-sided debates about it.³⁶

The U.N. Charter gave due recognition and respect for human rights and its role for promoting international peace and security. One of the purposes that the Charter spells out is the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.³⁷ The Charter opens with the words “We the peoples of the United Nations determined to reaffirm faith in human rights, in the dignity and worth of human, in the equal right of men and women and of Nations large and small have resolved to combine our efforts to accomplish these aims.” The change of the opening word from the “High contracting parties” from the covenant of the League of Nations to “We the peoples of the United Nations” denotes a great human advancement expressing the will of the peoples of the world.

³⁴ Leant M. Goodrich, *The United Nations*, London Institute of World Affairs, London (1960), p.29.

³⁵ Developing Human Rights Jurisprudence, Judicial Colloquium in Bangalore (1988), p.96.

³⁶ Henry J. Steiner & Philip Alston, *International Human Rights in context, Law, Politics and Morals*, Oxford University Press, New York (1996), 118.

³⁷ N.R. Sharma, *Human Rights in the World*, Pointer Publishers, Jaipur (1999), p.4.

The General Assembly should initiate studies and make recommendations regarding the realisation of human rights for all.³⁸ It provides that United Nations shall promote universal respect for and observance of human rights.³⁹ The United Nations Charter casts an obligation on the part of the Member States to take measures for the protection and promotion of human rights.⁴⁰ Article 68 of the Charter provides that the economic and social council shall set up a commission for promotion and protection of human rights charged with the task of submitting reports to the council concerning international bill of rights, guarantee of equality against discrimination on the ground of sex, race, language or religion. The principal task of the commission is the preparation of the draft of Bill of Rights. A drafting Committee for the framing of International Bill of Rights was constituted under the chairmanship of Eleanor Roosevelt.⁴¹ There were differences of opinion among the nations as to the nature of the Bill of Rights. Some favoured a binding convention and others for a declaration of Bill of Rights. Ultimately the General Assembly on the 10th of December 1948 adopted the Universal Declaration of Human Rights. The preamble to the Universal Declaration of Human Rights, 1948 emphasizes that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Some rights mentioned in the

³⁸ U.N. Charter Article 13(1).

³⁹ *id.* at Article 55.

⁴⁰ *id.* at Article 56.

⁴¹ David Cashman Coyle, *The United Nations and How it Works*, Columbia University Press, New York (1966), p.79.

Declaration require immediate binding obligations on the part of the States and are termed as Civil and Political rights and other require possible future obligations according to the available resources of the country and are termed as social, economic and cultural rights. Majority of the United Nations agreed that civil and political rights were inter-linked and inter-dependent to social, economic and cultural rights. Thus the Human Right Commission was given a direction to include both the above rights in the covenant. Consequently the two covenants were drafted.

The Universal Declaration of Human Rights 1948 can be regarded as the embodiment of common standard to be adopted for achievement of human rights. It sets forth the fundamental liberties and rights common to all people on earth.⁴² It is not a legally binding instrument, but it casts obligation on the Member States to incorporate its provisions into their national constitutions and laws. Apart from the preamble, the Universal Declaration consists of 30 Articles. Article 1-21 deals with the traditional civil and political rights such as right to life, liberty and security of person, effective remedy before competent tribunals for acts violating human rights, to be presumed innocent until proved guilty, freedom of movement, right to nationality, right to property, freedom of thought, conscience and religion, freedom of opinion and expression, right to peaceful assembly and association, right to take part in the government of a country, right to access to public services in his country etc. It condemns

⁴² Ketan Thakkar, *Human Rights and the Law. National and Global Perspectives*, Snow White Publications, Mumbai (1997), p.4.

slavery, torture and inhuman and degrading treatment, arbitrary arrest etc. Right to marry, right to privacy etc., are also guaranteed in the Declaration.

Articles 22 to 27 are concerned with the social economic and cultural rights. They declare that everyone has a right to social security, to work under just and favourable conditions, to join trade unions for the protection of interests, to rest and leisure, to adequate standard of living, to education, to participate in the cultural life of the community etc. According to Article 28 everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised.

The rights mentioned in Articles 2 to 21 of the Universal Declaration impose negative obligation on the part of the States not to interfere with the rights and these rights are called first generation rights. The rights mentioned in Articles 22-27 impose a positive obligation and they are called second-generation rights. Rights mentioned in Article 28 consist of collective rights and are termed as third generation rights.⁴³

As the Universal Declaration is not having legally binding force the General Assembly decided to adopt two separate instruments dealing with civil and political rights and social, economic and cultural rights and in 1966 it adopted two covenants; International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights 1966, and Optional Protocol to International Covenant on Civil and Political Rights.

⁴³ Dr. Paramjith S. Jaswal & Dr. Nisha Jaswal, *Human Rights in India*, APH Publishing Corporation, Mumbai, (1996), p.11.

The International Covenant on Social, Economic and Cultural Rights came into force on January 5th 1975 and the other covenant with its protocol on 23rd March 1976. The two covenants with the Universal Declaration on Human Rights constitute the International Bill of Rights. Apart from these there are so many regional conventions for the purpose of giving recognition, respect, protection and promotion of human rights.

The International Covenant on Civil and Political Rights consists of 53 Articles, which are divided into 6 parts. Part I & II deal with the contents and definitions of various rights and freedoms the other three parts deal with the procedure for implementation.

Article 1. refers to the right to the people to self-determination. Part II casts an obligation on the part of the States to take necessary steps to incorporate the provisions of the Covenant in their domestic laws and to adopt legislative or other measures to the effective implementation of the rights recognised in the Covenant. The State Parties have to ensure equal rights of men and women to the enjoyment of all civil and political rights.

Part III of the Covenant deals with specific rights of individuals and obligations on the part of the State Parties. It includes right to life, freedom from inhuman or degrading treatment, freedom from slavery, servitude and forced labour, the right to liberty and security of a person and to be free from arbitrary arrest and detention, the treatment of a person deprived of their

liberty, freedom of movement, the right to fair trial, non-retroactive application of criminal law, the right to privacy, right to family, home or correspondence and freedom from attacks on honor and reputation, freedom of thought, conscience and religion, freedom of opinion and expression, the right of peaceful assembly and freedom of association, the right relating to marriage and family protection, the right of the child, the right to take part in the conduct of public affairs, the right to vote and the right to be elected.

The International Covenant on Economic, Social and Cultural Rights, 1966 consists of 31 Articles, divided into 5 parts. Part I deals with the right of the people to self-determination. Part II deals with the obligation of the State Parties to take necessary measures for the realisation of the rights. Part III enumerates the rights of the individual.

The right of individual includes the right of work, the right to just and favourable conditions of work, trade union rights, right to social security, rights relating to motherhood and childhood, marriage and family. It also includes the right to adequate food and clothing, housing, standards of living and right to freedom from hunger, the right to health and right to education.

Part IV contains the procedure for implementation. Article 16 to 25 provide for a system of submission of periodic reports by State parties concerning the measures taken by them for implementation of various provisions to the Economic and Social Council. The Council will consider

these reports and give advice or help to the concerned State in the matter of social and economic development.

The Covenant does not envisage an obligation on the States to give effect to its provisions immediately. But the States have to take steps progressively for implementation of the various rights guaranteed. From the above analysis it is clear that implementation mechanism under the two covenants are not satisfactory or effective.

The Council of Europe in 1950 made a binding declaration for adoption of Universal Declaration of Human Rights and the European Convention on Human Rights came into force in 1953. It is a unique organization, which brought all the European countries under one umbrella for the protection of human rights and the fundamental freedoms.⁴⁴

This is the first international human rights instrument with an effective implementation mechanism. The instrument not only contains platitudes or expressing aspirations but incorporated compulsive provisions also. It established a commission to receive and examine complaints about the infringement of rights by the State Parties. A court was also set up to adjudicate complaints and to interpret the provisions of the Commission. A Committee of Ministers of the European Council was also established. It also recognises the right of individual to enforce his right against the sovereign. It provides for the submission of all complaints relating to the violations of human rights to the

⁴⁴ Dr. Syed Maswood, "Protection of Human Rights under the European Commission: Need for European Model in South Asia under SAARC", A.I.R., 2002 Jour. 114.

Human Rights Commission and the Commission after verification could bring the matter before the European Court of Human Rights. The verdict of the Court is binding on the respondent State. It has also far reaching effect on the inter-relationship among the States.

The Organisation of Latin American States adopted the American Convention on Human Rights, 1969, which came into force on 18th June 1978. It provides that Human Rights are inviolable and made the obligations of the convention binding on the participating States. The convention has been divided into three parts. Part I deals with the right to be protected and promoted and Part II deals with means of protection of Human Rights. Part III deals with general provisions regarding signature, ratification etc.

The preamble of the Convention recognised that the essential rights of man are not derived from one being a national of a State but are based upon the attributes of human personality and therefore entitled to protection through Convention and through incorporation of the norms of the Convention in domestic laws of the American States.

The State Parties to the Convention undertake to respect these rights and freedoms to all persons without any discrimination as to race, sex, language, religion, birth or any other social conditions. The Member States are under an obligation to incorporate these provisions into their domestic laws.⁴⁵

⁴⁵ American Convention on Human Rights, 1969 Article 11.

Part I of the Convention deals with civil and political rights such as right to life, right to human treatment, freedom from slavery, right to personal liberty, right to a fair trial, freedom from ex-post-facto law, right to compensation, right to privacy, freedom of conscience and religion, freedom of thought and expression, right to reply, right to assembly, freedom of association, right to family etc. Part III deals with economic, social and cultural rights.

The mechanisms for implementation of the human rights are (1) the Inter American Commission on Human Rights and (2) Inter American Court on Human Rights. Any person or group of persons or any non-governmental organisation may lodge petition before the Commission for violation of the Convention against his own State or any other States. But only State Parties and Commission shall have the right to submit a case to the court. If the court finds violation of human rights guaranteed under the Convention it shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated and also rule that fair compensation be paid to the injured. The decision of the court is final and not subject to appeal.

The Organisation of African Unity, an official body of all African States in 1981 adopted the African Charter on Human Rights and Peoples Rights, which entered into force in 1986. The main object set out in the preamble is the establishment of bodies to promote and protect human rights, especially freedom, equality, justice and dignity. The Charter was primarily dedicated to

eradicate all forms of colonialism from South Africa, to co-ordinate and intensify their co-operation and efforts to achieve protection and promotion of human rights having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights. The implementing organ of the African Charter is the Commission on Human and People's Rights and it has only limited powers, hence it cannot effectively implement or interpret the provisions of the Charter. The African Charter also recognises the various civil and political rights and social economic and cultural rights.

Thus generally speaking, the world community realised the importance and relevance of human rights and did what they could do in the post World War II scenario. The miseries of the war, the holocaust, destruction of civilization etc., made the human race to do something for the cause of world peace.

However, lack of unity among the leaders and the desperate interests generated by the difference in the socio-economic and cultural conditions of the different segments of the society had made it impossible to have effective machinery for the enforcement of human rights.

Some developed societies like the European countries having common cultural background could however experiment with provisions, which dictate establishment of necessary effective infrastructure for the implementation of the human rights norms. Indeed, comparatively speaking, it is the European

Convention on Human Rights that help the world community to progress towards the establishment of human rights friendly world society.

Even though human values and humanitarian laws were prevalent in the early society, the need to protect and promote these values was felt only after the Second World War. The International Community as a whole felt the need for upholding the moral and basic rights of the human being. It was also felt that when one State violates the human rights of its citizens, it is the duty of the International Community to intervene and accordingly many organizations were established and many Declarations and Conventions were formulated by the International Community to uphold these rights and the privileges inherent in a human person by virtue of the fact that he is a member of the human family.

The framing of the U.N. Charter, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Social Economic and Cultural Rights 1966, the International Covenant on Social Economic and Cultural Rights 1966 and the other International and Regional Instruments can be said as the most enchanting incident in the 20th Century.

CHAPTER II

EVOLUTION OF HUMAN RIGHTS IN INDIA

It may be true that it is the strong desire of the humanity to achieve world peace, disarmament and protection and promotion of human rights, which culminated in the adoption of U.N. Charter, Universal Declaration of Human Rights and other instruments that have a bearing on human rights.

Though there are references to rights in the ancient Indian literature like 'Rigveda', there is no trace of any serious movement for the consolidation of human rights in the post-vedic period. History of human rights movements in India can be traced to the advent of British including freedom movement. The British Indian Rulers discriminated against Indians in all matters and the Indian people had a feeling that their sacred and inalienable human rights and vital interests had been ignored and denied by the British Rulers.

The concrete demand for the attainment of human rights came into existence by the formation of Indian National Congress in 1885¹ and the need for protection of fundamental right appeared in the Constitution of India Bill 1895, prepared by the Indian National Congress. It envisaged a constitution guaranteeing to every citizen basic human rights such as freedom of speech, inviolability of one's own home, right to equality before law, imprisonment only by competent authority, free education etc. Though the demand was not

¹ Mahesh Prasad Tandon & Daya Sanker Dubey, *Constitutional History of India*, Allahabad Law Agency Law Publishers, Allahabad (1973), p.135.

meted out by the British Government, it signified the beginning of the demand for their rights by the Indian people. The Government of India Act 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in the public services regardless of race or religion. As the people of India were not satisfied with these rights, a series of resolutions adopted by the National Congress between 1917 and 1919 repeated the demand for civil rights and equality of status with the English.² The Indian National Congress demanded that the rights and liberties enjoyed by the British people should also be made available to Indians.³ The rights claimed include equality before law, protection in respect of liberty, life and property, freedom of speech and the press and the right of association. The Constitution of the Irish Free State in 1921 influenced the incorporation of fundamental rights that resulted in the drafting of the Common Wealth of India Bill 1925. The Common Wealth of India Bill contains a declaration of rights identical with the relevant provisions of the Irish constitution. The Rights claimed include freedom of liberty of the person, security of his dwelling, property, freedom of expression and opinion, right to assembly, association, free elementary education, use of roads and public places, courts of justice, equality before law irrespective of any discrimination on the ground of nationality and sex. After two years the Simon Commission was appointed by the British Government in 1927 to draft a “swaraj” constitution incorporating a declaration of rights. A committee was

² Granville Austin, *The Indian Constitution; Cornerstone of a Nation*, Clarendon Press, Oxford, London (1966), p.53.

³ Dr. B.R. Sharma, *Socio Economic Justice Under Indian Constitution*, Deep and Deep Publications, New Delhi (1984), p.36.

constituted in 1928 under the Chairmanship of Sri. Motilal Nehru. He was a strong supporter of the inclusion of fundamental rights in the Constitution.⁴ The Nehru Committee insisted that all those rights that had been denied to Indians should be granted to them. It also emphasized the need to have a future constitution for India. The committee specifically mentioned the importance of equality of men and women with regard to rights and freedom of religion. The Nehru Committee report recommended that fundamental right should be given a place in the constitution.

The main features of the Nehru Committee report was personal liberty and inviolability of dwelling house and property, freedom of religion, freedom of expression and assembly, right to education, equality before law and the right of every citizen to writ of 'habeas corpus', equality of rights to men and women as citizen etc.⁵ The Nehru Committee also insisted for the incorporation of a provision in the constitution to the effect that the rights guaranteed shall not at any instance be permissible to be withdrawn by the government. The proposal of the Nehru Committee report was however, rejected by the Simon Commission.

The Indian National Congress in 1931 passed a resolution reiterating the need to have a future constitution guaranteeing fundamental rights to the people of India. At the Round Table Conference also, immediately before the

⁴ B.K. Gokhale, *Constitution of India and its Working*, A.R. Sheth & Co. Bombay (1972), p.13.

⁵ B. Sivaramo et. al. *The framing of Indian Constitution, Select Documents Vol.I*, Indian Institute of Public Administration, New Delhi (1966), pp.59-60.

passing of the Government of India Act 1935, the Indian leaders demanded for the inclusion of Fundamental Rights in the Constitution of India.⁶

During 1933 and 1934, the Government Parliamentary Committee expressed the opinion that inclusion of a declaration of rights in the constitutional instrument is the best method for ensuring promotion of human rights. Although there was strong opposition against this within the Joint Select Committee of the British Parliament, some of the rights were incorporated in the Government of India Act, 1935. Such rights included prohibition of discrimination on the ground of sex,⁷ religion, place of birth or colour.⁸ Protection of certain rights and privileges of the persons was also envisaged by this Act.⁹

The Next important document in the evolution of human rights in India was the Sapru Committee Report published at the end of 1945. In this report also there was a strong demand for equality in the matter of civil and political life, equality of liberty, freedom of religion, worship etc.¹⁰ The Sapru Committee Report envisaged the distinction between justiciable fundamental rights and non-justiciable directive principles.

⁶ Dr. Durga Das Basu, *Constitutional Law of India*, Prentice Hall of India Pvt. Ltd., New Delhi (1978), p.XLV.

⁷ The Government of India Act, 1935 Section 275.

⁸ *id.* at Section 298.

⁹ *id.* at Section 300.

¹⁰ Tej Bahadur Sapru *et.al.*, *Constitutional Proposals of the Sapru Committee, The Sapru Committee Report* p.260.

In 1946, the Cabinet Mission Plan envisaged a Constitutional Assembly for framing the Constitution of India and recognised the need for a written guarantee of fundamental rights. None of the members opposed the idea of incorporation of fundamental rights in the Constitution. The Cabinet Mission also recommended for the appointment of an Advisory Committee. The function of the Advisory Committee is to report to the Constitutional Assembly about fundamental rights, the protection of minorities etc. Several sub-committees were also constituted. One of the functions of the sub-committee was to study about fundamental rights. Dr. Ambedkar also pointed out the need for incorporation of fundamental rights in the Constitution and proposed the inclusion of machinery for the redressal of grievances.

The sub-committee also pointed out the need for inclusion of justiciable and non-justiciable fundamental rights. A distinction was made between a justiciable Part III, fundamental rights and non-justiciable Part IV, Directive Principles of State Policy. The report of the Draft Committee and the report of the Minority Committee were considered by the Advisory Committee and submitted an interim report to the President of the Constituent Assembly. The draft Constitution was taken up for consideration on 30th October 1947.¹¹ The Draft Committee decided that the Directive Principles of State Policy should be included in Part IV and fundamental rights in Part III. The Government shall not make any law that restricts or abridges the rights guaranteed under Part III of the Constitution.

¹¹ *Constituent Assembly Debates, Vol. IX*, p.104.

Constitution of India incorporates most of the human rights enumerated in the international documents. It was perhaps due to the fact that Indian Constitution was drafted during the period when discussions and deliberations on the formulation of Universal Declaration of Human Rights were in progress. The Universal Declaration of Human Rights was the culmination of the efforts of many movements that sprout in the wake of violations of human rights that took place during the Second World War. The Declaration though not legally binding operated as a common standard of achievement of all people at all times for the recognition, protection and promotion of human rights. The Indians looked at the international legal norms for guidance in formulating the rights and obligations in the constitutional documents. So it is no wonder if one hears the echo of the Universal Declaration in Part III and Part IV of the Indian Constitution.

Later, the rights and aspirations reflected in the Universal Declaration of Human Rights came to be incorporated in the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. Generally speaking one finds the provisions of the International Covenant on Civil and Political Rights, incorporated in Part III and International Covenant on Social, Economic and Cultural Rights, 1966 incorporated in Part IV. International Covenant on Civil and Political Rights has been given much importance by the State and the authorities in charge of implementation. The Covenant on Social Economic and Cultural Rights remain

optional for the State. This attitude is somewhat reflected in the approach towards the Constitution.

Human Rights are inherent in a human person even before the existence of the State. When man agreed to live under a government, he has to surrender some of his rights in return of certain privileges from the society. In fact it cannot be said that in this exchange man surrenders his rights, what happens in this transaction is that the State undertakes not to infract his rights to the extent possible.

The Importance of the Universal Declaration of Human Rights:

The UDHR is the fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights, and has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms, which it proclaims. It is a historic document articulating a common definition of human dignity and values.

On coming into force of the Covenant, the State Parties accepted a legal as well as moral obligation to promote and protect human rights and fundamental freedoms as declared in the Universal Declaration of Human Rights. The very existence of the Covenants and the fact that they contain the

measures for implementation required to ensure the realisation of the rights and freedoms set out in the Declaration, gives greater strength to the Declaration.

These basic, natural human rights when came to be recognised and guaranteed by a written constitution are termed as fundamental rights. These rights are negative obligations on the part of the State. The human rights set forth in Part III of the Constitution can be categorized into groups: (1) The right to equality¹² (2) Right to freedom¹³ (3) Right against exploitation¹⁴ (4) Right to freedom of religion¹⁵ (5) Cultural and educational right¹⁶ and (6) Right to constitutional remedies.¹⁷

The right to equality includes prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.¹⁸ equality of opportunity in matters relating to employment or appointment to office under the State.¹⁹ The State shall not interfere with these rights guaranteed under Part III of the Constitution.

The rights incorporated in Part IV of the Constitution though as important as that in Part III are not to be justiciable as the State may not have the economic strength to enforce them promptly. The idea is to give the State enough time to muster the strength. There are human rights, which the society

¹² Constitution of India. Article 14.

¹³ *id.* at Article 19.

¹⁴ *id.* at Article 23.

¹⁵ *id.* at Article 25.

¹⁶ *id.* at Articles 29 & 30.

¹⁷ *id.* at Article 32.

¹⁸ *id.* at Article 15.

¹⁹ *id.* at Article 16.

aims to achieve for its citizens and though not enforceable through courts, can be regarded as fundamental in the governance of the country. In other words, the State should strive to facilitate the enjoyment of these rights in course of time. The citizens cannot compel the State to afford the facility even with the help of the courts. If the rights guaranteed under Part III are violated, the aggrieved person can approach the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution. The Universal Declaration of Human Rights, 1948 requires the Member States to take steps to incorporate the provisions of the Declaration into their national constitutions. Its preamble recognised the inherent dignity of the individual and the equal and inalienable rights of the members of the human family. One of the objectives mentioned in the preamble to the Constitution of India is to secure to all its citizens social, economic and political justice and equality of status and opportunity and liberty of thought, expression, belief, faith and worship. The preamble of the Indian Constitution also recognises the dignity of the individual and unity of the nation and it is considered as the basic root of all rights and justice to all, and human rights may said to be the offspring of the preamble.²⁰

On a careful comparison of the provisions of the Universal Declaration of Human Rights and the Indian Constitution, it can be seen that many provisions that are stated in the Universal Declaration of Human Rights finds position in the Constitution of India. Article 3 of the Universal Declaration of Human Rights, 1948 provides that everyone has a right to life, liberty and

²⁰ Gokulesh Sharma, *Human Rights and Legal Remedies*, Deep and Deep Publications Pvt. Ltd., New Delhi (2000), p.129.

security of person. This is echoed in Article 21 of the Indian Constitution, which provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

In developing the field of human rights, Indian judiciary has played a very important role and from several decided cases it has evolved new human rights jurisprudence. The Supreme Court of India in a number of decisions enforced many of the rights enumerated in the Universal Declaration of Human Rights.

The Supreme Court of India in the case of *Francis Coralie Mullin v. Union Territory of Delhi*²¹ held that the right to protection against torture or cruel or inhuman or degrading treatment is implicit in Article 21. The court in this case reasoned that right to life includes right to live with human dignity and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.

Article 25 of the Universal Declaration of Human Rights deals with the right to a standard of living, adequate for health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, widowhood, old age, other lack of livelihood in the circumstances beyond

²¹ A.I.R. 1981 S.C. 746.

control. Article 21 of the Indian Constitution was given interpretation so as to bring all the ramifications of Article 25 of the UDHR under its umbrella. This is reflected in cases of *Francis Corelie*²² and *Olga Tellis*. In *Olga Tellis and others v. Bombay Municipal Corporation*,²³ the Supreme Court has held, right to life includes the “right to livelihood because no person can live without the means of living”.

The court also observed:

“If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live and yet such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.”²⁴

²² *ibid.*

²³ A.I.R. 1986 S.C. 180.

²⁴ *id.* at pp.193-194.

Right to livelihood is essential to lead a dignified life and that was also included in Article 21. Article 12 of the Universal Declaration of Human Rights declares that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor attacks upon his honor and reputation. Everyone has the right to the protection of law against such interference or attacks. This right is now regarded as a fundamental right by the Supreme Court in *Kharak Singh v. State of U.P. and others*²⁵ and in *Rajagopal v. State of Tamil Nadu*.²⁶ The right of the citizen to safeguard his privacy, marriage, procreation, motherhood, child bearing etc. are also recognised.

Article 8 of the Universal Declaration of Human Rights, 1948 lays down that everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. Provision in tune with this can be seen in the Indian Constitution also. Under Article 32 the Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of 'habeas corpus', 'mandamus', 'prohibition', 'quo warranto' and 'certiorari', which ever may be appropriate for the enforcement of the rights conferred under Part III. This right cannot be suspended except as otherwise provided by the constitutions itself. In addition to this, the jurisdiction of the High Courts under Article 226 and 227 also helps enforcement of the rights.

The International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to human rights. Article 9(5) of the Covenant lays down thus:

“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Section 357 Cr.P.C enables the sentencing court to award imprisonment to the victim of the crime. The provision does not make it mandatory for the State to pay compensation and has not laid down any uniform or cardinal principles. It is of course necessary to construct a suitable legislation under which the State should pay compensation to the victims of crime or to the heirs of the victim.

The question as to whether the court has jurisdiction under Article 32 to award compensation consequent upon deprivation of fundamental rights came before the Supreme Court in a case where a person was detained in jail for over a period of 14 years after his acquittal.²⁷ The Court granted monetary relief to the victim for deprivation of his fundamental rights in a petition filed under Article 32 of the Constitution notwithstanding the rights available under the civil law to the aggrieved party where the court found that grant of such relief was warranted.

²⁷ *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141.

In another case a member of the Legislative Assembly of Jammu and Kashmir was prevented from attending the Legislative Assembly, thereby violated his personal liberty to attend the session of the assembly.²⁸ The court observed:

“Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct.”²⁹

The court further reasoned:

“When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation.”³⁰

²⁸ *Bhim Singh v. State of Jammu & Kashmir*, A.I.R. 1986 S.C. 494.

²⁹ *id.* at p.499.

³⁰ *ibid.*

The court directed the State of Jammu and Kashmir to pay to Shri. Bhim Singh a sum of Rs.50,000/- within two months.

Compensation was also awarded by the court to the mother of the deceased who died as a result of beating and assault by the police.³¹ The court considered the question of custodial death and the power of the court to award compensation in public law. In this case the court referred to Article 9(5) of the International Covenant on Civil and Political Rights 1966. The court held that the defence of sovereign immunity is not applicable to the guarantee of fundamental rights and if the fundamental freedoms and human rights of persons are violated by the State or its servant in the purported exercise of their power, the aggrieved person can resort to remedy under public law i.e. under the Constitution by recourse to Article 32 and Article 226.

Very wide powers are given to the Supreme Court to ensure complete justice and enforcement of fundamental rights. In appropriate cases where the only mode of redress available is to grant compensation, it can award monetary compensation. Relying on its earlier decisions and the International Covenant on Civil and Political Rights, the court directed the State of Orissa to pay a sum of Rs.150000/- as compensation and a further sum of Rs.10000/- as costs. The court also observed;

“This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and

³¹ *Nilabati Behera alias Lalita Behera and others v. State of Orissa and others*, A.I.R. 1993 S.C. 1960

jurisdiction but also an obligation to grant relief in exercise its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.”³²

The Supreme Court also upheld the award of compensation for violation of fundamental rights under Article 21 of an under-trial prisoner who was handcuffed and paraded through the streets in procession by the police during investigation.³³ In another case the petitioners belonging to the Sikh community suffered damage and loss of property leading to deprivation of their right to livelihood for want of adequate protection and security arrangements. The High Court of Jammu and Kashmir also directed the State Government to pay compensation to the petitioners for loss suffered by them as a result of communal riots as it is the responsibility of the State to maintain law and order and the State had failed to provide protection to its citizens.³⁴

The Supreme Court approved the order of the Calcutta High Court awarding compensation of Rs.10 lakhs in a case of gang rape of a Bangladeshi

³² *id.* at p. 1973.

³³ *State of Maharashtra v. Ravikanth Patil* (1991) 2 S.C.C. 373.

³⁴ *M/s. Inder Puri General Store and others v. Union of India and another*, A.I.R. 1992 J & K. 11.

woman by some railway employees.³⁵ The Court further held that even a foreign national also can be granted relief under public law for violation of fundamental rights on the ground of domestic jurisprudence based on constitutional provisions and human rights jurisprudence. The judgement reinforces the judicially recognised principle that monetary compensation can be granted for violation of fundamental rights. The Supreme Court reinforced the relevance of international documents on human rights in its interpretation of constitutional provisions in *Vishakha v. State of Rajasthan*.³⁶ As regard the interrelationship of the Constitution and the international human rights norms the court observed:

“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Article 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the

³⁵ *Chairman, Railway Board v. Chandrima Das* A.I.R. 2000 S.C. 988.

³⁶ A.I.R. 1997 S.C.3011.

constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with entry 14 of the Union List in the Seventh Schedule of the Constitution. Article 73 is also relevant. It provides that the executive power of the union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the union is, therefore available till Parliament enacts legislation to expressly provide measures needed to curb the evil.”

The court also held that gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally recognised human right. The court relied on international norms and conventions in the formulation of the guidelines to achieve this purpose. The court also relied on the norms laid down in the Convention on the Elimination Of All Forms Of Discriminations Against Women, 1979 for construing domestic law when there is no inconsistency between them and when there is a void domestic law.

In this case the Supreme Court has laid down certain guidelines for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment at work place, as there was no domestic

law occupying the field. The guidelines were issued by the Supreme Court in exercise of the power available under Article 32 of the Constitution for the enforcement of fundamental rights and it was further emphasized that this would be treated as the law declared by the court under Article 141 of the Constitution. The court also observed that these directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

The directions issued by the Supreme Court under Article 141 of the Constitution amounts to legislation to implement an international obligation, which the Constitution requires the legislature to do. The above discussions signified the tremendous support the Supreme Court had given for giving effect to human rights in India.

Article 22 to 27 of the Universal Declaration of Human Rights deal with the right to social security, right to work, right to equal pay for equal work, right to just and favourable remuneration, right to form trade unions, right to rest and leisure, right to adequate standards of living and well being of the family, the right to education etc. The International Covenant on Economic, Social and Cultural Rights 1966 also deal with these rights. Article 2 of the Covenant casts an obligation on the State Parties to implement its provisions depending on the resources available. The rights, guaranteed under this Covenant therefore do not require immediate enforcement. Instead they require implementation according to the available resources of the country, because of the reason that economic, social and cultural rights cannot be fully ensured

without the economic and technical assistance, education and planning. In many cases international co-operation is also required.

The rights conferred by this Covenant and enshrined in Part IV of our Constitution have the potential to cover all aspects of citizen's life. The principles laid down in Part IV are fundamental in the governance of the country and the State is under a duty to apply these principles while making laws.³⁷

Part IV of the Constitution contains various rights such as right to adequate means of livelihood,³⁸ Right to equal pay for equal work,³⁹ right to work, right to education and right to public assistance etc.,⁴⁰ it also directs the State to avoid concentration of wealth, and the ownership and material resources of the community are to be distributed for the common good.⁴¹

The State is also expected to direct its policy towards securing that the health and strength of the workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age and strength.⁴² Children are required to be given facilities to develop their personality in a healthy manner with freedom and dignity. Childhood and youth are required to be protected against moral and material abandonment.

³⁷ Constitution of India, Article 37.

³⁸ *id.* at Article 39(a).

³⁹ *id.* at Article 39(d).

⁴⁰ *id.* at Article 41.

⁴¹ *id.* at Article 39(b),(c).

⁴² *id.* at Article 39(e).

Though Part III and Part IV of the Indian Constitution incorporate the various human rights found in the Universal Declaration and the various International Covenants, regarding implementation and interpretation, the Indian Judiciary in earlier times placed more importance to fundamental rights. The Court observed that the Chapter on fundamental rights are sacrosanct and not liable to be abridged by any executive or legislative act or order except to the extent provided. The Directive Principles of State Policy cannot override the provisions found in Part III but have to conform to and run subsidiary to the chapter on fundamental rights.⁴³ Therefore the earlier view of the court was that in the case of conflict between fundamental rights and directive principles, the fundamental rights should prevail. But later on, the attitude of the Supreme Court has changed. The court is now of the opinion that when there is a conflict between Part III and IV, the court should adopt the principle of harmonious construction to give effect to both as much as possible.⁴⁴ Now-a-days, courts have tried to harmonise them by importing directive principles in the construction of fundamental rights. The object of fundamental rights is to protect individual liberty. The individual liberty of a person cannot be considered in isolation from the socio-economic structure in which it is to operate. There is a real connection between individual liberties and the shape and form of the social and economic structure of the society. The Directive Principles impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be social order ensuring

⁴³ *State of Madras v. Champakam Dorairajan and Another*, A.I.R. 1951 S.C. 226.

⁴⁴ *Minerva Mills v. Union of India*, A.I.R. 1980 S.C. 1789.

individual liberty and the dignity of all people irrespective of any other considerations. Hence the directive principles enjoy a very high place in the constitutional scheme and fundamental rights and directive principles should be construed in harmony with each other and every attempt should be made by the court to resolve the apparent inconsistency. Due to the influence of human rights jurisprudence, in order to give effect to fundamental rights, directive principles are read into it and thus judiciary started enforcing directive principles through fundamental rights. Right to life enshrined under Article 21, includes right to live with human dignity and it derives its existence from Article 39(e), (f), Article 41 and Article 42. These articles deal with health and strength of the workers, men and women and of the tender age of children against abuse, just and humane conditions of work and maternity relief, a minimum requirement that is needed to lead a dignified life. As these cannot be directly enforced through the courts the Supreme Court has indirectly enforced these directives by holding that the right to life under Article 21 includes the right to livelihood also. Right to education is essential to earn a livelihood and to lead a dignified life. Article 26(4) of the Universal Declaration of Human Rights, 1948 and article 13 of the International Covenant on Social, Economic and Cultural Rights, 1966 recognise the right to education and cast an obligation on the part of the State Parties to take steps to realize this right. This right is now held to be a fundamental right by the Supreme Court and opined that the right to life under Article 21 and the dignity of the individual cannot be

assured unless right to education accompanies it.⁴⁵ The State Government is under an obligation to make all endeavors to provide educational facilities at all levels to its citizens. Article 45 of the Indian Constitution requires the State to endeavor to provide for free and compulsory education to children. Right to education is declared as a fundamental right by the Supreme Court in the case of *Unnikrishnan J.P. and others v. State of Andhra Pradesh and others*⁴⁶ and declared that primary education up to fourteen years should be compulsory and free. This shows the inter-relationship of the rights in Part III and IV of the Constitution.

Article 13 of the International Covenant on Social, Economic and Cultural Rights also recognises the right of the parents or guardians as the case may be to choose educational institutions other than schools established by public authorities which confirm minimum educational standards. In India this is also made possible in as much as there are many schools run by private agencies, religious minorities and the citizens get ample opportunity to make the choice.

The Universal Declaration of Human Rights and other international instruments have only a persuasive effect on Indian courts. According to Article 245 and 246 and entries in List I of the Seventh Schedule of the Indian Constitution, only the Parliament has the power to legislate on foreign affairs, it includes:

⁴⁵ *Mohini Jain v. Union of India*, A.I.R. 1992 S.C. 1858.

⁴⁶ (1993) 1 S.C.C. 645.

- (1) Foreign affairs and all matters which bring the union in relation with a foreign country.
- (2) Participation in international conferences and other bodies and implementation of the decisions made.
- (3) Entering into treaties and agreements with foreign countries and implementing of treaties and conventions with foreign countries.

According to Article 253 Parliament shall have exclusive power to legislate for implementation notwithstanding that they relate to subjects, which are assigned to state legislatures. The Parliament so far has not made any law governing the making or implementation of treaties in accordance with power under Article 253. Until such a law is made by the Parliament the President can exercise this power in accordance with Article 53⁴⁷ and 73.⁴⁸

As regards the implementation of the treaties it has been ruled by the Supreme Court that implementation of treaties require legislation by Parliament. The Supreme Court observed;

⁴⁷ "Article 53(1) The Executive Power of Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him.

(2) Without prejudice to the generality of the forgoing provision the Supreme Command of the defence forces of the Union shall be vested in the President and exercise thereof shall be regulated by law."

⁴⁸ "Article 73(1) Subject to the provisions of the constitution the executive power of the union shall extend:

(a) ...

(b) to the exercise of such rights, authority and jurisdiction as one exercisable by the government of India by virtue of any treaty or agreement provided that the executive power referred to in sub-clause (a) shall not save as expressly provided in the constitution or any law made by the Parliament extend in any State..... to matters with respect to which the legislature of the State has power to make laws.

(2) Until other wise provided by Parliament a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State, such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

“The obligations arising under the agreement or treaties are not by their own force binding upon Indian nationals. The power to legislate in respect of treaties is with the Parliament under entries 10 and 14 of List I of Seventh Schedule. But making of law under that authority is necessary when the treaty or agreement operates to restrict the rights of citizens or others or modifies the law of the State. If the rights of the citizens or others which are justiciable are not affected, no legislative measure is needed to give effect to the agreement or treaty.”⁴⁹

Following the law laid down by the Supreme Court in this case the court started giving effect to the International treaties and giving certain rights to individuals. The Supreme Court in *Jolly George Varghese and another v. Bank of Cochin*,⁵⁰ gave effect to Article 11 of the Covenant on Civil and Political Rights, 1966 which lays down thus:

“No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation”

In the above case the appellant was facing imprisonment due to failure to discharge the debt and it was argued on behalf of the appellant that Article 11 of the International Covenant on Civil and Political Rights bans imprisonment merely for not discharging a decree debt. So the bank’s right is

⁴⁹ *Maganbhai Ishwarbhai Patel v Union of India and another*, A.I.R. 1969 S.C. 783 at p. 807.

⁵⁰ A.I.R. 1980 S.C. 470.

restricted by the International Covenant on Civil and Political Rights, 1996 to which India is a party.

The court remanded the case to the lower court for appropriate decision. It however correctly enunciated the law thus:

“The Covenant bans imprisonment merely for not discharging a decree debt. Unless there be some other vice or *mens rea* apart from failure to foot the decree, international law frowns on holding debtor’s person in civil prison as a hostage by the court. India is now a signatory to this Covenant and Article 51(c) of the Constitution obligates the States to “foster respect for international law and treaty obligations in the dealing of organised peoples with one another”. Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter.”⁵¹

The court also relied on Article 21 of the Constitution. It reasoned:

“Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for nonpayment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21,

⁵¹ *id.* at p.473.

read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence.”⁵²

The Constitution shall be revised so as to frame a comprehensive legislation dealing with making of treaties and making of legislation for treaty implementation. As the members of the Parliament do not have much competence in the field of international law, a special group of members having competency and ability shall be constituted from the legal and treaties division, Ministry of External Affairs, Indian Society of International Law and from Universities having international law as specialization, to act as Secretariat and it should be possible for them to provide information on signing/ ratification, reservation etc. of the Government of India on each treaty/ agreement/covenant/convention. If there is a clear provision, which clarifies or clears the meaning and implications of treaty authoritatively, the possibility of wide interpretation by the courts can be avoided.

A National Commission for Women was established under the National Commission for Women Act, 1990. The main function of the Commission is the protection and promotion of the human rights of women. It has succeeded to a considerable extent in containing the grievances of the ladies. It undertakes the study on conditions of women prisoners in jail and suggests remedial measures wherever necessary.

⁵² *id.* at p.475.

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 requires every State to adopt effective implementation mechanism to redress human rights grievances and violations. Apparently in pursuance of the obligations undertaken in this conference government also took steps to have effective machinery for the protection of human rights. In 1993 the Indian Parliament enacted the Protection of Human Rights Act, 1993 establishing a National Human Rights Commission and making provisions for each State to have State Human Rights Commissions. The Act defines human rights as the right 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.⁵³ The aim of this legislation is to enable the government to have information on the status of human rights in India. It enables the Commission to collect such information and advise the government to take action.

Though references to the rights of man can be traced from very beginning of life in the Indian society, the concept of human rights got a concrete shape only after the framing of Constitution of India. The strong desire of the international community for the protection and promotion of human rights resulted in the Universal Declaration of Human Rights, 1948 and as the Constitution of India was drafted during that period, many of the human rights provisions of the Declaration find place in the Indian Constitution also.

⁵³ The Protection of Human Rights Act, 1993 Section 2(d).

Many of the rights envisaged in the international documents were incorporated into the domestic law by the Indian Judiciary by expanding the horizons of human rights jurisprudence. Apart from this many legislations such as the Protection of Human Rights Act, 1999, The National Commission for Women Act, 1990 etc., were passed for the protection and promotion of human rights. Undoubtedly the concept of human rights jurisprudence marked an era of change in the judicial outlook.

CHAPTER III

INTERNATIONAL INSTRUMENTS DEALING WITH THE HUMAN RIGHTS OF WOMEN

Human Rights emanate from the dignity and worth inherent in a human person and are recognised by the legal systems of all the civilized countries. It was the bitter experience of the Second World War that prompted the nations to adopt an international norm of human rights. They did not encounter any difficulty in achieving unanimity for formulating the general norms of universal application.

The concept of equality and non-discrimination on the ground of sex finds its place in all international instruments dealing with human rights. Women who constitute half of humanity are often subjected to exploitation and human rights violations. The International Instruments cast an obligation on the Member States to incorporate provisions for the abolition of sex discriminatory laws and practices and for granting equal rights to women with those of men.

All distinctions, restrictions and exclusions impairing or nullifying the enjoyment and exercise by women of human rights and fundamental freedoms are required to be prohibited by the Convention on the Elimination of All Forms of Discrimination Against Women, 1979. It also required the Member States to abolish all customs, traditions and religious practices that discriminate against women.

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights states:

“Human rights of women and girl child are inalienable, integral and indivisible part of the universal human rights.”

It also calls for the equal and full participation of women in all aspects of public life.

It would be fruitful to examine the international documents for detailed discussion of the rights of women included therein.

One of the main purposes of the United Nation was the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. From its very inception it was concerned with the enjoyment of equal rights by men and woman.¹ Human Rights and fundamental freedoms are available to all persons without distinction as to sex.² The United Nations Charter requires the United Nations not to place any restrictions on the eligibility of men and women to participate in any capacity in any of its organs.³ The General Assembly was empowered to initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms of all without distinction as to race, sex, language or

¹ The United Nations Charter, 1945, Preamble.

² *id.* at Article 1.

³ *id.* at Article 8.

religion.⁴ All Member States of the United Nations pledged themselves to take joint and separate action in co-operation with the United Nations to promote universal respect for and observance of human rights and fundamental freedoms without distinction as to sex.⁵ The Charter authorises the Economic and Social Council to make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms of all.⁶ It also authorise the Council to set up Sub Commissions and a Commission on the Status of women was constituted to prepare recommendations on promoting human rights in political, civil, economic, social, cultural and educational fields, and to make recommendations to the council on urgent problem requiring immediate attention in the field of women's right, with the object of implementing the principle of equal rights of men and women. set forth in the various articles of the charter.⁷

The recognition and realisation of human rights and the rights of women were regarded, as one of the methods of achieving co-operation and unity with the nations. The charter of the United Nations is dedicated to the promotion and achievement of human rights and unless these rights and freedoms are guaranteed to all men and women without any distinction as to race, caste, language or religion, there cannot have peace or security. The Charter contains no provision for the enforcement of human rights.

⁴ *id.* at Article 13(1)(b).

⁵ *id.* at Article 55 and 56.

⁶ *id.* at Article 62.

⁷ *id.* at Article 68.

It is pertinent to look at the various international documents accepting and declaring the value of human beings especially of women for detailed examination.

The International Bill of Human Rights consists of Universal Declaration of Human Rights, 1948, International Covenant on Economic, Social and Cultural Rights, 1966 and International Covenant on Civil and Political Rights, 1966.

Universal Declaration of Human Rights, 1948

Universal Declaration of Human Rights, 1948 is neither a treaty nor a binding international instrument. It is only a statement of principles of the inalienable human rights, setting up a common standard for achievement of human rights and every Member State can take steps to promote respect for these rights and freedoms by incorporating the norms in their domestic law.

In addition to the preamble the Declaration consists of 30 articles dealing with the human rights and fundamental freedoms which all men and women everywhere in the world are entitled to, without any discrimination on the basis of sex.

The preamble of the Universal Declaration of Human Rights, 1948 recognises the inherent dignity of the individual and the equal and inalienable rights of the members of the human family. The basic principle enunciated in

The Declaration, which proclaims that "all human beings are born free and equal in dignity and rights"⁸ and that every one is entitled to all the rights and freedoms set forth in the declaration without distinction of any kind including distinction based on sex.⁹ All are equal before law and are entitled to equal protection of the law without any discrimination.¹⁰ A person shall not be subjected to arbitrary interference with his privacy, family, home, correspondence or attack upon his honour or reputation. Everyone has the right to protection of law against such interference or attacks.¹¹ A guarantee against factors affecting the human dignity, all forms of violence such as domestic violence, sexual violence, rape, and violence inside and outside the family that affect the honour and reputation are incorporated in the Declaration. The provision is intended for the protection of women because women are often subjected to sex based discrimination and often subjected to violence inside and outside the family.

The right to marry and found a family without any limitation due to race, nationality or religion¹² is another accepted norm protecting the right of women. Women are often denied the right to choose the spouse. This denial extends to their rights during the subsistence of marriage and also at its dissolution. Consent of the women to the marriage is often ignored and she is bound or forced to marry according to the decisions of the parents or guardians. According to the Universal Declaration of Human Rights, attainment of

⁸ The Universal Declaration of Human Rights, 1948, Article 1.

⁹ *id.* at Article 2.

¹⁰ *id.* at Article 7.

¹¹ *id.* at Article 12.

¹² *id.* at Article 16.

majority and free consent is regarded as a condition for the marriage.¹³ There is no provision in the declaration, which requires a woman to change her nationality according to that of her husband.

The right to work and equal pay for equal work without discrimination as to sex is recognised as an inalienable right of all human beings.¹⁴ The right to equal pay for equal work without discrimination as to sex implies the right of man and woman, the same right of employment, equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation and quality of work. There shall not be any restriction on the basis of sex, especially in marriage or maternity. The declaration also contains provisions guaranteeing the right to a standard of living sufficient for health and well being of a person and his family including the facilities to live with human dignity.¹⁵ It includes food, clothing, housing, medical care, necessary social services, right to security in the case of unemployment, sickness, disability, widowhood, old age etc. Motherhood and childhood are entitled to special care and protection under the Declaration.¹⁶

Articles 2 to 21 deal with Civil and Political Rights. They are right to life, liberty and security of person,¹⁷ Freedom from slavery or servitude,¹⁸ prohibition against torture, inhuman or degrading treatment or punishment,¹⁹

¹³ *id.* at Article 16 (2).

¹⁴ *id.* at Article 23 (2).

¹⁵ *id.* at Article 23 (3).

¹⁶ *id.* at Article 25 (2).

¹⁷ *id.* at Article 3.

¹⁸ *id.* at Article 4.

¹⁹ *id.* at Article 5.

recognition as a person before law,²⁰ equality before law and equal protection of law without any discrimination,²¹ effective remedy before national tribunal,²² freedom from arbitrary arrest, detention or exile,²³ right to a fair and public hearing by independent and impartial tribunal,²⁴ the right to presume to be innocent till the guilt is proved,²⁵ protection against ex post facto laws,²⁶ right to privacy, family, home or correspondence,²⁷ freedom of movement and residence,²⁸ right to leave the country including his own and to return to his country,²⁹ right to seek and to enjoy in other countries asylum from persecution,³⁰ right to nationality,³¹ right to marry and found a family,³² right to own property,³³ right to freedom of thought, conscience and religion,³⁴ right to freedom of opinion and expression,³⁵ right to freedom of peaceful assembly and association³⁶ and right to participate in the government of his country, etc.³⁷

Articles 22 to 27 of the Declaration deal with economic, social and cultural rights. They are the right to social security,³⁸ right to work and free

²⁰ *id.* at Article 6.

²¹ *id.* at Article 7.

²² *id.* at Article 8.

²³ *id.* at Article 9.

²⁴ *id.* at Article 10.

²⁵ *id.* at Article 11.

²⁶ *id.* at Article 11(2).

²⁷ *id.* at Article 12.

²⁸ *id.* at Article 13(1).

²⁹ *id.* at Article 13(2).

³⁰ *id.* at Article 14(1).

³¹ *id.* at Article 15.

³² *id.* at Article 16.

³³ *id.* at Article 17.

³⁴ *id.* at Article 18.

³⁵ *id.* at Article 19.

³⁶ *id.* at Article 20.

³⁷ *id.* at Article 21.

³⁸ *id.* at Article 22.

choice of employment,³⁹ right to rest and leisure,⁴⁰ right to a standard of living adequate for the health of himself and of his family,⁴¹ right to education,⁴² right to participate in cultural life⁴³ and right to good social and international order.⁴⁴

Universal Declaration of Human Rights, 1948 does not provide any machinery for enforcement. Hence the General Assembly decided to adopt two Covenants with machinery for its enforcement. Accordingly International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 were adopted. The Optional Protocol to Civil and Political Rights enables the individual to bring action against human rights' violations.

The rights conferred on the individuals by the Declaration shall be subject to the requirements of morality, public order and general welfare in a democratic society. The rights recognised in the declaration, are inalienable, universal, indivisible, inter-dependent and inter-related. Universal Declaration of Human Rights, 1948 has been a source for the various types of action taken by the United Nations. The provisions have inspired a number of international conventions, national constitutions, domestic legislation and decisions of courts.

³⁹ *id.* at Article 23.

⁴⁰ *id.* at Article 24.

⁴¹ *id.* at Article 25.

⁴² *id.* at Article 26.

⁴³ *id.* at Article 27.

⁴⁴ *id.* at Article 28.

International Covenant on Civil and Political Rights, 1966

International Covenant on Civil and Political Rights consists of 53 articles and is divided into six parts. Part I, II & III dealing with various freedoms and the other parts dealing with procedure for the effective realisation of these rights.

Part I deals specifically with the right of the people to self-determination. Part II casts obligations on the State Parties to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures to give effect to the rights recognised in the Covenant. The State Parties are to ensure equal rights of men and women to the enjoyment of all civil and political rights.

Part III deals with specific rights of the individuals and the obligations of the State Parties. The preamble as well as other articles of the Covenant recognises the natural and inalienable rights of women. It also envisages the protection and promotion of equal rights of man and woman. Universal peace can be maintained only when the rights of others are recognised by the individual as well as by the State.

The Covenant requires the State Parties to take steps to ensure that the rights guaranteed under the Covenant are available to all persons without distinction as to sex. It prohibited discrimination against any person on the ground of sex among other grounds such as race, caste, religion or place of

birth.⁴⁵ These rights are available to men and women equally.⁴⁶ All persons are equal before the law and are entitled to equal protection of law without discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.⁴⁷

Part III of the Covenant deals with the specific rights of the individuals and the obligation of the State Parties. They are right to life,⁴⁸ freedom from inhuman and degrading treatment,⁴⁹ freedom from slavery, servitude and forced labour,⁵⁰ right to liberty and security,⁵¹ right to be treated with humanity,⁵² freedom from imprisonment for inability to fulfill contractual obligation,⁵³ freedom of movement and to choose his residence,⁵⁴ freedom of aliens from arbitrary expulsion,⁵⁵ right to fair trial⁵⁶ non-retroactive application of criminal law,⁵⁷ right to recognition as a person before the law,⁵⁸ right to privacy, family,

⁴⁵ International Covenant on Civil and Political Rights, 1966, Article 2 para. 1: Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁴⁶ *id.* at Article 3 The State Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present covenant.

⁴⁷ *id.* at Article 26 All persons are equal before law and are entitled without any 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 discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁴⁸ *id.* at Article 6.

⁴⁹ *id.* at Article 7.

⁵⁰ *id.* at Article 8.

⁵¹ *id.* at Article 9.

⁵² *id.* at Article 10.

⁵³ *id.* at Article 11.

⁵⁴ *id.* at Article 12.

⁵⁵ *id.* at Article 13.

⁵⁶ *id.* at Article 14.

⁵⁷ *id.* at Article 15.

⁵⁸ *id.* at Article 16.

home or correspondence,⁵⁹ freedom of thought, conscience and religion,⁶⁰ freedom of opinion and expression,⁶¹ prohibition of propaganda of war,⁶² right to peaceful assembly,⁶³ freedom of association,⁶⁴ rights of the child,⁶⁵ right to take part in the conduct of public affairs, to vote and to be elected,⁶⁶ equality before the law⁶⁷ and rights of minorities,⁶⁸ etc.

Right to lead a dignified life requires privacy and protection of family. If there is any attack or interference with these rights, it is to be protected by law.⁶⁹ The right to privacy is concerned more with women. She has the right to safeguard her privacy, her family, marriage, motherhood, child bearing etc. In order to lead a life with human dignity without fear of sexual violence and domestic violence, the Covenant requires the State Parties to incorporate these norms into their domestic law.

Family is considered as the natural and fundamental unit of the society and entitled to protection. The right to form a family by marriage and its protection is also recognised by the Covenant. It also recognised the free

⁵⁹ *id.* at Article 17.

⁶⁰ *id.* at Article 18.

⁶¹ *id.* at Article 19.

⁶² *id.* at Article 20.

⁶³ *id.* at Article 21.

⁶⁴ *id.* at Article 22.

⁶⁵ *id.* at Article 24.

⁶⁶ *id.* at Article 25.

⁶⁷ *id.* at Article 26.

⁶⁸ *id.* at Article 27.

⁶⁹ *id.* at Article 17(2).

consent and attainment of majority as a condition for marriage.⁷⁰ So the Covenant implicitly prohibited child marriages. Equal right of nationality to women was also recognised.

Part IV (Articles 28 to 45) deals with measures of implementation of Civil and Political Rights. Human Rights Committee was constituted under Article 28. Articles 29 to 40 deal with constitution and functioning of the committee. Following are the procedures envisaged under the Covenant for implementation.

1. Reporting Procedure

Part I of Article 40 of the International Convention on Civil and Political Rights, 1966 casts an obligation on the part of the States to report to the Secretary General who transmitted the report to the Human Rights Committee, the measures taken by them to realise the rights guaranteed under the Convention. The first part of the report shall contain details about the violations of human rights and the second part shall contain the legislative, administrative or other measures in force in regard to such rights, restriction, limitation etc; imposed by the State on the enjoyment of these rights. By this system if the fair and accurate report is furnished by the state, the committee can really assess and supervise the human rights situations of that particular country.

⁷⁰ *id.* at Article 23.

2. Inter State Communication System

Article 41 provides for Inter State Complaint machinery that enables one State Party to charge another State Party with violation of the treaty. If a State Party is of opinion that another state is not giving effect to the provisions of the Covenant, the matter can be brought to the notice of that State in writing. Within three months, the receiving State can give clarification as to the domestic procedure or remedies taken in that matter. If the matter cannot be clarified to the satisfaction of both the States within six months, either State shall have the right to refer the matter to the human rights committee, after giving notice to the committee as well as to the State.

The committee shall deal with the matter only if it is satisfied that all alternate remedies under the domestic law have been exhausted except in cases where resort to domestic law caused unreasonable delay in deciding the matter. The committee shall after giving opportunities to the parties, tried for a friendly settlement of the matter on the basis of respect for human rights and fundamental freedoms recognised in the Covenant. If a friendly settlement is possible, the committee shall submit a report containing a brief statement of the facts and solutions reached and the report shall be communicated to the State Parties concerned.

If a friendly settlement is not possible, the committee may call the State Parties to submit relevant information relating to the matter. The report of the

committee shall contain a brief statement of the facts, the written submissions and a record of the oral submissions made by the State Parties. The complaint machinery under this article is optional. It becomes effective only if the State Party declares that it recognises the competence of the human right committee to receive and consider communications by the State Parties.

3. Conciliation Procedure

When the inter-state system fails, the Human Right Committee adopts the conciliation procedure. Article 42 of the International Covenant on Civil and Political Rights, 1966 provides for the establishment ad-hoc conciliation commission with the prior consent of the State Parties concerned with a view to an amicable solution of the matter on the basis of the respect for the Covenant. The commission shall submit its report to the Chairman of the committee. The report shall contain a brief statement of facts and the solution reached. If an amicable settlement is not possible its views on the possibilities of the amicable settlement is stated in the report. After the Commission examines the matter, it gives its views to the parties. The parties are at liberty to accept or reject the views.⁷¹ But the Covenant is silent as to the remedies available to the aggrieved state. It is one of the weaknesses of the conciliation system.

4. Individual communication system

Under the optional protocol to the Covenant on Civil and Political Rights after giving notice to the state parties and calling explanations from the

⁷¹ *id.* at Article 43.

State parties, the committee examines the complaint and forwards its views to the State parties concerned. The committee is not empowered to give its decision or judgement.⁷² The implementation procedure under this Covenant is not sufficient to make the protection and promotion of the rights effective. It is felt that an independent judicial enforcement system ought to have been created under the Covenant then it could have been possible for the individuals to enjoy these rights.

International Covenant on Economic, Social and Cultural Rights, 1966

Besides the preamble, the International Covenant on Economic, Social and Cultural Rights consists of 31 Articles divided into five parts. Part I deals with the right of the people for self-determination. Part II deals with the obligation of the State Parties to take measures to incorporate the rights recognised in the Covenant in their domestic law. The outstanding feature of the Covenant on Economic, Social and Cultural Right is that it does not require the State Parties to give immediate effect to this Covenant but only according to the available resources of the country. It requires the State Parties to take appropriate measures including legislation to give effect to this Covenant.⁷³ The rights guaranteed in the Covenant are available to all persons without any discrimination of any kind as to sex, among other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property,

⁷² Optional Protocol to the Covenant on Civil and Political Rights, 1966, Article 1.

⁷³ International Covenant on Economic, Social and Cultural Rights, 1966, Article 2(1).

birth or other status.⁷⁴ The Covenant casts an obligation on the State Parties to undertake steps to ensure that the rights available in the Covenant shall be equally enjoyable by men and women.⁷⁵

The International Covenant on Economic, Social and Cultural Rights, 1966 envisages protection of human rights of women and prohibits discrimination against women in work places.

The Covenant requires the State Parties to give every person, man and women the right to choose any work and favourable conditions of work. There shall not be any discrimination on the remuneration in ground of sex and the working conditions of women shall not be inferior to man.⁷⁶

The State Parties shall also ensure a decent living, safe and healthy living conditions, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays and equal opportunity for promotion.⁷⁷

The right of woman to work, equal wages, humane conditions of work etc; are guaranteed under the Covenant.⁷⁸ It is specifically provided in the Covenant that in the case of promotion to a higher level only the seniority and

⁷⁴ *id.* at Article 2(2) .

⁷⁵ *id.* at Article 3.

⁷⁶ *id.* at Article 7(a) (1) .

⁷⁷ *id.* at Article 7 a(ii) (b) (c) (d).

⁷⁸ *ibid.*

competence shall be taken into consideration. Discrimination shall not be made on the basis of sex in the matter of promotion.⁷⁹

Considering family as the natural and fundamental unit of the society and responsible for the care and protection of the dependent children, the covenant required the State Parties to give maximum protection to family especially to mothers during reasonable period before and after child birth. Working mothers should be accorded paid leave or leave with adequate remuneration during this period. Like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, free consent of marriage is also recognised.⁸⁰

It also provided that children and young persons should be protected from economic and social exploitation.⁸¹ The basic principle underlying all the human rights instruments is respect for human rights and the principle of nondiscrimination, which prohibits any distinction in the enjoyment, and exercise of human rights based on sex.

The full development of the personality of a person and the right to lead a dignified life requires education. The Covenant requires the State Parties to give free compulsory primary education.⁸²

⁷⁹ *id.* at Article 7 (a)(ii)(c).

⁸⁰ *id.* at Article 10(1) &(2).

⁸¹ *id.* at Article 10 (3).

⁸² *id.* at Article 13(2)(a).

Procedure for Implementation

The Covenant provides for reporting system for the implementation of the provisions. The State Parties undertake to submit reports to the Secretary General of the United Nations who shall transmit copies to the Economic and Social Council for consideration and to the specialised agencies concerned.⁸³

The Economic and Social Council may transmit the reports submitted by the States to the Commission on Human Rights for study and general recommendation or as appropriate for information.⁸⁴

The reports shall be furnished in stages in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the Covenant.⁸⁵ The council may submit from time to time to the General Assembly the reports with recommendations of a general nature and a summary of information received from the State Parties to the Covenant and specialised agencies.

The Economic and Social Council established a Committee on Economic, Social and Cultural Rights in 1985. The Committee also makes general comments on a number of topics for the effective realisation of the rights recognised in the Covenant.

Despite the rhetorical commitment to the indivisibility and interdependence of human rights, the international community including the

⁸³ *id.* at Article 16.

⁸⁴ *id.* at Article 19.

⁸⁵ *id.* at Article 17.

international human right movements has consistently treated civil and political rights as more significant, while consistently neglecting economic, social and cultural rights.⁸⁶

The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

The European Convention on Human Rights was signed by the State Parties in 1950 and entered into force in 1953. The significance of the European Convention is that it provides the machinery for enforcement. It establishes a Commission to receive and examine complaints about infringement of rights by the State Parties and a Court to adjudicate the complaints and to interpret the provisions of the Convention. It also establishes a committee of ministers of the Council of Europe, having power of adjudication.

Five protocols were later adapted to the Convention. First protocol was signed on 20th March 1952 which adds 4 new articles providing for certain rights and freedoms. The second protocol was signed on 6th May 1963. It recognises the advisory jurisdiction of the court of human rights on legal questions concerning the interpretation of the Convention and protocols. It came into force on 21st September 1970. The third protocol amended Articles 29, 30, 34, abolished the system of sub-commission and it was signed on 6th

⁸⁶ Audrey R. Chapman, "A Violations Approach for monitoring the International Convention on Economic Social and Cultural Rights, 1966." in Robert Mc Corquodale (Ed.) *The International Library of Essays in Law and Legal Theory, Second Series, Human Rights*, Dartmouth Publishing Company, England (2003), p.452.

May 1963 and came into force on 22nd September 1970. The fourth protocol was signed on 16th September 1963 and came into force on 2nd May 1968 secured four freedoms. (1) Freedom from imprisonment for debts, (2) Freedom from expulsion of aliens, (3) Freedom of choice of residence and (4) liberty of movement. The fifth protocol was signed on 20th January 1966. It makes certain procedural changes regarding the election of the commission and courts.

The European Convention protects predominantly civil and political rights. The rights guaranteed under the Convention are enjoyable by all persons without any discrimination on the basis of sex. These rights are equally available to men and women irrespective of their race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The rights recognised under the Convention are right to life,⁸⁷ freedom from torture and from inhuman or degrading treatment or punishment,⁸⁸ freedom from slavery and servitude,⁸⁹ the right to liberty and security of the person,⁹⁰ the right to fair trial,⁹¹ protection against retroactivity of the criminal law,⁹² freedom of thought, conscience and religion,⁹³ freedom of expression,⁹⁴ freedom of assembly and association,⁹⁵

⁸⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

Article 2.

⁸⁸ *id.* at Article 3.

⁸⁹ *id.* at Article 4.

⁹⁰ *id.* at Article 5.

⁹¹ *id.* at Article 6.

⁹² *id.* at Article 7.

⁹³ *id.* at Article 9.

⁹⁴ *id.* at Article 10.

⁹⁵ *id.* at Article 11.

right to an effective remedy if one's rights are violated⁹⁶ etc. The Convention recognises the right of men and women of marriageable age to marry and found a family according to the national laws governing the exercise of that right.⁹⁷ Every one has the right to respect for his private and family life, his house and his correspondence.

The European Social Charter, 1961 also has provisions protecting the rights of women. The right of the employed women to protection casts an obligation on the State to provide either by paid leave or by adequate social security benefits or benefits from public funds for women to take leave before and after child birth up to a period of at least twelve weeks. During such period, the employer shall not give her notice of dismissal. The mothers who are nursing their infants shall be entitled to sufficient time-off for that purpose.⁹⁸ There is also provision in the Social Charter to ensure fair and humane conditions of work to women employees at work place. The Charter considers family as the fundamental unit of the society and as such required the contracting parties to this Convention to promote protection of the family life by providing social and family benefits, fiscal arrangements, provisions for family housing, benefits for the newly married couple etc.⁹⁹ Article 5 of the seventh protocol protects the equality of the spouses in private law. The right to respect private and family life, the right to marry and found a family and the right to equality of the spouses and the prohibition of inhuman or degrading

⁹⁶ *id.* at Article 13.

⁹⁷ *id.* at Article 12.

⁹⁸ European Social Charter, 1961, Article 8.

⁹⁹ *id.* at Article 16.

treatment casts not only a negative obligation of non-interference but also a positive obligation to give effective respect for private and family life. This obligation very much implies protection of women.

The Convention establishes a Commission to receive and examine complaints about infringement of rights by the State Parties and a Court to adjudicate finally on complaints, and a Committee of the Ministers of the Council of Europe, for the protection and promotion of human rights. In international law, the individual cannot complain about violation of one's right. But the European Convention recognises the right of the individual to complain even against one's own government.¹⁰⁰ When a petition is brought before the Commission, the first task of the Commission is to decide whether it is admissible. The Commission may deal with a case only after all domestic remedies have been exhausted and within a period of six months from the date of the decision at the national level.¹⁰¹ When a petition is admissible, the Commission investigates the case and after investigation tries for a friendly settlement.¹⁰² If the commission finds that the petition is not acceptable, the fact is communicated to parties.¹⁰³ The Commission draws up a detailed report and the report is transmitted to the concerned State, to Committee of Ministers and to the Secretary General of the Council of Europe for publication.¹⁰⁴

¹⁰⁰ European Convention for the Protection of Human Rights and Fundamental Freedom, 1950, Article 25.

¹⁰¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 26.

¹⁰² *id.* at Article 28 (b).

¹⁰³ *id.* at Article 29 (as amended by Third Protocol).

¹⁰⁴ *id.* at Article 30.

If the case is not referred to the Court of Human Rights, the Committee of Ministers shall decide whether there is violation of human rights.¹⁰⁵ The Convention creates an obligation on States to take remedial measures on the basis of the decision of the Committee of Ministers and if the Government has not taken satisfactory measures within the period prescribed, the Committee of Ministers decides what further action is necessary and to publish the report of the commission.¹⁰⁶

A case may be referred to the European Court of Human Rights only by the Commission or a State Party and not by the individual applicant.¹⁰⁷ Only if the defendant State accepted the jurisdiction of the court, the court can exercise jurisdiction.¹⁰⁸

The Court may only deal with a case only after the Commission has acknowledged the failure of efforts for friendly settlement and within the period of 3 months provided for in Article 32.¹⁰⁹

Then the court has to decide whether there is violation of human rights. The Convention is silent as to the question whether the court has to order remedial measures. But the Convention empowers the court to award just satisfaction or damages to an injured party if the domestic law does not provide such a remedy.¹¹⁰ The judgement of the court is transmitted to the Committee

¹⁰⁵ *id.* at Article 32(1).

¹⁰⁶ *id.* at Article 32 (2) & (3).

¹⁰⁷ *id.* at Article 44.

¹⁰⁸ *id.* at Article 46 (1).

¹⁰⁹ *id.* at Article 47.

¹¹⁰ *id.* at Article 50.

of Ministers who has the duty to give effect to the judgement.¹¹¹ The Government concerned has to explain to the committee the remedial measures that have been taken by the Government to give effect to the provision and the committee decides whether such action satisfies the requirements of the situation.

As discussed earlier the European Convention on Human Rights recognises the right of every person of marriageable age to marry and establish a family. The efficacy of this provision came to be tested. In England a prisoner was denied the right to marry by the order of the authorities of the United Kingdom. The matter was referred to the Commission and the question for consideration before the Commission was whether there is violation of Article 12 of the Convention. The Commission was of the opinion that in so far as the prisoners' right to marriage does not affect the public interest, the exercise of his right to marry was substantially delayed by the combined effects of national law and administrative action, and according to the opinion of the Commission, it amounts to an injury to the prisoner's right to marry. The Commission finds that the applicant's right to marry guaranteed by Article 12 of the Convention was violated. The committee of ministers was also of the same view. From the above discussion it can be seen that respect for the human rights was recognised by the Commission and the committee by holding that even the prisoner has the right to marry.¹¹²

¹¹¹ *id.* at Article 54.

¹¹² *Hamer v. United Kingdom*, 1982 (4) E.H.R.R. p.139.

Article 8 of the Convention recognises respect for a person's family and his private life and any interference with the right violates the rights recognised in the Convention. Respect for the family life includes right to access to the child. A child was born to a mentally retarded woman. The local county council after due regard to the family and welfare of the child, applied to the Juvenile Court for safety order of the child on 12 February 1976 and following an application by the council to the High Court, the child became a ward of the court. During the early stages, she was given access to the child, but later the access was reduced and consequently she filed application before the High Court, which was refused and in the course of the Judgement, the Judge made a recommendation that the child may be placed for adoption. In 1977, she married another person and her health was improved and so she approached the council for access to the child. On 13 November 1978 she and her husband initiated proceedings before the High Court pursuant to wardship jurisdiction to re-establish access.

On 22nd October 1980, the Judge made an adoption order in respect of the child and refused applicant, access to the child. Access to the child was denied by the High Court and appeal was also dismissed. Proceeding was instituted before the Commission on September 3, 1981. The mother alleged delay in the disposal of the application to access and hence there is violation of Article 6(1) and Article 13 read with Article 8 of the Convention. The Commission admitted the case. The Commission found that refusal of access to the child is a violation of Article 8. There is failure on the part of the authorities

to show respect for her family life protected by Article 8(1) of the Convention. The European Court of Human Rights also observed that the length of the proceedings related to the applicants claim to access to her child violates Article 6(1) and 8 of the Convention. The court further held that the decision of the court determines the question of applicant's future relations with her child and the proceedings related to a fundamental element of family life etc.

Irrespective of their final outcome, the respect for the applicant's family life required that the question to be determined solely in the light of all relevant considerations. The delay in the proceedings amounted to an interference with the applicant rights to respect for her family life protected by Article 8(1).¹¹³ The same view was followed in *B v. United Kingdom*¹¹⁴ and it was held that denial of access to children taken to public care violates Article 8 of the European Convention on Human Rights.

These decisions show the support given by the European Court of Human Rights and the European Commission on Human Rights to protect the interest of women. Enforcement mechanism under the European Convention for Protection of Human Rights and Fundamental Freedoms 1950 is more effective than the other international conventions.

¹¹³ *H. V United Kingdom*, 1988 (10) E.H.R.R. p.195.

¹¹⁴ 1988 (10) E.H.R.R. p.87.

American Convention on Human Rights, 1969

The 9th Inter American Conference held at Bagota, Columbia in May 1948, established the Organisation of American States (OAS). The 1948 Charter entered into force in December 1951. The Bagota Conference of 1948 also adopted the American Declaration of the Rights and Duties of man. In 1956 the meeting of consultation of foreign affairs of the Inter-American Conference held at Santiago adopted a resolution for the establishment of Inter-American Convention on Human Rights. The preparation of the drafts of human rights convention was entrusted to the Inter-American Council of Jurists. It was also resolved to constitute an Inter-American Commission on Human Rights. The Inter American Council of Jurists met at Santiago and prepared a draft according to the model of European Convention. The draft was considered at the extra ordinary conference held in Rio' de Janeiro in November 1965, two other drafts were also presented by the Government of Uruguay and Chile, the latter was designed to incorporate all relevant provisions not only of the European Convention but also of its protocols and of the European Social Charter. After general discussion the drafts were referred to the Council of the Organisation of American States in Washington with instructions to prepare a single revised draft, which would be sent to governments for their comments, and thereafter to convene a specialised conference for providing a final text for adoption and signature. The Conference also adopted a resolution to the effect that pending the conclusion of a new Convention on Human Rights, the

existing Commission on Human Rights should be authorised to consider individual complaints of violation of certain basic rights such as right to life liberty etc.

The third special Inter-American Conference took place from 15th to 25th February 1967. It adopted detailed amendment of the Charter. The Inter-American Judicial Committee of experts replaced the Council of Jurists by the amended Charter. The Inter American Commission is made a statutory organ with the main function of protection and promotion of human rights. The conference was then held at Costa Rica from 7th to 22nd November, to produce the final text, to adopt and submit it for signature. The Convention was signed on 22nd November 1969 and entered into force on 18th July 1978.

The Convention has been divided into three parts.

1. Part I deals with the right to be protected and promoted. Article 1 to 32.
2. Part II deals with means of protection of Human Rights - Article 33 to 73.
3. Part III deal with general provisions regarding signature, ratification, reservations, amendment, protocols and denunciation.

The preamble of the Convention recognised that the essential rights of man are not derived from one being a national of a State but are based upon the attributes of human personality and therefore entitled to protection through Convention and through incorporation of the norms of the Convention to the domestic laws of the American States.

The State Parties to the Convention undertake to respect rights and freedoms to all persons subject to their jurisdiction without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social conditions.¹¹⁵ The Member States are under an obligation to incorporate the provisions in their domestic law through legislative or other process.¹¹⁶

Part II of the Convention deals with civil and political rights. Every person has the right to recognition as a person before law.¹¹⁷ The rights and freedom to be protected under the Convention are the right to life,¹¹⁸ right to respect for physical, mental and moral integrity, right not to be subjected to cruel, inhuman or degrading punishment or treatment,¹¹⁹ the right to personal liberty,¹²⁰ the right to fair trial,¹²¹ freedom from ex post facto law,¹²² right to compensation for miscarriage of justice,¹²³ right to respect his family, honour, right to privacy of life, family, correspondence,¹²⁴ freedom of conscience and religion,¹²⁵ freedom of thought and expression,¹²⁶ the right to reply,¹²⁷ the right to assembly,¹²⁸ right to association,¹²⁹ right to constitute family,¹³⁰ right to

¹¹⁵ American Convention on Human Rights, 1969, Article 1.

¹¹⁶ *id.* at Article 2.

¹¹⁷ *id.* at Article 3.

¹¹⁸ *id.* at Article 4.

¹¹⁹ *id.* at Article 5.

¹²⁰ *id.* at Article 7.

¹²¹ *id.* at Article 8.

¹²² *id.* at Article 9.

¹²³ *id.* at Article 10.

¹²⁴ *id.* at Article 11.

¹²⁵ *id.* at Article 12.

¹²⁶ *id.* at Article 13.

¹²⁷ *id.* at Article 14.

¹²⁸ *id.* at Article 15.

¹²⁹ *id.* at Article 16.

¹³⁰ *id.* at Article 17.

name,¹³¹ right of the child,¹³² right to nationality,¹³³ right to property, freedom of movement and residence,¹³⁴ right to participate in the Government,¹³⁵ right to equal protection of laws,¹³⁶ and right to judicial protection etc.¹³⁷

Article 10, 11, 17, 25 are provisions meant for the protection of women. The rights recognised in the Covenant are available to all persons without discrimination as to race, colour, sex, language, religion or other opinion, national or social origin, economic status, birth or any other social conditions. Every one has the right to respect his dignity, the right to non-interference of his private life, family, honour or reputation.¹³⁸ The right to form family is recognised. The right to form family implies equal participation of the husband and wife in all areas of household responsibilities such as family planning, child rearing and household work. But men are often reluctant to share the responsibility because of the social and traditional attitude of the society and women are often subjected to difficulties. Men and women have the same mental constitution, same intelligence, and both are human beings, and by virtue of being a human person women are entitled to the same right with that of man. The Convention requires the State Parties to take adequate steps for the protection and promotion of the family, which implies the active involvement of women in family and for the promotion of equal value of children of both

¹³¹ *id.* at Article 18.

¹³² *id.* at Article 19.

¹³³ *id.* at Article 20.

¹³⁴ *id.* at Article 21.

¹³⁵ *id.* at Article 23.

¹³⁶ *id.* at Article 24.

¹³⁷ *id.* at Article 25.

¹³⁸ *id.* at Article 17.

the sexes. The Convention also strives to achieve equal rights of men and women in matrimonial relations and at the dissolution of marriages by virtue of the principle of free consent to marriage.¹³⁹

The Inter American Commission on Human Rights and the Inter American Court of Human Rights constitute the mechanism for the implementation of human rights envisaged under this Convention.

The Commission of Human Rights was originally established under Santiago Conference, Resolution VII in 1959 as a promotional organ. By Rio Conference it was given certain limited powers to consider individual petitions. Later in 1967 Buenos Aires Conference on the revision of the Charter made it a statutory organ. The structure, competence, and procedure of the Commission were left to be decided by the draft Convention.

Under the draft Convention, the Commission would be composed of seven members who are persons of high moral character and recognised competence in the field of human rights. The Commission shall represent all the member countries of the organisation of American States.¹⁴⁰ They are elected by secret ballot in a personal capacity by the General Assembly from amongst the list of candidates proposed by the States. A State may propose three candidates out of which one must be national of other State.¹⁴¹ They are elected for four years. They could be reelected only once. Two nationals of the

¹³⁹ *ibid.*

¹⁴⁰ *id.* at Article 35.

¹⁴¹ *id.* at Article 36.

same State may not be members of the Commission. The term of three members chosen in the first election is two years. Immediately following the election, the General Assembly shall determine the names of those three members by lot.¹⁴²

Chapter VII deals with Inter American Commission on Human Rights.

The functions of the Commission are:

1. To develop awareness of human rights
2. To make recommendation for the adoption of progressive measures within the framework of national legislation.
3. To prepare studies and reports
4. To obtain information from States on measures adopted for the promotion and protection of human rights.
5. To respond to consultations made by the members on matters relating to human rights with advisory services through Secretary General.
6. To take action on petitions and other communication.
7. To submit report to the General Assembly of the organisation of American States.¹⁴³

Any person or group of person or any non-governmental organisation or one or more States of the organisation may lodge petition before the Commission for violation of the Convention against his own State or any other

¹⁴² *id.* at Article 37.

¹⁴³ *id.* at Article 41.

State.¹⁴⁴ Commission can entertain the petition only if the competence of the commission is recognised by the State Parties by a declaration at the time of ratification or at a later time.

This declaration can be made at any time for a limited period or unlimited period and is optional. The petition is admissible only if;

1. All the domestic remedies have been exhausted.
2. The petition is lodged within 6 months from the final decision of the domestic court
3. The subject of the petition is not pending before another International Tribunal for settlement.
4. The petition contains the name, nationality, profession, domicile and signature of persons or legal representatives.

The rules regarding admissibility of the petition is not applicable if the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have been allegedly violated or the party alleging violation of his right has been denied access to the remedies under domestic law or has been prevented from exhausting them, or there has been unwarranted delay in rendering a final judgement under the aforementioned remedies.¹⁴⁵

¹⁴⁴ *id.* at Article 44.

¹⁴⁵ *id.* at Article 46.

Procedures before the Commission

When an admissible petition is received by the Commission, copy of the same will be sent to the State responsible for the alleged violation and requires the State to furnish information within a reasonable period determined by the Commission in accordance with the circumstances of each case. When the information is received or at the expiration of the time specified for furnishing the information, the Commission shall ascertain whether grounds for the petition still exist. If they do not, the Commission shall order the record to be closed. The Commission has the power to declare the petition or communication inadmissible or out of order on the basis of the information or evidence subsequently received.

If the record has not closed, the Commission with the knowledge of the parties, and with the information from the States and if necessary by an investigation verify the facts and try for a friendly settlement of the matter on the basis of respect for human rights recognised in the Convention.¹⁴⁶ If a friendly settlement is reached the report of the Commission about the settlement shall be transmitted to the petitioner and to the State Parties to the Convention and shall then be communicated to the Secretary General of the Organisation of American States for publication. The report shall contain a brief statement of the facts and solution reached on the request of the party etc.¹⁴⁷

¹⁴⁶ *id.* at Article 48(d).

¹⁴⁷ *id.* at Article 49.

If the settlement is not reached, the report of the Commission shall be transmitted to the State concerned, and within a period of three months from the date of transmission of the report to the State concerned if the matter has not been settled, it is submitted to the court.¹⁴⁸

Inter-American Court of Human Rights

The Court consists of seven Judges, elected in individual capacity from amongst the jurists of high moral authority and recognised competence in the field of human rights and who are competent to be appointed to the highest judicial office of the State.¹⁴⁹ No two judges may be the nationals of the same State. They are elected by secret ballot by an absolute majority of votes in the General Assembly from out of a panel of three candidates by these States, of which at least one should be the national of other State.¹⁵⁰ The term of the judges is fixed to be six years and may be re-elected again.¹⁵¹

If a judge called upon to hear a case belongs to one of the parties, then the other party may appoint an ad-hoc judge. If none of the judge belongs to the parties, then each party is entitled to appoint ad-hoc judges.¹⁵² Five Judges constitute quorum for the court.¹⁵³ The Commission appears in all cases before the court.¹⁵⁴

¹⁴⁸ *id.* at Article 51.

¹⁴⁹ *id.* at Article 52.

¹⁵⁰ *id.* at Article 53.

¹⁵¹ *id.* at Article 54.

¹⁵² *id.* at Article 55.

¹⁵³ *id.* at Article 56.

¹⁵⁴ *id.* at Article 57.

Only the State Parties and the Commission shall have the right to submit a case to the court. Before the court could hear the case, it is necessary that the procedures of Article 48 to 51 should have been exhausted.

The State Parties, upon depositing its instrument of ratification or adherence to the Convention or at any subsequent time declare that it recognises the jurisdiction of the court on all matters relating to interpretation and application of the provisions of this Convention that are submitted to it, provided that the State Parties to the case recognise or have recognised such jurisdiction whether by special declaration or by a special agreement. In cases of extreme seriousness and urgency and whenever it becomes necessary to avoid irreparable damage to persons, the court may adopt provisional measures.¹⁵⁵ It may issue such orders on the request of the Commission in cases, which have not been submitted, to it. If the court finds a violation of the right or freedom protected by the Convention, it shall rule that the injured party is ensured the enjoyment of his right or freedom that was violated and also rule that fair compensation be paid to the injured party.¹⁵⁶ The decision of the court is final and not subject to appeal.

Any State may seek advisory opinion regarding the interpretation of the Convention or other treaties concerning the protection of human rights in the American States and the compatibility of the domestic laws with American Convention or any other treaty on human rights.

¹⁵⁵ *id.* at Article 63(2).

¹⁵⁶ *id.* at Article 63 (1).

The court is required to submit its report to the General Assembly, giving particulars about the working of the court and also specify cases in which a State has not complied with its judgement and make the pertinent recommendation.¹⁵⁷

The judgement of the court shall be supported by reasons and a judge is empowered to pronounce the dissenting opinion, in case of disagreement with other judges.¹⁵⁸ The court has the power to interpret the meaning and scope of its judgement on being requested by any within 90 days from the date of notification of the judgement.¹⁵⁹

The States shall be bound by the judgement of the court and an order of the court for damages will be directly enforceable in the State concerned in accordance with the domestic procedure governing the execution of the judgement against the State.

The court has also been conferred with advisory jurisdiction. The court is empowered not only to give advisory opinion regarding the interpretation of the Convention but also other treaties concerning protection of the human rights between American States. The jurisdiction of the court is optional.

American Declaration of the Rights and Duties of Man, 1948 also recognises the dignity of the individual and equality of status of all persons. Provisions are made in the Declaration to person ensuring the right to

¹⁵⁷ *id.* at Article 65.

¹⁵⁸ *id.* at Article 66.

¹⁵⁹ *id.* at Article 67.

protection of law against abusive attacks upon the individual's honour, reputation and his private and family life.¹⁶⁰ Every person has the right to establish a family and the right to protection of the family¹⁶¹. Special protection is given to all women during pregnancy and the nursing period.

African Charter on Human and Peoples Rights, 1981

The Organisation of African unity is a body of all African States. In 1981, the Assembly of the Head of the States and Government of the organisations of African Unity adopted African Charter on Human and Peoples Rights, 1981. This Charter entered into force in 1986. The main object set out in the preamble is the establishment of bodies to promote and protect human and peoples rights especially freedom, equality, justice, and dignity. The Charter was primarily dedicated to eradicate all forms of colonization from South Africa, to co-ordinate and intensify their co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

The various rights covered under the Charter include right to equality before law and equal protection of law.¹⁶² Every human being shall be entitled to respect for his life and dignity and to recognition of his legal status.¹⁶³ All persons can enjoy all the rights recognised under this Charter without any distinction as to race, ethnic group, colour, sex, language, religion, politics or

¹⁶⁰ American Declaration of the Rights and Duties of Man, 1948, Article 5.

¹⁶¹ *id.* at Article 6.

¹⁶² African Charter on Human and Peoples Rights, 1981, Article 3.

¹⁶³ *id.* at Articles 4 & 5.

any other opinion.¹⁶⁴ Like all the other conventions the African Charter also considers family as the fundamental unit of the society and a duty is cast on the government of the Member States to take steps to protect the physical and mental health of its members and to eliminate all forms of discrimination. The other rights include the right to life,¹⁶⁵ the right to security of the person,¹⁶⁶ the right to be heard,¹⁶⁷ freedom of conscience and freedom to practice religion,¹⁶⁸ freedom of expression and the right to receive information,¹⁶⁹ the right to form association,¹⁷⁰ freedom of assembly,¹⁷¹ freedom of movement and residence,¹⁷² right to participate in the government of the country,¹⁷³ the right to property,¹⁷⁴ the right to enjoy the best attainable standards of physical and mental health,¹⁷⁵ the right to education,¹⁷⁶ the right to existence,¹⁷⁷ and the right to freely dispose of their wealth and natural resources.¹⁷⁸ All people have the right to their economic, social and cultural development with due regard to their freedom and identity and the equal enjoyment of the common heritage of mankind,¹⁷⁹ right to national and international peace and security,¹⁸⁰ and the right to a general satisfactory environment favourable to their development¹⁸¹ etc.

¹⁶⁴ *id.* at Article 2.

¹⁶⁵ *id.* at Article 6.

¹⁶⁶ *ibid.*

¹⁶⁷ *id.* at Article 7.

¹⁶⁸ *id.* at Article 8.

¹⁶⁹ *id.* at Article 9.

¹⁷⁰ *id.* at Article 10.

¹⁷¹ *id.* at Article 11.

¹⁷² *id.* at Article 12.

¹⁷³ *id.* at Article 13.

¹⁷⁴ *id.* at Article 14.

¹⁷⁵ *id.* at Article 16.

¹⁷⁶ *id.* at Article 17.

¹⁷⁷ *id.* at Article 20.

¹⁷⁸ *id.* at Article 21.

¹⁷⁹ *id.* at Article 22.

¹⁸⁰ *id.* at Article 23.

¹⁸¹ *id.* at Article 24.

The enforcement machinery under the African Charter is the Commission on Human Rights and the People's Rights. It has very few powers; hence it cannot effectively implement or interpret the provisions of the Charter. Articles 31 to 45 to the Charter deal with the constitution, duration, powers and functions of the commission and articles 46 to 58 deal with the procedure before the commission.

Equal Remuneration Convention 1951

This Convention deals with equal remuneration for men and women workers for work of equal value, adopted by the General Conference of the International Labour Organisation on June 29, 1951 and entered into force on May 23, 1953. The object of the Convention is to ensure the principle of equal remuneration to men and women to work of equal value. Remuneration is defined in the Convention as including ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly whether in cash or in kind by the employer to the worker and arising out of workers' employment. The term equal remuneration for men and women workers of equal value refers to rates of remuneration established without discrimination based on sex.¹⁸² The Convention requires the parties to take appropriate steps through legislation or regulation or through machinery for wage determination or through agreements between employers and workers or through the combination of all these methods to ensure the application of the principle of equal remuneration to men and women of same work.

¹⁸² Equal Remuneration Convention, 1951, Article 1.

Measures shall be taken for the appraisal of the work and if different rates are paid to workers based on the differences in the work performed by them without regard to sex, it shall not be considered as being contrary to the principle of equal remuneration for men and women of equal value.¹⁸³ The Convention also requires the members to co-operate with the employers and workers concerned for the purpose of giving effect to the provisions of the Conventions.¹⁸⁴

The formal ratification of this Convention shall be communicated to the Director General of the International Labour Office for registration. The Convention shall be binding only upon those members of International Labour Organisation whose ratification has been registered with the Director General.

Convention on the Political Rights of Women, 1953

It was adopted by the General Assembly on 20th December 1952 and entered into force on 7th July 1954. The preamble of the Convention expresses the desire of the Member States to implement the principle of equal rights of men and women incorporated in the U.N. Charter and the Universal Declaration of Human Rights and recognised the right of everyone to take part in the government of his/her country directly or through freely chosen representatives, and has access to public service in the country. The object of the Convention is to equalise the status of men and woman in the enjoyment and exercise of political rights in accordance with the provisions of the Charter

¹⁸³ *id.* at Article 3.

¹⁸⁴ *id.* at Article 4.

and of the Universal Declaration of Human Rights. The Convention recognises the right of woman to vote in all elections in equal terms with men without any discrimination,¹⁸⁵ the right to be elected to publicly elected positions established by national law on equal terms with men without any discrimination,¹⁸⁶ the right to hold public offices and the right to exercise all public functions established by national law on equal terms with men without any discrimination.¹⁸⁷ The same provision is reiterated in Article 25 of the International Covenant on Civil and Political Rights 1966, after 14 years of the adoption of the Convention on the Political Rights of Women.

Convention on the Nationality of Married Women, 1957

The problem of nationality of married women has been the concern of the United Nations since 1948 as the rule followed in conflict of laws made the domicile of wife dependent on husband's domicile. The General Assembly adopted the

Convention on the Nationality of Women, in consonance with Article 15 of the Universal Declaration of Human Rights to ensure equality between man and woman and to prevent a woman from becoming stateless or to prevent other hardships arising out of conflict of laws. In 1955, the Commission on the Status of Women completed its preparation of the draft of the Convention and was adopted by the General Assembly on 29th January 1957 and entered into force on 11th August 1958.

¹⁸⁵ Convention on the Political Rights of Women, 1953, Article 1.

¹⁸⁶ *id.* at Article 2.

¹⁸⁷ *id.* at Article 3.

Under this Convention, each Contracting State agrees that neither the celebration nor the dissolution of marriage and the change of nationality of the husband during marriage shall affect the nationality of the wife.¹⁸⁸ Even if the husband voluntarily acquires the nationality of another State or renounces the nationality, wife can retain the nationality of her own¹⁸⁹. An independent status is thus provided to women as per this Convention and the nationality of wife does not depend upon the nationality of the husband. Each contracting State, however, agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband, through specially privileged nationalisation procedures.

Discrimination (Employment and Occupation) Convention, 1958

This Convention was adopted on 29th June 1958 by the General Conference of the International Labour Organisation at its 42nd session and entered into force on 15th June 1960. The main object of the Convention is to make the Member States to remove discrimination in the field of employment and occupation. The Convention casts an obligation on the part of the parties to the Convention to adopt a national policy designed to promote equality of opportunity and treatment of men and women in employment and occupation.¹⁹⁰

¹⁸⁸ Convention on the Nationality of Married Women, 1957, Article 1.

¹⁸⁹ *id.* at Article 2.

¹⁹⁰ Discrimination (Employment and Occupation), 1958, Article 2.

Discrimination is defined as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Any distinction, which is an essential requirement of the particular job, shall not be treated as discrimination. Employment and occupation include access to vocational training, access to employment and to particular occupation and terms and conditions of employment.¹⁹¹

According to the Convention the State Parties shall (1) seek the co-operation of the workers organization and the employer (2) enact legislation to give effect to the policy (3) repeal all laws which are inconsistent with this policy and (4) ensure the observance of the policy in activities such as vocational training, placement services etc. to give effect to the policy adopted by the States. The action taken by the States to promote the objects and the results of such activities shall be included in the annual report submitted to the General Assembly.¹⁹²

Measures taken against persons engaged in activities affecting the security of the State or special protection given to person on the ground of sex, age, family responsibilities, in consultation with appropriate authorities shall not be deemed to be discriminatory, provided that the individual concerned shall have the right to appeal to a competent body established in accordance

¹⁹¹ *id.* at Article 1.

¹⁹² *id.* at Article 3.

with the national practice.¹⁹³ The object of the Convention is elimination of discrimination on the ground of sex among other grounds in the field of employment and occupation. Section 5 of the Convention affords special protection to women. Any special treatment based on difference as to sex, or family responsibility shall not be treated as discrimination. The Convention shall be binding only upon those members of the International Labour Organization whose ratifications have been registered with the Director General.

Convention Against Discrimination in Education, 1960

This Convention was adopted by the General Conference of the United Nations Educational Scientific and Cultural Organization on December 14, 1960 and entered into force on 22nd May 1962.

The Conference considered that discrimination in education on the ground of sex among other things is a violation of the rights enumerated in the Universal Declaration of Human Rights and that the United Nations Educational, Scientific and Cultural Organisation (UNESCO) while respecting the diversity of national educational systems, has the duty to prohibit discrimination in education and to promote equality of opportunity and equal treatment of all in education.

Discrimination is defined as any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political

¹⁹³ *id.* at Article 4.

or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education, and in particular depriving a person or group of persons access to education on any level or limiting any person or group of an inferior standard education or establish separate educational institutions other than those permitted under the Convention and inflictions of conditions which are incompatible with the dignity of man.¹⁹⁴

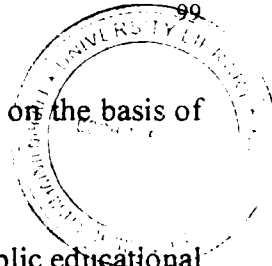
The maintenance and establishment of separate schools with the same curriculum and teachers with same qualifications for boys and girls, establishment of educational institutions by religious or linguistic minorities to preserve their culture, religion or language and establishment of schools for providing facilities in addition to facilities provided by public authorities shall not be deemed to be discriminatory provided such schools shall conform to the standards laid down by the appropriate authorities.¹⁹⁵ The Convention requires the parties to the Convention, to take steps to repeal or to abrogate all laws and administrative instructions for the purpose of eliminating discrimination and for the purpose of promoting equality in all spheres of education.¹⁹⁶ The steps to be taken by the State shall include;

1. Primary education shall be made free and compulsory
2. Secondary education shall be made available and accessible to all

¹⁹⁴ Convention Against Discrimination in Education, 1960, Article 1.

¹⁹⁵ *id.* at Article 2.

¹⁹⁶ *id.* at Article 3.



3. Higher education shall be made equally accessible to all on the basis of individual capacity.
4. The standards and quality of education are same in all public educational institutions.
5. Providing training for the teaching profession without discrimination.¹⁹⁷

The State Parties to the Convention agree to pay attention to the measures adopted by the General Conference of the UNESCO for the prevention of any kind of discrimination in the field of education and for ensuring equality of opportunity and for treatment.¹⁹⁸ The Parties to the Convention are also required to furnish to the General Conference of the UNESCO, the measures adopted by them to give effect to this Convention.¹⁹⁹

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962

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The Convention was adopted by the General Assembly on 7th November 1962 and entered into force on 9th December 1964. The object of the Convention is to prevent child marriage and marriages without the consent of the parties to the marriage. The Convention provides the following measures to achieve its object. The consent must be expressed by the two intending spouses in person after due publicity and in the presence of two witnesses.²⁰⁰ The States

¹⁹⁷ *id.* at Article 4.

¹⁹⁸ *id.* at Article 6.

¹⁹⁹ *id.* at Article 7.

²⁰⁰ The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962, Article 1.

shall take legislative measures to specify minimum age for marriage²⁰¹ and all marriages shall be registered in an appropriate register by competent authority.²⁰² The Convention requires the presence of the spouses in order to express the consent but in exceptional cases presence of one of the spouses can be dispensed with if the competent authority has satisfied that the circumstances is exceptional and the party has expressed the consent before a competent authority and has not withdrawn it.²⁰³ The Convention also permits exception in the case of age, if the competent authority has in the interest of the intending spouses and for serious reasons, granted a dispensation as to age.²⁰⁴ Even though the Convention itself has not specified the minimum age for marriage it imposes an obligation on the State Parties to take legislative action to this effect.

Declaration on the Elimination of Discrimination Against Women 1967

This declaration was made by the General Assembly on 7th November 1967. The parties to the Convention considered that discrimination against women affects the welfare of the society, the family and the development of the potentialities of women in social, political, economic and cultural life of the society. It also affects the full and effective participation of women in equal terms with men in the social, economic and cultural life and it is against the concept of human dignity of the individual. The full and complete development of the country, the welfare of the nation and maintenance of peace requires the

²⁰¹ *id.* at Article 2.

²⁰² *id.* at Article 3.

²⁰³ *id.* at Article 1(2).

²⁰⁴ *id.* at Article 2.

maximum participation of women along with men in all spheres of activities. Taking into consideration all these aspects the parties to the Convention feel that the principle of equality between man and woman requires the universal recognition in law and fact.

The Convention recognises that discrimination against women denying or limiting their equality of rights with men is fundamentally unjust and constitutes an offence against human dignity²⁰⁵ and it requires the State Parties to the Covenant to take steps to abolish all customs or laws or existing practices which are discriminatory against women and to adopt measures to ensure equal protection to men and women.²⁰⁶

The Convention also requires the State Parties to take all measures to eliminate all prejudices against women based on the idea of inferiority of women²⁰⁷ and to take appropriate measures to ensure women on equal terms with men the right to vote, be elected and to hold public offices.²⁰⁸ Women shall have the same right with men to acquire, change or retain the nationality. Marriage to an alien shall not automatically affect the nationality of the wife.²⁰⁹

Family is the natural and fundamental unit of the society and is entitled to protection and all the members of the family i.e. both man and woman have the same right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage. Marriage shall be entered into

²⁰⁵ Declaration on the Elimination of All Forms of Discrimination Against Women, 1967, Article 1.

²⁰⁶ *id.* at Article 2.

²⁰⁷ *id.* at Article 3.

²⁰⁸ *id.* at Article 4.

²⁰⁹ *id.* at Article 5.

with the full and free consent of the parties. Both the parties to the marriage have equal right in respect of dissolution of marriage. Parents have equal rights and duties in matters relating to their children. The Convention also envisages the prohibition of child marriages and betrothal of young girls before puberty. The Convention requires the State Parties to fix the minimum age for marriage and registration of marriages shall be made compulsory.²¹⁰ The Convention also requires the State Parties, to repeal all provisions in the penal code, which constitute discrimination against women.²¹¹

According to the Convention appropriate measures shall be taken to prohibit all forms of traffic in women and exploitation,²¹² to ensure equality in education, equal conditions of access, same curricula, equal distribution of scholarships among boys and girls,²¹³ the right to receive vocational training, free choice of profession and employment, the right to equal remuneration with men, equality of treatment in respect of work of equal value, the right to leave with pay, retirement privileges, provisions for security in case of unemployment, sickness, old age or incapacity to work, right to receive family allowances on equal terms with men.²¹⁴ In order to ensure equality between man and woman and to prevent discrimination against woman on account of marriage, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave with the guarantee of returning to former employment, and to provide the necessary social service

²¹⁰ *id.* at Article 6.

²¹¹ *id.* at Article 7.

²¹² *id.* at Article 8.

²¹³ *id.* at Article 9.

²¹⁴ *id.* at Article 10.

including child care facilities.²¹⁵ Measures taken to protect women in certain type of works for reasons inherent in their physical nature shall not be regarded as discriminatory.²¹⁶ The Convention requires the State Parties, to implement the principle of equality of rights of men and women enunciated in the United Nations Charter and the Universal Declaration of Human Rights. Governments, non-governmental organizations and individuals are required to do all in their power to promote the implementation of the principles contained in the Declaration.²¹⁷

Convention on the Elimination of All Forms of Discrimination Against Woman, 1979

The United Nations Charter, the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 various other Conventions, resolutions and recommendations concluded under the auspicious of the United Nations, and specialized agencies, contain provisions promoting equality between men and women. Despite these instruments extensive discrimination against women continues to exist.

The General Assembly adopted this Convention in 1979, and this is the basic and comprehensive instrument dealing with human rights of woman. The main issue concerning woman is the deprivation and discrimination to which they are subjected and the object of the Convention is to prohibit discrimination against women and to ensure equality.

²¹⁵ *id.* at Article 10(2).

²¹⁶ *id.* at Article 10(3).

²¹⁷ *id.* at Article 11.

The State Parties to the Convention were convinced that establishment of a new economic order based on equity and justice was needed to promote equality between man and woman. The full development of the country and the maintenance of peace and welfare of the world require maximum participation of woman in equal terms with man. The Convention requires the State Parties to bear in mind that the role played by women as mothers and in the upbringing of children shall not be the basis for discrimination and a change in the traditional role of men and women in the family and society is needed to achieve full equality between men and woman.

The Convention opens with the terms “Discrimination against Women”. Discrimination against women means 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 the basis of equality of men and women, of human rights and fundamental freedoms in the political, social, economic, cultural, civil or any other field.²¹⁸

Taking into consideration all these aspects, the parties to the Convention agreed to undertake steps to eliminate discrimination against women in all forms. The State Parties shall incorporate the principle of equality of men and women in national constitution, legislation and to adopt sanctions in appropriate cases through competent national tribunals and other public

²¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 1.

institutions to eliminate discrimination whether by the State or by any person, organization or enterprise. All the Member States of the Convention are under an obligation to take steps including legislation to ensure the full development and advancement of women and equality between men and women in all fields.²¹⁹ The State shall modify all the existing legislation, or abolish existing laws, regulations, custom or practices or repeal all final provisions, which constitute discrimination against women.²²⁰ The Convention mainly concerns with elimination of all forms of discrimination in the area of development, political and public life, nationality, marriage, family benefits, education, employment, health etc.

Every human being is born free and entitled to certain right by virtue of the fact that he is a human being, but the rights of women has always been neglected in the name of custom, honor, family, welfare and social prestige. The attitude of the society towards women is that they are weaker sex and they cannot do anything like that of men. The Convention casts an obligation on the parties to take appropriate measures to eliminate this and for this purpose the State shall take steps to modify the social and cultural patterns of the society for the purpose of eliminating all prejudices against women resulting from the customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on the stereo typed roles of men and women. Proper family education shall be given for the purpose of creating an

²¹⁹ *id.* at Article 3.

²²⁰ *id.* at Article 2.

awareness of common responsibility of men and women in the upbringing and development of children.²²¹

The Convention also requires the State Parties to take steps to eliminate discrimination in the political and public life of the country and to ensure women the right to vote, the right to be elected, the right to participate in the governmental policy, the right to hold public office, right to participate in non-governmental organizations and associations concerned with the public and political life of the country²²² and the right to represent their governments at international level and to participate in the work of international organizations.²²³ Women shall be guaranteed equal rights with men in the case of acquisition, change or retention of nationality. The marriage of a woman with an alien or change of nationality by the husband during marriage shall not affect the nationality of the wife. Women shall be given equal rights with men in respect of nationality of their children.²²⁴

In the field of education, same kind of treatment to boys and girls, especially same kind of training, same curricula, teaching staff with same qualification etc; shall be provided. Benefits from scholarships and study grants shall be equally distributed among men and women. The female drop out rates shall be reduced and the State shall organise programs for women and girls who left the school prematurely. Same opportunities shall be granted to men

²²¹ *id.* at Article 5.

²²² *id.* at Article 7.

²²³ *id.* at Article 8.

²²⁴ *id.* at Article 9.

and women to participate actively in sports and physical education. Women shall be given access to specific educational information to help to ensure the health and well being of families including information and advice in family planning.²²⁵

The Convention recognized that the right to work is an inalienable right of all human beings. Women and men have the same right to employment and the same criteria for selection in matters of public employment. Discrimination shall not be allowed in the right of free choice of profession, promotion, and job security and all benefits and conditions of service. The right to equal pay for equal work, equal treatment in respect of work of equal value and equality of treatment in the evaluation of the quality of work are also recognized. The State Parties are under an obligation to provide the same privileges in the case of right to social security in the case of retirement, unemployment, sickness, invalidity and old age and other incapacity to work. State Parties are also under an obligation to provide paid leave during the period of maternity to protect the health, to provide safe working conditions, including the safeguarding of the function of reproduction.²²⁶

In order to prevent discrimination against women on the grounds of marriage or maternity, the Convention requires the member states to prohibit dismissal on the grounds of maternity or pregnancy with appropriate sanction, to introduce provision for maternity leave, establish child care facilities and to provide special protection to women during pregnancy from doing works

²²⁵ *id.* at Article 10.

²²⁶ *id.* at Article 11.

which are harmful to them.²²⁷ There shall not be any discrimination on the ground of marriage, pregnancy, maternity leave etc. Protective legislation providing special benefits to women is required to be reviewed for the purpose of eliminating discrimination and giving protection. The health of women especially in times of pregnancy and lactation is protected by this Convention.²²⁸ With regard to family benefits, loans, and mortgages and in other financial matters, adequate steps shall be taken by the States to eliminate discrimination.²²⁹ The provisions of the Convention shall be applicable to rural women also. The Convention also recognized the right of women or the capacity of women to conclude a contract or administer property and to be treated equally before the court or tribunal. The freedom of movement and freedom to choose the residence is also recognised.²³⁰

The parties to the Convention are required to take all steps to eliminate discrimination against women in matters relating to marriage and family and to the equal right of men and women to enter into marriage, the right to decide the number of children, spacing of children, the right and responsibilities as parents, guardians, the right to hold and dispose of property etc.²³¹ The Convention also requires the State Parties to specify the minimum age for marriage and to make registration of marriages in an official registry compulsory.²³²

²²⁷ *id.* at Article 11(2).

²²⁸ *id.* at Article 12.

²²⁹ *id.* at Article 13.

²³⁰ *id.* at Article 15.

²³¹ *id.* at Article 16.

²³² *id.* at Article 16(2).

For the purpose of considering the progress made in the implementation of the present Convention, there shall be a committee on the Elimination of Discrimination Against Women. The State Parties shall make a report on the legislative, judicial, administrative, or other measures taken by them to the Secretary General of the United Nations for consideration by the Committee.

The Committee shall through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from State Parties. The Secretary General of the United Nations shall transmit the reports of the committee to the commission on the status of women for its information. The Convention shall not affect any provisions that are more conducive to the achievement of equality between men and women contained in the legislation of a State Party or any other international convention, treaty or agreement in force in that State. The State Parties under Article 24 have to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in this Convention.

Part V of the Convention (Articles 17-22) deals with the constitution and function of the Committee on the Elimination of all forms of discrimination Against Women. The committee consists of 23 members who serve in their individual capacities. The committee, which has to be convened once a year for a three-week period, reviews the report of the State Parties

relating to the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979. It can suggest specific as well as general recommendations for the implementation of the Convention.

Declaration on the Elimination of Violence Against Women, 1993

The Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly in 1993 is the first international human rights instrument exclusively and explicitly address the issue of violence against women. “Violence against women” for the purpose of the Declaration means any act of gender-based violence that results, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²³³

The Declaration is concerned with physical and psychological violence inside the family, violence committed by the community and violence perpetrated by the States and all such other forms of violence.²³⁴ According to the Declaration women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields.²³⁵ The Declaration required the State Parties to condemn violence against women and to pursue by appropriate means and

²³³ Declaration on the Elimination of Violence Against Women, 1993, Article 1.

²³⁴ *id.* at Article 2.

²³⁵ *id.* at Article 3.

without delay a policy for eliminating violence against women.²³⁶ For this purpose the State Parties should:

- (1) ratify the Convention on the Elimination of All Forms of Discrimination Against Women if they have not yet ratified;
- (2) refrain from engaging violence against women;
- (3) take steps to punish those who are responsible for acts of violence against women irrespective of the fact that it is perpetrated by the State or by private persons, to prescribe sanctions in domestic laws to provide effective remedies and to give access to the victims of violence to justice and to inform them about their rights;
- (4) consider the possibilities of developing national plans of action to promote the protection of women against violence. For this purpose the State can see co-operation of non-governmental organizations;
- (5) develop preventive measures against violence;
- (6) ensure rehabilitation of women subjected to violence and to their children, assistance and care according to the available resources of the country;
- (7) raise adequate resources for their activities relating to violence against women;
- (8) give training to public officials to sensitize them about the needs of women;

²³⁶ *id* at Article 4.

- (9) adopt appropriate means especially in the field of education to modify the social and cultural and customary practices that discriminates against women;
- (10) promote research and collect data about different forms of violence and suggest measures to prevent violence against women;
- (11) adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- (12) information pertaining to violence against women be included in the reports submitted to the United Nations by the relevant human rights instruments;
- (13) encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- (14) Recognise the important role of the women's movement and non-governmental organisations world wide in raising awareness and alleviating the problem of violence against women;
- (15) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

The Declaration required the organs and specialised agencies of the United Nations system within their respective fields of competence to contribute to the recognition and realisation of the rights and principles set forth in the Declaration.²³⁷

²³⁷ *id* at Article 5.

Conclusion:

The bird's eye view of the international documents may indicate that the international community focused its attention in all spheres of human activity with a view to avoid the age old sufferings of the women folk who constituted half of the humanity. These are in fact the culmination of the fulminating activities of women's organizations the world over. It is interesting that the international union for protection of women rights has percolated down to the municipal jurisdictions.

CHAPTER IV

STATUS OF WOMEN IN INDIA

The struggle for gender equality was still in its early stages when U.N. was established in 1945. The Charter of the United Nations contains several provisions for the advancement of women as they refer to the equal rights of men and women.

The Universal Declaration of Human Rights, 1948 proclaims that it applies to all human beings unconditionally without distinction of any kind such as race, colour, sex, language or other status.¹ The International Covenant on Social, Economic and Cultural Rights, 1966, the International Covenant on Civil and Political Rights, 1966, and the various other international and regional conventions on human rights recognise the need for the protection and promotion of human rights of women to be taken by the government. The recognition and protection of human rights of women became an international concern when the U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women. This Convention specifically articulated its aim to modify the social and cultural pattern of the conduct of men and women with a view to achieve the elimination of the prejudices and customs and all other practices based on the idea of inferiority or superiority of either of the sexes or stereotyped roles of man and woman.²

¹ Universal Declaration of Human Rights, 1948, Article 2.

² The Convention on the Elimination of All Form of Discrimination Against Women, 1979, Article 5.

The United Nations convened four world conferences to develop strategies and plan of action for the advancement of women. The efforts ranged from the need to development, recognize their contribution to the entire developmental process, empowerment of women and promotion of their rights to full participation at all levels of human activity.

The first conference was held in Mexico City and the main objectives were full gender equality, the integration and participation of women in development and the contribution given by women to world peace. The conference at Copen Hagen, 1980 recognised that women would be given equal access to education, health and employment opportunities in order to achieve equality, development and peace. The Nairobi Conference for equality, development and peace, declared that all human rights issues should be women's issues. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 states thus:

“The human rights of women and girl child are inalienable, integral and indivisible part of the universal human rights”.

The full and equal participation of women in political, civil, economic, social and cultural rights at the national, regional and international level and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. The Beijing Conference realised the need to re-evaluate the entire structure of the society and the relation between man and woman within the society. So a fundamental restructuring of the entire

society and its institutions are essential to empower women and make women equal partners with men in all aspects of life.

Gender based violence and all forms of sexual harassment and exploitation including those resulting from cultural prejudices and international trafficking are incompatible with the dignity and worth of the human person and must be eliminated.

In 1993 the U.N. General Assembly adopted the Declaration of Violence against Women and the governments, were asked to take steps to prevent violence against women. In 1994 the International Conference on Population and Development, the 1995 world summit for social development, the 1995 United Nations Fourth Conference on women (Women's Conference or Beijing Conference) etc. witnessed the firm conviction of the international community to recognise, promote and protect human rights of women. The International Conference on Population and Development 1994 recognised the need to promote gender equality, empowerment of women, the elimination of all forms of discrimination against women and the women's ability to control their fertility. The Beijing Conference also affirms that recognition of human rights of women is essential for the maintenance of equality, development and peace. Recognition of all these factors is necessary to improve the status of women. In spite of all these international instruments dealing with the protection and promotion of human rights, there are rampant violations of human rights of women. Unequal status of women is against the principle of human dignity

enshrined in the U.N. Charter and other International Instruments. From birth, the girl child is looked down upon by the family as well as by the society with contempt and all the basic necessities and facilities are denied to her and she is trained in such a way as to learn adjustment to suppress her emotions and opinions. Media and religious teachings reinforce these notions and which in fact prepare women to be the victims of sexual assaults, coercion and violence both within the family and outside the family.³

In the Indian Society, women are placed in a subordinate position though the preamble of the Constitution, the fundamental rights and directive principles guarantee equal rights of women with that of man. Only if the principles of equality are imbibed in the minds of the people, and only if the traditional, social and cultural attitude of the society, is changed, the status of women in India can be improved.

The traditional attitude of the society that assigns certain stereotyped roles to women, such as domestic work, child rearing, taking care of aged parents etc., are factors responsible for the inferior position of women. Her status in the family is always associated with a male member of the family. It is the general impression that all the productive works are done by men, and women are only consumers. The society and family always fail to recognise the multiple roles played by women in the family and outside the family. She is often denied the opportunities for personal growth and development. She is

³ Subash Chandra Singh. "Protection for Battered Wives." 1996 CrI. L.J. 129.

debarred from decision-making process and other developmental process. Economic dependence is a factor responsible for the lower status of women. Before pursuing a remunerated employment woman has to get the permission of the husband. Tradition and custom are often used as explanations justifying factors that affect the lower status of the women.

The attitude of the family to give preference to boys for their education, food etc. adversely affects the status of women. It is the reason preventing many women to come forward and to take part in the decision-making and developmental process of the country. Due to this traditional attitude of the society, the full potential and capabilities of many women cannot be realised. Only very few women have the courage to come forward by breaking these traditional ties and attitude of the society.

In the case of workingwomen, family appreciates the income of the women but is not ready to recognize her rights. Even in the educated circle, the attitude of the society has not changed. The workingwomen have to face the double responsibility i.e. the responsibility at workplace and the responsibility at home and she is not able to discharge her responsibilities effectively at home and work place. This is because of the reluctant attitude of the members of the family to share the responsibility. Apart from this women face special problems like rape, female infanticide, female genital mutilation, immoral trafficking in women, forced abortion, rape, sati, prostitution etc.

In ancient India, woman was given a status at par with men. During the vedic period woman enjoyed a position of honour, respect and equality. She enjoyed happiness, freedom and prosperity. She was entitled to participate in all fields like men and took active part in every spheres of human life.⁴ She was entitled to participate in all the religious ceremonies along with her husband, and certain religious ceremonies performed by the husband in the absence of his wife were not to be valid. Women were also entitled to study vedas and to undergo the ceremony of 'upanayana'. Dowry system was unknown during that period and giving gifts to son- in- laws due to love and affection was prevalent in certain aristocratic families alone. Marriage during that period was regarded as an indissoluble union and monogamy was regarded as the rule and polygamy occurred very rarely. The right of unmarried daughter to get share in the property of the father was recognised. Widow had the right to get maintenance from the joint family property. But married daughters have had no share in the property of the father. The position of women in ancient India was thus powerful and all encompassing.

During the post 'vedic' period, the respectable position enjoyed by the women in the family began to decline and the position of women in the matrimonial home was not satisfactory.⁵ During the 'smrithi' period, the status of women was adversely affected by the influence of the later 'vedic' literature like 'smrithi', 'sutra', 'purana' and other religious injunctions. During the

⁴ V.K. Dewan, *Law Relating to Offences Against Women*, Orient Law House, New Delhi, (2nd ed. 2000), p. 33.

⁵ Vijaya Sharma, *Protection to Women in Matrimonial Home*, Deep and Deep Publication, New Delhi, (1994), p. 20.

'smrithi' period Manu the founder of Hindu Law declared that woman was subordinate to man and she was under the control of her father during the childhood that of her husband during her youth and that of her son during her old age. The wife was regarded as subordinate to her husband and obliged to worship him even if he is of bad character. So the glorious position enjoyed by women gradually started deteriorating because of the sudden change of social attitudes and frequent foreign invasions. 'Upanayana' which was allowed to women was reduced and finally abolished. Educational rights were denied to women and child marriages and 'purdah' system started prevailing in the society. Early marriages created great problems to female children because educational facilities were denied to them and they turned into childbearing machines even at an early stage.⁶ It also affected their health, and under the 'purdah' system the freedom of movement of women was curtailed. Marriage was considered as the indissoluble union at that time. Property right of women was not recognised but she was entitled to maintenance. Evil customs like 'sati', 'devadasi' system, dowry, female infanticide etc; were evolved in society during the 'smrithi' period and women were victimised in all spheres of their life.⁷

During the invasion of the Mughals, the status of women further deteriorated. Girls were married during very young ages, thus resulting in the deprivation of basic education to them and early pregnancies resulted in

⁶ Dr. Prabhat Chandra Tripathy. *Crime Against Working Women*, APH Publishing Corporation, New Delhi (1998), p. 49.
⁷ *id.* at p.21.

various health problems. The Mughal period restricted their freedom of movement. Polygamy prevalent during that period further deteriorated the position of women. The position of the widows was miserable due to the practice of 'Sati'. The widow's re-marriage was not a rule during that period. The Muslim period was proved miserable to women. Education was beyond the reach of the women in general. In the course of time dowry system was considered as an essential ingredient in Hindu Marriage. The system of dowry casts an adverse effect on the birth of a female child. To escape the future problems, the child is killed either in the mother's womb or just after the birth.⁸

During the 18th century the position of women in the family was further deteriorated. Child marriage, female foeticide, female infanticide, forced customary practices such as 'sati', 'devadasi' system, polygamy, domestic violence, dowry system etc. started prevailing at that time and in such a society, the position of women was pathetic. The prevalence of the system of 'sati' further deteriorated the position of widows and several attempts were made by Raja Ram Mohan Roy and Mahadev Govind Ranade to abolish 'sati' and child marriage.⁹ Widows had a miserable life in the family. During the British reign, the condition of women was started improving. The Hindu Widow's Remarriage Act, 1856 legalised remarriage of Hindu widows. This was passed as a result of reformist movement among the educated Hindus.¹⁰ The Child Marriage Restraint Act was passed in 1929. Later in 1937, the Hindu Women's

⁸ *id.* at pp. 29-31.

⁹ G.N. Ramu, *Women, Work and Marriage in Urban India, A Study of Dual and Single Earner Couples*, Sage Publications of India, New Delhi (1989), p.21.

¹⁰ Ajani Kant, *Women and the Law*, A.P.H. Publishing Corporation, New Delhi (1997), p.73.

Right to property Act was enacted. According to this Act on the death of a Hindu male, not only his son would succeed but also his widow. Widow of the predeceased son and the widow of the son of the predeceased son were also entitled to succeed. The Dissolution of Muslim Marriage Act, 1939 gave to a Muslim wife the right to judicial separation from her husband that was denied to her earlier.

During the struggle for independence Mahatma Gandhi advocated the participation of women in the field of politics, education and economics. The percentage of education of women was very low and it was through a mass awakening at the freedom struggle it started increasing.¹¹ Lack of education was the main reason for the lack of participation of women in many activities. During the freedom struggle Mahatma Gandhi propagated the idea that national awakening could be possible only by the empowerment of woman and he gave inspiration to women to participate in the freedom struggle. As a result large number of women participated in the freedom struggle. The Karachi session of Congress in 1931 declared:

"All citizens are equal before the law irrespective of religion caste, creed or sex. No disability is attached to any citizen by reason of his or her religion, caste, creed or

¹¹ Lotika Sarkar, "Status of Women and Law as an Instrument of Social Change," 25 J. I.L.I. (1983), 263.

sex in regard to public employment, office or honour or in the exercise of trade or calling.”¹²

All India Women Conference was convened in 1945 and various disabilities of the women were discussed at that conference and decided to prepare a charter of Indian Women's Rights. The Industrial Dispute Act, 1947, The Minimum Wages Act, 1948, The Child Marriage Restraint Act, 1929, as amended in 1949 and various other social legislations were brought to effect social changes, and to improve the status of women. So woman in pre-independent India occupied an inferior status and were consequently victims of all types of oppression and exploitation both within the family and outside.

During the 20th century the activities of women organisations led to Women's Legal Rights Act, 1952, The Suppression of Immoral Traffic in Woman and Children Act, 1954, The Special Marriage Act, 1954, The Hindu Minority and Guardianship Act, 1956, The Intestate Succession Act, 1956 etc.

The post independent India also have many pieces of legislation giving equal rights and privileges to women with that of men, to eliminate discrimination against women, to abolish inequality between sexes and to remove external barriers coming in the way of self realization and development. But the complex system of social institutions and religious and customary practices come in the way of implementation of protective legislation for women. In spite of all these legislations and movements for the

¹² *id.* at p.33.

protection of the rights of women, women in India still continue to live under the stress and strain of male domination that manifests itself in the form of various cruelties to them.

The framers of the Constitution of India realised the unequal position of women and decided to make special provision for the protection of women and children. Chapter III and IV prohibit discrimination on the grounds of sex.

In Islamic Law, the Quran accepts the equal status of men and women but polygamy and unilateral divorce by the husband placed the Muslim wife in a subordinate position to that of man¹³. Giving of 'Mahr' at the time of marriage is regarded as a provision to safeguard the interest of women, but women were reluctant to claim this. Woman rarely invokes widow marriage, though permitted. The practices like seclusion, 'pardha' and child marriage have rendered women vulnerable and dependent on their male relatives. Poverty and lack of education have further contributed to the subordination of women.¹⁴ Though right of inheritance is granted to women because of ignorance or otherwise, women are not able to assert it.

In Christianity, monogamy has raised the status of women. The Christian woman is entitled to participate in all the religious ceremonies. Educational facilities are not denied to a Christian woman.

¹³ *Status of woman in India, A Synopsis of the Report of the National Committee*, Allied Publishers, Madras (1971-1974), p.15.

¹⁴ Flavia Agnes, *Law and Gender Inequality, the Politics of Women's Rights in India*, Oxford University Press, New Delhi (1999), p.36.

Despite the sincere efforts made by the governments and the women's organisations we find that the status of women in India has not yet improved because of several practices and notions that hinder progress and social change. Among these practices are the age-old institution of prostitution, 'devadasi' system, dowry system, rape, sexual harassment at workplace and domestic violence etc.

Prostitution

In India many women were engaged in or happened to be in this profession due to many reasons. Poverty, false offer for job in big cities, false marriage proposals etc., tempted the girls and the parents to leave the home and quite often they are cheated by the promises and happened to be in the profession of prostitution. In many cases women were abducted and coerced into circumstances where they were unaware of the nature of work. Growth of sex tourism also accelerated forced trafficking in women. Human Rights Watch, a non-governmental organisation working for the protection and promotion of human rights of women, reported that so many Nepali girls are recruited to India with offer for a job or marriage proposals for the purpose of immoral trafficking.¹⁵

Most of the cases go unreported due to many reasons. They are not able to pay back the amount given to their home at the time when they were recruited. Besides this, because of the fear of being punished or of the stigma

¹⁵ The Human Rights Watch, *Global Report on Women's Human Rights*, Oxford University Press, New Delhi (1995), p.230.

attached to them, they are forced to continue in the profession of prostitution. The failure of law to protect victims and punish pimps, procurers, brothel keepers and clients had resulted in the increase of children in commercial activity.¹⁶ The police and local officials protect the brothel owners and traffickers. When the Nepali women or girls complain to the police about the rape or abduction, they are detained in protective custody where the abuse continues.¹⁷

Whatever may be the circumstances or the ways, in which women entered into the profession, they are denied the basic human rights. Two sets of human rights issue arise in relation to women and prostitution. One is the right of the women to engage themselves in prostitution and the other is the right to live with human dignity.

Forced prostitution and child prostitution adversely affect the status of women and constitute denial of numerous human rights. Their right to liberty and security, right to be free from cruel and inhuman treatment, to be free from arbitrary detention, right to free choice of just and favourable conditions of work, adequate standard of living, education etc., incorporated in various human rights instruments are violated.

¹⁶ Maharukh Ader Walla, *Child sexual abuse and the law*. India Centre for Human Rights and Law, Mumbai (2000), p.31.

¹⁷ Kelly D. Askin, Dorean M. Koeing, "Common Abuses Against Women" 'in' Dorothy Q. Thomas and Robin S. Levi, (Eds.), *Women and International Human Rights Law*, Vol. I, Transnational Publications. New York (1999), p.174.

The Allahabad High Court pointed out that there were several factors, which compel a woman to turn into prostitution:

- (1) For the purpose of earning her livelihood.
- (2) Difficulty in finding employment.
- (3) Ill-treatment and neglect during the childhood.¹⁸

Eradication of prostitution is a condition to improve the status of women. The Universal Declaration of Human Rights, 1948 states that human rights are derived from the dignity and worth inherent in the human person. The dignity and status of women can be maintained only if the human rights of women are recognised and protected. All forms of discrimination on the ground of sex are violative of fundamental freedoms and human rights. The prostitutes need protection, care and rehabilitation.

To abolish the trafficking in women, there are various human rights movements. Governments are obliged to take steps to eradicate forced trafficking in person, exploitation of prostitution, forced labour and coerced marriage. In the Convention on the Suppression of Traffic in Persons and the Exploitation of the Prostitution, the State Parties agreed to punish any person who to gratify the passions of another procures or entices or leads away for the purpose of prostitution.¹⁹

¹⁸ *Shama Bai v. State of U.P.* A.I.R. 1959 All. 57.

¹⁹ The Convention on the Suppression of Traffic in Persons and Exploitation of Prostitution, Article 17.

The obligation of the State Parties to take all appropriate measures to suppress the trafficking in women was later reiterated in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW links trafficking to the exploitation by prostitution but fails to address trafficking or other exploitation. Article 6 of the Convention requires the State Parties to take appropriate measures including legislation, to suppress all forms of traffic in women and the exploitation of prostitution of women. This delegation goes beyond the trafficking Convention by requiring State Parties to address the root causes of trafficking and exploitation of prostitution, not simply to punish trafficking in women after the fact.

The Convention sets up a committee for compliance monitoring procedure. In general recommendation 19 on violence against women, the CEDAW has noted that poverty, unemployment, war, armed conflict and occupation of territories have led to increased opportunities for trafficking in women. CEDAW has recognised that there are new forms of trafficking, such as the recruitment of domestic labour from developing countries to work in developed countries, and organised marriages between women from developing countries to foreign nationals. Finally CEDAW reaffirmed that these practices are incompatible with the equal enjoyment rights of women and with the respect for their rights and dignity. According to the optional protocol to CEDAW individuals can bring complaints about human rights violations before the Committee on the Elimination of Discrimination Against Women.

In the Convention on the Right of the Child, there are number of provisions relevant to the issue of trafficking in girls. State Parties have an obligation to take measures to combat the illicit transfer and non-return of children abroad.²⁰ State Parties are also required to take all appropriate measures to protect children from all forms of physical and mental violence, injury or abuse, while in the care of parents, legal guardians or any other person who has care of the child.²¹ It also contains provision to protect children from economic exploitation and sexual abuse.²² States are required to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of any form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment. India ratified the Convention on the Right of the Child.

Many non-governmental organisations also take active role in preventing prostitution and trafficking in women. The root cause of trafficking in women lies in the unequal status of women in the society, which makes women vulnerable to such practices. It is deep rooted in the society due to the economic, biological, social and cultural reasons. So a fundamental restructuring of the society and a change in the attitudes of its members are essential to eradicate this problem apart from legislation and international instruments and its enforcement.

²⁰ Convention on the Right of the Child, 1989, Article 11.

²¹ *id.* at Article 19.

²² *id.* at Article 34.

Article 23(1) of the Indian Constitution prohibits traffic in human beings and beggar and other similar forms of forced labour and declares that any contravention of Article 23(1) shall be an offence punishable by law. Article 39 states that the State should in particular directs its policy towards securing that tender age of the children are not abused.

The Suppression of Immoral Traffic in Women and Girls Act, 1956 was passed to prevent commercialisation of sex. The Act does not penalise the individual instances of prostitution. The women are not often sent to prisons but they are sent to protective homes. The punishment prescribed under the Act was not adequate to check the evil. The Act was amended in 1986 and re-enacted as Immoral Traffic (Prevention) Act, 1956. The amended Act also penalise prostitution in the commercialised form, but not individual prostitution. The children of the prostitutes are faced with several problems such as denial of admission to educational institutions, shelter, social stigma etc.

Now a days the prostitutes especially in Kolkotta designated themselves as sex workers demanded for the legalisation of the profession of prostitution and for the constitution of self regulatory boards to regulate the profession. They also demanded that their human rights should be respected. They demanded better working conditions, human treatment, equal opportunities etc. Their argument was that it is their body and they have the right to utilise their body and if their right to utilise their body is violated it is the denial of the right

to livelihood as enshrined in Article 21 of the constitution. It is suggested that legalisation of prostitution leads to further exploitation thereby creating a feeling among men that woman is a commodity upon which violence can be committed. The Supreme Court also considered the issue of child prostitution and has issued directions to State governments and Union Territories to take necessary measures to eradicate child prostitution. More rehabilitative homes need to be managed by well-qualified social workers, psychiatrists and doctors.²³

In *Upendra Baxi v. State of Uttar Pradesh*²⁴ the Supreme Court of India highlighted the need to enforce rights of the inmates of the protective homes, particularly in relation to their health. Many of them suffer from mental retardation and serious contagious diseases. The authorities were ordered by the Supreme Court to do their duty in accordance with the law without conflicting with the interest of human rights and the dignity of the inmates.

Devadasi System

In the course of the complex cultural context, there emerged in India a class of people constituting dancing and singing girls and women who came to be later labeled as Devadasis. Under the peculiar socio-religious customs that emerged around the temple, girls from some families used to be dedicated to deities. They were performing multipurpose work in the temple including satisfying sexual instincts of worshippers and managing persons of the

²³ *Vishal Jeet v. Union of India*, A.I.R. 1990 S.C. 1412.

²⁴ (1983) 2 S.C.C. 308.

temple.²⁵ Probably their comparatively poor economic condition coupled with the detachment from families made them victims of prostitution.

Whatever may be the reason or way in which they entered into the profession, once entered it appears that they were not able to escape from the profession and thereafter it becomes the only avenue for their survival. This custom can be changed only by a change in the attitude of the society. This requires co-operation by Devadasis, their well-wishers, the government, police and voluntary organisations.²⁶

Economic rehabilitation is one of the factors that can prevent the practice of dedication of young girls to prostitution. The main reason for girls entering into this profession is lack of education and economic empowerment. In States where Devadasi system is prevalent, several attempts were being made to rehabilitate the Devadasis and to abolish Devadasi system. Bombay Devadasi Protection Act 1934, The Bombay Protection (Extension) Act, 1957, The Madras Devadasi (Prevention of Dedication) Act 1947 etc., are some of the legislation to prevent the system of Devadasi. Andhra Pradesh passed the Andhra Pradesh Devadasi (Prohibition of Dedication) Act 1988. All these Acts declare dedication of Devadasi unlawful. Now a woman dedicated as Devadasi is free to enter marriage with any person of opposite sex and such marriage will be valid and the offspring of such marriage will be legitimate.²⁷

²⁵ Lalith Parmar. *Human Rights* Anmol Publications Pvt. Ltd., New Delhi (1998), p. 114.

²⁶ *Status of women in India. A synopsis of the report of the National Committee.* Allied Publishers, Madras (1971-1974), p.73.

²⁷ Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988, Section 4.

Sati

Burning alive the wife on the funeral pyre of the husband or any women along with the body of her relative which to be known as sati is prevalent even now in some parts of India. It is observed in the name of religious reasons like attainment of salvation.²⁸ Though this type of human sacrifice was banned long before, some religious fanatics wanted to revive it. The forcible burning of Roop Kanwar on the funeral pyre of her husband is an example of it.²⁹

Violence Against Women

Violence is an attitude that causes mental or physical injury and debars and dehumanises a person.³⁰ Although it is true that physical acts of violence can be easily detected, psychological and mental abuse in some cases cause more harm to the mind and body of the women.³¹ Violence against women whether in the family or in the community or by the State is incompatible with human dignity and worth and it reduces the status of women to a subordinate position. Violence against women affects her physically, mentally and psychologically. The injury, loss and feeling of the insecurity suffered by her affect her right to live with human dignity and her right to privacy, and it cannot be compensated by damages.

²⁸ Paras Diwan and Peeyush Dewan, *Woman and Legal Protection*, Deep and Deep Publications, New Delhi, (1994), p.30.

²⁹ Manohar Raj Saxena "Woman and the Law" A.I.R. 1997 Jour.147.

³⁰ Dr. Krushna Chandra Jena, "Violence Against Woman," A.I.R. 2003 Jour. 312.

³¹ Bai Guimei "The Question of State Responsibility at International Law for Acts of Violence Against Women" in Erro P. Mendes and Anik Lalonde-Raussy (Eds.) *Bridging the Global Divide on Human Rights, A Canada-China Dialogue*, Ashgate Publishing Limited, England (2003), p.184.

Violence within the family termed as domestic violence, which is identified as a problem that disturbs almost all the societies in the world.³² Its impact depends upon its severity. It may range from death to minor scars.³³ In recent years, international community as a whole is concerned with the problem of domestic violence.³⁴ Violence against women affects her health, self-esteem and her ability to participate in the developmental process. It keeps women away from functioning independently in the world³⁵. Domestic violence includes battering, sexual abuse of female children in the household, dowry related crimes, marital rape, female genital mutilation and other practices harmful to women. Violence in the family affects the independence of women and sense of self-worth. Many of the cases go unreported considering the fact that it is a private matter.

Wife battering is willfully striking wife by her husband with or without injury is another form of violence. Family conflicts, stress, cultural norms and sexual inequality contribute to wife battering.³⁶ The Indian Penal Code also contains provision to punish causing hurt to others.³⁷

In India there is no specific legislation that governs the problem of domestic violence. The reluctance on the part of the government to frame a law

³² Roma Mukherji, *Legal Status and Remedies for Women in India*, Deep and Deep Publications, New Delhi (1997), p.17.

³³ Indira Jaising, *Law of Domestic Violence*, Universal Law Publishing Company Pvt. Ltd., New Delhi (2001), p.1.

³⁴ Cheryl Thomas "Domestic Violence" 'in' Kelly D, Dorean M., Askin and Koenig (Eds.) *Women and International Human Rights Law*, Transnational Publishers, New York Vol. 1 (1999), p.219.

³⁵ Lina Gonsalves, *Women and Human Rights*, APH Publishing Corporation, New Delhi, (2001). p.55.

³⁶ R.K. Bag, "Domestic Violence and Crime Against Woman: Criminal Justice Response in India" 39 J.L.L. 359.

³⁷ The Indian Penal Code, 1860 Section 323.

on domestic violence is due to the myth that no legislation should interfere in domestic affairs of man and wife.³⁸ Though there is no specific law, there are provisions in the I.P.C and Cr.P.C. prohibiting domestic violence. The Domestic violence bill introduced in the Parliament is yet to be enacted as law.

Violence within the community includes rape, sexual harassment, sexual abuse and intimidation at workplace, educational institutions, trafficking in women, forced prostitution etc. The main cause of violence against women is powerlessness and oppression, unawareness about their rights and the traditional and social attitudes of the society that assigns a lower status to women.

Violence against women has become a matter of concern for the international community. The Convention on the Suppression of Traffic in Women 1949, Declaration of the General Assembly on Violence Against Women, the Vienna Declaration 1993, the Convention on the Elimination of All Forms of Discrimination Against Women 1979 etc., condemn violence against women. The 1994 International Conference on Population and Development and the 1994 Programme of Action also recognise the need to eliminate violence against women.

In 1994 the United Nations Commission on Human Rights appointed a special rapporteur on violence against women. According to the recently established norms of the International Community a State that does not act

³⁸ B.D. Agarwal, "Legislating domestic violence" 10 *law teller*, 253 (2002).

against crimes of violence against women is as guilty as perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.³⁹

The Declaration on the Elimination of Violence Against Women passed by the United Nations General Assembly in December 1993 recognises in its preamble thus:

“Violence against women is a manifestation of the historically unequal power relations between man and women which have led to the domination over and discrimination against women by men”.

The Declaration casts an obligation on States to fight against specific forms of violence against women and called on governments to exercise due diligence to prevent, investigate and punish acts of violence against women.

The status of Indian women is far better than that of the women in other countries. The Constitution of India and many social legislation passed after the Constitution, have framed provisions designed to promote and protect the rights of women. Yet the social condition, traditional and cultural attitudes, economic imbalances and the religious imbalances places women in an inferior position when compared to men. Many of the Indian women are ignorant of their rights and privileges that have been conferred on them. Women are often

³⁹ *Preliminary report submitted by the Special Rapporteur on Violence against Women*, United Nations' Commission on Human Rights, (1994), p.18.

denied the basic human right to decide freely the number of and spacing of children. In many cases married woman suffer many discrimination. She has to depend on her husband for every aspects and it is her responsibility to take care of the husband, the children and the other members of the matrimonial house. Without the consent or authorisation of the husband she is not capable of undertaking an independent work, business, profession or other occupation outside the home. Her independent earnings are also liable to be controlled by the husband. In the cases of marriage also many woman were not given autonomy and equality in making decisions.

In order to eliminate violence against women, the fourth International World Conference suggested several measures that can be taken by the governments, international community and non-governmental organizations etc. The main suggestion was to give training to the women to fight against violence inside the family, community and State. The family relationship also must be strengthened to eliminate discrimination and violence against women.

In addition to this, the Conference also requires the State to take all measures, legislative, administrative and educational to protect the girl child from all forms of exploitation. The conference also requires the governments to enact legislation to eliminate violence against women including female infanticide, prenatal sex selection, genital mutilation, sexual abuse, sexual exploitation, child prostitution and child pornography.

During recent years, violence inside the family is the concern of the whole world. The Matrimonial Homes Act, 1967 was passed in England to give protection to women in the case of marital breakdowns. Similarly the Domestic Violence and Matrimonial Proceedings Act, 1978 and the Domestic proceedings and the Magistrate Court Act 1978 were passed to give protection to battered wives. In India the Indian Penal Code, Criminal Procedure Code and the Evidence Act were recently amended to provide protection to women against cruelties.

Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 is the first regional human rights treaty exclusively meant to prohibit violence within the home. The Convention requires the State Parties to condemn, prevent and punish violence against women.⁴⁰ The Convention also requires governments to undertake progressively specific positive measures to address the root cause of gender based violence such as mass education programmes to counter gender stereotypes as well as to create protective and social services to victims of violence.⁴¹

⁴⁰ Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994, Article 7.

⁴¹ *id.* at Article 8.

Violence Against Women includes:

Dowry Death

The institution of dowry in India dates back to ancient times as presents or cash given to the girl at the time of marriage out of love and affection. Later on man started to demand the money and in the case of non-payment of money the girl and the family are tortured to extract the money and it assumed the name of dowry. It became a deep-rooted social problem causing the unfortunate death of young brides.⁴² Cases came to the notice of the police that brides, for not bringing out the promised or expected dowry have been beaten up, starved for days together, tortured physically and mentally, strangulated or burnt alive or abetted to suicide.⁴³ It is usually committed in the house and the inmates of the house try to create an impression that it was an accident or suicide. The dowry system has ruined a number of families. It resulted in sex delinquency among the girls whose parents are unable to get their daughters married at the proper age. The problem is so serious that the families condemn the birth of the girl child.⁴⁴ The Dowry Prohibition Act, 1961 was passed to check the evil practice of giving and taking of dowry. It was amended in 1983 and 1986. In spite of that, the practice of giving and taking of dowry and dowry deaths are rampant in the Indian society. It is because of the lack of proper and effective enforcement machinery. The conviction for dowry deaths are few

⁴²Ram Ahuja, *Violence against women*, Rawat publications, Jaipur and New Delhi (1998), p.153.

⁴³Paras Diwan "Dowry Prohibition Law", 27 J.I.L.I 564 (1985).

⁴⁴R. Jag Mohan Rao, "Dowry System in India – A socio-legal approach to the problem" 15 J.I.L.I. 620 (1973).

owing to the manner in which the investigation is conducted and the delay in investigation etc.⁴⁵

Where the death of the woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and soon before her death she was subjected to cruelty and harassment by the husband or his relatives in connection with or for demand of dowry, such death shall be dowry death and such husband or relative shall be deemed to have caused her death.⁴⁶ This provision has intended to eradicate the social evil of dowry death and the relative or the husband who subjects the women to cruelty on demand of dowry soon before her death are presumed to have caused the death⁴⁷ and the burden is shifted to the accused. It is the duty of the accused to prove that he has not committed the offence.

Marital rape is another form of violence against woman. Section 375 read with Section 376 IPC that a man cannot be guilty of rape on his own wife unless she is below 15 years. Even if the wife is below 15 years of age she is reluctant to make complaints because of fear of loss of security and financial loss.⁴⁸ Now-a-days young girls from Muslim community are given in marriages to aged foreigners and after the birth of a child or even before that they abandon the girls and leave the country.

⁴⁵ Roma Mukherjee. *Woman, Law and Free Legal aid in India*, Deep and Deep Publication Pvt. Ltd. New Delhi (1998), p.6.

⁴⁶ Indian Penal Code. Section 304 B.

⁴⁷ Indian Evidence Act, 1872. Section 113B.

⁴⁸ Subhash Chandra Singh "Marital Violence a Pervasive Theme of Women's Oppression", 1999 (2) Cr.L.J.87.

Causing of bodily injury to women also categorised as violence against women. Section 498A was introduced into the Indian Penal Code, which prohibited matrimonial cruelty. Cruelty was defined as any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health whether mental or physical of the women. It includes harassment of women in connection with demands for property. To give better protection to women Section 113A was introduced to the Indian Evidence Act so that the court can draw an inference of abetment to commit suicide under Section 306 if the woman has been subjected to cruelty soon before her death. The Criminal Law Amendment Act 1983 amended Section 174 Cr.PC making post mortem compulsory in the case of women died within 7 years of marriage.

Female infanticide is another form of domestic violence prevalent in almost all parts of India. Misappropriation of the spouse's property with an intention to put her under economic subjugation is also another form of domestic violence.⁴⁹

Sexual Harassment

Sexual harassment whether occurs within the family, or in the street, or at the work place, or in educational institutions is an attack on women's personality, integrity, mind and violating women's right to live with human dignity. It also affects her right to education, right to work and right to

⁴⁹Gargi Ganguli, "Domestic Violence - Every Body's Business," 'in' *Documentation on Women, Children and Human Rights*, 2001 (Oct-Dec), p.39.

movement. Sexual harassment affects her physically and psychologically and many health problems arise as a result of sexual harassment. Due to the reluctance on the part of the women to complain about sexual harassment, incidents of sexual harassment often go unreported and on the increase.

In order to protect woman from sexual harassment at work places and to ensure the principles of gender equality enshrined in the constitution, the Supreme Court of India relied on International documents especially the Convention Against All Forms of Discrimination Against Women, 1979 issued guidelines, as there is no law governing sexual harassment of women at workplace.

Equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment.⁵⁰ In the exercise of its power under Article 32 the court laid down guidelines and norms for the observance of all working places and institutions until legislation is enacted for the purpose. The guidelines were directed to be treated as law declared by the court under Article 141 of the Constitution.⁵¹

Various International Conventions like the Convention on the Elimination of All Forms of Discrimination Against Women and the Beijing Declaration prevents all forms of discrimination on the ground of sex and cast an obligation on the State Parties to protect the honour and dignity of women. The covenant on Social, Economic and Cultural Rights also recognises several

⁵⁰ The Convention on the Elimination of All Forms of Discrimination Against Woman, 1979, p 11.

⁵¹ A.I.R. 1997 S.C. 3011.

rights of women such as right to fair condition of work and reflects that women shall not be subjected to sexual harassment at work place which may violate the working environments. These international instruments require the Indian State also to recognise the rights of women and protect the rights of women. Courts in India started to give due recognition to international covenants when there is no inconsistency with domestic law. The Parliament has to enact appropriate legislations by incorporating the guidelines issued by the Supreme Court for effective implementation. Creating awareness and educational programmes and gender sensitive training to Judges and Magistrates and law enforcement agencies can solve the problem of sexual harassment of women at work places to some extent.⁵²

Rape

Rape is an act of aggression aimed at degrading and humiliating women, which affects her mentally and physically.⁵³ Rape causes great suffering and injury to the body and health of the individual and constitutes violence. It is an offence, which is violative of the fundamental right of a person guaranteed under Article 21 of the Constitution.

In *Bodhi Satwa Gautham v. Subhra Chakraborty*, the Supreme Court observed:

Rape is thus not only a crime against the person of a woman (victim); it is a crime against the entire

⁵² Shrinivas Gupta, "Sexual Harassment of Women at Work Place in India and Abroad, 24 (2000) Ac.L.R.253.

⁵³ Dr. G. Kamaswari, "Law on Rape in India, an Evaluation," A.I.R. 2001 Jour. 55.

society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer willpower that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished of the fundamental rights, namely the right to life contained in Article 21.

After the decision of the Supreme Court in *Mathura's*⁵⁴ case resulting in the acquittal of the accused, and the repeated instances of rape in police custody, women's group organized themselves with the demand for a concrete legislation on violence against women. The result was the enactment of Criminal Law Amendment Act, 1983 wherein in addition to Section 376(1) of the Indian penal code which prescribes a minimum term of 7 years imprisonment it prescribed a mandatory ten years imprisonment for police officers who rape a woman in their custody. The sentence may be extended to life imprisonment and may also include fine. The Criminal Law (Amendment) Act 1983 shifts the burden of proof regarding the consent to the accused.

Rape and sexual abuse adversely affect the health of the women. They often become pregnant and vulnerable to sexually transmitted diseases. In such

⁵⁴*Tukaram and another v. State of Maharashtra*, A.I.R.1979 S. C.185.

situations in countries where abortion is legally permitted, they have to take recourse to unsafe abortions, causing great risks to the health of women.

The humiliating questions put to the victims of rape by the defence counsels; the fear of the social stigma attached and the fear of the possibility of being remained unmarried are factors that hinder the reporting of rape cases. The Supreme Court of India was of opinion that there is need to compensate the rape victim and suggested for setting up of Criminal Injuries Compensation Board under Article 38(1) of the Constitution of India. It was also held that trial of rape case *in camera* should be the rule and an open trial is an exception.⁵⁵

Educational Status of Women

Education is the prime requisite for the development of the personality of women. Economic and social development and economic empowerment are denied to many women due to several factors. They include early marriages, early pregnancies, inadequate and gender based teachings and educational materials, sexual harassment at educational institutions and lack of adequate and accessible school facilities. The illiteracy rate of women in rural areas is very high when compared to the urban areas. From time immemorial the girl child is considered as the property of another and educational facilities are denied to her on the fear that the expenses incurred for her education cannot be reimbursed. As a result there is a wide gap between the educational enrolment

⁵⁵ *Delhi Domestic Working Women's Forum v. Union of India*, 1995 (1) S.C.C. 14.

of boys and girls. Social, economic, regional, religious and cultural factors combine in denying women full participation in educational opportunities.

Several international instruments are set for the right to education for all people. The Convention on the Elimination of All forms of Discrimination Against Women, 1979, was the first instrument, which explicitly specified the right to education to women. The Universal Declaration of Human Rights, 1948⁵⁶ Convention Against Discrimination in Education, 1960⁵⁷, International Convention on the Elimination of All Forms of Racial Discrimination, 1966,⁵⁸ International Covenant on Economic, Social and Cultural Rights, 1966,⁵⁹ Convention on the Right of the Child, 1989⁶⁰ etc., articulate the responsibility of the State for education of women and girls.

The preamble of the Declaration on Education recalls “education is a fundamental right for all people, women and men of all ages.” It also states that every child, youth and adult shall benefit from educational opportunities designed to meet their basic needs.⁶¹ The Declaration on Education and the Women's Commission specifically recognise the need for women’s education and the CEDAW provides that all ratifying States are to take all appropriate measures to ensure the full development and advancement of women and all

⁵⁶ UDHR Article 26.

⁵⁷ The Convention Against Discrimination in Education, 1960, Article 1.

⁵⁸ International Convention on Elimination of All Forms of Racial Discrimination, 1966, Article 5 e(v).

⁵⁹ International Covenant on Economic, Social and Cultural Rights, 1966, Article 13.

⁶⁰ Convention on the Rights of the Child, 1989, Article 3.

⁶¹ *id at.* Article 1.

appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.⁶²

The World Declaration on Education For All, 1990 resolves for providing educational opportunity to all to enable them to develop their own full capacities, participate in the developmental process, to improve quality of their lives, to make informed discussions and to continue learning.⁶³

The four World Conferences on Women recognised the need to have equal access to women to education and training programmes. The 1985 Conference⁶⁴ addressed education as the basic tool that should be given to women in order to fulfill their role as full members of the society. The 1995 Conference⁶⁵ also recognised that education is a human right and an essential tool for achieving the goals of equality, development and peace. It highlighted the lack of access by the girl child to education and vocational training.

The right to education finds a place in Part IV of the Constitution of India and the Supreme Court laid down that every citizen of India has a guaranteed right to free education up to 14 years of age and this right thereafter is subject to economic capacity and development of the State.⁶⁶

⁶² *id.* at Article 10.

⁶³ Upendra Baxi, *The Right to be human*, Lancer International, New Delhi (1987), p.63.

⁶⁴ Third World Conference on Women, 1985 held at Nairobi.

⁶⁵ The Beijing Declaration, 1995.

⁶⁶ *Unnikrishnan v. State of Andhra Pradesh*, 1993 (1) S.C.C. 645.

Education to women helps her to understand her rights, duties and responsibilities and enable her to participate in the developmental process of the country. In spite of several attempts to remove the illiteracy among Indian women, vast majority have remained outside the reach of education and are illiterate. The recognition of the human right of education of women is a necessary condition to improve the status of women.

The international conference on population and development also acknowledged that education is one of the most important means of empowering women with knowledge, skills, and self-confidence necessary to participate fully in the developmental process.

Health

The Health of women is at great risk due to many factors. Early pregnancies, unwanted pregnancies, female genital mutilation, sexual violence, prostitution, pre-mature sex relations, the denial of the choice of taking decisions in reproductive matters such as the right to take decisions on the number and spacing of children etc., are the main factors adversely affecting the health of women. In spite of that, women's health and lives are equally endangered by abuse at the hands of husbands, employers, parents or brothel owners. Violence against women in all its forms adversely affects the health of women. Most often health care facilities are denied to women due to many reasons.

The issue of women's right to health and control their reproductive rights were recognised in Cairo's International Convention on Population and Development 1994. The Platform for Action states that "good health is essential for leading a productive and fulfilling life and the right of all women to control all aspects of their health; in particular their own fertility is basic to their empowerment." Female genital mutilation and other harmful traditional practices are a reflection of gender discrimination and violence practiced against women, constitute a violation of basic human right, affect women physically, mentally and psychologically. The World Health Organisation estimates that between 85 to 115 million women and girls have suffered female genital mutilation through out the world and it has a negative impact on the health of women. According to Convention on the Elimination of All Forms of Discrimination Against Women, 1979 right to health of women includes access to family planning.⁶⁷

The Cairo Conference on reproductive health and human rights advanced the message that "women's health is a human right". The 1994 International Conference on Population and Development Programme of Action includes the recognition of women's empowerment, women's reproductive health, sexual health, maternal mortality and the health impact of unsafe abortion.

⁶⁷ The Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 12.

In spite of all these international movements for the protection of women's right to health, denial of health care facilities and violations against women, which affects her mental and physical health, continues to be in existence and States are obliged to take measures to improve the health of women so that their status can be improved.

Political Status of Women

Though the Constitution of India guarantees equality in social and political spheres, women remained under-represented in decision-making process. If women are allowed to participate in the making of the government and in the decision making process, it is the recognition of the necessity to improve the status and empowerment of women. The improvement of the social, economic and cultural rights of women and participation in decision-making process is essential to attain equality, development and peace. It is necessary for the achievement of transparent and accountable government.

In spite of various instruments and movements for making women's participation in the decision making process and formation of the government, very few women hold responsible positions in the government and this is because of the disabilities on women and because of the traditional stereotyped roles attributed to women by the society and other discriminatory attitudes towards her. Her right to participate in the decision-making process and

formation of the government cannot be denied only on the ground that she is a woman.

The Universal Declaration of Human Rights, 1948 declares that everyone has the right to take part in the government of the country.⁶⁸ The Beijing Declaration expressly provided the need to have a government with adequate representation of women, with active participation in decision-making. The media and the under representation of women in art, culture, sports and religion have prevented women from having a significant impact in many institutions. The attribution of a negative role to women by the media, religion, law, culture and art etc., denies her right to live with human dignity and such under estimation of women should be avoided.

The unequal power distribution between men and women within the family to a greater extent limit women's participation in the decision making process because of lack of time due to the increased responsibilities inside the house. In order to develop the potentialities of women, time is required and equal sharing of family responsibility by men and women provide better opportunity for shaping public policy, practice and expenditure, so that their interest may be recognised and addressed. Equal sharing of responsibility by men and women not only provides time for women to participate in the decision making process but also a means to improve the health of women.

⁶⁸Universal Declaration of Human Rights, 1948, Article 21.

The 73rd and 74th amendment to the Constitution of India (1993) proposing to make provision for 33.3% reservation for women in local governance, at all the three levels of rural and urban bodies was a landmark in women's empowerment. If women are allowed to participate in the decision making process, the status of women can be improved.

Another problem faced by woman that affects her status is fraudulent non-resident Indian marriages. The parents are attracted by the matrimonial advertisements that NRI seeks alliances without any demand and the poor, helpless and uneducated girls of middle class families become victims of NRI marriages. After marriage and stay with girl for one or two months, the husband abandons the wife, and she loses everything, her status, dignity and peace. In order to save the victims of NRI marriages, the Supreme Court has issued certain directions.

1. A marriage between a NRI and an Indian woman; which has taken place in India if annulled by a foreign court, will not be recognized as divorce in India.
2. Provisions may be made for adequate alimony to the wife in the property of the husband both in India and abroad.
3. The decree granted by Indian courts may be executable in foreign courts both on principle of reciprocity and by entering into reciprocal agreements, like Section 44A of the Code of Civil Procedure code which

makes a foreign decree executable as it would have been a decree passed by the Indian Court.⁶⁹

Another situation affecting the status of women in India is the problem of aged women. In traditional society where joint family system exists, the members of the family looked after the aged parents. But due to the disintegration of the families and formation of the nuclear families, especially families where women are working, it is difficult for them to look after the aged parents. This is because of the attitudes of the male members of the family. If the wife is working, she has to take the responsibility at the work place and at home. In such circumstances the woman is compelled to do all these and find it extremely difficult to succeed in their career as well as their domestic roles. Because of these factors the aged women in the family have a feeling that they are not respected or that they are not adequately cared for. In some extreme cases she has to depend on destitute homes. When they are in the destitute homes, the family members seldom visit them. The traditional attitude of the society that it is the duty of the women in home to take all these responsibilities needs a change to improve the status of women. The law should therefore provide appropriate remedy to make the life of the women easy, particularly when they were employed. A culture should be developed in our society whereby the burden is shared by the husband and wife.⁷⁰ Besides that, government shall also take steps to rehabilitate aged and destitute women.

⁶⁹ *Smt. Neeraja Saraph v. Jayanth V. Saraph and Another* 1994 (6) S.C.C. 461.

⁷⁰ Justice Rajendra Babu, "Gender Justice, Indian Perspective", A.I.R. 2002 Jour.145.

Discrimination in the Payment of Equal Wages to Women

Women continue to be discriminated in the field of employment and in the payment of remuneration. Women are often given comparatively low wages than men due to many factors such as biological nature of women, cultural and traditional attitude of the societies etc. At every level of employment ranging from casual labourer to highly paid professionals gender discrimination always disadvantages women when compared to men with regard to opportunities, options or remuneration.

The adoption of two conventions recognises the international community's respect for women's right. These two conventions are the Maternity Protection Convention and the Right to Work Convention. The convention gave protection to women during pregnancies and in cases incompatible with the dignity of women.

The Equal Remuneration Convention, 1951 provides for equal pay for men and women, for the work of equal value without discrimination on the ground of sex. Article 23(2) of the Universal Declaration of Human Rights refers to equal pay for equal work. The aim of these Conventions is to promote equality and opportunity and treatment in employment or occupation.

The Convention on Elimination of All Forms of Discrimination Against Women deals with equality in employment and Labour Rights. States are obliged to take measures to eliminate discrimination against women in

employment in order to ensure to all, equal right to work, the right to equal employment opportunities, the right to free choice of profession and employment, the right to equal remuneration, right to social security, right to protection and safety. In spite of the International Convention dealing with equal remuneration of women and constitutional provisions and the Equal Remuneration Act, discrimination continues to be practised. According to Article 39(d), the State shall in particular, directs its policy towards securing that there is equal pay for equal work both for men and women.

Pursuant to this mandate Parliament passed the Equal Remuneration Act 1976, which was amended in 1987 and the Act prohibits discrimination of women on the ground of sex in the matter of recruitment, training, promotion and transfer. According to the amendment also, stricter punishment is provided for the violation. According to Section 4 of the Act a duty is cast upon the employer to pay equal remuneration to men and women workers for the work of similar nature. There are some provisions which though discriminating is justified as affecting protective discrimination.

According to Section 497 Indian Penal Code a man is punishable for adultery while a wife who may be equally guilty is not punishable. This provision appears to be discriminatory. The women can advance an argument that because of these provisions they are not in a position to prosecute a woman with whom her husband committed adultery. But the real intention of the makers of the provision is to protect the women from the social stigma attached

to her if she is subjected to prosecution for adultery. So it is because of the fear of social stigma attached to the woman that the section makes only a man punishable and not a woman.

The Supreme Court has said, discrimination between man and woman with regard to Section 497 Indian Penal Code is not because of the fact that woman had sexual differences from man but because women in this country were so situated that special legislation was required to protect them. The Supreme Court held the Constitution itself provides special provision in the case of women and children and therefore Section 497 of the Indian Penal Code was not ultravires the Constitution.⁷¹

Apart from this the Civil Procedure Code and Criminal Procedure Code also contain many provisions to protect the interest of women. Section 66 of the Civil Procedure Code prohibits arrest and detention of women in execution for payment of money. Section 62 of the same code provides for exemption of certain women from personal appearance in the court. Criminal Procedure Code also has special provision for women. From the analysis of the status of women in India, it can be seen that in spite of the constitutional guarantee of equality of sexes and social, political and economic justice and other legislations protecting and guaranteeing the rights of women, the discrimination and exploitation of women continues to be rampant.

⁷¹ *Sowmithri Vishnu v. Union of India*, 1985 Cri. L.J. 1302 (S.C.).

The status of the non-working women is adversely affected by economic dependence. The only economic security, which can be claimed by women in the case of separation, is the right to maintenance. In spite of the legislation regarding maintenance, due to the delay in procedure and the insufficiency of the amount, and because of the difficulty in executing the decree and if the husband is determined not to pay the amount, there is no other alternative to execute the amount.

Another problem faced by non-working women is in the case of break down of marriage, she has no other place to go but she has to undergo humiliation, pain and agony both physical and mental. In such situations her parents also did not welcome her. In order to overcome the problem India need an improved statute on the lines of Matrimonial Homes Act, 1967 of England and in such a situation even if the marriage is breakdown she should be given a right to reside in the matrimonial home and in appropriate cases the court should have the power to issue injunction against her husband preventing him from interfering with her possession.

Indecent Representation of Women

The law relating to obscenity is found in Sections 292, 293 and 294 of Indian Penal Code. There is a tendency to represent women indecently in advertisements and publications, which has the effect of lowering the status of women. The Indecent Representation of Women (Prohibition) Act, 1986 was passed to prevent this evil but in spite of the penal provisions in the Indian

Penal Code and the Act, women continued to be exploited for commercial purpose.

Section 366 of the Indian Penal Code deals with kidnapping or abducting a woman to compel her to marry against her will or for forced illicit intercourse. Sections 366A and 366B deal with persuasion of minor girls for the aforesaid purpose. Section 373 deals with buying and selling of minor girls for the purpose of prostitution. Section 359 deals with kidnapping and Section 363 deals with abduction.

In order to deal with the problem concerning women, a National Commission for Women has been constituted under the National Commission for Women Act, 1990.

Despite all these attempts, Chapter III and IV of the Constitution, and other welfare legislations, crimes and atrocities against women are on the increase. This is because of the fact that the authorities in charge of the enforcement of the law are always reluctant to enforce the law. Rape laws have been amended and Sections 376A, 376 B, 376 C and 376 D are included in the Penal Code to prevent sexual abuse in custody. But in spite of all these, instances of rape are on the increase and the courts are reluctant to award maximum punishment to the accused.

Despite the passing of the Dowry Prohibition Act, 1961 and the subsequent amendment in 1983 and 1986 brides are still harassed, tortured and

even burnt to extract more dowry. In spite of Section 498 A in the Indian Penal Code incidence of cruelty and wife beating are on the increase. The Child Marriage Restraint Act prohibited child marriage and prescribed punishments, but still child marriages are prevalent. The government has also not been able to control female foeticide. In domestic violence against woman, the woman continues to bear the atrocities committed against her because of the fact that she has no other place to go.

Now a days the world as a whole witnessed a firm conviction of the international community to protect and promote the rights of women. But the unequal power distribution between man and woman, poverty, economic dependence, the reluctant attitude of the male members in the family to recognise the contribution given by woman to the family and society and equal sharing of responsibilities between man and woman and the traditional, customary, and religious attitudes of the society etc., places woman in a subordinate position. This is the reason why several atrocities are committed against woman in spite of the international and national movements for the protection and promotion of the rights of woman.

Empowerment of woman and thereby enabling her to participate in all the developmental and decision making process of the country and the elimination of all cultural, traditional and religious practices placing her in a subordinate position can to some extent improve the status of women.

Educating the women and creating awareness among them about their rights also helps to improve the status.

Combined efforts of the Executive, the Legislature and the Judiciary, law enforcement agencies, NGO's, media, individual men and women are required to eliminate all forms of discrimination against women and crimes against women and above all to improve the status of women.

CHAPTER V

INTERNATIONAL MOVEMENTS FOR THE PROTECTION OF HUMAN RIGHTS OF WOMEN

The movement for gender equality was still in its infancy at the inception of the United Nations in 1945. The United Nations Charter incorporates several provisions conferring equal rights to men and women. The Charter declares the organisation's faith in fundamental human rights and the dignity and worth of human person.

Most of the work of norms building and generation of public opinion in favour of women's right was done by the United Nations, which convened several Conferences to protect the human rights of women. Four world conferences were convened by the United Nations to develop strategies and plan of action for the advancement of women.

The first World Conference on the status of women was convened in Mexico City, which coincided with the 1975 International Women's Year. The main objectives of the conference were attainment of full gender equality and the integration of women in development and the overall advancement of women in different fields.

The plan of action set the minimum targets to be met by 1980. It focused on securing equal access for women to resources such as education,

employment opportunities, political participation, health services, nutrition and family planning.

The discussions and decisions in the Mexico City Conference led to the establishment of International Research and Training Institute for the advancement of women and creation of the United Nations Development Fund for Women to provide the institutional framework for research, training and operational activities in women development studies.

In the conference the delegates from Eastern Countries advocated peace, those from Western Countries advocated for equality and those from the developing countries sought for development. The conference has actually succeeded in uniting men and women from different nations for the advancement of women.

Copenhagen Conference, 1980

The second conference held at Copenhagen reviewed and appraised the plan of action of the 1975 World Conference on women. The conference recognised that the first step towards the achievement of equality was adoption of the Convention on the Elimination of All Forms of Discrimination Against Women. It resolved to remove all the obstacles to prevent the implementation of this convention. The conference also recognised that in order to attain the goals of equality, development and peace, women should be given equal access to all aspects of life. The conference identified a variety of factors that

contributed to the discrepancy between legal rights and the women's ability to enjoy the rights. The factors included the reluctant attitude of men in improving the status of women, non-recognition of the value of the contributions of women to the society, lack of awareness of women about their rights and opportunities and the lesser number of women in decision-making and in development processes. The Copenhagen conference recognised the need for taking strong measures to ensure women's ownership and control of property, inheritance, child custody, loss of nationality etc.

Nairobi Conference, 1985

The main objects of the third world conference on woman were equality, development and peace. The conference acknowledged the concern of the international community to achieve equality. It was of the opinion that further action was necessitated to improve the status of women. Facilitating participation of women in the developmental process was envisaged. At the same time it recognized the fact that the main obstacle to prevent participation of women in the developmental process was economic crisis and poverty.

The conference also recognized the fact that equality, development and peace are interrelated and the attainment of one automatically leads to the attainment of the other.

Employment, health and education constitute a concrete basis for equality, development and peace. To achieve this, the conference was of

opinion that there should be equal enjoyment of all human rights by man and woman and the participation of woman in all the decision-making and developmental process of the country. Apart from this the contribution of women to the welfare of the society and family must be recognized. Furthermore their strength and capabilities must also be fully acknowledged. The conference also recognized the fact that poor economic condition is the main obstacle hindering participation of women in the developmental process. The other obstacles include:

1. The social, economic, political and traditional practices
2. Devaluation of women's productive and reproductive roles, which undermine the status of women.
3. The double burden of women having the major responsibility for domestic tasks and labour force.
4. Lack of adequate supportive services for working women.
5. Poverty.

A complete restructuring of the society and a change in the traditional, cultural and societal attitude that treat women as subordinate to men is needed to improve the status of women.

Basic Approach to the Formulation of Forward Looking Strategies

The conference in accordance with the recommendations of the Commission on the Status of Women gave special attention to women situated under vulnerable circumstances such as poor women in rural and women in

areas affected by armed conflict, elderly women, abused women, destitute women, women victims of trafficking and women in involuntary prostitution, women deprived of livelihood, women who are burdened with large families women in detention, refugee and displaced women, migrant women, minority women and indigenous women.

The conference recognised that the main reasons for inequality are poverty, cultural, traditional and social attitude of the society that justifies discrimination on the ground of physiological differences and unequal access of women to the power structure of the society.

The conference suggested the ratification of the Convention on Elimination of All Forms of Discrimination Against Women and to establish institutional mechanisms to redress the grievances against women.

It also suggested for the constitution of a law reform committee with equal representation of women and men from governments and non-governmental organisations to review and amend the laws, which discriminate against women .It was also recognized that laws on employment should be made to provide adequate protection to women.

In order to achieve equality, the conference identified various measures including encouraging efforts by government with resources and other agencies to formulate a comprehensive policy.

The conference also decided that measures should be taken to change the bad portrayal of women in the media and develop attitudes to portray positive aspects of women's role and status in the intellectual and other activities. Steps also should be taken to control pornography and other obscene portrayals of women as sex objects.

The conference required the government to take effective steps to enable women to participate in formulating national policies and activities and in decision-making processes. Awareness shall be created among women as to the right to vote, to be elected and to participate in the political process at all levels in equal terms with men.

Role of Women in Development

The conference identified that economic situation; poverty, population growth and lack of appropriate machinery for the effective integration of women are the main obstacles to the participation of women in the developmental process. It was felt that women should be able to participate in all processes such as policy making, decision making etc. They should also be allowed to involve in all the social, economic and cultural activities of the country. In order to attain this, the conference stressed the need for sharing of responsibilities between men and women. It also expressed the need to eliminate gender bias in all developmental Programmes. Particular attention must be given to the restructuring of employment and educational system ensuring equal access to land.

The conference expressed the need to establish national machinery with adequate resources to integrate women effectively to the developmental process. The conference required the government to take measures to create awareness among women as to their right to participate at all levels of developmental process.

Government mechanisms should be established for monitoring and evaluating the effectiveness of institutional and administrative arrangements, plans and Programmes and projects to promote equitable participation of women in development.

Peace

International strife including war and armed conflict pose threat to gender equality. Women all over the world by nature always wish for peace and they wish to play important roles in international co-operation, amity and peace among different Nations. All obstacles at the national and international level in the way of women's participation in promoting international peace and co-operation should be removed as soon as possible. Government should take measures to encourage the full and effective participation of women in negotiations on International peace and security.

Women situated in areas of armed conflict are subjected to all kinds of exploitation and governmental and non-governmental organisations alike should be encouraged to play an active role in the restoration of peace in areas of conflict, in accordance with the United Nation's resolutions.

The conference required the government to take steps to increase the participation of women in international, regional and sub regional level activities and decision making including those directly or indirectly concerned with the maintenance of peace and security and the role of women in the development and achievement of equality between man and woman.

The Nairobi Conference declared that all human rights issues should be women issues. Women's participation in decision making and handling of all human affairs was recognised not only as their legitimate right but as a social and political necessity that would have to be incorporated in all institutions of the society. The measures covered a wide range of subjects like employment, health, education, social services, industry, science, communication and environment.

The fourth conference on women was held at Beijing in 1995. The Beijing Conference apart from gender equality realised the need to re-evaluate the entire structure of the society and the relation between men and women within the society. According to the conference a fundamental restructuring of the entire society and all its institutions are essential to empower women and make women equal partners with men in all aspects of life. The whole idea was the empowerment of woman. The full realisation of human rights and fundamental freedoms are essential to the empowerment of woman. The conference was also of opinion that sustainable development and economic

stability are needed to have a just world respecting the human rights and fundamental freedoms of all people.

Employment

The conference suggested that man and woman should have the same right to work and receive equal remuneration and there should not be any discrimination based on sex while giving employment. Women should be given equal access to all employment, including employment, which requires skill and technical knowledge. The conference was also concerned with the benefits to be given to the women employees. They were, giving protection to casual and seasonal employees, maternity benefits, and parental leave after childbirth etc.

Health

Woman in the family is responsible for the health of all members of the family, but the health of women is often ignored by all the members of the family.

The conference felt that the government should take steps to ensure the participation of women in higher professional managerial positions in health institutions and health care services. Health education should be made available to the entire family not only through health care systems, but also through all appropriate channels and in particular the educational system.

Preventive and curative health measures including vaccination should be strengthened through combined measures and supportive infrastructure. Reproductive health of women must be recognized to ensure the health of women. Early pregnancies, which adversely affect the health of woman, must be avoided. Public and private sectors should enhance occupational health and safety.

Education

The conference recognised that education is the basic requirement for the protection of human rights of women and is essential to improve the health and nutrition of the family. Empowerment of women to enable them to participate in the decision making process of the society necessitates education. The conference realised the fact that educational facilities are denied to women due to various factors such as early marriages, pregnancies, domestic work, sexual harassment and lack of educational facilities etc. The conference urged the need to give equal access to boys and girls to educational institutions and allocation of adequate funds to eradicate illiteracy among women and thereby to eliminate inequalities between man and woman.

Beijing Declaration and Platform for Action

The platform for action is a document detailing all aspects of empowerment of woman. It requires detailed examination.

Chapter I of platform for action make the mission statement whereas Chapter II gives an overview of the status of women, the obstacles they confront, the world's political and economic situation as on 1995.

The internal areas of concern are discussed in Chapter III. Chapter IV (Para 45-285) contains strategic objectives and actions – This is further divided into 12 sections.

1. Women and Poverty (Para 47-68).
2. Education and Training of Women (69-88).
3. Women and Health (89-111).
4. Violence against women (112-130).
5. Women and Armed Conflict (131-149).
6. Women and Economy (150-180).
7. Women in power and decision making (181-195).
8. Institutional mechanism for the advancement of women (196-209).
9. Human rights of women (210-213).
10. Women and the media (234-245).
11. Women and the Environment (246-258).
12. The Girl child (259-285).

Chapter V contains institutional arrangements (286-344).

Chapter VI – deals with financial arrangements (345-361).

The success of the platform of action requires adequate mobilisation of the financial resources from the available resources and continued international co-operation and assistance.

Women and Poverty

The conference was concerned with poverty of women and realised that eradication of poverty is a critical factor in the empowerment of women. Women's poverty, the conference identified, is because of the absence of economic opportunities, lack of access to economic resources including credit, ownership of land, lack of access to education and minimal participation in the decision making process. In the family, poverty affects woman than man, as it is the duty or burden of the women to adjust the expenses of the house with the limited income. Poverty also force women into situations in which they are vulnerable to sexual exploitation. The conference also noticed that social security system in many countries is inadequate to eradicate poverty.

The conference suggested several measures to eradicate poverty and required the government to revise laws and administrative practices to ensure women's equal rights and access to economic resources among other things.

Education and Training of Women

It has been reiterated by the conference that education is a basic requirement for the empowerment of woman and for the maintenance of equality, development and peace. Educational facilities are denied to woman

due to many reasons such as early marriages, early pregnancies and the traditional and social attitude of the society.

The Beijing Declaration urged the need to have an educational system, which may enable the students to analyse and understand the negative and positive aspects of every action because now-a-days media has a powerful impact on young people both negative and positive. The declaration required the government to take urgent action to eliminate discrimination in education and to give equal access to man and woman and to take all steps to eliminate illiteracy among women.

Women & Health

Right to health, physical and mental is a human right of women, which is essential for the maintenance of equality, development and peace. Factors which adversely affect the health of women such as early pregnancies, sexual exploitation, rape, trafficking, forced prostitution, genital mutilation etc., must be avoided.

The reproductive rights of woman must be recognised and respected. they should be given the right to decide the number and spacing of the children. If adequate health facilities are provided to women, many diseases like breast cancer, cervical cancer and other cancers of the reproductive system could be prevented.

The Declaration required the government and other non-governmental institutions to take measures to provide equal access to health services to both man and woman. Declaration also required for taking preventive measures to eradicate sexual abuse and exploitation, trafficking and violence against women.

It also required the government to reinforce the laws, institutions etc., and promote norms that eliminate discrimination against women and encourage both men and women to take the responsibility for their sexual and reproductive behaviour and ensure full respect for the integrity of person and to ensure the conditions necessary for women to exercise their reproductive rights and eliminate coercive laws and practices.

Violence Against Women

The objectives of equality, development and peace can never be achieved if women are not free from violence. Violence against women means any act of violence such as sexual harassment, wife beating, assault, arbitrary deprivation of liberty etc., which result in or likely to result in physical, mental or sexual harm or suffering to women

The conference suggested various measures to eliminate violence against women. Among them the main important suggestion was to sensitise boys and girls about the cause, consequences and detrimental effects of violence in the family and society through the educational system. The

educational system should be capable of promoting self-respect, mutual respect and co-operation between man and woman. The conference also emphasized the need to eliminate incidences in the media, which generated violence against women. Apart from this, new legislation, review of existing legislation etc were also suggested.

Lack of statistics on the incidence of violence against women including at work place, both in the public and private sphere stands in the way of designing efforts to prevent it. Awareness must be created among women as to the fact that violence against women is the denial of their right to enjoyment of the human rights. The Declaration also required the governments to take up special measures to eliminate violence against women particularly those placed in vulnerable situations such as young women, refugee, displaced women, women with disabilities and migrant women workers. .

The Beijing conference required the governments not to invoke any custom, which prevents the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women 1979.

Women and Armed Conflict

The Vienna Declaration and Programme of action adopted by the World Conference on Human Rights states:

"Violations of human rights of women in situations of armed conflict are violations of the principles of human rights and humanitarian law".

Though armed conflict and terrorism affect the entire society, women and girls are affected more because of their lower status in the society. Human rights violation during armed conflict affects women of all ages making the refugees, migrant women, displaced women and those who have lost their relatives. They are also victims of murder, rape, terrorism, torture, sexual slavery, forced prostitution etc. They continue to be vulnerable to violence and exploitation while in flight, in countries of asylum and resettlement.

Considering the situations of women in armed conflicts, Beijing Declaration suggested measures to prevent the abuse of women during armed conflict. Some of the suggestions were:

- 1 Increase the participation of women in conflict resolution at decision-making levels.
- 2 Reduce the military expenses and the expenses saved there under may be diverted to activities to protect the rights of women.
- 3 Promote non-violent forms of conflict resolution and reduce the incidence of human rights abuse in conflict situations and

- 4 Provide protection, assistance and training to refugee woman and other displaced women in need of international protection.

Women and Economy

There are considerable differences between man and woman's access to and opportunities to exert power over economic structures in their societies. In major part of the world women are poorly represented in economic decision making including the formulation of financial, monetary, commercial and other economic policies as well as tax systems and rules governing pay.

The conference was of opinion that in countries undergoing fundamental political, economic and social transformation, the skills of women if better utilized could constitute a major contribution to the economic life of their respective countries. Their input should continue to be developed and supported and their potential further released. In many countries women workers engaged in employment are either not remunerated, or remunerated minimally. To realise full equality between man and woman in their contribution to the economy, active efforts are required for equal recognition and appreciation of the work, experience knowledge and values of both men and women in the society.

Government is required to (1) enact and enforce legislation to guarantee the rights of women and men to equal pay for equal work or work of equal value (2) abolish discrimination in employment based on the physiological nature of man, take gender perspective policies and to empower women as

equal partners with men in all aspects (3) facilitate women's equal access to resources, employment, markets and trade (4) Provide business services, training and access to markets, information technology particularly to low income women (5) Strengthen women's economic capacity and commercial networks (6) Eliminate employment segregation and all forms of employment discrimination and to (7) promote harmonization of work and family responsibilities for women and children.

Women in Power and Decision Making

Participation of women in decision-making process is essential to the empowerment of women and for the attainment of equality, development and peace. The Beijing Declaration expressly emphasized the need to have a government with adequate representation of women with active participation in decision-making. Quite often women were not able to participate in the decision making process because of lack of time and due to the increased responsibilities in the house. The conference was of opinion that equal sharing of responsibility by man and woman not only provides time for woman to participate in the decision making process but also give her means to improve her health.

Institutional Mechanism for the Advancement of Women

The conference required the government to establish national machinery for the advancement of women and protection and promotion of their human rights. Many countries have such institutions but suffer from lack of adequate

staff, training, data and sufficient resources and inefficient support from political leadership.

Regional bodies concerned with the advancement of woman have been strengthened together with the international machinery such as Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women. However the limited resources available continue to impede full implementation of their mandates.

Human Rights of Women

The conference acknowledged the commitment and responsibility of the Nations to co-operate for the protection of human rights of women. The platform of Action reaffirmed that all human rights are independent, universal, indivisible and inter-related. The conference re-affirmed that human rights of women and girl child are inalienable and indivisible part of the universal human rights. The full and equal enjoyment of all human rights and fundamental freedom by woman and girl is a priority for governments and the United Nations and is essential for the advancement of women.

Unless the human rights of women embodied in the international human rights instruments are fully recognised and effectively protected, applied and implemented, they will exist in name only. There is a wide gap between the guarantee of rights and their enforcement.

Complex administrative procedures, lack of awareness within the judicial process and inadequate monitoring of the violations of human rights of all women coupled with under-representation of women in justice system, insufficient information on existing rights and persistent attitudes and practices perpetuate women's de facto inequality.

Co-operation is also needed to strengthen and rationalise the United Nations human rights system and to promote its effectiveness and efficiency taking into account the need to avoid unnecessary duplication and overlapping of mandates and tasks.

As already stated refugee women and other displaced women suffer continued abuse. Human rights education is essential for promoting an understanding of the human rights of women, including knowledge of recourse mechanism to redress violation of their rights. The conference suggested that human rights of women must be integrated into the mainstream and before a decision is taken by the government on any matter, its impact upon man and woman must be taken into consideration.

The government also should ensure that (1) there is no reservation incompatible with international treaty law and withdraw reservations that are contrary to the object and purpose of the Convention on the Elimination of All Forms of Discrimination Against Women or which are otherwise incompatible with international treaty law (2) governments shall also formulate plans and policies for the protection and promotion of human rights of women (3)

Develop comprehensive educational Programme to raise awareness among women of their human rights.

The Girl Child

The Convention on the Right of the child declares:

“State Parties shall respect and ensure the rights set forth in the convention to each child within their jurisdiction, without discrimination of any kind, irrespective of the child or his or her parents or legal guardian’s race, colour or sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or status.”

In many countries the girl child is discriminated against from her childhood to adult hood. The declaration requires the governments to take initiatives to make girls to participate actively and effectively. Equally with boys at all levels of social, economic, political and cultural leadership is to be ensured. The conference also expressed the need of man and woman to work together with youth to break persistent gender stereotypes taking into account the right of the child, and responsibilities, rights and duties of parents.

Educational facilities are often denied to the girl child and she is given less opportunities to learn, about the social, economic and political functioning

of the society with the result that she gets little opportunity to take part in the decision making process.

Young girls are often forced to prostitution even with the aid of the government authorities. The offer of a good job or marriage attract the young girls and their parents and they become victims of forced trafficking. There is failure on the part of the government to distinguish between voluntary prostitution and forced prostitution. They are also subjected to forced labour and vulnerable to sexual diseases and exploitation.

The conference required that:

- (1) all barriers must be eliminated to enable the girls without exception to develop their full potential and skills through equal access to education and training, nutrition, physical and mental health care and related information
- (2) Eliminate all forms of discrimination against girl child
- (3) Eliminate negative cultural attitudes and practices against girls
- (4) Promote and protect the rights of the girl child and increase awareness of her needs and potential
- (5) Eliminate discrimination against girls in education, skills, development and training
- (6) Eliminate discrimination against girls in health and nutrition
- (7) Eliminate the economic exploitation of child labour and protect young girls at work

- (8) Eradicate violence against Girl child
- (9) Promote the girl child's awareness of and participation in social economic and political life
- (10) Strengthen the role of the family in improving the status of the girl child.

Women and the Media

The conference was of the opinion that mass media can contribute to a great extent for the advancement of women. It has greater impact on the public attitude and behaviour of children especially the children and young adults. Therefore the conference urged the need to have a change in the negative and degrading portrayal of woman in the media as it affected her adversely and prevented her participation in the developmental and decision making process of the country. If women were given access to information technology, they can to some extent prevent the negative portrayal of women. The conference required the government to take steps to increase the participation of women in the decision making process in the media including the management, Programming education, training and research for the advancement of women and to make appropriate self regulatory mechanism to promote a balanced and non-stereotyped portrayal of women by the media. It also required the mass media and advertising organisations to develop professional guidelines and code of conduct to promote non-stereotyped images of man and woman to

prevent violent, degrading and pornographic materials concerning women in the media.

The conference also required the mass media and non-governmental organisations to work for the advancement of women. The mass media is required to disseminate information about the non-stereotyped role played by man and woman and the need to equal sharing of responsibility by man and woman. It also urged the need to create awareness about the human rights of woman and the need for elimination of all forms of exploitation and violence against women including domestic violence.

Women and Environment

An ecologically sound environment is desirable for the health of woman and girl child. Participation of women in the environmental decision-making at all levels as managers; designers etc., is essential for the maintenance of a healthy and pollution free environment. Equal access and information shall be given to woman about science, technology and economics for the purpose of enhancing their knowledge, skills and opportunities for participating in environmental decisions. Government shall take measures to reduce risks to women from environmental hazards and to empower women as consumers and producers so that they can take effective environmental actions along with men in their homes, communities, workplace etc. The conference required the government to support the development of women's equal access to housing infrastructure, safe water, sustainable and affordable energy technologies such

as wind, solar and other renewable sources, energy planning and policy formulation at the local and national level.

Institutional arrangements for Implementation

The primary responsibility to implement the norms of the Declaration is on the government. Besides the government there is a wide range of institutions in the public, private and non-governmental organisations at the national, regional and international level. They are also responsible for the implementation.

During the United Nations Decade for Women (1976-1985) many institutions specifically devoted to the advancement of women were established at the national, regional and international levels. The United Nations Institutions specifically for the advancement of women include, International Research and Training Institute for the Advancement of Women (INSTRAW), United Nations Development Fund for Women (UNIFEM) and the committee to monitor the convention on the Elimination of All Forms of Discrimination Against Women, the Commission on the Status of Women, the Division for the Advancement of Women etc.

National Level Initiatives

The primary responsibility to implement the conference resolutions rests with the government at the national level. Raising of resources is one of the main hurdles in the implementation of the objectives. Sufficient resources

should be allocated to national machinery for the advancement of women as well as the institutions.

Where national mechanism for the advancement of women does not exist or where they have not yet been established on a permanent basis government should strive to make available sufficient and continuing resources for such machinery.

The financial institutions such as World Bank, International Monetary Fund etc, shall provide available resources to the developing countries. United Nations system shall provide all forms of assistance to the developing countries for the implementation of the platform of action.

In order to empower women so as to make them participating in all decision making processes of the country, there must be a renewal, reformation and revitalization of the various organs of the United Nations system especially the Division For the Advancement of Women and other units and subsidiary bodies that have a specific mandate to promote the advancement of women. For this purpose relevant governing bodies within the United Nations systems are encouraged to give special consideration to the effective implementation of the platform of action, their policies and Programmes.

Follow Up to the Fourth World Conference on Women and Full Implementation of the Beijing Declaration and Platform for Action:

The General Assembly realised that international co-operation is necessary for the proper implementation of the Programme of action. The Assembly therefore invited the Economic and Social Council for monitoring

the progress of implementation of the Beijing conference with the help of other institutions. It also noted the need to raise funds for the effective implementation of the objectives. The Assembly appreciated the fact that recognition of human rights of women is essential for maintaining a just and humane world.

The General Assembly decided to assess and review the progress achieved and included in the agenda in its session started in 1996, an item entitled implementation of the outcome of the 4th world conference on women for the purpose of assessing the progress achieved in the Nairobi Forward looking strategies for the advancement of women.¹

It also recognised the importance of the Commission on the Status of Women to assist the Economic and Social Council.

The Assembly requests the Secretary General to report annually to the Commission on the Status of Women and to the General Assembly through Economic and Social Council, the measures taken and the progress achieved in the implementation of the Beijing Declaration and Platform for Action.

Vienna Declaration

The General Assembly of the United Nations decided to convene a world conference on human rights to assess the progress made by the

¹ General Assembly Resolution 50/23 U.N. Document.

international community since the adoption of the Universal Declaration of Human Rights.

The other objectives of the conference were to identify matters that prevent the proper implementation of human rights and to find out means for the effective enforcement of human rights. The World Conference on Human Rights adopted the Vienna Declaration on 25th June 1993.

The conference focused its attention mainly on the protection and promotion of human rights in the international community. It was a unique opportunity to analyse the international human rights system and the machinery employed to afford its protection. The conference supported the view that human rights of women are universal, indivisible, interdependent and interrelated.

The conference concluded by adopting Programme of action to review and assess the rights of women especially those situated under special and vulnerable situations. The plat form of action deals with woman, minorities, indigenous people, children, persons with disabilities, refugees, migrant workers and prisoners. A chapter has been devoted to each group. Each chapter sets out the relevant international instruments pertaining to the group.

One of the objectives of the convention is full participation of women in all the activities in public and private life and the eradication of all forms of discrimination on the ground of sex. Vienna Declaration and Programme of

Action recognise that human rights of women and girl child are an inalienable and indivisible part of the universal human rights.

The conference required the governments to take steps to eliminate violence against women and sexual harassment and exploitation, as they are incompatible with the dignity and worth of the human person. International co-operation is required to eradicate discrimination against woman. The governments, institutions, intergovernmental and non-governmental organisations should work together to facilitate the access of women to decision making post and their greater participation in the decision making process.² But the conference was not concerned with violence by private persons.

Increased Co-Operation on Efforts to Protect Human Rights, Equal Rights and Human Rights of Women within the United Nations System

The conference urged the need to strengthen the co-operation and co-ordination between the Commission on the Status of Women, the Commission on Human Rights, the Committee on the Elimination of All Forms of Discrimination Against Women, UNIFEM, the United Nations Development Programmes and other United Nations' Agencies for the protection and promotion of human rights. The co-operation and co-ordination should also be strengthened between the Centre for Human Rights and the Division for the Advancement of Women.

² Vienna Declaration and Programme of Action, 1993 Para 38.

The participants urged the governments to give special attention to eliminate violence against women and welcome the appointment of a special rapporteur on violence against women at its fifth session.

The conference was concerned with the health of women and required the government to give access to women to health care services, family planning and access to education at all levels etc.

The World Conference urged the eradication of all forms of discrimination against women both hidden and overt. The conference required the governments to ratify the Convention on the Elimination of All Forms of Discrimination Against Woman and to withdraw all directions incompatible with the object and purpose of the convention, which are otherwise incompatible with international law.

International Conference on Population and Development

The United Nations Conference on Population and Development was held from 5th to 13th September 1994 at Cairo, Egypt. The objective was to achieve equality and to ensure the enhancement of women's contributions for sustainable development. The conference identified that empowerment of women by giving them education and their participation in decision-making process was necessary to meet their basic human needs.

The conference acknowledged that factors of population, health, education, poverty, patterns of production and consumption, empowerment of women and environment are closely interconnected and inter-related and the achievement of one resulted in the achievement of another.

U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities: U.N. Doc. E/CN.4/Sub.2/1996/41 (1996)

U.N. sub-commission on Prevention of Discrimination and Protection of Minorities urged the need for eradication of all traditional, customary and religious practices, which affect the health of women and standing in the way of elimination of all forms of discrimination against women. Factors affecting the health of women such as genital mutilation, forced abortion etc., are violence against women affecting their health and are violations of the human rights of women. It expressed the need to implement all measures to prevent customary and traditional practices affecting the health of women.

It also extended the period of special rapporteur for a further period of two years, and suggested other measures and requested the Secretary General to transmit the final report of the special rapporteur to the Commission on Human Rights for adoption.

The Sub Commission on Prevention of Discrimination and Protection of Minorities

In its resolution 1995/26 of 24th August 1995, the Sub-Commission decided to consider the human rights of women and girl children under every

item of its agenda as well as in relevant studies undertaken by the Commission. It also considered human rights of women as the integral part of the universal human rights.

The Sub-Commission like the other conference stresses the need to take steps to eradicate all forms of exploitations, abuse, violence and discrimination against women. It also required the States to take measures for the effective implementation of the Declaration of Violence Against Women, taking into special consideration of women who are situated in special situations such as migrant woman workers, refugee women and women in conflict situations. The Conference also recognised the importance of the effective implementation of Elimination of All Forms of Discrimination Against Women. In short, the Conference recognised the need to eliminate all practices, which are incompatible with the dignity and worth of the human person. Governmental support for all the work in this direction was also emphasized by the Conference.

United Nations Conference on Environment and Development (Rio De Janeiro, June 3 & 4, 1993)

The international community had conducted several conferences and adopted several conventions and declarations for the protection and promotion of the human rights of woman. The United Nations Conference on Environment and Development (RIO DE JANEIRO, June 1992) was of opinion that effective implementation of these Programmes will depend on the active involvement of woman in economic and political decision making.

The conference proposed some action to be taken by the National Governments as indicated below:

- 1 Encourage the participation of women in the national ecosystem management and control of environmental degradation.
- 2 Increase participation of women in the environmental decision-making.
- 3 The promotion of women's literacy, education, training, nutrition, health, participation in key decision making processes and management of environment shall be included in all the policies and plan of action of the governments. The conference also recognised the equal reproductive rights of man and woman. It also required the governments to take all measures to prevent violence against women in all its forms.
- 4 To ensure that women and men have equal right to decide freely and responsibly the number and spacing of their children and have equal right of access to information and education to enable them to exercise their rights.
- 5 To adopt measures or strengthen measures to prevent violence against women and to take all necessary measures to prevent violence against women.

Activities

- 1 Government shall take all measures to eliminate illiteracy among women and to increase the participation of woman as decision makers, scientists, managers etc. for the purpose of empowering women.

- 2 Take measures to protect the physical, mental and reproductive health of women.
- 3 To establish the principle of equal pay for equal work
- 4 To eliminate the persistent stereotyped attitude of man and woman through changes in socialisation patters, media advertising and formal and non-formal education.
- 5 To take measures to ratify all relevant conventions pertaining to women and take all appropriate measures to implement the convention.
- 6 To review and suggest amendments to CEDAW by the year 2000 particularly provisions related to environment and development giving special attention to the issue of access and entitlements to natural resources, technology etc.

The conference also required the countries to take steps to prevent economic degradation in developing countries that generally affects the lives of women and children in rural areas. Environmental hazards resulted in drought, desertification, deforestation and other natural disasters. In order to avoid these calamities women could play an active role. But they are not allowed to participate in the decisions. In order to ensure that they are given adequate opportunities the international agencies have therefore encouraged to involve women in these activities.

The Conference also required the Secretary General of the United Nations to review the adequacy and efficiency of the United Nations'

institutions especially those institutions responsible for the protection and promotion of human rights of women such as the United Nations Development Fund for Women, International Research and Training Institute for the Advancement of Women (INSTRAW) etc. to strengthen environmental protection and to incorporate the role of women in Programmes and decisions relating to sustainable development.

Review of the Conference by the U.N. General Assembly

The U.N. General Assembly has called for a review of the progress made in five years since the Beijing Platform for Action was adopted. A special session was convened in New York from 5 to 9 June 2000 under the heading gender equality, development and peace for the 21st century. The special session provided opportunity for governments and civil society to share good practices and examined current challenges and obstacles encountered in the implementation of the Beijing Platform of Action. The review session helped to give a new momentum to political commitments to achieve women's empowerment and gender equality³

The United Nations and its various other specialised agencies have made considerable efforts to improve the status of women and for the protection and promotion of the human rights of woman. The inferior status assigned to women is because of the fact that there is division of labour between man and

³ See U.N. Document DP/2035/M/May 2000.

woman and because of inequality in access of woman to education and employment.

The United Nations Educational Scientific and Cultural Organisation has made several attempts to find out the causes or factors that denies access to education of women. It is concerned with giving education to girls, especially technical education, so that they are given access to skilled employment.

In 1973-74 UNESCO made arrangements with the ILO for a joint study to be conducted in five countries concerning education, training and employment opportunities for women.

The International Research and Training Institute for the Advancement of Women (INSTRAW) established by the Economic and Social Council was concerned with the protection, promotion and training of women in various fields. It also took step for the effective participation of women in all spheres of activities. It also imparted training Programmes especially in developing countries to enable women to assume leadership roles within their own countries and to increase their earning capabilities.

The Commission on the Status of Women

The Commission on the Status of Women is a functional body of the Economic and Social Council. The main function of the Commission is to make recommendations to the Council about the protection and promotion of human rights, about the problems requiring immediate action in the field of

human rights of women and to develop proposals to give effect to such recommendations. It is an intergovernmental body with a membership of 45 representing different countries. The members have a 4 years term. The Commission meets once a year for at least 8 days.

The Commission is concerned not only with the protection and promotion of human rights of woman but also with the opportunities available to women in exercise of these rights. It also tried to eliminate the discrepancies existing between the legal status of women in theory and the actual role played by them in practice.

In order to give effect to the provisions of the U.D.H.R. and to create an awareness among women about their full potential and to enable women to participate in all the developmental process, the United Nations organised a unified long term Programme for the advancement of woman and the Commission on the Status of Women was also invited to co-operate with the Programme. As part of this Programme the commission focused its attention to the role of woman in national development.

The main objective of the Programme as declared by the General Assembly included ratification and access of the relevant international conventions relating to the status of women, to take effective legal and other measures to ensure the full implementation of the Programme and to study the negative and positive aspects of the scientific and technical changes in the

status of women and the establishment of a permanent machinery for the review and evaluation of the women's integration into all sectors of life. The General Assembly also calls for the elimination of illiteracy, ensuring equality in literacy between sexes, equal access of boys and girls to education and vocational training, employment etc. Maternity leave, child care facilities, protection of the health of the mother and child were the thrust areas the Assembly focused its attention.

Since the beginning of its work in 1946, the commission was concerned with the legal status of women. On the recommendation of the Commission on the Status of Women, the Economic and Social Council recommended the government to take all possible measures to ensure equality of rights and duties in family matters and to ensure to the wife the freedom to work outside the home. She shall also be given the right to acquire, administer and dispose of property equally with that of the husband.⁴

The limitations on the parental authority of the child that it exclusively belongs to the father excluding the mother is incompatible with the principle of equality of status and the Council therefore on the recommendations of the Commission on the Status of Women recommended that State Members of the United Nations shall take steps to ensure equality between parents in exercise of rights and duties with respect to their children.⁵ It further recommended that with reference to the special characteristics of legislation in different countries.

⁴ Res. 504 D (XVI) of July 1953.

⁵ Res. 587 D-11 (XX), 1955.

- (1) with respect to care, custody, education and maintenance, women shall have same right and authority as that of man.
- (2) with respect to the administration of the property of the minor children, women shall have equal rights with that of men
- (3) In the case of dissolution of marriage both the spouses have equal rights with regard to the custody of the children⁶

The council on the recommendation of the Commission on the Status of Women also recognised the right of unmarried mothers and required the State to take adequate measures in favour of the unmarried mother, and children born out of the wedlock.⁷

The General Assembly also called for ensuring paid maternity leave, child care facilities and facilities for the protection of the health of the mother and child.

It also took steps to ensure the reproductive freedom of the women including information on the ways in which women can benefit from family planning.

The Commission on the Status of Women found that in some legal system women have no right to take independent work without the permission of the husband and also that they do not have any right over the income earned by them. Hence it is recommended that governments shall take all necessary

⁶ Res. 1207 (XLII) of 29 March 1967.

⁷ Res. 1514 (XLVIII), 1970.

measures to ensure that married women have the right to undertake any independent work and to carry on and to administer and dispose of her earnings without the authorisation of the husband.

The Economic and Social Council on the recommendation of the Commission on the Status of Women⁸ resolved that state members of the United Nations shall take steps to ensure equality between parents in the exercise of rights and duties with respect to their children. The council also recommended the member states to take all possible measures to ensure equality between man and woman in the exercise of parental rights and duties.

Generally speaking, in private international law, the domicile of a married woman is that of the husband. This smacks of inequality. The women may suffer a lot in her marital and succession matters. The council therefore recommended that married woman would have independent domicile of choice.

In some legal systems the inheritance rights of women are not equal to those of men. On the recommendation of the Commission on the Status of Women, the Social and Economic Council recommended the government to take measures to ensure equality of inheritance rights to man and women by providing that men and women in the same degree of relationship to the deceased should be entitled to equal share in the estate and should have equal rank in the order of succession⁹ The capacity of the women to make a will, accept or refuse an inheritance and to be administrators or executors of estates

⁸ Res. 587 D (XX) of August 1955.

⁹ Res. 884 D1 (XXXIV), 1962.

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⁸ Res. 587 D (XX) of August 1955.

⁹ Res. 884 D1 (XXXIV), 1962.

should not be affected by marriage and that the interest of the widow should be equal to that of widower.

Equal Pay for Equal Work

The Economic and Social Council on the recommendation of the Commission on the Status of Women adopted a resolution reaffirming the principle of equal pay for equal work as envisaged in the Universal Declaration of Human Rights. The Council called upon the Member States to implement the principle irrespective of nationality, race, language or religion.

The Economic and Social Council on the recommendation of the Commission on the Status of Woman forwarded recommendations to the International Labour Organisation regarding the principle of equal pay for equal work. It also recommended that wages should be given on the basis of work and not on the basis of sex and women should be given training and guidance and equal access to job opportunities as that of man. Abolition of all legal and customary practices, which restrict the principle of equal pay for equal work, was also recommended. Every effort should be taken by the governments to reduce the double burden of women that arise from the responsibility of women in work place and at home.

The Commission on the Status of Women also requested the Member States of the United Nations to grant equal educational rights to women with that of men irrespective of other considerations.

The Commission on the Status of Women and the Economic and Social Council have examined at regular intervals reports prepared by UNESCO on particular aspects of education of girls and women and adopted recommendations to member states on such subjects as access of girls and women to primary, secondary and vocational education and to the teaching profession.

Improvement of Health of Women

The Commission on the Status of Women in co-operation with world health organisation and United Nations Children Fund have given special attention to the health of women. It expressed the need to recognise the reproductive rights of women and access to women to adequate nutrition and health care for women and their children.

Role of Non-Government Organisations in the Protection and Promotion of Human Rights of Women

Non-governmental organisations have played an active role in the protection of the human rights of woman. The main function of the NGOs are gathering of information regarding the rights, the violations of the rights, finding out the obstacles that stand in the way of implementing the rights and defines new areas and issues which require reconsideration by the governments or requires legislation. It also helps the government in drafting the legislation. It tried to prevent abuses of human rights and to give redressal of the

grievances of the victim such as attempts to take missing person, visits to detainees and trying to get human treatment to prisoners etc.

Most of the NGOs are specialised in certain areas of work such as women's rights, refugee rights etc. They have also played an important role in imparting literacy to the society by conducting seminars, consultations, training etc. They gave special attention in the case of refugees and other displaced persons.

The non-governmental organisations consistently condemn human rights violations by the States as well as by private individuals. They recommend the governments for ratification of human right treaties and for the effective implementation of those treaties.

The Vienna Declaration and Programme of Action, World Conference on Human Rights in June 1993, specifically recognised the important role of NGOs in the protection of the human rights. The Amnesty International made several recommendations about women's human rights, violence against women and abuses of women in armed conflict and the 4th World Conference on Woman incorporated many of the recommendations made by the Amnesty International.

In March 1994 the United Nations Commission on Human Rights appointed a special rapporteur to collect information on gender-based violence

and recommended measures to eliminate the discrimination at national and international level.

The non-governmental organisations were of opinion that women shall be given equal access and participation in the decision making process. Sharing of responsibilities between man and woman is a necessary condition to ensure equality and restructuring of the society.

The NGO's contribution to the implementation of human rights norms is worthy of mentioning. They create awareness among the public about human rights violations. Their contribution also involves exchange of information between governmental and non-governmental organisations. A brief description of the activities of the prominent non-governmental organisations dealing with the human rights is furnished below:

(1) Amnesty International

The Amnesty International is the best known and largest non-governmental organisation dealing with human rights. At the initial stage it was concerned with human rights violation of prisoners. Now it is concerned with all sorts of human rights violations including female genital mutilation, indiscriminate killing in war times etc. Its concerns are not limited to human rights violations by government but extend to violations of human rights by non-governmental entities as well as by private citizens and include actions such as trafficking in children, forced prostitution etc. It also concerned with

domestic violence and according to Amnesty International the most common forms of torture include severe beating, scolding, burning with cigarettes etc., among others. Amnesty notes that women situated in vulnerable situations especially those belonging to scheduled castes and scheduled tribes are subjected to torture. In domestic violence also the wife is targeted for petty reasons because she is powerless and has to depend totally on the batterer. In addition to physical torture she is also subjected to psychological torture through various means isolating, humiliating her and denying her the basic necessities of life. The impact of all these is to make the woman lose her self-esteem and autonomy completely.

The Amnesty International had actively participated in the 4th World Conference on Women and the World Conference adopted most of its recommendations.

It also reported and condemned the vulnerable situations of women in India such as rape, violence against women, ill treatment etc. It also concerned with the rights of women in the context of international armed conflict and also concerned with customs and practices detrimental to women's rights, loopholes in law and delay in introducing safeguards to protect the rights of women.

. Amnesty International required the nurses association and International Council to undertake Programmes of information and education on the torture, impact and issues involved in the female genital mutilation.

Amnesty International has also documented violations of human rights of women in armed conflict and rape and torture by the armed forces and in the custody of the police¹⁰

(2) The Human Rights Watch

Human Rights Watch is an independent non-governmental organisation supported by private individuals and other foundations. It conducts regular and systematic investigation of human rights abuses in several countries around the world.

The Human Rights Watch observed that persons who are in a responsible position to protect the rights of women commit many of the violence against women. Many of the violence against women are caused by the government staff e.g. rape in police custody. Similarly forced prostitution, promotion of prostitution and sex tourism work out injustice to the women, as they open up opportunities for the growth of these vulnerable abuses. A brief description of the contributions of Human Rights Watch concerning the abuses of women in custody and trafficking in women is given below:

Abuses of Women in Custody

Taking into consideration of the miserable conditions of women in custody, the N.G.O. recommended to governments to take urgent steps to ensure that their officers shall strictly adhere to the international standards

¹⁰ *Role of Amnesty, Red Cross and National Human Rights Commission*, Indian Law Institute of Human Rights, Maidangarhi Marg, New Delhi, p.54.

guaranteeing due process and protection from cruel, inhuman and degrading treatment or punishment. It also suggested making sexual abuse in custody as a criminal offence.

The United Nations should ensure that administration of prisons shall be in accordance with the international human rights standards set forth in the Universal Declaration of Human Rights, 1948 and other International Instruments.¹¹

Trafficking in Women and Girls, Forced Prostitution and Coerced Marriages:

Human Right Watch observed that the government often facilitates trafficking in women and girl and it is due to the inaction on the part of the government that the flesh trade is flourishing. The organisation's studies found that illiterate women situated in very poor economic conditions were often cheated by the promise of good job and better marriage proposals and they happened to be the victims of forced prostitution. There is failure on the part of the government to check this. Human Right Watch also condemned laws and policies, which condemn women alone and not men who profit from prostitution. It also observed that government have an obligation to prevent forced trafficking and coerced marriages. The police usually arrest the trafficking victims and this is a violation of women's right to be free from discrimination on the basis of sex.¹²

¹¹ Human Right Watch *'Global Report on Women's Rights'*, Oxford University Press, New Delhi, 1995 p.140.

¹² Human Right Watch. *Global Report on Women's Rights, op. cit.*, 1995 pp.196-203.

The Human Right Watch was also concerned with abuses of women at work places, violence against women, violation of reproductive rights of women etc. It requires all responsible government and international bodies to take measures to eliminate discrimination against women. It also required the governments to abolish and review all legislation that discriminates women and urged that Member States of the U.N. should adopt and ratify the protocol to CEDAW that would allow women, whose domestic legal system have failed, to submit complaints directly to the Committee on the Elimination of Discrimination Against Women. The United Nations Agencies, particularly the U.N. Development Programme and the U.N. Population Fund, donor governments and multilateral development bank should seek to ensure that: population Programmes and policies that they support include safeguards for the protection of all basic civil and political rights. International financial institutions such as the World Bank as well as donor governments should extend the concept of good governance to include a firm commitment to the protection of human rights.

The Human Rights Watch world report, 2002 reported that the status of women in the society is linked to the status of the male member of the society and most often women face discrimination not because of the fact that they happen to be a women but because of the fact that they belong to a particular race or ethnic group. It also reported that in many countries women faced discrimination in employment. It also found that sexual harassment does take

place at work places. It also observed that in many cases the trafficked women are subjected to free sexual services to local police officers. In refugee camps also women were subjected to sexual exploitation resulting in their being affected by HIV/AIDS. In many cases the woman could not get any redress from the police who declined to intervene in rape cases.

(3) The Woman, Law Development International

It is an International Human Rights Organisation working for the realisation of the human rights of woman. It conducted a study on the rights and the obstacles that stand in the way of implementation of the rights. It is expected to create awareness among women to identify and explore their human rights and enable them to respond to the violations of the rights through women organisations for the purpose of improving their status. For this purpose they tried to unite women activists from the various parts of the world to identify and articulate common issues and generate new thinking on the right challenges facing woman. The Women, Law, Development International established a strong relationship with the United Nations Social and Economic Council.

The Women, Law Development International's main programme of action involves

1. Making the Right Real: For this purpose it creates new thinking and create an ability to exercise these rights by providing leadership and forums for issues and strategies.

2. Building individual and organisational capacity to successfully advocate for change.
3. Advocacy and Organising: The regional women's right movement is facilitated.

Non-Governmental Organisations Concerning Human Rights of Women in India

The positive role played by the non-governmental organisations in India has culminated in the enactment of the Protection of Human Right Act, 1993 and the setting up of National Commission on Human Rights. The National Human Rights Commission is of opinion that NGOs can play an active role in the investigation of human rights violations and takes up the matter before the commission. The NGO's can also undertake serious studies on specific problems and issues in view of their specialised knowledge.

Human Rights violations by the State and its organs have been articulated by a specialised group of NGOs known as Civil Liberties and Democratic Rights Group.

The main non-governmental organisations in India are:

1. The Andhra Pradesh Civil Liberties Committee
2. Association for the Protection of Democratic Rights (APDHR)
3. Committee for the protection of Democratic Rights (CPDR)
4. Citizens Committee for Civil Liberties and Democratic Rights (GOA)

5. Lok Adhikar Sangh, Gujarat
6. Peoples Union for Democratic Rights (PUDR)
7. Citizens for Democracy (CFD)
8. Karnataka Civil Liberties Committee (KCLC)
9. Organizing Committee for Democratic Rights (OCDR)
10. Peoples Union for Civil Liberties.

The National Commission for Women is a statutory body constituted under the National Commission for Women's Act, 1990 to investigate and to provide remedial measures for the protection and promotion of the human rights of women. A statutory duty has been cast upon the National Commission to examine the status of women prisoners. The Commission has formed an expert committee on custodial justice to women.

Along with the National Commission for women, the non-governmental organisations, Prison Reforms International and Penal Reforms and Justice Association collaborated to organise a workshop on New Models of Accessible Justice¹⁴ in New Delhi.

The main object of the Prison International is the promotion of international human rights of women with regard to law enforcement, prison conditions and standards, elimination of all forms of discrimination against women in all penal measures, reduction of imprisonment and abolition of death penalty and some of the prison reforms.

Penal Reform & Justice Association is a non-governmental organisation established in India and is more concerned about the problems of the vulnerable groups such as women, old, and socially and economically deprived person.

The study undertaken by this organization reveals that the reasons of criminality of women are poverty, institutional powerlessness, victimisation and general ignorance. The situations faced by women include unhealthy living conditions, lack of proper sanitation, untrained wardens, lack of training for women prisoners.

Two other studies undertaken by the Regional Institute of Correctional Administration (RICA) Vellore, on contemporary and correctional issues found that, women prisoners need legal advice, awareness and counseling and most of the women are worried about the custody and care of their adolescent daughters. The vocational training given to them is not of any rehabilitative value. The study also suggested the need to have clinical psychologists, welfare officers and social workers in women's prison.¹³

Community Action for Development: It is a human right NGO working for the protection and promotion of human rights of women. In Nagpur city it helped generating legal awareness about the rights of women and also emphasized the need to have women participated in the developmental

¹³ *Workshop on New Models of Accessible Justice; The Indian Experience, Special focus on Women and Juveniles.* Report prepared by Rani P Shankardas, Nikhil Roy & Vidya Seshadri. Page 151.

process of the community.¹⁴ The Community Action For Development with the help of other NGO's like 'Mahila Mandals' create awareness and educational Programmes at various rural villages in different parts of the state.

The 'Mahila Mandals' take several actions in relation to the health status and health care of rural women. The 'Mahila Mandals' found that nutritional deficiency is one of the main problems faced by women and the intake of quantity and quality of food is very less in the case of women when compared to men. The 'Mahila Mandals' elaborately discuss the problem regarding health care aspects which created practical knowledge to women.

The Social Institute New Delhi, People's Union for Democratic Rights, Indian Society of Human Rights also work for the protection and promotion of human rights of women. The Peoples Council for Social Justice (PCSJ) is another NGO working in India especially in Kerala, educating the masses organizing 'Neethi Mela' outside court etc. *

The main objectives of the World Conferences on Women's Rights, the Mexico City, Copen Hagen, Nairobi and Beijing were equality, development and peace and the participation of women in the developmental and decision-making processes. The inferior status of women was found to have emanated from the division of labour between man and woman and because of unequal access of women to employment and education. The conferences urged the

¹⁴ V.V. Devasia and Leelamma Devasia, *Women Social Justice*, A.P.H. Publishing Corporation, New Delhi, (1998) p.52.

need to include in all the governmental policies and plan of actions the promotion of women's health, protection from violence and trafficking. education, training and participation in key decision making processes with a view to improve their status. All the conferences stressed the need to eliminate all practices. which are in compatible with the dignity and worth of the human person. They also urged the need to eliminate all religious and traditional practices that stand in the way of eliminating discrimination against women.

In short it can be safely said that International norms of women's rights have been formulated, nurtured and enforced through passive persuasions by way of relating them to the standards, which the international community wanted to inculcate among the people. The United Nations' bodies and NGO's have to an appreciable extent, succeeded in achieving their mission.

CHAPTER - VI

INDIAN LAWS DEALING WITH HUMAN RIGHTS OF WOMEN - AN APPRAISAL

It is evident from the discussions in the previous chapters that the international community as a whole is concerned with the protection and promotion of human rights of women and the elimination of discrimination and violence against women. The various human right norms incorporated in the international instruments have got concrete shape in India after the framing of the Constitution of India. Many laws have also been enacted in accordance with the international documents for the protection and promotion of human rights of women. The Indian Judiciary also has been playing a significant role to uphold the dignity and worth of Indian women. It has expanded the horizons of human rights jurisprudence and many of the Directive Principles, considered as non-justiciable rights, were made enforceable indirectly, by bringing them into the arena of fundamental rights.

The framers of the Indian Constitution were fully aware of the exploitation, discrimination and attitude of the society towards women and need of special protection for their survival in the male dominated society. Therefore the Constitution envisages special provision for the protection of women.

The preamble of the Constitution seeks to secure to its citizen, including women social, economic and political justice, liberty of thought, faith, belief

and worship, equality of status and opportunity and fraternity assuring the dignity of the individual.

Fundamental Rights and Directive Principles are incorporated in the Constitution in tune with the Universal Declaration of Human Rights. Provision for the protection of women envisaged under the Universal Declaration of Human Rights, 1948 provides that all are equal before law and entitled to equal protection.¹ The Principle of equality before law and equal protection of law is incorporated in the Indian Constitution.² Our Constitution also prohibits discrimination on the basis of religion, race, caste, sex, descent, place of birth, residence etc.³ Taking into consideration the attribution of weaker position and subordination of women and the biological role performed by women, the Constitution empowers the legislature to make special provision for the protection of the human rights of women.⁴

The Constitution of India also provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be eligible for discrimination against in respect of any employment or office under the State.⁵

In the case of public employment also women have the same right and if there is any law or executive action prevents the State from appointing women,

¹ Universal Declaration of Human Rights, 1948, Article 7.

² The Constitution of India, Article 14.

³ *id.* at Article 15.

⁴ *id.* at Article 15(3).

⁵ *id.* at Article 16.

such law, shall be declared void. The liberal interpretation given to Article 21 shows the concern of the Indian judiciary for the protection human rights of women.

The Constitution prohibits traffic in human beings and beggar and other forms of forced labour.⁶ Any contravention of this shall be an offence punishable in accordance with law⁷. The parliament is authorised to make laws for punishing acts prohibited by this article.⁸

The Directive Principles of State Policy have several directives to protect and promote the human rights of women. It provides that (a) the citizens men and women, equally have the right to an adequate means of livelihood⁹ (b) that there is equal pay for equal work for both men and women¹⁰ (c) that the health and strength of workers men and women are not abused and that citizens are not forced by economic necessity to adopt avocation unsuited to their age and strength.¹¹

In furtherance of these, various labour laws have been passed such as the Equal Remuneration Act, 1976, The Bonded labour System (Abolition) Act, 1976, The Factories Act, 1948, The Mines Act, 1952, The Plantation Labour Amendment Act, 1981, The Equal Remuneration Act, 1976 etc.

⁶ *id.* at Article 23.

⁷ *id.* at Article 23(2).

⁸ *id.* at Article 35.

⁹ *id.* at Article 39(a).

¹⁰ *id.* at Article 39(d).

¹¹ *id.* at Article 39(e).

All the international instruments especially the Universal Declaration of Human Rights 1948 and the International Covenant on Social, Economic and Political Rights envisage fair and humane conditions of work. The same provision is incorporated in Part IV of the Constitution. It casts an obligation on the State to make provision for securing just and human conditions of work and maternity relief.¹² Accordingly the Maternity Benefit Act was passed by the Parliament. If a uniform law is applied to all religion, discrimination against women can be solved. With a view to ensure a uniform law, the Constitution envisages for a uniform civil code.¹³

Role of Women in Decision Making Process

The welfare of the nation, the society and the family requires the maximum participation of women in the decision making process. The various international conferences for the protection of human rights of women required the Member States to take steps to make women participating in the administration of the country and also envisage the participation of women in all the developmental activities. In India the 73rd and 74th constitutional amendments enable women to participate in the administration of the country. There are also several statutes which enable women to participate in the decision making process.

Part IX was inserted in the Constitution by the 73rd Amendment Act 1992, and Part IX A was added by the 74th Amendment Act which, provides

¹² *id.* at Article 42.

¹³ *id.* at Article 44.

that not less than one third of the total number of seats which are reserved for scheduled castes and scheduled tribes in the Panchayat shall be reserved for women belonging to these communities.¹⁴

The amendment also provides that not less than one third of the total number of offices of the Chairpersons in the Panchayats at each level shall be reserved for women.¹⁵

The 74th Amendment provides for reservation of seats for scheduled caste and scheduled tribes in every municipality and of which not less than one third of the total number of seats shall be reserved for women belonging to scheduled castes.¹⁶ It directs that not less than 1/3rd (including the number of seats reserved for women belonging to SC & ST Classes) of the total number of seats to be filled by direct election in every municipality shall be reserved for women and that such seat may be allotted by rotation to different constituencies in a municipality.¹⁷ It also provides that the offices of chairperson of the municipality shall be reserved for scheduled castes and Scheduled tribes and women in such manner as the legislature may by law provide.¹⁸

According to Article 334, the reservation of seats and special representation shall cease to have effect after the expiry of 60 years from the date of commencement of the Constitution.¹⁹ The stipulation of Article 334 will not be applicable to reservation of seats to women under Article 234 T (1) (2).

¹⁴ *id.* at Article 243D(2).

¹⁵ *id.* at Article 243D.

¹⁶ *id.* at Article 243 T(2).

¹⁷ *id.* at Article 243 T(3).

¹⁸ *id.* at Article 243 T(4).

¹⁹ *id.* at Article 243(5).

The Consumer Protection Act, 1986 provides that at least one woman member must be appointed in each of the three redressal agencies namely the District Forum, the State Commission and the National Commission.²⁰ Similarly the Family Courts Act, 1984 also provides that preference shall be given to women while making appointments of judges of Family Courts.²¹

Role of Judiciary in Protection and Promotion of Human Rights of Women

In this constitutional context the Indian judiciary has played an important role in the protection of human rights of women. The Supreme Court has observed:

“Article 21 of the Constitution reinforces “rights to life”. Equality, dignity of person and right to development are inherent in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of the person. The fulfillment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy economic,

²⁰ The Consumers Protection Act, 1986 10(1)(b), 16(1)(b) & 20(1)(b).

²¹ The Family Courts Act, 1984 Section 4 (4)(b).

social, cultural and political rights without discrimination on footing of equality.²²

In another case the Supreme Court observed:

“Under Constitutional arrangement, there is no occasion for a differential treatment between male teachers and employees and lady teachers and employees in the education department doing administrative business, when they are doing the same job. Nor do we find any justification for a preferential treatment in the matter of affording promotional avenues for male teachers.”²³

Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 which requires a woman member of the service to obtain permission of the government in writing before her marriage was solemnized was challenged as discriminatory in the case of *C.B. Muthumma v. Union of India and others*.²⁴ As per rule 8(2), the government can at any time after marriage of the women feels that her family and domestic matters come in the efficient discharge of duties, require her to resign from service. The court observed:

“ We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do

²² *Madhu Kishwar v. State of Bihar*, A.I.R. 1996 S.C. 1864.

²³ *Uttara Khand Mahila Kalyan Parishad and others v. State of U.P.*, A.I.R. 1992 S.C. 1695.

²⁴ A.I.R.1979 S.C.1868.

not exclude the need to pragmatise where the requirements of a particular employment, the sensitiveness of sex or peculiarities of societal sectors or handicaps of either sex may compel selectivity. But save where the differentiation is negotiable, the rule of equality must govern.”

Air India Employees Service Regulations Rule 46(1)(c) provided that an Air Hostess was to resign from service upon attaining the age of 35 years or on marriage if taken place within 4 years of service or on first pregnancy whichever occurred earlier. The court held that the termination of service on first pregnancy is violative of Article 14. The court observed:

“It seems to us that the termination of service of an air hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood, the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilized society. Apart from being grossly unethical, it smacks of a deep-rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked

despotism and is, therefore clearly violative of article 14 of the Constitution.”²⁵

The Madhya Pradesh High Court dismissed a claim for money, which was given for bringing a Dangi girl for keeping as mistress. On realising that the girl was not a Dangi by caste the plaintiff claimed back the money. The court observed that such contract is *ab initio* void and it is against Article 23 of the Constitution. The court dismissed the petition making the observation that sale of the woman is considered as traffic in human beings which is prohibited by Article 23 of the Constitution.²⁶

In a writ petition filed by women’s organization known as Saheli²⁷, two women tenants were severely beaten up and harassed by land lord and police and in the course of events, 9 year old boy of one of the women was also beaten up and was later succumbed to his injuries, the Supreme Court held that the mother of the boy was entitled to get compensation from the State which was responsible for the tortious acts of its employees.

The Supreme Court has laid down certain principles regarding blood test to ascertain the paternity of the child. In an appeal against maintenance to wife and child, husband applied for blood test of the child to establish his parentage. According to Section 112 of the Evidence Act, if a child is born in wedlock, the husband is presumed to be the father of the child and the burden to prove the

²⁵ *Air India v. Nergesh Meerza*, A.I.R. 1981 S.C. 1829 at p.1850.

²⁶ *Nihal Singh v. Rambai*, A.I.R. 1987 M.P. 126.

²⁷ *SAHELI, a woman resource centre v. Commissioner of Police, Delhi.*, A.I. R.1990 S.C.513.

contrary was on the husband. Regarding blood test the court observed that (1) the courts in India cannot order blood test as a matter of course (2) application for subjecting a child to blood test made in order to have a roving inquiry cannot be entertained (3) there must be a strong prima facie case for suspecting the fatherhood of a child, which can be established only by proving non-access (4) The courts must carefully examine as to what would be the consequence of ordering a blood test, whether it would have the effect of branding a child as bastard and the other as an unchaste woman. The court observed that subjecting the child to blood test was contrary to the right to personal liberty guaranteed by Article 21 of the Constitution.²⁸ This decision strengthens women's right to dignity and liberty.

The Indian Penal Code and the Criminal Procedure Code envisage various provisions for safeguarding the interests of women. It is worth to examine such provisions.

Indian Penal Code contains several provisions having a bearing on women's protection.

They are the prohibition of obscene acts and songs in public place,²⁹ special provisions for causing dowry death³⁰ punishment for causing miscarriage without women's consent³¹ and punishment for death caused by act

²⁸ *Goutam Kundu v. State of West Bengal*, A.I.R. 1993 S.C. 2295.

²⁹ The Indian Penal Code, Sections 292 to 294.

³⁰ *id.* at Section 304 B.

³¹ *id.* at Section 313.

done with intent to cause miscarriage.³² The following acts are also made punishable under the Indian Penal Code with a view to protect and promote the human rights of women. They are simple hurt (wife beating)³³ grievous hurt³⁴ assault or criminal force to a woman with intent to outrage modesty,³⁵ kidnapping, abducting or inducing woman to compel her to marriage,³⁶ procurement of minor girls,³⁷ selling minor for the purpose of prostitution,³⁸ buying minor for the purpose of prostitution³⁹ rape,⁴⁰ sexual intercourse with one's wife living separately,⁴¹ intercourse by public servant with women in his custody,⁴² intercourse by superintendent in jail, remand homes etc.,⁴³ intercourse by any member of management of a hospital with any woman in that hospital,⁴⁴ cohabitation caused by a man deceitfully inducing a belief of lawful marriage,⁴⁵ bigamy,⁴⁶ adultery,⁴⁷ enticing or taking away or detaining with criminal intent a married woman,⁴⁸ subjecting a woman to cruelty,⁴⁹ and uttering of any word, gesture or act intended to insult the modesty of a women⁵⁰

³² *id.* at Section 312 to 314.

³³ *id.* at Section 323.

³⁴ *id.* at Section 325.

³⁵ *id.* at Section 354.

³⁶ *id.* at Section 366.

³⁷ *id.* at Section 366A.

³⁸ *id.* at Section 372.

³⁹ *id.* at Section 373.

⁴⁰ *id.* at Section 376.

⁴¹ *id.* at Section 376A.

⁴² *id.* at Section 376B.

⁴³ *id.* at Section 376C.

⁴⁴ *id.* at Section 376D.

⁴⁵ *id.* at Section 493.

⁴⁶ *id.* at Section 494.

⁴⁷ *id.* at Section 497.

⁴⁸ *id.* at Section 498.

⁴⁹ *id.* at Section 498.

⁵⁰ *id.* at Section 509.

Section 498 A was added by the Criminal Law Amendment Act, 1983 and Section 304 B was added by the Criminal Law Amendment Act, 1986. These two provisions were introduced to protect the women from cruelty caused to her, by her in-laws in demand for money as dowry. Whoever being the husband or relative of the women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.⁵¹

In order to protect the women from the inhuman treatment from the relatives of the husband a new section was introduced in 1986. It reads thus:

"Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and she was subjected to cruelty or harassment by her husband for or in connection with any demand for dowry, such husband or relative shall be deemed to have caused her death. A minimum punishment of 7 years but which may extend to imprisonment for life was prescribed."⁵²

When the question is whether a person has caused dowry death of a woman and it is shown that soon before her death such person had subjected such woman to cruelty, harassment for or in connection with any demand for dowry the court shall presume that such person has been the cause of

⁵¹ *id.* at Section 498A.

⁵² *id.* at Section 304B.

dowry death.⁵³ Criminal Law (Amendment) Act, 1983 has introduced Clause 3 to Section 174 of Cr. P.C. According to this clause if the woman has within 7 years of marriage committed suicide or died in circumstances raising a reasonable suspicion that some other person has abetted the commission of the offence, the executive magistrate must conduct the inquest in all these cases.

In order to attract section 304 B and 498A the death must be within 7 years of marriage and the deceased person was subjected to cruelty and harassment. The burden of proof is shifted from the prosecution to the accused. It is the duty of the accused person to prove that such woman was not subjected to cruelty. This shifting of burden from the prosecution to that of the accused is to strengthen the position of women and to save her from cruelty resulting from the demand for money.

Section 113A Evidence Act and Section 498A I.P.C. were introduced by the Criminal Law Amendment Act 1983 and Section 113B and 304B were introduced by the 1986 amendment. Under section 113A, the court may presume that her husband or relative has abetted the commission of suicide by a woman; if the women had committed suicide within the period of seven years from her marriage and that the husband or relative had subjected her to cruelty.

Section 498A is intended to protect the married women but if a widow or unmarried woman or separated woman is subjected to cruelty by her natal family this section is of no help. The section does not take cognizance of other

⁵³ The Indian Evidence Act, 1872 Section 113B.

cruelty to woman such as occasional beating and other forms of domestic violence, which are not so grave so as to drive the woman to commit suicide.

In spite of Section 304B and 498A domestic violence against woman still persists because of the reluctant attitude of the police to interfere in family disputes. Police should be given adequate training to be fully aware of the law and to respond to every complaint involving domestic violence as expeditiously as possible.

Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women gives protection to women against all forms of traffic in women and exploitation of woman. The Indian Penal Code also has provision to that effect. Procurement of minor girls for illegal and improper purposes is prohibited under the Act.⁵⁴ Importation of minor girls i.e. girls below 21 years of age from foreign countries and from Jammu and Kashmir for illegal and improper purpose is also prohibited.⁵⁵ The Constitution also prohibits traffic in human beings and forced labour.⁵⁶ The Immoral Traffic (Prevention) Act, 1956 also penalise procuring or taking a person for sake of prostitution.⁵⁷ The Bombay Devadasi (Protection) Act, 1934, penalise the dedication of girls and women to gods and goddesses⁵⁸

Rape affects women mentally, physically, and psychologically and affects her right to live with human dignity. It is always used by men to exploit

⁵⁴ *id.* at Section 366A.

⁵⁵ *id.* at Section 366B.

⁵⁶ Constitution of India, Article 23.

⁵⁷ The Immoral Traffic (Prevention) Act, 1956, Section 5.

⁵⁸ The Bombay Devadasi (Protection) Act, 1934, Section 3.

her rather than sexual gratification. It can be regarded as the highest torture inflicted upon virginity, motherhood and womanhood itself.⁵⁹ Corroboration, consent and immoral character of the victim are used as defence by the accused. As per Section 155(4) of the Indian Evidence Act, the past immoral character of the victim can be used as an inference adverse to the women.

In the famous *Mathura* case⁶⁰ the Supreme Court acquitted the accused on the ground that victim consented to rape. The court did not distinguish between consent and submission. The Criminal Law Amendment Act 1983 provided for trial *in camera* and inserted a new clause making the publication of the identity of the victim punishable.⁶¹ Section 114 A was introduced into the Indian Evidence Act by the Criminal Law Amendment Act, 1983. According to this section it is the duty of the accused to prove that the prosecutrix was a consenting party to the offence. In prosecution for rape under Clause (a), (b), (c), (d), (e) or (g) of section 376, if sexual intercourse was proved and a question arises as to whether there was consent of the woman alleged to have been raped and if she deposed before the court that she did not consent, the court shall presume that she did not consent. This provision shifts the burden of proof to the shoulders of the accused thus removing the patent defect so far existed.

In all rape cases anonymity of the victim must be maintained. The Supreme Court recognises the right of the victim for compensation by

⁵⁹ Meena Rao, "Ramification of harassment of women" 43 J.I.L.I. (2001) p.43.

⁶⁰ *Tukaram and another v. State of Maharashtra*, A.I.R.1979, S.C.185.

⁶¹ Indian Penal Code, Section 228A.

providing that it shall be awarded by the court on conviction of the offender, subject to the finalisation of the scheme by the central government⁶² On the basis of the principles set out in that decision, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the courts trying the offence of rape which is an offence against basic human rights and also fundamental right to liberty and life. The court observed:

“It is a crime against basic human right and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.”⁶³

The court awarded an interim compensation of Rs.1000 per month to the victim till the case was decided.

Having regard to the directive principles enshrined in Article 38 (1), it shall be lawful to constitute a Criminal Injuries Compensation Board, which shall take into consideration the pain, suffering and shock as well as loss of earnings due to pregnancy and expenses of the child birth, if occurred as a result of rape. The court also observed that National Commission for Women would have to evolve a scheme of compensation to the victims. The court directed the National Commission to prepare the scheme within six months from the date of the judgment and thereupon the Union of India to examine the same and shall take necessary steps for the implementation.

⁶² *Delhi Domestic Women’s Forum v. Union of India* (1995) 1 S.C.C. 14.

⁶³ *Bodhisattwa Gautam v. Subha Chakraborty* (1996) 1 S.C.C. 490 at p.500.

The National Commission for Women suggested that in rape cases the report under Section 177 Crminal Procedure Code shall include a medical report made by a female medical practitioner. It also suggested that the report should be made within three months. Another suggestion is that rape cases shall be investigated by female police officer in the presence of the parents if the victim is below 18 years of age. It also suggested that the court should be presided over by women. But if the court is also presided by women the accused may not get fair trial.⁶⁴

In a case where one and a half year old girl was raped,⁶⁵ the Supreme Court was reluctant to enhance the punishment by taking into consideration, his family, the age of his daughter etc. While sentencing the accused in rape cases the judges must take both the aggravating and mitigating factors. There should be a proper balancing of the aggravating and mitigating factors in the sentencing process. Only if appropriate sentences, could be imposed in appropriate cases the offence of rape which affects the right of the women to live with human dignity, guaranteed under Article 21 of the Constitution, can be prevented. It is suggested that Section 155 (4) of the Indian Evidence Act that places reliance on the past immoral character of the victim shall be abolished. The attitude of the society to condemn the innocent girl who is a victim of rape should be changed and every effort must be made by the society to bring back the woman to the normal life.

⁶⁴ K.N. Chandrasekhara Pillai, "Women and Criminal Procedure", in Amita Dhand and Archana Parashar (Eds.), *Engendering Essays in honour of Lotika Sarkar*, Eastern Book Company, Lucknow (1999), p.166.

⁶⁵ *T.K. Gopal alias Gopi v. State of Karnataka*, (2000) 6 S. C.C.168.

Provision also should be made in the Indian Penal Code to penalise man who abandons or neglects, or fails to provide medical care and attention to pregnant women. Failure to perform these duties results in violation of human rights of women. For the offence of outraging the modesty of women, more stringent punishment should be given.

Special Provisions in the Criminal Procedure Code for Protecting Women

The Criminal Procedure Code also contains several provisions for the protection of women. Only a female shall search an arrested female with strict regard to decency.⁶⁶ A woman cannot be compelled to appear as a witness at the police station.⁶⁷ It has been laid down that the inquest of suspicious dowry death shall be done by the executive magistrate.⁶⁸ This is to facilitate quick investigation by the police. In the case of death of a woman within 7 years of marriage the police have to send the dead body to a civil surgeon for examination.⁶⁹ If a woman is convicted for an offence not punishable with death or imprisonment for life and if no previous conviction is proved against her the court can order release on probation.⁷⁰ If a woman sentenced to death happened to be pregnant, the High Court can postpone the execution of sentence and if it thinks fit can commute the sentence to imprisonment for life.⁷¹ This provision is reflective of the respect the legal system accords to motherhood.

⁶⁶ Criminal Procedure Code, 1973, Section 51(2).

⁶⁷ *id.* at Section 160(1).

⁶⁸ *id.* at Section 174.

⁶⁹ *id.* at Section 174(3).

⁷⁰ *id.* at Section 360.

⁷¹ *id.* at Section 416.

In non-bailable offences, it is the discretion of the court to grant bail. In cases punishable with death or imprisonment for life, bail shall not be granted. But an exception is provided to this section that a woman may be released on bail, even if the offence charged is punishable with death or imprisonment for life.⁷² This provision appears to ensure that women and children are not held in prison for long periods; as such confinement may have other harmful consequences.

Sexual intercourse by a man with his wife who is under the age of 15 is an offence.⁷³ In such instances the court could not take cognizance of the offence if one year has elapsed from the date of commission of the offence.⁷⁴ But in a country like India where child marriages are prevalent in spite of the child Marriage Restraint Act, if the husband is punished for the rape of his own wife, it will result in injustice. It is suggested that the age of fifteen should be made to 18 years.

According to Section 198 A of the Criminal Procedure Code the court should not take *suo-motu* action in case of domestic quarrels. This provision is also for the purpose of prevention of marriage being broken up. Section 199 permits others to complain in cases where by reason of customary practices women are not able to appear before the court or the police.

In order to claim maintenance under Section 125 the woman must be the legally wedded wife of the husband. If this condition is strictly enforced the

⁷² *id.* at Section 437.

⁷³ *id.* at Section 376.

⁷⁴ *id.* at Section 198(6).

object of the provision, i.e. to prevent vagrancy is defeated. So it is unjust to hold that only legally wedded wives are entitled to maintenance under Section 125. It appears that the appellate courts in India have properly appreciated this. Generally speaking, they do not now a days insist for the strict application of this rule.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 does not afford protection to the needy divorced women. The object of the Act is the protection of muslim women who have been divorced or who have obtained divorce from their husband and other incidental and consequential matters. The decision of the Supreme Curt in *Mohd Ahmad Khan v. Shabanoo Beegum and others* has⁷⁵ led to certain controversies and conflict and as a result, the Muslim Woman(Protection of Rights on Divorce) Act,1986 was passed.

According to the Act, a Muslim woman shall be entitled to maintenance from her husband during the *iddat* period⁷⁶. She is also entitled to maintenance to the children born to her before or after her divorce for a period of two years from the birth of the children⁷⁷. If after the period of *iddat* the wife is unable to maintain herself, the magistrate is empowered to make an order directing the relatives who would entitled to inherit her property to pay maintenance in the proportions in which they would inherit the property.⁷⁸ If any one of such relative were unable to pay his or her share on the ground of not having the

⁷⁵ A.I.R 1985 S.C.945.

⁷⁶ The Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3(a).

⁷⁷ *id.* at Section 3(b).

⁷⁸ *id.* at Section 4(1).

means to pay, the magistrate would direct the other relative who have sufficient means, to pay maintenance to her. If she has no relatives or if the relatives have no means to pay maintenance, the magistrate would order the 'Wakf' Board to pay maintenance to her⁷⁹.

She is also entitled to 'Mahr' or 'Dower' and all the properties given to her by the husband and husband's relatives at the time of divorce.⁸⁰ If she is not given all the benefits, she can apply to the magistrate for an order directing her former husband to provide maintenance to her or Mahr or Dower or the delivery of the properties⁸¹. Under the Act option is given to the parties either to be governed by the provisions of the Criminal Procedure Code or by this Act⁸². The Muslim Women (Protection of Right on Divorce) Act, 1986 does not afford sufficient protection to women. In different parts of the country young girls are given in marriage to the aged foreigners and after the birth of a child or even before that, they abandon the wives and leave the country. In such cases it is the duty of her relatives to maintain the wife and if the relatives are unable to maintain the girl, the Act envisages maintenance of the divorced women by the 'Wakf' Board as the last resort.

According to Section 3 of the Act, the divorced woman shall be entitled to a fair and reasonable provision for maintenance during the period of *iddat* from her former husband. So the obligation to pay maintenance to the wife

⁷⁹ *id.* at Section 4 (2).

⁸⁰ *id.* at Section 3(2).

⁸¹ *id.* at Section 3(2).

⁸² *id.* at Section 5.

under the Act does not extend beyond the period of *iddat*. But the Supreme Court recently has held that the liability of the Muslim husband to his divorced wife arising under Section 3 (1)(a) of the Act to pay maintenance is not confined to the period of *iddat*.⁸³

Abandoned/divorced women are in very difficult circumstances and it takes a lot of time and effort for these young women to get maintenance. The enforcement of the order is also very difficult. The only method provided under the code is imprisonment, which is only a coercive method to compel payment. This chapter of the Cr. P C needs to be urgently reviewed.

Criminal Law Amendment Act, 1983, inserted chapter XXA and section 198 A⁸⁴ in the Cr. PC. This section widened the scope of prosecution and even a relative of the wife can file a complaint. The Criminal Law Amendment Act, 1983 has introduced sub-section (3) to Section 174. This provision has been made for inquest by executive magistrates and for post mortem examination in all cases when a woman has within 7 years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person has abetted the commission of the offence.

Legislations Protecting Women's Rights

As already stated there are many provisions for the protection of human rights of women in the Constitution, especially in its preamble, fundamental

⁸³ *Daniel Latifi v. Union of India*, A.I.R. 2001 S. C. 3958.

⁸⁴Section 198A: No Court shall take cognizance of an offence punishable under Section 498 A of the I.P.C., except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother sister or by her fathers or mother's brother or sister or with the leave of the court, by any person related to her by blood, marriage or adoption.

rights and directive principles. The Constitution not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. Several laws have been passed and several policies and plans have been organised, for the protection of rights women. India had ratified several international convention made for the welfare of the women and for protecting the rights of women.

In tune with the international instruments, the Parliament of India and the various States Legislatures have enacted several legislations to uphold the dignity and worth of women and to prevent exploitation, discrimination and violence against women. Following are the important legislations in this regard:

- (1) The Dowry Prohibition Act, 1961.
- (2) Prevention of Immoral Traffic in Women and Girls Act, 1956
- (3) Indecent Representation of Women (Prohibition) Act, 1986.
- (4) The Commission of Sati Prevention Act, 1987.
- (5) Legislations Prohibiting Devadasi System.
- (6) Women and Children's Institution (Licencing) Act, 1956
- (7) The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- (8) The Equal Remuneration Act, 1976.

Dowry Prohibition Act 1961

The Dowry Prohibition Act, 1961 was passed by the Parliament in order to check the evil practice of dowry. The giving and taking of dowry creates a

feeling in the mind of the parents that the girl child is a liability, and this results in unequal treatment between man and woman, and ultimately in some cases results in female infanticide and female foeticide.

The Act defines dowry as any property or valuable security given or agreed to be given by one party to the marriage to another party or by the parents of either party to the marriage or by any other person to either parties of the marriage before marriage or after marriage as consideration for marriage. It does not include dower or Mahr.⁸⁵

By the 1984 Amendment Act, words "as consideration for marriage" is substituted by the words "in connection with marriage". Amendment Act also deleted explanation 1 of Section 2. By removal of explanation I, even presents are now included as dowry. Before the amendment gift or any other present in cash or kind to the bride or bridegroom is excluded from the purview of dowry. Section 2 was amended by the Amendment Act of 1986, which substituted the words at any time after marriage for words on or after marriage.

The Act prohibits the giving or taking of dowry. If any person gives or takes or abets the giving or taking of dowry, he shall be punished with imprisonment, which may extend to six months or fine, which may extend to Rs.5000/- or with both. This punishment is not commensurate with the gravity of the offence in question. The 1984 amendment enhanced the punishment from 6 months to 2 years and with fine up to Rs.10000/- or value of dowry

⁸⁵The Dowry Prohibition Act, 1961, Section 2.

whichever is more. The term of imprisonment is further enhanced to five years instead of 2 years and the 1986 Amendment Act increases rate of fine up to Rs.15000/- or amount equivalent to dowry.⁸⁶

Presents which were given at the time of marriage to the bride or bridegroom without demand would not be dowry if such presents are entered in a list maintained according to the rules made under the Act.⁸⁷ The presents that are customary in nature the value of which is not excessive, having regard to the financial status of the person by whom they are given are also excluded.⁸⁸

The Act makes demanding dowry an offence and provides punishment of not less than six months imprisonment and fine up to five thousand rupees or both.⁸⁹ Subsequently the period of imprisonment is raised up to 2 years and the 1984 Amendment Act raises the rate of fine to Rs.10000/-. According to the original Act cognizance of the offence is taken only with the previous sanction of the State Government, but the Amendment Act 1984 removes such a requirement. By the Amendment Act, demands from the relatives are also punishable. The court can also impose a punishment for less than 6 months after recording special reasons.⁹⁰

Section 4A was introduced by the Amendment Act 1986 which imposes a ban on advertisement offering money or any property as consideration for

⁸⁶ *id.* at Section 3(1).

⁸⁷ *id.* at Section 3(2) (a) & (b).

⁸⁸ *id.* at 2nd proviso to Section 3.

⁸⁹ *id.* at Section 4.

⁹⁰ *id.* at proviso to Section 4.

marriage. Any person contravenes this section shall be punished with imprisonment which shall not be less than 6 months but may extend to 5 years or with fine which may extend to Rs.15000/-. The court may after recording special reasons in the judgement impose lesser punishment.⁹¹ In this section also the expression consideration for marriage is used which may cause hardships. The Act also declares an agreement for giving and taking of dowry, void.⁹²

The Act envisages for the retransfer of dowry amount to the women.⁹³ Under the original Act, the period of retransfer was one year within the date of marriage or the date of receipt or the date of attaining majority as the case may be.⁹⁴ Subsequently the period has been reduced to 3 months. If dowry was received before marriage, the period of retransfer is three months after the date of marriage.⁹⁵ If received at the time or after the marriage, it is to be transferred within three months of the receipt of dowry⁹⁶ and if dowry was received when the woman was a minor, then also the retransfer is within a period of three months after she has attained the age of eighteen years.⁹⁷ Punishment for violation of the provision has been raised from imprisonment up to 6 months or fine up to Rs.5000/- or with both to imprisonment ranging from 6 months to 2 years or with fine up to Rs.10000/- or with both.⁹⁸ A new subsection was also

⁹¹ *id.* at proviso to Section 4A.

⁹² *id.* at Section 5.

⁹³ *id.* at Section 6.

⁹⁴ *id.* at Section 6(2).

⁹⁵ *id.* at Section 6(a).

⁹⁶ *id.* at Section 6(b).

⁹⁷ *id.* at Section 6(c).

⁹⁸ *id.* at Section 6(2).

added which provided that in case of failure to return the dowry, as provided under Section 6, court shall direct return of dowry within a specified period, failing which, an amount equal to the value of dowry is to be recovered from such person as fine and the woman and her heirs are to be paid such fine.⁹⁹ A new proviso has been added to sub-section 3 of section 6. Accordingly if a married woman dies without any issue within 7 years of marriage and the death is not due to natural causes, dowry shall be transferred to her parents. If she has children then dowry shall be transferred in trust for the children.

Only a metropolitan magistrate or the first class judicial magistrate can try the offence under the Act and the complaint shall be filed within one year.¹⁰⁰ Limitation period of one year has been taken away by the 1984 amendment. By the Amendment Act, court shall take cognizance upon its own knowledge or on police report or upon a complaint by the aggrieved person, parent or relative of such person or by any social welfare institution having recognition from the Central or State Government.¹⁰¹ The 1986 amendment added sub clause 3 to Section 7, which states that a statement made by the aggrieved person, shall not subject such person to prosecution under the Act.¹⁰²

The offences under the Act were non-cognizable, bailable and non-compoundable. By 1984 amendment, offence is made cognizable for the

⁹⁹ *id.* at Section 6(3A) added by 1986 amendment.

¹⁰⁰ *id.* at Section 7.

¹⁰¹ *id.* at Section 7(1)(b)(i)&(ii).

¹⁰² *id.* at Section 7(3).

purpose of investigation. The 1986 amendment has made offences under the Act cognizable, bailable and non-compoundable.¹⁰³

The 1986 Amendment introduced section 8A, which states that when any person is prosecuted for taking or abetting the taking of dowry, burden of proving that he had not committed the offence shall be with him. This shifting of burden of proof is supposed to serve the purpose of effectiveness of legislation. The Act also empowered the State Government to appoint as many dowry prohibition officers as it think fit and specify areas in respect of which they shall exercise their jurisdiction and powers under the Act.¹⁰⁴

The functions of the dowry prohibition officers are:

1. to see that the provisions of this Act are to be complied with.
2. to prevent the taking or abetting the taking of, or the demanding of dowry as far as possible
3. to collect necessary evidence for the prosecution of persons committing offences under the Act.
4. to perform such additional functions as may be assigned to him by the State Government or as may be specified in the rules.

The State Government can confer the powers of a police officer on such dowry prohibition officers by notification in the official gazette and he shall act according to the rules made under this Act.¹⁰⁵ The State Government is also

¹⁰³ *id.* at Section 8(2).

¹⁰⁴ *id.* at Section 8B inserted by the 1986 amendment Act.

¹⁰⁵ Section 8B(3).

empowered to appoint an advisory board for assisting dowry prohibition officers.¹⁰⁶ Central Government is empowered to make rules under the Act by notification in the official gazette.¹⁰⁷ Every rule shall be laid before each house of Parliament. Approval of both the houses is necessary for making the rules effective. Sub section (2) has been added by the amendment Act that states the purposes for which rules can be framed.

Old section 10 has been replaced by 1986 amendment. Additional functions to be performed by Dowry Prohibition Officers and the limitations and conditions subject to which dowry prohibition officers may exercise their functions etc., are provided in the newly inserted Section 10.¹⁰⁸

The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985

In Exercise of the powers conferred on Central Government by Section 9 of the Act, the Dowry Prohibition (Maintenance of Lists of Presents to Bride and Bridegroom) Rules, 1985 were framed.

It came into force on 2nd October 1985. A list of presents that are given at the time of marriage to the bride and a list of presents given to the bridegroom at marriage shall be maintained by the bride and bridegroom

¹⁰⁶ *id.* at Section 8B(4).

¹⁰⁷ *id.* at Section 9.

¹⁰⁸ Section 10 reads: (1) the state government may by notification in the official gazette, make rules for carrying out the purposes of this Act. (2) In particular and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely: (a) the additional functions to be performed by the Dowry Prohibition Officers under sub-sec. (2) of Section 8B. (b) Limitations and conditions subject to which a dowry prohibition officer may exercise his functions under sub- Section (3) of Section 8B. (3) Every rule made by the state government under this Section shall be laid as soon as may be after it is made before the state legislature.

respectively.¹⁰⁹ The list shall be prepared as soon as possible, after marriage.¹¹⁰ It shall be in writing and shall contain a description and appropriate value of presents, name of the person who has given the present and description of relationship between such person and the person who received the presents and the appropriate value of the gift.¹¹¹ Both the bride and the bridegroom shall sign list.¹¹² In case of incapability of the bride or bridegroom to sign, thumb impression should be affixed.¹¹³

The Dowry Prohibition Act is a failure because the State Governments are not interested in taking adequate steps for its effective implementation. Steps should be taken to create awareness about the Dowry Prohibition Act and Dowry Prohibition (Maintenance of List and presents to the Bride and Bridegroom) Rules, 1985.

Though the Act provides for taking *suo-motu* cognizance of the offences, the courts are reluctant to take cognizance of the offence *suo- motu* and people are reluctant to give complaints.

The Civil Service (Conduct) Rules, 1964

In order to prohibit central government employees from taking or giving dowry, a new rule has been incorporated into Central Civil Service Conduct

¹⁰⁹ The Dowry Prohibition (Maintenance of lists of Presents to the bride and bridegroom) Rules, 1985. Rules 2(1) & (2).

¹¹⁰ *Id.* at Rule 2(3)a.

¹¹¹ *Id.* at Rule 2(3) (b) (c).

¹¹² *Id.* at Rule 2(3)d.

¹¹³ Explanations 1 and 2 of Rule. 2(3).

Rules, 1964. The new rule stated that any central government employee who has taken or given dowry should be liable to disciplinary action.

Though the Act contains penal and remedial provision to prevent the evil practice of giving and taking of dowry, the custom of giving and taking of dowry continues to be in existence. In order to rectify deficiencies in the Act and to make the dowry prohibition Act more effective the legislature has introduced amendments to the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act.

Prevention of Immoral Traffic in Women and Girls Act, 1956

Article 23 of the Constitution prohibits traffic in human beings and beggar and other forms of forced labour. Prostitution itself is not recognised as an offence under any law in India. However, to prevent sexual exploitation for commercial purposes and the procurement and taking away any woman with the intention of exploitation for the purpose of prostitution, the Suppression of Immoral Traffic (Prevention) Act, 1956 was passed which was amended in 1986 and renamed as Prevention of Immoral Traffic in Women and Girls Act, 1956.

Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Woman affords protection to women from all forms of traffic in women and exploitation of prostitution of women. The Act was

passed in order to give effect to the Convention on the Prevention of Immoral Traffic at New York on 9th May 1950.

Brothel is defined as including any house, room (conveyance) or place or any portion of any house or room (conveyance) or place which is used for the purpose of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.¹¹⁴ Child is defined under the Act as a person who has not completed the age of sixteen years.¹¹⁵ The Act also defines prostitution as sexual exploitation or abuse of persons for commercial purpose.¹¹⁶

The Act provides punishment for keeping a brothel.¹¹⁷ If any person keeps a brothel or assist in keeping a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in subsequent occasion with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

Any occupier of the land uses the premises or allows another person to use the land or the owner of the land or landlord use the land for the purpose of prostitution shall be punished with a fine of Rs.2000/-. In the case of

¹¹⁴ Prevention of Immoral Traffic in Women and Girls Act, 1956, Section 2a(i).

¹¹⁵ *id.* at Section 2a(ii).

¹¹⁶ *id.* at Section 2 (e).

¹¹⁷ *id.* at Section 3(i).

subsequent conviction rigorous imprisonment up to 5 years is prescribed by the Act.¹¹⁸

Any person living on the earnings of the prostitution is also punishable under the Act (2 years and fine up to Rs.1000/- or both) and if the earnings relate to the prostitution of a child, the punishment extends to seven years and not more than 10 years.¹¹⁹ If a person above the age of 18 years is living with a prostitute or has exercised control over the movements of a prostitute or aids or abets or compels prostitution or acting as tout, the presumption is that such person is living on the earnings of the prostitution.¹²⁰

The Act also penalises procuring or inducing or taking away a person for the purpose of prostitution with or without the consent of the person. Imprisonment of not less than 3 years, which may extend up to 7 years and a fine of Rs.2000, can be prescribed under the Act. If the offence under this section is committed against the will of such person, he shall be punishable with imprisonment for a term of seven years, which may be extended to fourteen years.¹²¹

If the person in respect of whom the offence is committed is a child, punishment extends to rigorous imprisonment for a term not less than 7 years but may extend to life. If the person in respect of whom the offence is committed is a minor, a punishment not less than seven years and not more

¹¹⁸ *id.* at Section 3(2) (a),(b).

¹¹⁹ *id.* at Section 4(1).

¹²⁰ *id.* at Section 4(2) (a),(b),(c).

¹²¹ *id.* at Section 5.

than 14 years is prescribed under the Act.¹²² Detaining a person in a brothel or any other premises for the purpose of prostitution shall be punishable under the Act.¹²³ If a child is found to be in the company of a person in a brothel it is presumed that he detains such child for the purpose of prostitution and if on medical examination it is proved that the child is sexually exploited, unless the contrary is proved, it shall be presumed that the child has sexually exploited for the purpose of prostitution.¹²⁴ Prostitution shall not be made in areas prohibited by State Government by notification in the official gazette and within a distance of two hundred meters of any place of public religious worship, educational institutions, hostel, hospital, nursing home or other place of any kind notified by the commissioner of police or magistrate. Such acts shall be punishable with imprisonment, which may extend to 3 months.¹²⁵ If the offence is committed in respect of a minor, a punishment, not less than 7 years and extend up to 10 years and fine is prescribed under the act¹²⁶

If a keeper of a public place or tenant or occupier or owner let the building for the purpose of prostitution, he shall be punishable on first conviction with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred

¹²² *id.* at Section 5(1)(i)&(ii).

¹²³ *id.* at Section 6.

¹²⁴ *id.* at Section 6(2a),(b).

¹²⁵ *id.* at Section 7(1)(a) & (b).

¹²⁶ *id.* at Section 7(1A).

rupees and if the public place or premises happened to be a hotel, the license for carrying on the business of such hotel under any law for the time being in force shall also liable to be suspended for a period of not less than three months but which may extend to one year¹²⁷ provided that if an offence committed under this sub section is in respect of a child or minor in a hotel, such license shall also liable to be cancelled.¹²⁸ The Act also prohibits seducing or soliciting for the purpose of prostitution.¹²⁹

If any person in the custody of a person who has the power to exercise authority over that person causes or aids or abets the seduction of prostitution he shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.¹³⁰

If a female offender is found guilty of prostitution in the vicinity of a public place or seducing or soliciting for the purpose of prostitution, and if the character and state of health and mental condition of the offender necessitates correction, the court can pass an order for the detention of the person in corrective institution for a term not less than two years and not more than 5 years.¹³¹

Before passing the order, the court shall give an opportunity to the offender to be heard. The court shall also examine the representation of the

¹²⁷ *id.* at Section 7(2)(a),(b),(c).

¹²⁸ proviso to Section 7(2).

¹²⁹ *id.* at Section 8.

¹³⁰ *id.* at Section 9.

¹³¹ *id.* at Section 10(1).

offender and the report of the probation officer appointed under the Probation of Offenders Act, 1958.¹³² The Court shall record that it is satisfied that the character, state of health and mental condition of the offender and other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.¹³³

The Magistrate has the power to close the brothel and evict the offenders from the premises if he is satisfied on receipt of information from the police or other that any place or building is used for the purpose of prostitution.¹³⁴ If on investigation the magistrate found that the owner, lessor or land lord was innocent of the improper use of the building, he may cause the same to be restored to the owner, lessor or land lord with a direction that the house, room, place or portion shall not be leased out or otherwise given possession to the benefit of the person who was allowing the improper user therein.¹³⁵ The order is not appealable and ceases to have effect after the expiry of one year or 3 years as the case may be.¹³⁶

On receipt of relevant information magistrate can issue notice to remove the prostitutes, if he is satisfied that the person is a prostitute and the removal of the prostitute is necessary in the interest of general public.¹³⁷ Under the Act the State Government may establish protective homes and corrective institution.

¹³² *id.* at proviso to Section 10(1).

¹³³ *id.* at proviso to Section 10(1).

¹³⁴ *id.* at Section 18(1).

¹³⁵ *id.* at proviso to Section 18(1).

¹³⁶ *id.* at Section 18(3).

¹³⁷ *id.* at Section 20.

There is no provision in the Act for the punishment of individual prostitution. Only if prostitution is carried on within the stipulated distance from religious places as provided in the Act and prostitution is carried for commercial purposes, the Act comes into operation. The Act also has no provision for punishment of officials and servants of Government who facilitate the trafficking of women. Single person practices prostitution for his or her own livelihood is not punishable under the Act. Most of the provisions in the Act are intended to punish brothel keepers, the pimps and those involved in the trafficking of persons for the purpose of prostitution and those who are living on the earnings of the prostitution. The Act is to be amended to penalize individual prostitution also to achieve the object of eradicating the evil of prostitution.

Indecent Representation of Women (Prohibition) Act, 1986

The indecent representations of women in any manner affect her right to lead a dignified life, which is the guaranteed human right of every woman. Exposition of woman or her body or part of her body in any advertisement which include any notice, circular, label, wrapper or other document or any visible representation made by means of any light, sound, smoke or gas which affects public morality or morals are defined as indecent representation.¹³⁸ Indecent representation of women in any form is prohibited under the Act.¹³⁹

¹³⁸ Indecent Representation of Women (Prohibition) Act, 1986, Section 2(c).

¹³⁹ *id.* at Section 3.

The Act further prohibits the production, selling, hiring, distribution, circulation, sending by post of any pamphlet, paper, slide, film, writing, drawing and photographs etc., which contain indecent representation of women.¹⁴⁰ But if it is for public good or for religious purpose¹⁴¹ or any film in respect of which the provisions of Part II of Cinematograph Act, 1952 applicable is exempted from punishment.¹⁴² Exception is also provided in any representation sculptured, engraved or painted or represented in any ancient monument within the meaning of the Ancient Monument and Archeological Sites and Remains Act, 1958¹⁴³ or on any temple or any car used for the conveyance of idols or kept or used for any religious purpose.¹⁴⁴

Any gazetted officer authorised by the State Government can according to the rules prescribed by the State Government enter any place where he has reason to believe that an offence under the Act has been or being committed¹⁴⁵ or seize the things which he has reason to believe contravenes any of the provisions of the Act.¹⁴⁶ He can also examine any record found there if he has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act.¹⁴⁷ A private dwelling house can be searched only with warrant¹⁴⁸ and a person seizing the articles shall inform the matter immediately to the Magistrate.¹⁴⁹

¹⁴⁰ *id.* at Section 4.

¹⁴¹ *id.* at proviso to Section 4(a) i.

¹⁴² *id.* at proviso to Section 4C.

¹⁴³ *id.* at proviso to Section 4(b)(i).

¹⁴⁴ *id.* at proviso to Section 4(b)(ii)

¹⁴⁵ *id.* at Section 5(1)(a).

¹⁴⁶ *id.* at Section 5(1)(b).

¹⁴⁷ *id.* at Section 5(1)(c).

¹⁴⁸ *id.* at proviso to Section 5.

¹⁴⁹ *id.* at proviso 2 to Section 5.

A company also can commit the offence under the Act. If the offence is committed by the companies every person at the time of the commission of the offence in charge and responsible to the conduct of the affairs of the company shall be liable to be proceeded against and punished.¹⁵⁰ He is exempted from punishment if he proves that the offence was committed without his knowledge and that he had exercised due diligence to prevent the commission of the offence.¹⁵¹

The offence of indecent representation of woman is punishable on the first conviction with imprisonment, which may extend to two years and fine, which may extend to Rs.2000/-. In the event of subsequent conviction the punishment has to be for a term of imprisonment of not less than six months and may extend to five years and with a fine of not less than Rs.10000/-, which may extent to Rs.100000/-.¹⁵²

The Commission of Sati (Prevention) Act, 1987

Burning of a woman alive with the dead body of her husband is an act shocking the conscience of human mind and the women's right to life. It is not considered as an imperative duty by any religion in India. Realising that it is necessary to take effective measures to prevent the commission of sati, Parliament has passed the Commission of Sati (Prevention) Act, 1987.

The Act defines sati, as the act of burning or burying alive any widow along with the body of her deceased husband or any other relative or with any

¹⁵⁰ *id.* at Section 7(1).

¹⁵¹ *id.* at proviso to Section 7.

¹⁵² *id.* at Section 6.

article, object or thing associated with the husband or such relative or the burning or burying alive any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or women or otherwise.¹⁵³ Performance of any act in connection with the commission of sati such as processions, creation of any trust, collection of funds, the construction of any temple or building or structure etc., to preserve the memory of the person who has committed Sati or used for the purpose of worship or for the observance of any ceremony in connection with the commission of Sati etc., is known as glorification of Sati.¹⁵⁴

Any person attempts to commit Sati or does any act towards the commission of sati is punishable under the Act.¹⁵⁵ The court shall take into consideration the state of mind of the accused, the circumstances which led to the commission of the offence and all the other relevant factors before entering a conviction.¹⁵⁶

Abetment to commit sati either directly or indirectly shall be punishable with death or imprisonment for life and also liable to fine.¹⁵⁷ Any inducement to a widow to commit sati,¹⁵⁸ any inducement making a widow or woman believe that the commission of sati would result in some spiritual benefit to her

¹⁵³ The Commission of Sati (Prevention) Act, 1982, Section 2(c) (i) & (ii).

¹⁵⁴ *id.* at Section 2(b)(i),(ii),(iii)&(iv).

¹⁵⁵ *id.* at Section 3.

¹⁵⁶ *id.* at proviso to Section 3.

¹⁵⁷ *id.* at Section 4.

¹⁵⁸ *id.* at Explanation (a) to Section 4.

or her deceased husband or relative or general well being of the family,¹⁵⁹ or encouraging a widow or woman to remain fixed in her resolve to commit sati and instigate her to commit sati¹⁶⁰ etc., amounts to abetment to the commission of sati. Participating in any procession connected with sati, or aiding the widow or woman in her decision to commit sati,¹⁶¹ present in the place where sati is committed as an active participant,¹⁶² preventing a woman to save herself from committing sati,¹⁶³ obstructing or interfering with the police in the discharge of the duties of prevention of the commission of sati¹⁶⁴ etc., are abetment to the commission of sati. Those who are responsible for the prevention of sati have become negligent in preventing sati also be included within the definition of abetment to commit sati.

Abetment to commit sati, either directly or indirectly shall be punishable with imprisonment for life and shall also be liable to fine.¹⁶⁵ Glorification of sati is also punishable with imprisonment for a term that shall not be less than one year, but may extend to seven years and with fine not less than five thousand rupees that may extend to thirty thousand rupees.¹⁶⁶

The District Collector has the power to prohibit the commission of sati if he has reason to believe that sati is about to be committed.¹⁶⁷ He has also the

¹⁵⁹ *id.* at Explanation (b) to Section 4.

¹⁶⁰ *id.* at Expl. (c) to Section 4.

¹⁶¹ *id.* at Expl. (d) to Section 4.

¹⁶² *id.* at Expl. (e) to Section 4.

¹⁶³ *id.* at Expl. (f) to Section 4.

¹⁶⁴ *id.* at Expl. (g) to Section 4.

¹⁶⁵ *id.* at Section 4(2).

¹⁶⁶ *id.* at Section 5.

¹⁶⁷ *id.* at Section 6(i).

power to prohibit the glorification of sati.¹⁶⁸ Any person contravenes such order shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine not less than five thousand rupees but which may extend to thirty thousand rupees.¹⁶⁹

The person convicted of the offence of sati has been disqualified from inheriting the property of the person in respect of whom such sati has been attempted to commit or the property of any other which he would have been entitled to inherit on the death of the person in respect of whom sati has been committed.¹⁷⁰ Such person is also disqualified from contesting any election for a period of five years from the date of conviction.¹⁷¹ Special courts can be constituted for the trial of sati offences and such court has the power of a session's court.¹⁷²

Devadasi System

This system involved the dedication of girls to the deity of a temple in the locality. The girl was considered the property of the locality. She was to go with the men of the locality if they so desire. Several attempts were made to abolish the Devadasi System. The Bombay Devadasi Protection Act, 1934, Bombay Devadasi Protection (Extension) Act, 1957, Madras Devadasi (Prevention and Dedication) Act, 1947 and the Andhra Pradesh (Devadasi

¹⁶⁸ *id.* at Section 6(ii).

¹⁶⁹ *id.* at Section 6(iii).

¹⁷⁰ *id.* at Section 18.

¹⁷¹ *id.* at Section 19.

¹⁷² *id.* at Section 12.

Prohibition of Dedication) Act, 1988 are some of the legislations intended to prevent Devadasi system.

The latest Act which provides for prohibition of Devadasi system is the The Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988 which declares the dedication of devadasi unlawful and any person who performs or promotes or takes part in or abets the performance of any ceremony or act for dedicating a woman as devadasi or any ceremony connected with it is punishable with imprisonment which may extend to three years but which shall not be less than two years and a fine which may extend to Rs.3000/- but shall not be less than Rs.2000/-. But if the dedication of the girl is by the parent or guardian a mandatory punishment of 2 years, which may extend to five years and fine not less than Rs.3000/-, which may extend to Rs.5000/- can be imposed. The Act prohibits propagation of devadasi system also.

The District Magistrate and other executive magistrates are authorised to take action under the Act and they shall have the same powers of the Judicial Magistrate to try the offences pertaining to dedication of Devadasis.

Women and Children's Institution (Licencing) Act, 1956

The Directive Principles of State Policy declares, that the State shall in particular direct its policy towards securing that children and youth are protected against exploitation and against moral and material abandonment.¹⁷³ In order to give effect to this directive and to protect the women and children

¹⁷³ Constitution of India, Article 39.

from exploitation, The Women and Children Institutions (Licensing) Act, 1956 was passed and on fulfillment of certain conditions prescribed under the Act license is issued and such institutions shall be maintained only according to the license issued under the Act.

A large number of institutions and orphanages are established under the pretext of promoting the human rights of destitute woman and children, but in practice they are exploiting the destitute women and children.

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

This Act was passed for the regulation of pre-natal diagnostic techniques for the detection of chromosomal abnormalities and the misuse of such techniques for the purpose of female foeticide and other incidental and connected matters. Pre-natal diagnostic tests can be conducted only in institutions registered under the Act and only by persons having the qualifications prescribed under the Act.¹⁷⁴

It can be used only for the purpose of detecting chromosomal abnormalities, genetic metabolic diseases, sex linked genetic diseases, congenital anomalies and can be conducted only if the pregnant woman is above 35 years and has undergone two or more spontaneous abortion or foetal loss or she had been exposed to teratogenic agents such as drugs, radiation, infection or chemicals or the pregnant woman has a family history of genetic

¹⁷⁴ The Pre-Natal Diagnostic Techniques Act, 1994, Section 3(1)&(2).

diseases or any other conditions specified by the Act.¹⁷⁵ It can be conducted only with the written consent of the women and after explaining the consequences. The Act prohibits the communication to the relatives the sex of the foetus.¹⁷⁶ From the commencement of the Act, the test for the purpose of determination of sex is prohibited.¹⁷⁷ The Act provides for the Constitution of central advisory board to exercise the powers and perform the functions conferred on the Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.¹⁷⁸

The main functions of the Act include advising the government on policy matters relating to the use of pre-natal techniques, reviewing the implementation of the Act, recommending changes and creating public awareness against the practice of pre-determination of sex and female foeticide etc.¹⁷⁹

The Act also prohibits advertisement relating to pre-natal determination of sex.¹⁸⁰ Any person approaching the genetic center for the purpose of conducting pre-natal diagnostic technique on a pregnant women for a purpose not mentioned in the Act shall be punishable on first conviction with imprisonment which may extend to three years and fine which may extend to ten thousand rupees and a subsequent occasion with imprisonment which may

¹⁷⁵ *id* at Section 4.

¹⁷⁶ *id* at Section 5.

¹⁷⁷ *id* at Section 6.

¹⁷⁸ *id* at Section 7.

¹⁷⁹ *id* at Section 16.

¹⁸⁰ *id* at Section 22.

extend to five years and with fine which may extend to fifty thousand rupees.¹⁸¹

The Act authorise the Central Government to make rules to carry out the provisions of this Act.¹⁸²

Though this Act prohibits the use of the prenatal diagnostic techniques for the purpose of determination of sex and also prohibits advertisements, it is misused for the purpose of determining the sex, which ultimately lead to female foeticide.

Equal Remuneration Act, 1976

The international community expressed its concern on discrimination based on sex in the payment of wages. The Constitution of India also envisages equal pay for equal work and directs its policy towards securing equal pay for equal work for both men and women.¹⁸³ The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 requires the State Parties to take measures to ensure 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.¹⁸⁴ Where there is unequal pay based on no classification or irrational classification for work of similar nature, there is violation of the principle of equality enshrined in Article 14 of the Constitution. In spite of the directive principles contained in 39(d), and the

¹⁸¹ *id* at Section 23.

¹⁸² *id* at Section 32.

¹⁸³ The Constitution of India, Article 39(d).

¹⁸⁴ Convention on the Elimination of All Forms of Discriminations Against Women, 1979, Article 11(d).

principle of equality envisaged under Article 14 and in spite of the Convention on Elimination of All Forms of Discrimination Against Women to which India is a party, discrimination against women in the matter of payment is rampant. The Equal Remuneration Convention, 1951 was ratified by India in the year 1958. Till 1975, there was no law that envisaged payment of equal wages to man and woman for work of similar nature. The Equal Remuneration Act was passed by the Parliament in 1976.

Equal Remuneration Act casts an obligation on the employer to pay same wages both to men and women.¹⁸⁵ The Act forbids discrimination against women workers either at the time of recruitment or in any conditions of service subsequent to recruitment such as promotion, training or transfer.¹⁸⁶ Only when the nature of work requires exclusion of women, because of some special requirement that cannot be fulfilled by women, the Act permits discrimination on the ground of sex.¹⁸⁷ In all other circumstances if men and women do the same kind of work, they must be given equal wages. This protection does not extend to places where the employment of woman is prohibited or restricted by any other laws in force.¹⁸⁸ Same work of same value means work under the same working conditions that require the same skill and efforts and responsibilities by man and woman.

The Act envisages the setting up of advisory committees and appropriate authorities to hear and decide complaints arising out of the Act for the purpose

¹⁸⁵ The Equal Remuneration Act, 1976 Section 4.

¹⁸⁶ *id.* at Section 5.

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

of promoting the employment opportunities for women.¹⁸⁹ With the aim of providing increasing opportunities for woman including part time employment, the advisory committee is required to advise the government on the extent to which women may be employed in specified establishment after duly considering the nature, hours of work and suitability of women for that employment.¹⁹⁰ This provision also requires that half of the members of the advisory committee should be women.¹⁹¹

The Supreme Court has 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 32.¹⁹²

In cases where sex discrimination is alleged in payment of wages, the court held that there should be proper work evaluation.¹⁹³ If the lady stenographers were doing the work of the same kind*as the male stenographers irrespective of the place where they were working, the employer was obliged to pay equal remuneration. The court 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.¹⁹⁴ The Supreme

¹⁸⁹ *id.* at Section 6.

¹⁹⁰ *id.* at Section 6 (3).

¹⁹¹ *id.* at Section 6(2).

¹⁹² *Randhir Singh v. Union of India*, A.I.R. 1982 S.C. 879.

¹⁹³ *ibid.*

¹⁹⁴ *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'costa*, A.I.R.1987 S.C.1281.

Court reiterated the principle of equal pay for equal work in the case of *Bhagwan Dass and others v. State of Haryana and others*¹⁹⁵

Complaint with regard to unequal pay must be made to the labour officer in the locality. The officer will hear the employer and the women who make the complaint and order the employer to pay women, the amount withheld by him on the ground of sex. The Authority has the powers of a civil court. If she is aggrieved she can appeal to the higher authority as the appropriate government may by notification specify, within thirty days.¹⁹⁶

Each employer has the duty to maintain registers.¹⁹⁷ In order to make sure that there is equal pay for equal work; the appropriate government can appoint inspectors, who can enter any building, factory or premises and can ask the employer to produce the document. He can also make on the spot investigation to check-up whether the law is followed in the establishment.¹⁹⁸ The Act also prescribes penalties for those who disobey the rules.

If there is failure on the part of the employer to maintain register or to produce the register or prevents any person from giving evidence, or omit to give information, a punishment up to one month imprisonment or fine up to ten thousand rupees or both can be imposed.¹⁹⁹

¹⁹⁵ A.I.R. 1987 S.C.2049.

¹⁹⁶ The Equal Remuneration Act, 1976, Section 7.

¹⁹⁷ *id.* at Section 8.

¹⁹⁸ *id.* at Section 9.

¹⁹⁹ *id.* at Section 10(1)(a)(b)(c)(d).

If the employer recruits any person in contravention of the Act, or discriminates against man and woman in the payment of wages etc., he shall be punishable with fine not less than ten thousand rupees which may extend to twenty thousand rupees and imprisonment not less than 3 months but which may extend to one year or with both at the first instance and with imprisonment which may extend to two years for the second or subsequent offence.²⁰⁰

Where a company violates the Act the company as well as those who are in charge of its business shall be deemed to be guilty and punished accordingly.²⁰¹

Welfare Legislations

Indian Parliament has enacted many a legislation for the welfare of women drawing spirit of various international instruments dealing with the women's welfare and rights. Appropriate attention was given to the health of women by international documents and free consent and age of majority was considered as a condition for marriage. Child marriage, early pregnancies and unwanted pregnancies affect the health of women. Adequate health and rest are needed during the time of pregnancy and immediately before and after childbirth. India also has much legislation protecting these rights. The major instances of legislative protection granted to women can be categorised under the following heads.

²⁰⁰ *id.* at Section 10(2).

²⁰¹ *ibid.*

- (1) Labour Legislations
- (2) Personal Legislations.
- (2) The Child Marriage Restraint Act, 1929
- (3) The Maternity Benefit Act, 1961
- (4) The Medical Termination of Pregnancy Act, 1971
- (5) Infant Milk Substitutes, Feeding bottles and Infant Food (Regulation of Production and Distribution) Act, 1992

Labour Legislations dealing with the rights of women

The history of Labour Legislations in India linked with the establishment of the International Labour Organisation in 1919, concerned with the welfare of the worker, regulation of working hours, the regulation of labour supply and prevention of unemployment, payment of adequate living wages, protection of workers against sickness etc.²⁰²

From 1919 onwards the International Labour Organisation through its conventions and recommendations made attempts to lay down uniform labour standards for labour in different industries. India is a signatory to the International Labour Organisation Convention and a number of legislations were passed in India to protect the rights of women.

Laws Protecting the Working Conditions of Women

There are numerous employment laws that give special protection to women and children. This discrimination in favour of women is in accordance with the spirit of the Constitution.

²⁰² Harod Courlander, *Shaping our Times, what the United Nations is and does*, Higgin Bothoms (Pvt.) Ltd. Madras (1967), p. 93.

The Factories Act, 1948

The main purpose of the Factories Act is to improve the working conditions of workers and to provide effective steps for the welfare of the workers. The Act prohibits employment of woman between 7 PM and 6 AM.²⁰³ It provides for various health care facilities such as ventilation, control of dust and fumes, over-crowding, drinking water, separate toilets for male and females, fencing of dangerous machinery etc.²⁰⁴

The Act envisages establishment of creches if the factory employs thirty or more women. These rooms should be clean, adequately lighted and ventilated and under the control of a woman trained in the care of children and infants.²⁰⁵ The Act also envisages separate and adequate washing facilities for the use of female workers.²⁰⁶ A woman or young person shall not be allowed to clean, lubricate or adjust any machinery while it is in motion if it is likely to expose the woman or young person to the risk of an injury from any moving part of either of that machine or of any adjacent machine.²⁰⁷

Though the Factories Act covers most industries, there are some important laws like the Mines Act 1952, The plantation Labour Act 1951, The working Journalists (Condition of Service) Act 1955, the Shops and Commercial Establishments Act etc., which contain several provisions for the protection of women.

²⁰³ The Factories Act, 1948, Section 66(b).

²⁰⁴ *ibid.*

²⁰⁵ *id.* at Section 48(1) &(2).

²⁰⁶ *id.* at Section 42(a).

²⁰⁷ *id.* at Section 22(2).

The Mines Act, 1952

This Act allows the women to work only between 6 A.M. and 7 P.M. and they are not allowed to work below the ground. Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

The Plantation Labour Act, 1951

In plantations the entire family of the worker is employed. All the members of the family work in the plantation in different capacities. Women mainly work as pluckers in tea and coffee plantations. The Act provides for several facilities for women such as cool drinking water, separate latrines, urinals and medical facilities for the worker and the family. In case the number of women employed exceeds fifty and the number of children below six exceeds twenty, a fully equipped creche facility must be provided by the owner. Even if the woman employees are below fifty, the state government may order that separate room should be provided for their children. Women and children shall not be employed for night work. Women are also entitled to maternity leave.

Employees State Insurance Act, 1948

The Act provides for periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature childbirth or miscarriage.²⁰⁸

²⁰⁸ Employees State Insurance Act, 1948, Section 46(1)(b).

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

As far as women are concerned, three provisions in the Act are important. One is that the term employer includes a home worker also. Hence the provision in the Act is important to women. The Act provided for a clean and adequately ventilated creche that is under the charge of a trained woman.²⁰⁹

Another provision in the Act protecting the rights of women is a restriction of night work. Under this Act, women employees shall be permitted to work only between 6 AM and 7 PM.²¹⁰

Personal Laws

Personal laws though, include provisions, which are discriminatory to woman; there are provisions for the protection of the rights of women. Hindu women under the Hindu Law have acquired a new status and position in the society.²¹¹ The various enactments relating to marriage, divorce, maintenance, succession, adoption, guardianship etc. are examined hereunder:

Marriage

The Hindu Marriage Act, 1955 lays down certain conditions of marriage, which actually protects the woman. One of the conditions is that either party to the marriage has no spouse living at the time of marriage.²¹² Monogamy is the rule after the coming into force of the Hindu Marriage Act, which is a provision beneficial to women. The second condition is regarding

²⁰⁹ Beedi and Cigar Workers Act, 1966, Section 14.

²¹⁰ *id.* at Section 25.

²¹¹ Namitha Agarwal, *Women and Law in India*, New Century Publications, New Delhi (2002), p.6.

²¹² The Hindu Marriage Act, 1955 Section 5(i).

the age. The bridegroom should complete the age of 21 years and the bride has to complete the age of 18 years.²¹³

All the international instruments dealing with human rights especially the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 recognise the right to marry and form a family. According to the Child Marriage Restraint Act, 1929 the male shall not be below 21 years of age and the female shall not be below 18 years. The Hindu Marriage Act 1955 also prescribes the same condition as to age.²¹⁴

Under the Muslim Personal Law attainment of puberty i.e. Muslim boy/girl complete his/her 15 years of age, and soundness of mind is prescribed as a condition for marriage.²¹⁵ In case of person not attained puberty, he or she may be contracted into marriage by his/her guardians.²¹⁶

Divorce

The Hindu Marriage Act lays down grounds of divorce available to both the husband and wife. They are adultery, cruelty, desertion, conversion, insanity, leprosy, venereal disease, renouncing the world, not heard for 7 years or more, non-cohabitation of the parties even after one year of passing the order of judicial separation.²¹⁷ The Act also provides for four more grounds to the wife.

²¹³ *id.* at Section 5(iii).

²¹⁴ *id.* at Section 5(ii).

²¹⁵ Paras Diwan; *Muslim Law in Modern India, (8th Edition)*; Allahabad Law Agency, Faridabad (2000), p.51.

²¹⁶ *ibid.*

²¹⁷ The Hindu Marriage Act, 1955, Section 13(a).

They are (1) if the marriage has been solemnised before the commencement of the Act and the husband had married again before the commencement of the Act or any other wife of the husband married before the commencement of the Act was alive at the time of solemnization of marriage with the petitioner.²¹⁸ In order to file the petition, in both the cases the first wife must be alive at the time of presentation of the petition.²¹⁹ (2) If the husband has since the solemnization of marriage been guilty of rape, sodomy or bestiality.²²⁰ (3) If a decree of maintenance has been passed against the husband and that since the passing of the decree or order or cohabitation between the parties has not been resumed for one year or upwards.²²¹ (4) If the marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining the age but before attaining the age of eighteen years.²²²

The Hindu Marriage Act 1955 lays additional grounds of divorce available to a Hindu Women. The choice is left to the Hindu women to decide whether she has to remain with the husband under the circumstances mentioned above or has to obtain a divorce from the husband.

Muslim husband can divorce his wife at his will, without assigning any reasons. The presence of the wife is not necessary at the time of dissolution of marriage. The Muslim husband thus is given a unilateral right to divorce his

²¹⁸ *id.* at Section 13(2)(i).

²¹⁹ *id.* at proviso to Section 13(2)(i).

²²⁰ *id.* at Section 13(2)(ii).

²²¹ *id.* at Section 13(2)(iii).

²²² *id.* at Section 13(2)(iv).

wife merely by words without writing or signing a deed. According to the Dissolution of Muslim Marriage Act, 1939, the Muslim wife and not the Muslim husband can sue for divorce. The Muslim wife can seek divorce only on certain contingencies namely; (1) the whereabouts of the husband have not been known for a period of 4 years,²²³ (2) husband has neglected or failed to provide for maintenance for a period of 2 years,²²⁴ (3) The husband has been sentenced to imprisonment for a period of 7 years or more,²²⁵ (4) has failed to perform without reasonable cause his marital obligations for a period of 3 years,²²⁶ (5) the husband was impotent at the time of marriage,²²⁷ (6) husband has been insane for a period of 2 years or is suffering from leprosy or a virulent venereal disease,²²⁸ (7) husband treats her with cruelty²²⁹ and (8) the woman has been married before she attained the age of 15 years and she repudiated the marriage before attaining 18 years.²³⁰ In all the grounds mentioned above the wife can obtain divorce from the court. The Act improved the position of women with regard to divorce.

But when comparing the position of women governed by Hindu Law and Mohammedan law, the position of Hindu Women is comparatively better to that of Muslim women, because under Mohammedan law, husband can divorce the wife without assigning any reason. While the Muslim law does not

²²³ Dissolution of Muslim Marriage Act, 1939, Section 2(i).

²²⁴ *id.* at Section 2(ii).

²²⁵ *id.* at Section 2(iii).

²²⁶ *id.* at Section 2(iv).

²²⁷ *id.* at Section 2(v).

²²⁸ *id.* at Section 2(vi).

²²⁹ *id.* at Section 2(vii).

²³⁰ *id.* at Section 2(vii).

permit a woman to undergo a second marriage during the lifetime of a legally recognized husband, it imposes no corresponding restriction on man.²³¹

Divorce among Christians was governed by the Indian Divorce Act 1869. A Christian wife can secure divorce under the Indian Divorce Act 1869. The grounds are (1) her husband has changing the religion through a form of marriage with another woman (2) Adultery of the husband (3) Bigamy with adultery i.e. adultery with a woman within the prohibited degrees (4) Adultery with cruelty (5) Adultery coupled with two years or upwards.

According to the Act the husband can secure divorce on the grounds of adultery of woman but a woman must establish additional grounds namely cruelty, rape, incest, bigamy or desertion in order to secure divorce.²³² The Kerala High Court directed the Union of India to take a decision on 90th report of Law Commission regarding the amendments to the Act within six months²³³. In another case the Kerala High Court quashed the words “incestuous” and “adultery coupled with” from the provisions of Section 10 as violative of Article 14, 15 and 21 of the Constitution.²³⁴

The Indian Divorce (Amendment) Act, 2001 brought significant changes in the Christian Divorce Law. More liberalised provisions for divorce were added and the gender-based discrimination that existed in the Act has also been removed. Section 10 has been omitted from the Act. A petition for divorce can

²³¹ T. Mohamood, *Muslim Law of India*, Law Book Company, Allahabad (1982), p 58.

²³² Indian Divorce Act, 1869, Section 10.

²³³ *Mary Sony Zacharia v. Union of India*, 1990(1) K.L.T.130.

²³⁴ *Ammini E.J. v. Union of India*, A.I.R. (1995) Ker. 252.

now be filed on any grounds of adultery, conversion, unsoundness of mind, leprosy, venereal disease, willful refusal to consummate marriage, non-compliance with a decree of restitution for a period of two years or above, desertion, cruelty etc. These grounds are available to both the husband and wife.

The wife has been given one additional ground for divorce i.e., the husband has since the solemnization of marriage been guilty of rape, sodomy and bestiality.

Right to Maintenance

Under the Hindu Marriage Act both the husband and wife are entitled to ask for maintenance during the pendency of the suit for dissolution of marriage.²³⁵ Both husband and wife may ask for permanent maintenance from either spouse on dissolution of marriage according to the economic capacity of the parties.²³⁶

Under the Indian Divorce Act wife is entitled to interim maintenance.²³⁷ She is also entitled to permanent maintenance.²³⁸ Under Muslim law there is no provision for interim maintenance. Muslim husband shall maintain the divorced wife for 3 months after the *talaq*. But this is different from maintenance as envisaged under other personal laws.

²³⁵ The Hindu Marriage Act, 1955, Section 24.

²³⁶ *id.* at Section 25.

²³⁷ *Indian Divorce Act, 1869, Section 36.*

²³⁸ *id.* at Section 37.

Under the Criminal Procedure Code a wife living/divorced/ deserted may file a suit against her husband for maintenance. Muslim women can file a petition under Section 125 provided her husband has given his consent for the applicability of Section 125 Criminal Procedure Code before seeking divorce.

Guardianship

Under the Hindu Minority and Guardianship Act 1956 father is the natural guardian of legitimate son and unmarried daughter and only after the death of the father mother can act as the natural guardian. During the life time of the father the mother is entitled to be the natural guardian of their legitimate children only if the father has ceased to be a Hindu or has completely and finally renounced the world or has refused or neglected or found in any other way unfit to discharge his obligation as such guardian.²³⁹ This provision blatantly discriminates against the mother in that it confers a preferential status to the father without having any reasonable cause for making such differentiation. Section 6 of the Hindu Minority and Guardianship Act, 1956, can only be explained by saying that our law is till under the influence of patriarchal society, where the father's right over everything in the household including wives and children, were supreme.²⁴⁰

The Supreme Court has expressed the view that while deciding the issue of natural guardianship, the paramount consideration should be the welfare of the child.

²³⁹ Hindu Minority and Guardianship Act, 1956. Section 6 Clause (a)&(b). See also Section 19(b) of the Guardian and Wards Act.

²⁴⁰ Paras Diwan, "Natural Guardian of Minor Children Under Hindu Law" 5 Jaipur Law Journal. 167. (1965), at p.178.

Before the commencement of the Act if the father appoints a testamentary guardian, he can act as the guardian even if the mother survives the father. But according to the Act if the mother survives the father, she would be the guardian of the minor child and not the testamentary guardian. The mother can also appoint a testamentary guardian of her choice when she survives her husband. If she does not appoint any testamentary guardian on her death, the testamentary guardian appointed by the father would function from the time of her death.²⁴¹ In the case of illegitimate son, the mother has the right to appoint the testamentary guardian.²⁴²

Under Section 6(a) of the Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardian and Wards Act 1956, only father can be recognised as the natural guardian of a minor. This was challenged as violative of Article 14 & 15 because it relegated the mother to an inferior position because she can act as guardian only after the father. The provision provides preference to the father primarily and after him the mother. It gives an impression that mother can act as guardian only after the lifetime of the father. The court held that if the word 'after' in Section 6(a) of the Hindu Minority and Guardianship Act was replaced or was interpreted to mean 'in the absence of,' the discrimination could be remedied and then the provision would be perfectly constitutional.²⁴³

²⁴¹ Hindu Minority and Guardianship Act, 1956, Section 9(2).

²⁴² *id.* at Section 9(4).

²⁴³ *Githa Hariharan and another v. Reserve Bank of India and another*, (1999) 2 S.C.C 228.

As far as Muslim Law is concerned, mother is the guardian of a male below 7 years and a female till she attains puberty, and once a boy completes his 7 years of age and a daughter attains her puberty, father is the guardian. For the property of minors, father is the legal guardian and he may appoint any other Muslim excluding the mother as the legal guardian. Christians have no provision relating to guardianship but in these communities also father is considered as the legal guardian.

Succession

Although different personal law discriminates against women differently, the common understanding is that in most rules of intestate succession, women are economically dependent on men.²⁴⁴ Hindu Succession Act, 1956 confers absolute ownership of property on Hindu woman, which was in her possession when the Act came into force. Before the Act came into force she was entitled only a life estate in the property and it was reverted to the relations of her husband on her death.

The Patna High Court observed that the object of the Act was to improve the legal status of Hindu Women. It enlarged their limited interest in the inherited property held by them to an absolute interest, provided that they were in possession of property when the Act came into force and therefore in a position to take advantage of its beneficial provisions.²⁴⁵ According to the Hindu succession Act, 1956 property in the possession of a Hindu Women,

²⁴⁴ Ratna Kapur Brenda Cossman, *Subservice Sites, Feminist Engagements with Law in India*, Sage Publications, New Delhi (1996), p.134.

²⁴⁵ *Harak Singh v. Kailash Singh and Another*, A.I.R. 1958 Pat. 81.

whether it is acquired by inheritance or partition or by way of gift or purchase or in any other manner is her absolute property and she has the right to dispose of the property, provided she is in possession of the property at the commencement of the Act.²⁴⁶ Daughters also have the equal rights as sons in their parents' property. They have a share in the ancestral property.²⁴⁷

Since the right by birth of the son is retained, the right given to the daughter in relation to coparcenary property was restricted to the father's interest in such property and did not affect the independent right of the son in such property.²⁴⁸

Even though daughter inherits along with the son, the ultimate share that she gets is very much less in comparison to that of her brother. Because son was already a coparcener and daughter gets only a share in the property, which her father gets if a notional partition has been made in the coparcenary property. Thus the son's share in the property of his intestate father is in addition to his share in the property that he acquires by birth.

The Kerala Hindu Joint Family System (Abolition) Act, 1976 is a legislation attempting to do away with this discrimination between son and daughter. Lucy Carroli has stated that by abolishing birthrights in the Mithakshara System existing in the State, the Kerala Legislature took a bold step benefiting women.²⁴⁹

²⁴⁶ The Hindu Succession Act, 1956, Section 14(1).

²⁴⁷ *id.* at proviso to Section 6.

²⁴⁸ S. Venkitaraman. "The Hindu Succession Act, 1956, A Study" 1956 (2) M.L.J. (Jour) 59 at p.64.

²⁴⁹ Lucy Caroll. "Kerala Joint Family System (Abolition) Act, 1976, Women and Society the beneficiaries" 1993 (1) K.L.T. (Jour) 4. See also B. Sevaramayya "The Hindu Succession (Andhra Pradesh Amendment) Act, 1988 a move in the wrong direction" 30 J.I.L.I. 166 at p.167 (1988).

The unmarried daughter has the right to shelter in the parental house, maintenance according to the status and income of the family and the right to have marriage expenses. Married daughters have no right to shelter in the father's property. She has the right to residence in the dwelling house if she is deserted, divorced or widowed.²⁵⁰ The widowed daughter in law, daughter and mother can succeed together and they have the right to residence in the house but they cannot demand a partition. However, on partition they can take their respective shares.²⁵¹ Any heir related to the intestate as a widow of the predeceased son, the widow of a predeceased son of the predeceased son or the widow of the brother shall not be entitled to succeed if she remarries.²⁵²

All the properties owned by the female are her absolute property and in case she dies intestate her husband and children regardless of their sex under Section 15(1) and 16 of the Hindu Succession Act, 1956, shall inherit all the property owned by her.

The Hindu Succession (A.P. Amendment) Act inserted a new chapter IIA and added Section 29A, 29B and 29C to the Hindu Succession Act. The object of the Act is to confer equal rights on daughters in co-parcenary property at par with sons. The extent of applicability of the Act is limited to the State of Andhra Pradesh.

According to the Act in a Joint Hindu Family governed by Mithakshara Law, the daughter shall by birth become a coparcener in her own right in the

²⁵⁰ *id.* at proviso to Section 23.

²⁵¹ *id.* at Section 23.

²⁵² *id.* at Section 24.

same manner as a son. This benefit is not extended to a daughter married before the commencement of the Act.²⁵³ If a Hindu female dies after the commencement of the Act, her interest in the Mithakshara coparcenary will devolve by survivorship upon the surviving members of the coparcenary. However, if she leaves behind a child or child of a predecessor, the property devolves by testamentary or intestate succession under the Act.²⁵⁴ This Act was followed by the Tamil Nadu Amendment Act 1990, Hindu Succession (Maharashtra Amendment) Act, 1994 and Hindu Succession (Karnataka Amendment) Act, 1994.

Succession – Muslim Law

Under Hanafi Law, in case of a single daughter she is entitled to half of the total share if there is no son. If there is more than one daughter, they together are entitled to two thirds of the total share provided there is no son. Along with the son the daughter becomes a residuary and takes only half the share of which a son is entitled to claim.²⁵⁵ Similarly a wife takes only half the share of the husband.²⁵⁶ In short it is the general rule that females are entitled to only half the share of a male.²⁵⁷ Under the Shia Law also females are entitled to only half of the share to which men are entitled.²⁵⁸ A Muslim could not by will dispose of more than one third of his properties.²⁵⁹

²⁵³ Hindu Succession (A.P. Amendment) Act, 1988, Section 29A.

²⁵⁴ *id.* at Section 29B.

²⁵⁵ Mulla's Principles of Mohammadan Law, N.M. Tripathi, Pvt. Ltd., Bombay (1972) p.49, 54.

²⁵⁶ *id.* at p. 49.

²⁵⁷ Fyzee A.A.A. Outlines of Mohammadan Law, Oxford University Press (1974), p.390.

²⁵⁸ *id.* at, pp 644-645.

²⁵⁹ Mohammad Imam, "Muslim Law Reforms in India and Uniform Civil Code" in Mohammed Imam (Ed.), *Minorities and the Law* (I.L.I.), N.M. Tripathi Pvt. Ltd., Bombay 1972, pp 413, 414.

Indian Succession Act, 1925

The widow of the intestate gets 1/3 share in the property of the intestate, if he left widow and lineal descendants.²⁶⁰ If the intestate has no lineal descendants but has left only persons kindred to him, 1/2 of his property shall belong to the widow and his father succeeds to the rest of the property. If there is no father, mother, sister or brothers the property is distributed among those relative who are the nearest degree of kindred.²⁶¹ If the intestate has not left behind any lineal descendants or persons who are of kindred to him, the whole of the property shall belong to the widow. Sons and daughters are entitled to inherit equally.

Adoption

In India, the institution of adoption is prevalent among the Hindus. The Hindu Adoption and Maintenance Act, 1956 is the only statute on the law of adoptions in India. Although the religious laws of Christians and Parsees do not prohibit adoption, these communities have no personal laws of adoption.

According to the Hindu Adoption and Maintenance Act, 1956 both the male and female can adopt a son or daughter. Any female who is of sound mind and who is not a minor or who is not married or if married whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared

²⁶⁰ Indian Succession Act, 1925, Section 33.

²⁶¹ *id.* at Section 48.

by a court of competent jurisdiction to be of unsound mind can take a son or daughter in adoption.²⁶²

Normally a married woman has no right to adopt. She can adopt a child only on the death of the husband or after divorce or if the husband is suffering from any of the infirmities mentioned under Section 8 of the Act. This provision of law is criticized as “If there is no discrimination between husband and wife or man and woman, and if each of them has got equal rights, why should a married woman be prevented from taking a child in adoption without the consent of her husband even when she is not under any disqualification”.²⁶³

The father has the primary right to give a child in adoption but that too with the consent of the mother even if divorced or who has abandoned the child. But if the mother has completely and finally denounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, father can give his children in adoption even without the consent of the mother.²⁶⁴ After the father, mother has the right to give the child in adoption. Where father is dead or had renounced the world or has entered into religious order or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, mother may give the child in adoption.²⁶⁵ Christian and Mohammedan law do not provide for

²⁶² The Hindu Adoption and Maintenance Act, 1956, Section 8.

²⁶³ B.G. Dasgaonkar. “Flaws in Hindu Law” A.I.R. 1993 (Jour.) 129.

²⁶⁴ *id.* at Section 9(2).

²⁶⁵ *id.* at Section 9(3).

adoption. But guardian can be appointed under the Guardian and Wards Act, 1890.

The Child Marriage Restraint Act, 1929

This Act was passed to prevent child marriages. All the international instruments dealing with human rights of women prescribe the age of majority as a condition precedent to the marriage and as an essential condition for a healthy family, a healthy mother and healthy child. According to the Act, child means a man who has not completed the age of 21 years and a woman who has not completed the age of 18 years²⁶⁶ and the child marriage is defined as a 'marriage to which either of the contracting parties is a child.'²⁶⁷ Punishment of simple imprisonment up to 15 days and fine up to RS.1000/- or both can be imposed upon a male above 18 years and below 21 years who contracts a child marriage²⁶⁸ and punishment of simple imprisonment up to three months and fine can be awarded if a male above 21 years of age contracts a child marriage.²⁶⁹ The persons responsible for performing, conducting or directing child marriage are also liable to simple imprisonment which may extend to three months and shall also liable to fine²⁷⁰ and a guardian who does any act to promote the child marriage is also liable to be prosecuted under the Act,²⁷¹ but a woman shall not be liable to be imprisoned.²⁷² The offences under the Act

²⁶⁶ The Child Marriage (Restraint) Act, Section 2 (a) introduced by the 1978 amendment. Before the amendment the child is a male who have not completed the age of 18 years and a female who have not completed the age of 15 years.

²⁶⁷ *id.* at Section 2(b).

²⁶⁸ *id.* at Section 3.

²⁶⁹ *id.* at Section 4.

²⁷⁰ *id.* at Section 5.

²⁷¹ *id.* at Section 6.

²⁷² *id.* at proviso to Section 6.

are cognizable offences. The metropolitan magistrate or magistrate of the first class is competent to take cognizance of the offences.²⁷³

In order to prevent child marriages, the punishment prescribed under the Act should be made more stringent. The Act does not prohibit child marriages and child marriage as such is not punishable. Compulsory registration of marriages can to some extent prevent child marriages.

Maternity Benefit Act, 1961

The framers of the Constitution of India were influenced by the norms of Universal Declaration of Human Rights, 1948 enabling fair and human working conditions and other benefits such as maternity benefits, equal pay for equal work etc., and were included in the Constitution. It directs the State to make provision for securing just and humane conditions of work and for maternity benefit.²⁷⁴ The performance of the biological role of women such as child bearing and give birth to the child requires protection, support and withdrawal from service for a considerable period of time. In order to ensure the health and support of the women employees, the Indian Legislature enacted The Maternity Benefit Act, 1961.

The Mines Maternity Benefit Act, 1941 was applicable only to women working in mines. In 1948 provisions of the Maternity Benefit was made under the Plantation Labour Act. Under these Acts the rates and period of benefit was not uniform. The Maternity Benefit Act, 1961 was passed to remove these

²⁷³ *id.* at Section 9.

²⁷⁴ The Constitution of India. Article 42.

disparities and to have uniform rules. The Maternity Benefit Act, 1961 applies to factories, mines, and plantations and in establishments where persons are employed for exhibition of equestrian acrobatic and other performances.²⁷⁵ In 1988, the provisions were extended to all shops and establishments in which 10 or more persons were employed in any day in the preceding 12 months.²⁷⁶

The Act provides for payment of cash, grant of leave and other medical facilities. This benefit is available in case of confinement, miscarriage, sickness arising out of pregnancy and premature birth of the child. Now the benefit was extended to women undergoing tubectomy, medical termination of pregnancy and for any illness arising out of MTP or tubectomy.²⁷⁷

The benefits under the Act are extended to persons having service for a certain period. But in order to escape the granting of maternity benefit, the employers used to cause break in services. The 1988 amendment reduce the eligibility criterion for claiming maternity benefit from 160 days to 80 days.²⁷⁸ In computation of the period of 80 days the period of lay off and paid holidays shall be included. Employers have thus been prevented from escaping their obligation by causing break in service.

An employer cannot employ a woman in any establishment during six weeks immediately following her delivery, miscarriage or medical termination

²⁷⁵ Maternity Benefit Act, 1961, Section 2(1)a.

²⁷⁶ *id.* at Section 2(1)(b).

²⁷⁷ *id.* at Section 9, 9A, 10 Maternity Benefit (Amendment) Act, 1995.

²⁷⁸ *id.* at Section 5(2).

of pregnancy or shall not engage in any arduous work, which adversely affect her health and the health of the foetus.²⁷⁹

The pregnant woman is entitled to a maximum period of 12 weeks of which not more than six weeks to precede the date of her expected delivery. If the woman dies during the period of leave, the benefit shall cease to operate on the day of the death of the woman. If the child survives the woman, the maternity benefit shall be available for the whole period. If the child also dies during the period, then the maternity benefit shall be available only for the day up to and including the death of the child.

In the case of death of the woman the benefit shall be given to the person nominated by the woman and in case where there is no nominee, then to the legal representatives. The Act also provided for medical bonus to women if no prenatal confinement or postnatal care is provided for by the employer free of charge.²⁸⁰ The Act also provided leisure for nursing mothers for feeding their infants.²⁸¹

Many establishments adopted the practice of terminating the service on pregnancy. The Supreme Court found these provisions to be most arbitrary and unreasonable.²⁸² The Act was enacted to ensure the health and well being of working women and during that period, they are entitled to full wages and medical bonus.

²⁷⁹ *id.* at Section 4.

²⁸⁰ *id.* at Section 8.

²⁸¹ *id.* at Section 11.

²⁸² *Bombay Labour Union v. International Franchisee*, A.I.R. 1966 S.C. 942.

The Medical Termination of Pregnancy Act, 1971

The Act permits termination of pregnancy under certain circumstances like (1) when there is danger to the life or risk to the physical or mental health of women,²⁸³ (2) if the pregnancy arises from sex crimes like rape or intercourse with a lunatic woman,²⁸⁴ (3) where there is a substantial risk that the child if born would suffer from deformities and diseases.²⁸⁵ If pregnancy is terminated under these circumstances, and according to the provisions of the Medical Termination of Pregnancy Act, the doctor shall not be liable to punishment according to the provisions of the Act.²⁸⁶ The termination of pregnancy under the Act can be done only on the advice of the medical practitioners. If the length of pregnancy does not exceed 12 weeks the opinion of a medical practitioner is sufficient,²⁸⁷ but if the length of the pregnancy is between 12 weeks and 20 weeks, the opinion of two medical practitioners is necessary.²⁸⁸ In all cases of termination of pregnancies, the consent of the pregnant woman²⁸⁹ and in case the pregnant woman is a lunatic or minor, the consent of the guardian is necessary.²⁹⁰ But if there is imminent danger to the life of the pregnant woman and immediate termination of pregnancy is essential to save the life of the woman, it can be done without observing these

²⁸³ Medical Termination of Pregnancy Act, 1971, Section 3(2)(1).

²⁸⁴ *id.* at Explanation 1 to Section 3.

²⁸⁵ *id.* at Section 3(2) (ii).

²⁸⁶ *id.* at Section 3(1).

²⁸⁷ *id.* at Section 2(a).

²⁸⁸ *id.* at Section 2(b).

²⁸⁹ *id.* at Section 3(3)(b).

²⁹⁰ *id.* at Section 3(4a).

formalities.²⁹¹ The termination of pregnancy by a person who is not a registered medical practitioner is an offence punishable under the Act.²⁹²

The Act also defines the registered medical practitioner and stipulates the place where the pregnancy can be terminated. The place must be a hospital established or maintained by the Government.²⁹³

The provision in the Act that the termination of pregnancy can be done only with the consent of the pregnant women is beneficial to the women but the termination of pregnancy only under the circumstances mentioned in the Act curtails the right of women over her body and the right to decide the number and spacing of children.

Infant Milk Substitutes, Feeding bottles and Infant Food (Regulation of Production and Distribution) Act, 1992

The object of the Act is the protection, promotion and support of breast-feeding and the regulation of advertisement for the purpose of controlling the marketing and promotion of milk substitutes and infant foods. The main object of the Act is the protection of the health of the nursing mothers and babies.

The Act contains certain restrictions on the marketing of the milk products. The advertisement about infant milk substitutes shall not contain any statement that these milk substitutes are equivalent to breast feeding or better than breast-feeding. The Act prohibits the giving of incentives for the use and

²⁹¹ *id.* at Section 5(i).

²⁹² *id.* at Section 5(2).

²⁹³ *id.* at Section 4(a).

sale of infant milk substitutes or feeding bottles, donations of infant milk substitutes or feeding bottles etc. The infant milk containers shall provide information to the public that “Mothers milk is best for your baby” in capital letters. The containers also carry information such as the ingredients used, the composition, the storage conditions etc. It shall also contain a statement that infant milk substitutes or infant food shall be used only on the advice of the health worker as to the needs for its use and proper method of its use. A statement that infant milk substitute or infant food is not the sole source of nourishment of the infant shall also be included.

The Act also prescribes the standards for the infant milk substitutes, feeding bottles and infant foods and the standards shall be the same as that of the Prevention of Food Adulteration Act 1954. The container also shall contain standard mark specified by the Bureau of Indian Standards established under the Bureau of Indian Standards Act 1986 to indicate that the infant milk substitute shall conform to such standards.

The food inspector appointed under the Prevention of Food Adulteration Act, 1954 has the power to search the place and seize the bottle, food or container if he has reason to believe that any of the provisions of the Act has been contravened.

The Family Courts Act, 1984

Family Court Act was passed for the establishment of Family Courts for the speedy disposal of cases relating to marriage, maintenance, and custody of

children etc. The main aim of the Act is reconciliation and resolution of matrimonial disputes. In case reconciliation is not possible the Act envisages for the settlement of disputes expeditiously.

Family courts can be established in any town or city where the population exceeds one million or in any other area as the state government may choose for the establishment of family court.²⁹⁴

The family court consists of more judges than one is to be designated as principal judge and the State Government shall make the appointment with the concurrence of the High Court.²⁹⁵ The qualification of the judge shall be 7 years experience as a judicial officer or as a member of a Tribunal or who has held a post under the Central or State Governments and requires special knowledge of law²⁹⁶ or who has been an advocate of the High Court for 7 years.²⁹⁷ Women will be given preference in the appointment.²⁹⁸ It is to be ensured that the persons selected are committed to the need to protect and preserve the institution of marriage and to promote the welfare of children. In conciliation of disputes associations engaged in social welfare will also be allowed to participate in conciliation and settlement of disputes.²⁹⁹

The court has the power to reconcile or settle disputes relating to family matters such as nullity of marriage, declaration as to the validity of marriage,

²⁹⁴ Family Court Act, 1984, Section 3(1)(a),(b).

²⁹⁵ *id.* at Section 4.

²⁹⁶ *id.* at Section 4(3)a.

²⁹⁷ *id.* at Section 4. 4 (3) (b).

²⁹⁸ *id.* at Section 4(4)(b).

²⁹⁹ *id.* at Section 5.

with respect to property of the parties or either of them, with regard to legitimacy of children, guardianship and custody of the minor, the maintenance of wife, children and parents etc.³⁰⁰ When a family court is constituted all cases pertaining to disputes relating to family affairs are transferred to the Family Court excluding the jurisdiction of other courts.

Procedure

At the first instance the court can try for the settlement of the dispute. The cases can be adjourned for the purpose of enabling the parties to consider the situations. The object of the Act is to preserve the sanctity of the institution of marriage. So special effort shall be made by the judges to effect a conciliation to protect and preserve the institution of marriage.³⁰¹ While deciding cases or settling the disputes the family court can secure the service of medical expert or such person preferably women for the purpose of assisting the family court in discharge of its duties.³⁰² In proceeding before the family court, parties are not entitled to get the right to be defended by a lawyer of his choice as of right.³⁰³ Detailed evidence need not be recorded. On the contrary the person need record only substance of the evidence. Evidence of the formal character may be taken on affidavit and may be read in evidence and parties are at liberty to support or defend it by producing counter evidence. An appeal

³⁰⁰ *id* at Section 7.

³⁰¹ *id* at Section 9.

³⁰² *id* at Section 12.

³⁰³ *id* at Section 13.

from the order of the court would lie before a High Court and will be heard by two judges or more. The limitation period is 30 days.³⁰⁴

Conclusion:

India is a party to all major International Instruments relating to protection of human rights and women's rights. Indian Parliament and State Legislatures are keen to introduce various Legislations for protecting the rights of women. Indian Judiciary has also played a vital role in protecting women's rights. Attempts were also made to give a definite role to women in decision-making processes. But the demand of various women's organisations and the women members of the Parliament to give reservation for Assembly and Parliamentary constituencies to women still remain to be fulfilled. Even though there are stringent provisions in various penal and welfare Legislations for protecting the women's rights, many of the rights are yet to be exposed only because of the lack of sufficient support from the law enforcement agencies. Making the women aware of their rights, educating and enabling them to be economically independent and organizing them suitably and posting officers who are sensitive to the rights of women in the enforcement agencies etc. will definitely give some positive results. This is essential for the overall development of the society as well.

³⁰⁴ *id* at Section 19.

CHAPTER VII

MACHINERY FOR PROTECTION AND PROMOTION
OF HUMAN RIGHTS

As already discussed in the previous chapters, human rights of women enshrined in the various international instruments can be enforced only if those norms are incorporated into the domestic law through legislation and if there is proper machinery for their enforcement. The International Covenant on Civil and Political Rights 1966 required the State Parties to take effective steps for the protection and promotion of human rights. The Member States undertake to respect and ensure to all individuals within the territory, the rights recognised in the Covenant without distinction as to race, colour, sex, language, religion, place of birth etc.¹ Member States also undertake to ensure equal rights of men and women in the enjoyment of all civil and political rights set-forth in the Covenant.²

All international instruments cast an obligation on the Member States to establish national institutions for the effective implementation of the human rights. At the international level there are six committees for the implementation of human rights. They are:

¹ International Covenant on Civil and Political Rights, 1966, Article 2.

² *id.* at Article 3.

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 also requires the Member States to implement the principles contained in the convention. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 required the States to adopt measures for the implementation of human rights.

- (1) Human Rights Committee for the implementation of the provisions of the ICCPR, 1966.
- (2) The Committee on Economic, Social and Cultural Rights, 1966 for the implementation of International Covenant on Social, Economic and Cultural Rights, 1966.
- (3) The Committee on the Elimination of Discrimination Against Women monitors the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).
- (4) The Committee on the Elimination of Racial Discrimination.
- (5) The Committee Against Torture
- (6) The committee on the Right of the Child.

The Member States are under an obligation to report to the respective committees the legislative, administrative and judicial measures taken by them to implement the rights enshrined in the respective instruments. In order to provide machinery for the effective implementation of human rights, the Economic and Social Council established a Human Rights Commission. The main objective of the Human Rights Commission is to study and to investigate into human rights violations and to codify international norms. It is also concerned with violations of human rights of women especially those situated in vulnerable situations and persons belonging to religious and linguistic minorities and indigenous people.

A Commission on the Status of Women was constituted by the Economic and Social Council to formulate recommendations on promoting the human rights of women. The main function of the Commission on the Status of Women is to collect information regarding violations of human rights of women and forward recommendations to the appropriate authorities for effective implementation. It is also concerned with the implementation of the principle of equality between man and woman set forth in the various articles of the charter.

There are also a number of other United Nations Programmes specifically dedicated to the protection, promotion and empowerment of women. The International Research and Training Institute for the Advancement of Women (INSTRAW) was established in 1976 by the Economic and Social Council which is mainly concerned with the promotion and training of women in various fields.³ Its periodical programmes help many women activists to receive training.

The Division for the Advancement of Women (DAW) has also played an important role in the protection and promotion of the human rights of women. The Division for Advancement of Women (DAW) is also concerned with the improvement of status of women in the world and the achievement of equality between man and woman. It envisages equal participation of women in all aspects of life especially in sustainable development, peace and security. It

³ Digu Marti Bhaskara Rao, *Study the stories of human rights, Part 1*, Discovery Publishing House, New Delhi (2001), p.43.

also provides support to the organisations in mainstreaming of gender perspectives in all policies and programmes.⁴

Within the United Nations system the United Nations High Commissioner for Refugees (UNHCR), the World Health Organisation (WHO) and the International Labour Organisation (ILO) have also played an active role in the protection and promotion of human rights of women. The United Nations Children's Fund (UNICEF) is also concerned with the rights of mothers and other gender based issues. It also takes active step in the elimination of sexual exploitation of girls by providing employment counselling for girls.⁵

Implementation of International Treaties

In order to give effect to the international treaties, Article 253 of the Constitution of India declares that Parliament shall have exclusive power to legislate for the implementation of treaties even if they relate to a subject falling in the State list. Till such law is made, it has only a persuasive effect.

Article 51(c) of the Constitution obligates the State to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. In spite of Article 51(c), international law to which India is a party becomes part of municipal law only if the Indian legislature enacts appropriate law for its implementation. Even though India is a party to various

⁴ http://www.un.org/women_watch/daw visited on 20/12/2003.

⁵ *ibid.*

conventions protecting human rights no legislation was enacted to give proper legal effect to them. This situation compels the Supreme Court to interfere by way of judicial activism in its eagerness to protect the rights of the people.

The power to legislate in respect of treaties lies with the parliament under entries 10 & 14 of list 1 of seventh schedule of our Constitution. Making law under that authority is necessary when the treaty or agreement operates to restrict the rights of the citizens or others or modifies the laws of the State. If the right of the citizens or others which are justiciable are not affected, no legislative measure is needed to give effect to this agreement or treaty.⁶ Until the municipal law is changed to accommodate the Covenant, what binds the court is the former, not the latter.⁷ The court relied on Article 11 of the international Covenant on Civil and Political Rights in *Jolly George's* case. The Court observed:

“The covenant bans imprisonment merely for not discharging a decree debt unless there be some other vice or *mensrea* apart from failure to foot the decree, international law frowns on holding the debtor’s person in civil prison, as hostage by the court. India is now a signatory to this covenant and Article 51 (c) of the constitution obligates the State to “foster respect for international law and treaty obligations in the dealings of

⁶ *Supra* Chapter 2 n.49.

⁷ *Supra* Chapter 2 n.50 at p.473.

organised peoples with one another". Even so until the municipal law is changed to accommodate the covenant what binds the court is the forever, not the latter."⁸

The court further reasoned

"Equally meaningful is the import of Art.21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21 read with Article 14 and 19 obligates the state not to incarcerate except under a law which is just, fair and reasonable in its procedural essence."⁹

In *Rudul Sah v. State of Bihar and another*,¹⁰ the court awarded compensation to the victim for the fault of the State in keeping the person in custody beyond the period for which he was to be confined. However, the court did not offer justification for developing this remedy.

The conceptual foundation for it was however provided by the Court in the case of *Nilabati Behera alias Lalitha Behra v. State of Orissa*,¹¹ wherein while awarding compensation to the mother of the deceased, who was tortured to death by the police, the court evolved the theory that it has the power to award monetary compensation in public law in order to make the relief

⁸ *ibid.*

⁹ *id.* at. p. 475.

¹⁰ A.I.R. 1983 S.C. 1086.

¹¹ *Supra* Chapter 2 n.31.

meaningful and effective. The doctrine of sovereign immunity has been held to be inapplicable in the public law remedy against violation of human rights. The court drew strength for formulating this remedy from the Article 9(5) of the International Covenant on Civil and Political Rights.¹²

The Supreme Court held award of monetary compensation is an appropriate and effective remedy for the redressal of grievances caused by infringement of fundamental rights of citizens by the public servants and State is vicariously liable for their acts. Relying on the reasoning of *Nilabati*, Court declared that compensation could be awarded in cases of illegal detention.¹³

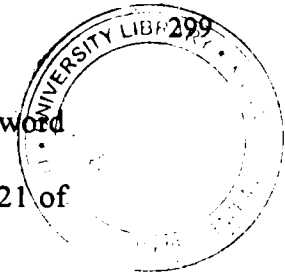
Further in *Chairman, Railway Board v. Chandrima Das*, The court reasoned:

"The word life has also been used prominently in the Universal Declaration of Human Rights, 1948. The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants on Civil and Political Rights and the Covenants on Economic Social and Cultural Rights to which India is a party, having ratified them, as set out by this court in *Kubic Darusz v. Union of India*. That being so since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same

¹² Article 9(5) Any one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

¹³ *D.K. Basu v. State of West Bengal*, A.L.R. 1997 S.C. 610.

meaning and interpretation as have been placed on that word by this court in its various decisions relating to Article 21 of the Constitution.”¹⁴



The court has always been strident in its efforts to humanise the law particularly in the case of weaker sections of the society. In a case where sexual harassment was alleged the court found no law to contain the crime. The court relied on the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 and formulated guidelines and norms to prevent sexual harassment of women at workplace.¹⁵

The court justified its reliance on the Beijing Statement thus:

"The obligation of this court under Article 32 of the Constitution for the enforcement of fundamental rights, in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of the principle of independence of judiciary in LAWASIA region.”¹⁶

Also the court reasoned that it is possible to rely on the international documents while interpreting the Constitution. The court reasoned thus;

"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of

¹⁴ *Supra* Chapter 2 n.35.

¹⁵ *Supra* Chapter 2 n.36.

¹⁶ *id.* at p.3014.

sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in the domestic law.”¹⁷

The court thus issued guidelines under Article 141 to have the force of law till legislation is made by the legislature.¹⁸

The court again relied on the Convention on the Elimination of All Forms of Discrimination Against Women 1979, International Covenant on Social Economic and Cultural Rights, 1966 and the Beijing Declaration and observed:

“These international instruments casts an obligation on the Indian States to gender sensitise its laws and the courts are under an obligation to see that the message of the

¹⁷ *id.* at p.3015.

¹⁸ *id.* at p.3016.

international instruments is not allowed to be drowned. The court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws more so when there is no inconsistency between them and when there is a void in the domestic law.¹⁹

The Constitution of India was drafted nearly at the same time when the drafting of the Universal Declaration of Human Rights was in progress. Part III of the Constitution containing fundamental rights correspond to Article 2-21 of the UDHR and the Directive Principles of the State Policy in Part IV of the Constitution correspond to Article 22-28 of the UDHR. The International Covenant on Civil and Political Rights and the International Covenant on Social and Economic and Cultural Rights are further elaborations of these rights with machinery for enforcement.

The Constitution of India empowers the Supreme Court to issue any order or direction or writ including writs of *habeus corpus*, *mandamus*, *certiorari* and *quo-warranto* for the enforcement of fundamental rights. Article 32 itself is a fundamental right. Only if the matter falls under Part III, it can be

¹⁹ *Apparel Export Promotion Council v. A.K. Chopra*, A.I.R. 1999 S.C. 634.

enforceable through Article 32. The Directive Principles are fundamental in the governance of the country though they are not enforceable through courts. Supreme Court has relied on Directive Principles to enlarge the scope and content of Fundamental Rights, indirectly bring them within the purview of justiciable rights.

Originally only the aggrieved person could approach the court. The court evolved the doctrine of public interest litigation to provide justice to the poor and underprivileged group of person. Now any member of the public, who has a *bonafide* interest, can approach the Supreme Court for the redressal of the grievances of a person unable to approach the court by reason of poverty, helplessness or disability. By liberalising the rule of *locus standi*, any public-spirited person, social activist, or organisation can bring issues of public interest before the court provided it is *bonafide*.

Justice Bhagavati has brought about the relevance of public interest litigation thus:

“The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letter from public spirited individuals seeking judicial

redress for the benefit of persons who have suffered a legal wrong or legal injury whose constitutional or legal right has been violated but who by reason of their poverty or socially disadvantaged position are unable to approach the court for relief.”²⁰

His Lordship also held that public interest litigation would lie to the Supreme Court wherever there is a breach of any social legislation, since pieces of social legislation are passed to ensure fundamental rights to the weaker sections of the society.²¹ Any person who has a *bonafide* interest can approach the court for the protection and promotion of human rights of other persons and the Indian Judiciary had played a very important role in the enforcement of human rights. There are a number of cases where the concept of human rights has been given a new dimension through judicial activism.

The preamble together with Part III and IV of the Constitution have been construed by the Supreme Court to give an interpretation to Article 21 by saying that the right to life under it includes the right to live with human dignity²² In order to lead a dignified life there must be an end of all types of exploitation and violence against women on the ground of sex. Any action which violates a person’s right to live with human dignity is violative of his human rights.

²⁰ *S.P. Gupta and others v. Union of India and others*, A.I.R. 1982 S.C. 149 at p.189.

²¹ *People’s Union for Democratic Rights v. Union of India*, A.I.R. 1982 S.C. 1473.

²² *Supra* Chapter 2 n.21.

The Constitution of India empowers the State to make special provisions for the benefit of women. The Supreme Court explained it thus:

"The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15."²³

The Court reiterated the status of woman in India in *Charan Singh v. Union of India*²⁴

"In theory women form a class distinguished from men who form another class. In social, educational and economic spheres women have been far more backward than men. This is evident not only in India but in most parts of the world. The word 'backward' expresses essentially a relationship or

²³ *Government of A.P. v. P.B. Vijaykumar and another*, A.I.R. 1995 S.C. 1648 at p. 1651.

²⁴ 1979 (2) Lab. L.J. 123.

comparison. It is only in relation to men or in the question of comparison with men that women as a class being backward can arise. In theory, therefore, one can say that women are backward class as compared to men.²⁵”

But one of the disadvantages of this reasoning is that women from the advanced section are likely to pick up the benefits of reservation and the really backward women may lose.

The Supreme Court has had enough occasions to examine the inequality suffered by women. It straightened the law wherever it found gender discrimination. The court declared that Rule 8 (2) of the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules 1961, which required women employees to obtain permission of the government before marriage and denial of employment to married women to be discriminatory and violative of Article 14.²⁶ The court while upholding the principle of equality of status put the women employees at par with men employees. The court expressed the need to overhaul all service rules to remove the stain of sex discrimination by the government without waiting for adhoc inspiration from writ petitions or gender charity. Further the court detected that rule 46(1) (c) of the Air India employee's service regulations, which required an airhostess to terminate services on pregnancy, were declared unconstitutional by the court. The court

²⁵ *ibid.*

²⁶ *Miss C.B. Muthumma v. Union of India and others*, A.I.R. 1979 S.C. 1868.

held that such a provision is arbitrary, unfair and discriminatory and violative of Article 14 of the Constitution²⁷

In the State of Uttar Pradesh lady teachers and other female employees doing administrative work were discriminated against male teachers doing the same kind of work. They were paid lower scale of salary with less avenues of promotion. When challenged the court held:

“Under constitutional arrangement there is no occasion for a differential treatment between male teachers and employees and lady teachers and employees in the educational department doing administrative business, when they are doing the same job. Nor do we find any justification for a preferential treatment in the matter of affording promotional avenues for the male teachers.”²⁸

The court was of opinion that there is no justification for giving preferential treatment in the matters of affording promotional avenues to male teachers.

The Supreme Court in a number of cases has upheld the principle of equal pay for equal work without any distinction as to sex. The difference in pay scales to confidential lady stenographers and male stenographers in the

²⁷ *Air India v. Nergesh Meerza and others*, A.I.R. 1981 S.C. 1829.

²⁸ *Uttarakhand Mahila Kalyan Parishad and others v. State of U.P.*, A.I.R. 1992 S.C. 1695.

same company was held to be discriminatory on the ground of sex by the Supreme Court. The employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that women are not fit to do the work of male stenographers.²⁹

To achieve equality between men and women the court at times resorted to positive discrimination in favour of women. In *Sowmithri Vishnu v. Union of India and another*,³⁰ section 497 of the Indian Penal Code was challenged as discriminatory against women as it does not confer any right on the wife to prosecute the husband or the woman with whom husband has committed adultery. The court held that the offence of adultery as defined in section 497, is considered by the legislature as an offence against the sanctity of the matrimonial home, and the man who is responsible for the break of that sanctity is to be brought within the purview of law and hence there is no discrimination on the basis of sex.³¹ The law under this section does not envisage either of the spouses to prosecute each other for the purpose of maintaining the matrimonial tie and to safeguard the interest of the children and to save the women from the social stigma attached to her if she is sent to jail for adultery. Section 497 does not arm the two spouses to hit each other with the weapon of criminal law. That is why neither the husband nor the wife can prosecute the husband and send the other to jail. Thus reasoned the court saying

²⁹ *Mackinnon Mackenzie and Co. Ltd., v. Audrey D' Costa and another*, A.I.R.1987 S.C. 1281.

³⁰ A.I.R. 1985 S.C. 1618.

³¹ *V. Revathi v. Union of India and others*, A.I.R. 1988 S.C. 835.

that there is no discrimination against woman in so far as she is not permitted to prosecute her husband.

Article 21 of the Indian Constitution guarantees right to life and personal liberty. Right to life is interpreted by the Supreme Court to include various rights including the right to live with human dignity and the court observed that rape is a crime against basic human rights, violative of the victim's most cherished fundamental rights namely the right to a dignified life contained in Article 21.³² With a view to assist rape victims the Supreme Court has laid down certain guidelines and the National Commission for Women was directed to evolve a scheme for providing adequate safeguards to these victims. The guidelines include legal assistance, anonymity of the victims, compensation and rehabilitation of the victims.³³ In both the above cases the Supreme Court awarded compensation to the victims in a petition filed under Article 32 of the Constitution. The court again held that women and children couldn't be compelled to work in unhygienic conditions and for nominal wages.

The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensure basic human dignity to the bonded labourers. Any failure of action on the part of the State in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution.³⁴ It becomes the duty of the court to see that the legislative provisions regarding their

³² *Bodisatwa Gautam v. Subhra Chakraborty*, (1996)1 S.C.C.490.

³³ *Delhi Domestic Working Women's Forum v. Union of India* (1995) 1 S.C.C. 14.

³⁴ *Neeraja Chaudhary v. State of M.P.*, A.I.R. 1984 S.C. 1099.

rehabilitation are properly implemented and these poor and miserable persons are allowed to enjoy the benefit, which the Constitution of the land affords them.

A writ petition was filed by women's organisation known as SAHELII on behalf of two women tenants who were severely beaten up and harassed by their landlord in collusion with the police. In the course of events a nine-year-old boy of one of the women was beaten up to death. The court held that the mother was entitled to get compensation for the death of her son from the State, which was responsible for the tortious acts of its employees.³⁵

The human rights of mentally ill patients were also protected in another public interest litigation, which secured release of these patients from jail in Bihar. Many of these patients were kept in jail from 20 to 30 years. Sending of lunatics and mentally ill patients to jail, the court observed, is not a healthy or desirable practice and the court directed the jail superintendent that a psychiatrist examine such mental patients at least once in every six months and submit a report to the district judge. The district judge has the power to release such persons if found fit. The court also directed the state government to meet the expenses of such released persons for a period of one week.³⁶

In a public interest litigation filed before the Supreme Court for the rehabilitation of the children of fallen women, the court appointed a committee known as Mahajan Committee to investigate into the plights of the children of

³⁵ *Supra* Chapter 6 n.27.

³⁶ *Veena Sethi v. State of Bihar*, (1982) 2 S.C.C. 583.

prostitutes. The Committee apart from studying the right of the children of prostitutes studied the root causes of prostitution and submitted the report. The court issued directions to the State to take every effort to rehabilitate the fallen women. The court identified that their rehabilitation and socio-economic empowerment is the duty of the State. Regarding the children of fallen women, the court directed the authorities, as interim measure, to have the children admitted in general schools to make the children to overcome the disabilities and stigma attached to them and to create a feeling of oneness and desegregation. But Justice Wadhwa recorded his dissenting opinion about the directions relating to eradication of prostitution as that issue has not been raised and the parties have not been informed.³⁷ As the two judges constituting the bench differed, a review petition was filed before the Supreme Court and the court allowed the review petition and set aside the directions of the court regarding the prostitution and its amelioration. But the court observed that it is left to the discretion of the government to formulate its own policies regarding the measures taken to eradicate prostitution. The court also observed that questions regarding directions in relation to prostitution, its eradication or amelioration, would have to be placed before the larger bench if any directions in this matter is required from the court.³⁸

Section 125 Cr.P.C. gives a summary and quick remedy to the women to claim maintenance from her husband. The Supreme Court declared that a destitute father also could claim maintenance under Section 125 from his

³⁷ *Gaurav Jain v. Union of India and others*, A.I.R. 1997 S.C. 3021.

³⁸ *Gaurav Jain and another v. Union of India and others*, A.I.R. 1998 S.C. 2848.

married daughter who is well off and has a separate source of income.³⁹ The reasoning of the Court signifies that the Court treats an employed daughter and son as equals so far as their obligation to maintain the father is concerned.

Section 304 B and 498 A were introduced into the Indian Penal Code to protect the human rights of women. The court observed that taunting the women for not bringing dowry and calling her ugly amounts to mental torture. Further it was held that if there was a quarrel the day before her death that would amount to cruelty both within the meaning of Section 498 A and 304 B I.P.C.⁴⁰ The harassment or cruelty must be of such a nature that they may force the women to commit suicide.

The court felt the need for ensuring and preserving the basic human rights even in jail. Realising the pathetic conditions of female prisoners, the court issued directions to the State Governments to improve their conditions. Some of the directions issued by the court were:

- (1) Female suspects should not be kept in police lock-ups in which male suspects are detained.
- (2) Interrogation of female should be carried out only in the presence of female officers or constables.
- (3) Arrested person should be informed of all rights available to her including the right to bail and right to legal aid.

³⁹*Dr. Mrs. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai and another*, A.I.R. 1987 S.C. 1100.

⁴⁰*Pawankumar and others v. State of Haryana*, (1998) 3 S.C.C. 309.

- (4) When a person is arrested and brought before him, the magistrate should inform about the right to be medically examined under Section 54 of the Criminal Procedure Code.⁴¹

The object of establishing care homes is to provide at least minimum conditions to enable women to live with human dignity. The Yuva Adhivakta Kalyan Samithi drew the attention of the court to the pathetic conditions of female inmates of Patna care home. The court observed that care homes maintained by the State must provide at least the minimum conditions ensuring human dignity of the inmates. The Supreme Court directed the State of Bihar to take immediate steps for the welfare of the inmates of care home in Patna. The Supreme Court also directed the welfare department further to appoint a full time superintendent to take care of the home and to ensure that the doctor visited the home daily.⁴²

In the case of child prostitution, the Supreme Court has directed the State Governments, Union Territories, the law enforcing agencies etc., to take speedy action under the law for the purpose of eradicating child prostitution. It also directed to set up separate advisory committees to suggest remedies for the eradication of the prostitution and also to take steps to provide adequate rehabilitation homes manned by well qualified and trained social workers, psychiatrists and doctors.⁴³

⁴¹ *Sheela Barse v. State of Maharashtra*, (1983) 2 S.C.C. 96.

⁴² *Vikram Deo Singh Tomar v. State of Bihar*, A.I.R. 1988 S.C. 1782.

⁴³ *Vishal Jeet v. Union of India*, A. I.R. 1990 S.C.1412.

Women continued to be the victims of violence all times because of the lower status given to them in the society. As a positive step to promote gender equality, the Supreme Court of India gave women the same right as natural guardians of a minor. In a case wherein a mother's application for financial bonds in the name of her minor children had been rejected by the Reserve Bank of India on the basis of the Hindu Minority and Guardianship Act 1956, which regards the father and only after him the mother as the natural guardian of a minor. The Supreme Court ruled that the provision 'after' had to be read as 'in the absence of' as it violated gender equality.⁴⁴ The court relied on the Universal Declaration of Human Rights, 1948 and Beijing Declaration.

Under Article 226 of the constitution, the High Court also could issue, directions or orders or writs for the purpose of protection of human rights of women and the various High Courts of India have exercised their powers for the protection of human rights.

Apart from the powers of the Supreme Court and the High Courts under Article 32 and 226 for the protection and promotion of human rights, national institutions are constituted for the effective enforcement of human rights. The main national institution for the protection and promotion of human rights are Ombudsman (Lokayukta) and the Human Right Commission. Generally a lawyer or judge or person with high reputation and integrity can act as ombudsman and their reports about violations can act as a check against mal-administration.

⁴⁴ *Supra* Chapter 6 n.243.

National Commission for Women

National Commission for Woman is one of the most important statutory institutions for the Protection of Human Rights of Women. As already stated, the Indian Constitution and various other legislations contain provisions for the protection and promotion of human rights of women. The National Commission for Women is constituted under the National Commission for Women Act, 1990, to protect the human rights of women, is a timely step to ensure the steady and even development of women.⁴⁵

The National Commission for Women shall consist of a chairperson nominated by the government and five other members to be nominated by the central government from amongst persons of ability, integrity and standing who have had experience in law or legislations, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations including women activists, economic development, health, education and social welfare. At least one member shall be from amongst persons belonging to scheduled caste and scheduled tribes.

An expert in the field of management, organisational structure or sociological movement or an officer who is a member of civil service of the union or of an All India Service or holding a civil post under the union can be nominated by the central government as the member secretary.⁴⁶

⁴⁵ Mukulita Vijayawargiya, "National Commission for Women" 34 J.I.L.I. (1992) 295.

⁴⁶ National Commission for Women Act, 1990 Sec.3.

The Commission may appoint committees to deal with special issues taken up by it from time to time.⁴⁷

The Commission has been entrusted with the work of conducting investigation and examination of all matters relating to the safeguards provided for women under the Constitution and other laws⁴⁸ and presentation to the central government annually and at other times report upon the working of those safeguards.⁴⁹ It is the duty of the Commission to provide or suggest measures to improve the conditions of women situated under various circumstances.

The Commission can take suo motu notice in matters relating to deprivation of women's rights. It can also examine whether there is any non-compliance with the policy decisions or instructions or guidelines ensuring the welfare of women. In such cases it can take up the issues arising out of such matters with appropriate authorities.⁵⁰ The Commission can also conduct special studies and investigations into specific problem or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.⁵¹ It can also undertake promotional research and to participate and advice the government on the planning process of the socio-economic development of women under the union and the states. Inspection of jails, remand homes, women institutions or

⁴⁷ *id.* at Section 8.

⁴⁸ *id.* at Section 10(1)a.

⁴⁹ *id.* at Section 10(1)b.

⁵⁰ *id.* at Section 10(1)(f).

⁵¹ *id.* at Section 10(1)g.

other places of custody of women, giving funds to litigation involving issues affecting a large body of women and to make periodical reports to governments⁵² etc; are some of the other functions of the Commission.

The reports presented to the central government under Section 10(1) (b) shall be laid before each house of Parliament along with the action taken or proposed to be taken on the recommendation of the union and the reasons for non-acceptance, if any of such recommendations.⁵³ If the reports or any part of the recommendation relates to any matter in which any State Government is concerned, the report or that part may be sent to the state government which shall be laid before the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State. If any of the recommendations is not accepted, then the reason for the non-acceptance must also be stated.⁵⁴

In investigating the matters referred to in Clause (a) to clause (I) of section 10(1), the Commission shall have the powers of a civil court with regard to summoning and enforcing the attendance of any person from any part of India and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavit, requisitioning any public record or copy from any court or office, issuing Commissions for the examination of witnesses and documents and other matter which may be prescribed.⁵⁵ The Act

⁵² *id.* at Section 10(1)(i to n).

⁵³ *id.* at Section 10(2).

⁵⁴ *id.* at Section 10(3)

⁵⁵ *id.* at Sec. 10(4).

authorises the Central Government to make rules for carrying out the provisions of the Act.⁵⁶

It is to be mentioned that the National Commission for women proposed certain bills for enactment where the existing provisions were found inadequate. It proposed the Criminal Law Amendment Bill, 1994 regarding child rape and suggested amendments to I.P.C., Cr.P.C. and Evidence Act.⁵⁷

As per the decision of the Supreme Court in Delhi Domestic Forum Case⁵⁸, the Commission has drafted a scheme for compensation. It also drafted a code of conduct for women at work place as per the decision of the Supreme Court in Vishakas case.⁵⁹ In order to provide speedy justice to women and to create awareness among women about their rights a project known as Mangalam project was planned in 1994 in the Union Territory of Pondichery, to impart knowledge to women in every branch of law.⁶⁰

The Commission has found on studies that creating awareness and making women economically independent would to some extent help to prevent violence against women. The Commission with this objective has launched several schemes.⁶¹ A legal awareness campaign against dowry was launched, titled "Dehej Mukthi Abhiyan," to sensitise women about the harmful image, dignity and empowerment of women.⁶²

⁵⁶ *id.* at Sec. 17.

⁵⁷ *National Human Rights Commission for Women, A decade of Endeavor*, Deen Dayal Upadhyaya Marg, New Delhi (1990-2000), p.21.

⁵⁸ *supra* n.33.

⁵⁹ *supra* n.57 at p.25.

⁶⁰ *ibid.*

⁶¹ *id.* at p.37.

⁶² *id.* at p.69.

The Commission was very much appreciative of the vulnerable situations of women in prostitution and suggested several recommendations to improve their situation. In its annual report of 1992-1993 the Commission reported that child prostitution is on the increase in the city of Bombay and there is an urgent need to save the women from the vicious practices of the trade. The Commission was of opinion that areas prone to trafficking must be identified and must be put under strict surveillance to prevent minor girls and innocent women falling into the hands of pimps. It also suggested for the amendment of the Juvenile Justice Act for the protection of children and prostitutes.⁶³

In its annual report of 1998 the National Commission has suggested several measures such as old age pension, vocational training and employment opportunities and loans to improve the living conditions of old and destitute women. It also suggested for the establishment of special schools, special hostels etc., for physically handicapped women.⁶⁴ In order to prevent child marriages the Commission recommended for the compulsory registration of marriages.⁶⁵

In September 2000, the NCW launched an ambitious college student empowerment programme called 'preparing the women for tomorrow' with the object of information, education and capacity building in adolescent girls of

⁶³ *id.* at p.79.

⁶⁴ *id.* at p.127.

⁶⁵ *id.* at p.154.

today to face the challenges of tomorrow with conviction and confidence.⁶⁶ In its various interactions, the Commission realised that in most of the cases the provisions of the Equal Remuneration Act, and the Minimum Wages Act, has not been observed. The National Commission for Women urged the need for setting State Human Right Commission and requested all the States to set up Commission for Women.

Human Rights Commission

Protection of Human Right Act, 1993 was enacted by the Parliament establishing National Human Right Commission, State Human Right Commission and Human Rights Court for the protection of individual against discrimination and implementation of human rights as it is practically not possible for the ordinary courts to go deep into the violations of human rights

On the recommendation of the Commission on the status of women in its 25th report, the Government of India constituted a committee on the status of women in 1971. The committee recommended for the constitution of a National and State Human Rights Commissions and accordingly the Protection of Human Right Act, 1993 was passed. The Protection of Human Right Act defines human right as the right 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.⁶⁷ The Human Rights Commission can investigate complaints about violation of human rights and report the

⁶⁶ *id.* at p.171.

⁶⁷The Protection of Human Right Act, 1993, Section 2(d).

matter to the legislature. The function and powers of the Commission is to be determined accordingly to the law by which they are established.

The main objective of the Act is to constitute National and State Human Rights Commission and a Human Rights Court for the better protection of human rights and incidental matters. Now in India we have the National Human Rights Commission and 13 State Human Rights Commissions. State Human Rights Commissions are functioning in the States of Assam, Kerala, Manipur, Andra Pradesh, Madhya Pradesh, Tamil Nadu, Chattisgarh, Punjab, Uttar Pradesh, Jammu & Kashmir, Maharashtra, Rajasthan and West Bengal.

The Human Right Commission can investigate complaints about violation of human rights and make recommendation to the government or authority that violate the human rights to take legislative or administrative measures to prevent human rights violations.

The National Human Rights Commission consists of a chairperson and four other members. The chairperson who is or has been the Chief Justice of the Supreme Court, one member who is or has been a judge of the Supreme Court, one member who is or has been the chief justice of the High Court and the other two members to be appointed from amongst persons having knowledge or practical experience in matters relating to human rights⁶⁸.

Apart from this, the chairperson of the National Commission for Minorities, the National Commission for Scheduled Castes and Schedules

⁶⁸ *id.* at Section 3(2).

Tribes and the National Commission for Women shall be the ex-officio members of the Commission.

The chairperson and other members of the Commission can be appointed by the President on the basis of recommendations of the Committee comprising the Prime Minister as the Chair Person, the Speaker of the Lok Sabha, the Home Minister, the leaders of the opposition in the Lok Sabha and Rajyasabha and the Deputy Chairperson of the Rajyasabha as members.

The National Human Rights Commission is not competent to entertain complaints filed after the period of one year or if the matter is pending before a state Commission. If the complaint is vague, anonymous or frivolous in nature, or pertains to service matters then also the Commission cannot entertain the complaints.⁶⁹

For the effective discharge of the functions of the Commission, the Commission is given the powers of the civil court with regard to summoning of the witnesses, production of documents, receiving affidavits, issuing Commission for examination of witnesses⁷⁰ etc. For the purpose of investigation, the Commission is given wide powers. It can utilise the service of any officer or agency of the Central or State Governments for the purpose of conducting an investigation.⁷¹ Such officer is required to submit a report to the Commission within a period to be specified by the Commission.

⁶⁹ Section 36 read with Section 8 of the National Human Rights Commission (Procedure) Regulation, 1994.

⁷⁰ *id.* at Section 13.

⁷¹ *id.* at Section 14.

The Commission also has the power to receive information from any person acquainted with the violation of human rights. The proceeding before the Commission is deemed to be judicial proceeding.

Section 10(2) of the Act empowers the Commission to regulate its own procedure. The National Human Rights Commission has made the National Human Rights Commission (Procedure) Regulations, 1994 that have come into force with effect from 1st March 1994.⁷² Normal sitting of the Commission shall be the first and third week of every month and special sittings can be conducted in case of urgency.

The Human Rights Commission can hear individual complaints, which can be brought before it either by the victim or his/her representative, third parties, by non-governmental organisations, associations, trade unions or any other representative organisations etc. The complaints received by the Commission ranges from custodial death and rape, torture, bonded labour, case of disappearance, special problems of the minority community, environmental issues affecting right to life, dignity etc. The Commission disposes of most of the complaints with the observation to the effect that the remedies were more appropriately available in another forum and that the complainant shall seek remedies from them.

When a complaint is filed and if there is no substance in the complaint it is dismissed in-limine, otherwise the complaint is admitted. If admitted, after

⁷² National Human Rights Commission, Notification No. A 110 3111194 N.H.R.C. dated Feb 17, 1994 published in the Gazette of India (Extra) Part II, Section I dated 26th Feb. 1994 pp. 1-5 SI. No.19.

numbering the complaint it is placed before a bench consisting of two members within a period of two weeks from the receipt of the complaint. Once admitted, the secretariat calls for reports or comments from the governments or authority concerned within a reasonable time and if within that time report is not received, the Commission could investigate the complaint on its own. If the information is received within the time specified, the Commission prepares a detailed note on the merit of the case. If the Commission feels that no further enquiry is needed then it may not proceed further with the complaint and the matter is intimated to the complainant. After the investigation of the case is completed, the Commission may take any of the following steps.

If after the completion of inquiry the Commission feels that there is violation of human rights or there is negligence on the part of the authority to prevent violation of human rights, it can recommend the government or the appropriate authority to take action against the person concerned.

The Commission can also approach the appropriate court (High Court & Supreme Court) for such directions, orders or writs, as court may deem necessary.

The Commission can also require the appropriate government or the authority concerned to grant interim relief to the victims or the members of the family. The Commission is required to send the report to the concerned authority and is required to give its comment on the report including the action taken or propose to be taken, thereon, to the Commission. The Commission is

required to publish the enquiry report together with the comments of the concerned government or authority and action taken or propose to be taken by the government or authority within the period of one week.⁷³

The Commission is also required to submit an annual report to the Central Government and the State Government. The Central Government and the State Government shall place the annual report and special reports of the Commission before each house of Parliament or the State Legislature respectively.

Though the Commission was constituted for the purpose of effective protection and promotion of human rights, the Commission has no power to decide the violations or grant the redressal of grievances of the aggrieved person. The Commission can only make recommendations to the government or appropriate authority and such recommendations are also not binding. Though it has only a recommendatory character it helps to create a culture of human rights throughout the country by creating mass awareness about human rights.

The main functions of the Commission are:

- (1) Making inquiries
- (2) Review of laws, implementation of treaties and other international instruments on human rights.
- (3) Improving the jail conditions

⁷³Regulation 16 of the (Procedure) Regulation 1994 and Section 18 of the Act 1993.

- (4) Promotion of human right literacy and awareness among various sections of the society.
- (5) Undertaking and promoting research in the field of human rights.

It is interesting to see how the Commission has been working with reference to some of these items of functions:

Inquiry into Complaints

The Commission considered complaints regarding maternity leave to the employees of private schools in West Bengal. The Secretary, Department of Education, West Bengal submitted a report as per the directions of the Commission and the Commission found that there was no uniformity in rules. The Commission directed the Government of West Bengal to review the existing rules to bring about uniformity and also to incorporate the provision to grant 120 days maternity leave to teaching and non-teaching women employees of various educational institutions. The Commission also stated that it is the discretion of the State Government to restrict the facility of maternity leave to two-child birth if it thought necessary and appropriate. This decision of the Commission is to give effect to the mandate of Article 10 of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.⁷⁴

The Commission took cognizance of a complaint received from Juvenile Rights Forum, Hyderabad, Andhra Pradesh. The complaint disclosed that a girl

⁷⁴ <http://www.nhrc.nic.in> visited on 20/12/2003.

with bleeding was admitted in the Juvenile Observation Home in Hyderabad on 10th July 1998 and the officials did not provide her with any medical treatment. On 11th September 1998 she was admitted at Nilofer Hospital and doctors found that she was raped brutally. Though the police registered a case, proper investigation was not conducted. The Commission sought report from the Government of Andhra Pradesh and on consideration of the report, the Commission directed the State of Andhra Pradesh to complete the investigation as expeditiously as possible and directed the State of Andhra Pradesh to pay an interim compensation of Rs.50, 000 to the parents of the girl.⁷⁵

In another alleged rape case relating to two Jain 'Sadhvis' the Commission has asked the Madhya Pradesh Government to take cognizance of and to start investigation. The Commission further held that though the victims of rape cases are reluctant to come to the court, it is the duty of the police to set the law in motion. Upon the intervention of the Commission the Madhya Pradesh police in this matter has now registered a case.⁷⁶

The Commission took suo motu action in the case of alleged rape of Bhanwari Devi by certain villagers of Rajasthan for her campaign against child marriage, and the acquittal of the accused by the District and Sessions Court, Rajasthan. The Commission directed the State of Rajasthan to file appeal against the acquittal by the District and Sessions Court.⁷⁷

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ *ibid.*

Compensation of Rs.1 lakh was recommended by the Commission to the State of Rajasthan in an alleged rape case of 9 minor girls in a school at Rajasthan. The Commission took cognizance of the case on the recommendations of 'Sakshi' a Delhi based non-governmental organisation.⁷⁸

Review of existing Laws, Implementation of Treaties and other International Instruments on Human Rights

Section 12(d) of the Protection of the Human Rights Act, 1993 empowers the Commission "to review the safeguards provided by or under the Constitution or any other law for the time being in force for the protection of human rights and recommend measures for their effective implementation." In view of this section the first area of concern of the Commission was the review of Terrorist and Disruptive Activities (Prevention) Act, 1985. The Commission then concentrated on the area of child labour and later legislations affecting the rights of women. The National Commission for Women constituted under the National Commission for Women Act, 1990 has also assisted the Human Right Commission in the task of reviewing the legislations.

Improving Jail Conditions

In view of the power given to the Commission to visit jail, the Commission visited various jails and made suggestions to improve the conditions in jail especially those of women prisoners. The Commission suggested measures to reduce the overcrowding in jails, to take steps to

⁷⁸ *ibid.*

improve the skills of the inmates of jails and rehabilitation of those who were released from jails. The Union Department of Child Development has constituted an expert committee on “custodial Justice for Women”, under the Chairmanship of Justice V.R. Krishna Iyer to aid and advice the commission to enquire into the conditions of women in jail and the report of the committee states that:

“Womanhood and childhood even in criminal wrappings and behavioural aberrations deserve to be nursed in dignity and restored to working normally using all the material, moral and spiritual, resources at the society’s command”⁷⁹

Promotion of Human Rights Literacy and Awareness

The Act casts a responsibility on the Commission “to spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, through media, seminars and other means.”⁸⁰

Human right education plays an important role in promoting human rights of women as more than half of the population in India is illiterate. The Commission conducted many seminars, literacy classes, workshops etc; to impart knowledge to the common people about various human rights enshrined in the Constitution and the national laws and the various other international

⁷⁹ *supra* n.57 p. 104.

⁸⁰ Protection of Human Rights Act, 1993, Section 12 (h).

documents. The Commission also recommended the inclusion of human rights in the syllabus of the universities and colleges.

Undertaking and Promoting Research on Human Rights

The Commission is also entrusted with the responsibility to undertake and promote research in the field of human rights.⁸¹ The Commission has taken up research studies with regard to abolition of child labour in the safety matches and firework industry in Tamil Nadu, abolition of child prostitution, prevention of female infanticide and foeticide among other subjects.⁸²

Though the Commission cannot issue binding orders, the method of appointing its members, their fixity of tenure and the financial autonomy provided under Section 32 of the Act shows its independence and integrity.

The transparency of functioning of the Commission is reflected in the statute and regulations framed thereafter. The Commission has laid its annual report before the parliament and it encouraged the co-operation of non-governmental organisations, human rights activists, the media and the public while enforcing human rights.

During the year 1995-96, the Commission examined two reports about female foeticide and infanticide and the Commission has for this purpose sought the assistance of the National Commission for Women and department of women and child development.

⁸¹ *id.* Section 12 (g).

⁸² Arunkumar, Palai, *The National Human Rights Commission in India*, Atlantic Publications, New Delhi (1999), p.155.

Realising the misuse of sex determination to commit female foeticide, the Commission approached the medical council of India and the medical council has decided to suggest amendments to the regulations governing the code of medical ethics, in order to enable the undertaking of disciplinary proceedings against doctors who misuse the Act.⁸³

Regarding child prostitution the Commission has decided that the issue has to be considered by a group consisting of the National Commission for Women, the Department of Women and Child Development, Government of India selected NGO's and UNICEF. The group shall consider the inadequacy of the existing law, and shall suggest amendments to the existing laws to prevent child prostitution.⁸⁴ As the National Human Rights Commission lacks authority and no power to eradicate violations of human rights, the Supreme Court in some cases has resorted to Constitution and various other provisions in the Criminal Procedure Code. With the help of the Universal Declaration of Human Rights and other international instruments, the Supreme Court could evolve a new human right jurisprudence as mentioned earlier.

The Supreme Court directed the Human Rights Commission to enquire into the alleged violations of human rights by the officers of the Punjab Police and negligence of the government servants in preventing human rights violations.⁸⁵ The order was made by the Supreme Court in exercise of its

⁸³ Dr. S. Subramanian, *Human Rights – International Challenges Vol-2*, Manas Publications, New Delhi, (1997) p.500.

⁸⁴ *id.* at p.501.

⁸⁵ *Paramjith Kaur v. State of Punjab*, A.I.R. 1999S.C. 340.

power under Article 32 of the Constitution of India. When the Supreme Court makes such order, the Commission was not functioning under the provisions and the limitation of powers under the Act and that the Commission has no power to investigate into complaints after the expiry of one year has no application in this case. The Supreme Court therefore designated the Commission as a body *sui generis* to carry out the functions and to determine the issues as entrusted to it by the Commission. From this case the lack of power, independence and inadequacy of the Commission for the protection of human right violation can be inferred. A large body with adequate powers can be necessitated to eradicate violations of human rights. The members of the Commission shall also include persons who are human right activists, who have been working for along time for the protection and promotion of human rights. Exchange of staff with that of similar bodies of foreign countries shall be desirable to improve the administrative and technical knowledge of the functioning of the Commission.

The Protection of Human Rights Act also envisages the constitution of State Human Rights Commission and a Human Right Court.

State Human Rights Commission

The Act empowers the State Government to constitute State Human Rights Commission to enquire into human rights violation in respect of matters, which are related to any of the entries enumerated in list II, and III. The procedure and powers conferred on the Commissions are also similar to those conferred on National Human Rights Commission.

The main defect of the Commission is the lack of adequate power and authority to enforce the human rights, irrespective of the presence of high dignitaries in its Constitution. The main function of the Commission is to collect information and to undertake studies and submit report to the government about the alleged violations of human rights and to take action, creating awareness about violation of human rights is also another function of the Commission. In fact the scheme of protection of human rights does not give any power to the Commission. If it has to initiate action, it should be through the Sessions Court, which will be declared as Human Rights Court.

Section 30 of the Act declares, for the purpose of providing trial of offences arising out of violation of human rights, the State Government may with the concurrence of the Chief Justice of the High Court, by notifications, specify for each District a Court of Session to be a Human Right Court to try the said offence provided that nothing in this section shall apply if.

- (a) A court of session is already specified as a special court.
- (b) A special court is already constituted for such offences under any other law for the time being in force.

As the National Human Rights Commission lacks authority and power to eradicate violations of human rights, the Supreme Court in some cases has resorted to the Constitution and various provisions in the Criminal Procedure Code. With the help of the Universal Declaration of Human Rights and other international instruments, the Supreme Court could involve new human rights jurisprudence as mentioned earlier.

The Family Court Act, 1984

The Family Court Act, 1984 was passed for the protection and promotion of human rights of women. The object of the Act is reconciliation and resolving of disputes relating to marriage, maintenance and custody of children etc. In family courts appointment of women is preferred as they are very much acquainted with the problem faced by women. Associations engaged in social welfare will also be associated with conciliation and settlement of disputes.⁸⁶

The legislature has passed several legislations to protect and promote the human rights of women, to enable them to live with dignity, to eliminate discrimination against women, to protect their health to enable them to participate in the decision-making and developmental process as envisaged under the various international instruments.

The National Human Rights Commission and the National Commission for Women are playing their roles to protect human rights of women. Even then there are serious flaws in enforcing the rights of women due to the lethargy of various enforcement agencies. Adequate measures, including creating of awareness are required for the effective implementation of the various rights guaranteed by our Constitution, other legislations and various international documents.

⁸⁶ The Family Court Act, 1984 Sec.5.

CHAPTER VIII

CONCLUSION

Human Rights emanate from the dignity and worth inherent in the human person. They are recognized by the legal systems of all civilized countries. Though the need for upholding human values and protection of human rights had been appreciated by the society from very early days, the necessity for establishing machinery for their protection was felt only after the second world war. The bitter experiences of the second world war prompted the international community to uphold the moral and basic rights of the human being. It was also felt that when a State violates the human rights of its citizens, the international community couldn't remain unconcerned and inactive. In fact the position of human rights transcending State boundaries made the international community to intervene in many a conflict having human rights overtones. Accordingly many organizations were established and many declarations and conventions were formulated by the international community to protect human rights.

The framing of the U.N. Charter, the Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966, the International Covenant on Social Economic and Cultural Rights, 1966, and other International and Regional Instruments can be said to be the most enchanting incidents in the 20th century.

Human Rights are positive rights, which every human being is entitled to enjoy and to have protected by State authorities. The principles of equality before law and prohibition of discrimination constitutes the essence of rules of law and human freedom. Attainment of equality of status of women was one of the specific objectives, which is implicit in various international instruments. All the international and regional instruments on human rights prohibit discrimination on the ground of sex and cast an obligation on the Member States to incorporate provisions for protection of women and elimination of discrimination against women in the domestic law so as to ensure equality.

The U.N. Charter recognized the importance of non-discrimination of individuals on the basis of sex for keeping peace and stability of the world order. The preamble to the charter affirms faith in fundamental human rights and the dignity, worth and equal rights of man and women. This faith is reflected in Article 1(3) of the charter of the United Nations, which runs as follows:

“To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms of all without distinction as to sex, language or religion.”

The ardent faith of the founding fathers of the United Nations had in the vitality of human rights protection made the international community to follow up its establishment with the formulation and formalization of universality of human rights.

The Universal Declaration of human rights guarantees the right of every individual not to be discriminated against on the basis of sex among other things. The declaration is accepted as part of the customary international law and has been further reiterated in the International Covenant on Civil and Political Rights, 1966 and in the International Covenant on Social, Economic and Cultural Rights, 1966. The Convention on the Elimination of All Forms of Discrimination Against Women required the Member States to abolish or modify all religious and customary practices that discriminate against women. A birds' eye view of the international documents indicates that in every sphere of activity the international community focused its attention with a view to avoid age-old sufferings of women who constitute half of humanity. These are the factors that culminated in the formulating activities of women's organizations of women world over.

The four world conferences on women, the Mexico City Conference, the Copenhagen Conference, Nairobi conference and the Beijing Conference convened by the United Nations General Assembly revealed the firm conviction of the international community to protect the rights of women. These conferences were concerned with the participation of women in equal

terms with men in all aspects of life and required the States to adopt the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 to ensure equality and to eliminate violence against women. The main objectives of the conferences were equality, development and peace. These objectives were necessarily to be achieved for the empowerment of women. Participation of women in all aspects of life especially in the administrative and developmental process is essential to the development and welfare of the nation, society, and family and for the maintenance of world peace.

The inferior status of women was found to have emanated from the division of labour between man and woman and because of unequal access of women to employment and education. The conferences urged the need to include in all the governmental policies and plan of action the promotion of women's health, protection from violence and trafficking, education, training and participation in key decision-making process to improve their status. All the conferences stressed the need to eliminate all religious and traditional practices that stand in the way of eliminating discrimination against women. In short, it can be safely said that international norms of women's rights have been formulated, nurtured and attempted to be enforced through passive persuasions by way of relating them to standards, which the international community wanted to inculcate among the people.

The Constitution of India incorporates most of the human rights including those for the protection of women enumerated in the Universal

Declaration of Human Rights. The Declaration though not legally binding has been operating as a common standard of conduct. In fact the Declaration represents the consensus of humanity on the need for promoting human rights among the people. While the Declaration and the Covenant constitute the basic norms to inspire the international community, the legislations made in pursuance of the basic norms provides operational rules for the enforcement of the rights. So far as India is concerned, the basic norms can be incorporated into the Constitution making it obligatory for the State to resort to legislation for operationalising human rights regime.

In developing human rights, the Indian Judiciary has played a very important role and evolved a new human right jurisprudence. The Supreme Court of India in a number of decisions relied on Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Discrimination Against Women 1979, the discussions and statements of international conferences etc. Article 21 of the Constitution was interpreted by the judiciary as right to life which includes right to live with human dignity, right to livelihood, right to privacy, right to legal aid, right to speedy trial, right to education, protection from sexual harassment at workplaces etc.

Article 9(5) of the International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to human rights. In fact the Supreme Court of India awarded

compensation in a number of cases involving violation of human rights. The court observed that the defense of sovereign immunity is not applicable to the guarantee of fundamental rights and if fundamental freedoms and human rights of persons are violated by the State or its servants in the purported exercise of their powers, the aggrieved person can resort to remedy under public law i.e. under the Constitution by recourse to Article 32 and get compensation. For example the Supreme Court awarded compensation for police torture in *Nilabati Behera v. State of Orissa*.¹ In *Chairman, Railway Board v. Chandrima Das*² the court awarded compensation to a woman who was raped by Railway employees. These decisions signify that the Indian Judiciary would give effect to International Covenants despite India's reservation to Article 9(5) of the Constitution. The gap in the Municipal Law was filled by the Supreme Court in *Vishaka v. State of Rajasthan*³ wherein the court relied on the statements made in international discussions (Beijing Declaration) and the Convention on the Elimination of All Forms of Discriminations Against Women, 1979 to lay down guidelines to protect women from sexual harassment at workplace. The court was of the opinion that the provisions of the covenant so far as they are not inconsistent with fundamental rights and domestic law, can be read into the provisions to enlarge the meaning and content even in the absence of parliamentary legislation under Article 253. The Supreme Court in a number of cases also relied on international documents to give effect to human rights provisions.

¹ (1993) 2 S.C.C. 744.

² (2000) 2 S.C.C. 465.

³ A.L.R. 1997 S.C. 3011.

In spite of the sincere efforts made by the legislature, judiciary and other organisations, women who constitute half of humanity is often exploited and abused. The birth of the girl child is condemned by the society. She is denied opportunities for personal growth and development. The full development of the personality of women requires education. The convention on the Elimination of All Forms of Discrimination Against Women, 1979 required the Member States to eliminate discrimination in giving education to women. The world conferences also recognized the need to give equal access to education to women as a condition to build a healthy and democratic nation with participation of women in all aspects of life. Educational facilities are denied to women in India due to several factors. Child marriages coupled with traditional and religious attitudes are the main reason that restricted the educational chances of the girl child. In spite of the Child Marriage Restraint Act, child marriages are prevalent in India as the Child Marriage Restraint Act does not prohibit child marriage but only minor punishment. More stringent punishment and compulsory registration of marriages can restrict child marriages.

The preamble of the Universal Declaration of Human Rights, 1948, recognizes the inherent dignity of the individual and equal and inalienable rights of the members of the human family. This is reiterated in other human rights instruments also.

The dignity and status of women can be maintained only if the human rights of women are recognized and protected. The Supreme Court has held

that right to life under Article 21 includes right to live with human dignity. Rape, sexual harassment at workplaces, domestic violence, dowry related crimes, devadasi system, sati, prostitution etc. violate women's right. Devadasi system prevalent in certain parts of the country leads woman to prostitution. Forced prostitution and child prostitution adversely affect the status of women and constitute denial of numerous human rights. Their right to liberty and security, the right to be free from arbitrary detention, the right to free choice of just and favourable conditions of work, adequate standard of living, education, right to health etc. incorporated in various human rights instruments are violated. The Immoral Traffic (Prevention) Act is not adequate to check prostitution, as it does not penalize individual prostitution but only its commercialised form. It also does not penalize those who are responsible for the trafficking of girls including those from other countries.

The police and local officials protect brothel owners and traffickers. State governments are obliged to punish those who are responsible for facilitating prostitution. But the number of prosecution is low. The root cause of trafficking in women lies in the unequal status of women in the society. It is deep rooted in the society due to economic, biological, social and cultural reasons. So a fundamental restructuring of the society and a change in the attitude of its members are essential to eradicate the problem. Prostitutes in certain parts of the country argue that right to life include rights to one's body. It is left to the individual to do what she wants with her body. Designated themselves as sex workers they argue for discrimination of activities connected

with prostitution, as it is their right to prostitute their body. Discrimination of prostitutes leads to further exploitation of women and create a feeling that women constitute a commodity upon which men can commit violence. Apart from discriminalising prostitution more stringent punishments should be given to individual prostitutes, pimps, brothel owners and to clients. Appropriate steps are to be taken by the government for rehabilitation of prostitutes and their children.

Rape affects women mentally, physically and psychologically; it affects her right to live with human dignity. It is usually committed by men to exploit her rather than sexual gratification. As per section 155 (4) of the Evidence Act the past Immoral Character of the victim can be used as an inference adverse to the women. It is suggested that section 155(4) of the Evidence Act that places reliance on the past immoral character of the victim shall be abolished. The attitude of the society to condemn the innocent girl who is a victim of rape should be changed and every effort must be made by the society to bring back the women to normal life. The humiliating questions put to the victims of rape by the defense counsel, the fear of the social stigma attached and the possibility of remaining unmarried are factors that hinder reporting rape cases.

Right to lead a dignified life can be effectively examined only if there is privacy. If there is any attack or interference with the rights, it is to be protected by law. Woman has the right to safeguard her privacy, family, marriage, motherhood, child bearing etc. In order to lead a life with dignity

without fear of sexual violence and domestic violence, the international instruments require the State Parties to incorporate these norms into their domestic laws. The Supreme Court of India also recognized the right to privacy as a fundamental right.

The International Bill of Human Rights, the European Convention for the protection of Human Rights and Fundamental Freedoms, 1950, the American Convention on Human Rights, 1969, and the African Charter on Human and Peoples Rights, 1981, required the State Parties to take adequate steps for the protection of family which is the fundamental unit of the society. Though Member States are under an obligation to ensure protection of the family especially to mothers, women are subjected to exploitation and violence inside the family. Several attempts were made by the Indian Legislature to prohibit violence against women. The Dowry Prohibition Act, 1961 and its repeated amendments, introduction of Section 498 A and 304 B into the Indian Penal Code and Section 113 A and Section 113 B to the Evidence Act cannot adequately check cruelty to women in relation to dowry demands. Children and youth must be educated about the evil consequence of giving and taking of dowry. Equal inheritance rights irrespective of personal law are to be given to woman to eradicate the evil of dowry. Strict enforcement of the Dowry Prohibition Act, the initiation from the part of the girl and the parents to bring the case before the court and determination of the judge to punish those who violate the Dowry Prohibition Act etc., can eradicate the problem to a considerable extent.

In spite of section 304 B and 498 A domestic violence against women still persists because of the reluctant attitude of the police to interfere in family disputes. Police should be given adequate training to be fully aware of the law and to respond to every complaint involving domestic violence as expeditiously as possible.

Violence against women whether by her relatives or by the community or by the State is incompatible with human dignity and the injury, loss and the feeling of insecurity suffered by her cannot be compensated by damages. Poverty, powerlessness, dependence, unawareness about their rights, traditional and social attitudes of the society etc., are the main reasons for violence against women. Many of the Indian women are ignorant about their rights and the privileges that have been conferred on them. Women should be given training to fight against violence. Family relationship must be strengthened to prevent violence against women. In India there is no specific legislation that governs the problem of domestic violence. Domestic violence bill was introduced in the parliament recently. It is yet to be enacted.

The effort to check violence against woman should start from the government itself. Violence against women usually occurs in jails, prison, custody etc. Every official responsible for violence against women holding responsible positions should be strictly punished. As suggested by Human Rights Watch, a non-governmental organization, all types of sexual abuse in custody should be made a criminal offence.

If a person is found guilty of violence against women, he should not be allowed to marry again during his lifetime. Provisions also should be made in the Indian Penal Code to penalise man who abandons or neglects or fails to provide medical care and attention to pregnant women.

In many cases the married woman suffers much discrimination. She has to depend on her husband for every aspects and it is her responsibility to take care of the husband, the children and other members of the matrimonial home. Without the consent or authorisation of the husband she is not capable of undertaking an independent work, business, profession or other occupation outside the home. In the case of marriage also many women were not given autonomy and equality in making decisions. These traditional, social, religious and customary attitudes should be changed to improve the status of women.

In the case of breakdown of marriages, it is usually the woman who suffers the most. If she is unemployed the problem becomes aggravated. The only economic security, which can be claimed by woman in the case of separation, is the right to maintenance. In spite of the provisions for maintenance, due to the delay in procedure, the insufficiency of amount, and because of difficulty in executing the decree, the maintenance orders are usually flouted. If the husband is determined not to pay the amount, at present he can avoid payment. In the case of breakdown of marriages, she has no place to go and she has to undergo humiliation, pain and agony both physical and mental.

The Matrimonial Homes Act, 1967, was passed in England to give protection to women in the case of marital breakdowns. Similarly the Domestic Violence and Matrimonial Proceedings Act, 1978 and the Domestic Proceedings and Magistrate Court Act, 1978 had been passed to give protection to battered women in England. India is also in need of such legislation so that women can live in the matrimonial home in the case of breakdown of marriages.

The situation of workingwomen in the family is also not satisfactory because of the reluctant attitude of the members of the family to share the responsibility. Due to the increased burden at workplace and family, she is not able to discharge her duties satisfactorily at both the places. The reluctance on the part of the male members of the family to share the responsibility is the reason for this. Women are always assigned a subordinate role in the family. The attribution of subordinate position to women is also a human right violation.

The negative and degrading portrayal of women in the media denies her right to live with human dignity. The portrayal of women in the media as sex objects, create a negative feeling about women in the minds of youth and young people. The luxurious life shown on television is to a great extent lure girls to prostitution. The media should be positively used for creating awareness of human rights rather than projecting degrading images of women.

Article 12 of the CEDAW recognizes that right to health of women includes access to family planning. The Indian Parliament enacted several legislations such as the Child Marriage Restraint Act, The Maternity Benefit Act, The Medical Termination of Pregnancy Act, Infant Milk Substitute, Feeding Bottles and Infant Food (Regulations of Production and Distribution) Act, 1992 and various labour legislations etc., to ensure the health of women. The provisions in the Medical Termination of Pregnancy Act that termination of pregnancy can be done only with the consent of pregnant woman are beneficial to women.

The Universal Declaration of Human Rights, and the International Covenant on Social, Economic and Cultural Rights, 1966 require the State Parties to give every person, the right to choose any work and favourable conditions of work etc. The Equal Remuneration Convention requires the State Parties to incorporate the provisions therein in their domestic law. Indian legislature enacted several legislations to protect women at workplaces. The Maternity Benefit Act, the Factories Act, Equal Remuneration Act etc., were enacted with many provisions exclusively to safeguard the interest of women. But women face several difficulties at work places including sexual harassment. Though the decision of the Supreme Court in *Vishaka v. State of Rajasthan*⁴ is an encroachment to the field assigned to the legislature the guidelines are deemed to be law till the legislature makes a law on the subject. Till now no legislation has been passed by the parliament to prevent sexual

⁴ A.I.R. 1997 S.C. 3011.

harassment at workplaces. Due to the ineffectiveness of the provisions in the guidelines not much could be done in this field. Human rights violations frequently occur at workplaces. In order to prevent sexual harassment of women at workplaces parliament has to enact appropriate legislation by incorporating the guidelines issued by the Supreme Court in Vishaka's case.

Creating awareness about the human rights of women under the international documents and national legislation is essential to enable women to fight against the violation of rights. In appropriate cases the government is also under an obligation to provide legal assistance to women.

The Indian Parliament has enacted the Protection of Human Rights Act, 1993 creating National and State Human Rights Commissions. The Act is not effective in containing human rights violations. It lacks authority and power to eradicate human rights violations. In *Paramjit Kaur v. State of Punjab*⁵ the Supreme Court directed the National Human Rights Commission to make inquiries into alleged violations of human rights by officers of Punjab Police and negligence on the government servants in protecting human rights violations.

A National Commission for Women was appointed under the National Commission for Women Act, 1990 to safeguard the rights of women and to make suggestions to improve the status of women. Because of lack of power this body also could not do much.

⁵ (1997) 7 S.C.C. 20.

A combined effort of the legislature, the judiciary and executive is necessary for the protection of human rights. As already stated the Indian judiciary has done a commendable job in protecting the human rights of women. But persons approached the court only after violation of human right. In order to have the human rights not violated, the government should take initiative. The National Human Right Commission and National Commission for women should be given more power to prevent human rights violations. Persons having sufficient experience in human rights movements should be included as members of human rights commission. The potential of non-governmental organizations and educational organizations to prevent violation of women's right should be fruitfully utilised.

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