



# Saurashtra University

Re – Accredited Grade 'B' by NAAC  
(CGPA 2.93)

Rathod, Jyotsna Y., 2006, “*Administration of International Instruments on Human Rights in India to Ensure Elimination of Discrimination Against Women with Special Reference to Cedaw*”, thesis PhD, Saurashtra University

<http://etheses.saurashtrauniversity.edu/id/eprint/726>

Copyright and moral rights for this thesis are retained by the author

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.

This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the Author.

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the Author

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

Saurashtra University Theses Service  
<http://etheses.saurashtrauniversity.edu>  
repository@sauuni.ernet.in

**ADMINISTRATION OF INTERNATIONAL INSTRUMENTS  
ON HUMAN RIGHTS IN INDIA TO ENSURE ELIMINATION  
OF DISCRIMINATION AGAINST WOMEN WITH SPECIAL  
REFERENCE TO CEDAW**

A THESIS  
SUBMITTED TO SAURASHTRA UNIVERSITY, RAJKOT  
FOR THE AWARD OF THE DEGREE OF

**DOCTOR OF PHILOSOPHY IN LAW**

By  
***SMT. JYOTSNA YAGNIK K. RATHOD***

Under the Supervision of  
**Dr. B. L. SHARMA**  
Professor and Head  
Department of Human Rights and  
International Humanitarian Laws

FACULTY OF LAW  
SAURASHTRA UNIVERSITY,  
RAJKOT, (GUJARAT)

Ph. D. Registration No.  
3004

Date of Registration  
23/09/2003

Submission of Thesis  
April, 2006

## DECLARATION

I hereby declare that this thesis entitled " **ADMINISTRATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS IN INDIA TO ENSURE ELIMINATION OF DISCRIMINATION AGAINST WOMEN WITH SPECIAL REFERENCE TO CEDAW** " which I am submitting for the award of Degree of Doctor of Philosophy in Law, to the Saurashtra University, Rajkot is an original research work done by me.

I also declare that this thesis or any part of it has not been submitted to this or any other University for the award of any Degree, Diploma or Fellowship.

Place : Rajkot

Date : 27<sup>th</sup> April, 2006

(Jyotsna Yagnik K. Rathod)

**Dr. B. L. Sharma**  
**Professor and Head**

Department of Human Rights and  
international Humanitarian Law,  
Saurashtra University, Rajkot.

---

### **CERTIFICATE**

This is to certify that the thesis entitled "**ADMINISTRATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS IN INDIA TO ENSURE ELIMINATION OF DISCRIMINATION AGAINST WOMEN WITH SPECIAL REFERENCE TO CEDAW** " submitted for the award of Degree of Doctor of Philosophy in Law, is a record of the research work done by Smt. Jyotsna Yagnik K. Rathod, under my guidance and supervision during the period of September, 2003 – April, 2006.

I Certify that this is a bonfide work of Smt. Jyotsna Yagnik K. Rathod.

**(Dr. B.L. Sharma,)**

## PREFACE

Social Status of women, throughout the world is day by day deteriorating. Offences against women are on rise, even in developed countries social scenario is not changing rapidly in favour of women. The present researcher initiates the work with deep rooted feeling that the research on the subject of human rights vis-à-vis women is extremely essential to put up outcome of the studied research before an awakened and elite class, and before un-awakened class to awaken them.

The international scenario reveals that numerous international instruments have come into effect to curb social evils and to ensure elimination of discriminatory treatment prevalent throughout the world. The Convention on the Elimination of All Forms of Discrimination against Women, shortly known as 'CEDAW' is the instrument which is most talked document being used by signatory countries to ensure elimination of discriminatory treatment against women. The present research study is conducted with the view to examine the governance of the said Convention with regard to its purpose. The study is necessitated firstly, for assessing the impact of administration of CEDAW in India and secondly, it is necessary to know and enlist as to what can be done for effective implementation of CEDAW. It is also to identify means, methods and

improvements to ensure effective elimination of the discrimination against women.

India is a country which has a very typical kind of social setup wherein women are subjected to numerous kind of discriminations. Right from birth to graveyard, discriminatory treatment is the fate of Indian women. While in family woman is treated as the inferior component to man. While in service she is a decorative piece and at times she is subjected to sexual harassment. As far as discrimination is concerned, social treatment to women remains same whether she is in the public life or private life. The role of the State Parties is decided in the document of CEDAW as, it has been decided by the Constitution of India to eliminate discrimination against women and to protect the women from unjust treatment by the society but, the analysis, the present researcher has undergone, has very categorical and clearly suggests that the success rate of CEDAW is quite low. The glaring weakness in Indian laws like lacuna of laws to protect working women from sexual harassment, protecting women from the domestic cruelty, etc. are the issues which have not been addressed effectively for the prevailing reasons including the dominance of the Indian tradition and unrepresentative character of the Political Parties, eggheads and religious leaders.

The detailed research on the subject has light a lamp of tremendous sensitivity to the issue of human rights of women. The last chapter of the thesis is in form of 'Suggestions & Conclusions' wherein, the present researcher suggests that judiciary, teaching fraternity, State Government, Central Government, members of the CEDAW Committee, N.G.Os., Parliament, Legislative Assembly and any and every public functionary can contribute towards resolution of the problem - to eliminate discrimination against women.

The research to find out an answer to the subject has been undertaken with lots of sincerity. The humble attempt, endeavour and analysis would remain the most memorable exercise of the life of the present researcher. It is doubtless that the exercise would render lot many solutions to those who are interested to resolve the problem. If the question, as to whether discrimination against women has been eliminated by implementation of CEDAW in India, is to be answered in one word, it can be answered as, "NO". But, if the reply has to be given in an analytical mode, the research has answer in many folds. Before parting, it has to be placed on record that the present researcher witnesses the sincere endeavour undertaken, by the National Commission for Women, by Hon'ble the Supreme Court while speaking through its judgments and by the different N.G.Os. by addressing the cause to ensure just, fair and reasonable treatment to women need a special mention. It is

for sure that the research work is a gift of the womanhood of the present researcher to the Indian womanhood which is surely to gift thousands of Indian women whose womanhood would surely receive the fruits of research.

27<sup>th</sup> April, 2006

**Jyotsna Yagnik K. Rathod**



## ACKNOWLEDGEMENTS

I am extremely grateful to all those who have not only inspired me but, have also provided me innovative ideas to colourfully complete the Herculean task I have undertaken. As such, there are series of names flash in my mind which all are worthy to be mentioned.

My first salutation goes to Mr. Kantilal P. Rathod and master Maulik Rathod both my beloved, spouse and son respectively for constantly providing me an atmosphere to carry on the research. I am very much indebted unto my guide Professor Dr. B.L. Sharma who has been my friend, philosopher and guide in real sense of that phrase. His able, innovative and constant guidance has enabled me to undertake this work successfully.

My thanks are due to my sisters Smt. Charu Mehta and Smt. Paru Rawal have contributed during the whole process of research but for which I would not have been able to give shape to my work. My sincere thanks to their spouses as well as for their whole hearted support.

The role of Meghna, Ankit, Viral and Rupal is an unforgettable one which too has helped me in devoting the research subject.

I just cannot forget the National Women Commission for providing me the base material of CEDAW, reports of N.G.O., the Commission and the Government of India.

I honestly beg apology from the rest of the community people who have rendered their help and have made it possible for me to come out with this work if I have failed to acknowledge them in express terms. But, I acknowledge each concerned, directly or indirectly from bottom of my heart.

DATE : 27/04/2006

**Jyotsna Yagnik K. Rathod**

## TABLE OF CONTENTS

DECLARATION	i
CERTIFICATE	ii
PREFACE	iii - vi
ACKNOWLEDGEMENTS	vii - viii
TABLE OF CONTENTS	ix - xv

		Page No.
<b>Chapter - I</b>	<b>Historical Background And Introduction of the Problem</b>	<b>1 – 21</b>
1.1	History of India	1
1.2	European History	5
1.3	Discrimination against Women : A Statistical Survey	10
1.4	Aims of Research	13
1.5	Objectives of Research	14
1.6	Hypothetical Issues	15
1.7	Scope of the Study	16
1.8	Research Methodology & Collection of Data	17
1.9	Significance of Study	18
1.9.1	International Level	18
1.9.2	National Level	18
1.9.3	Contribution to Knowledge	18
1.10	Abstract of Thesis	19
1.11	Conclusions	21
<b>Chapter - II</b>	<b>Foundational International Instrument and CEDAW -The International Experience</b>	<b>22 – 58</b>
2.1	Significance & Introduction	22
2.2	The Covenant of The League of Nations (1919-1924)	23
2.3	Slavery Convention (1926)	23
2.4	Convention Concerning of Forced or Compulsory Labour (ILO No. 29)	24
2.5	Charter of The United Nations (1945)	24
2.6	Universal Declaration on Human Rights, 1948 : Setting Goals	25

2.7	Convention on the Prevention and Punishment of the Crime of Genocide (1948)	27
2.8	Convention for the Suppression of the Traffic in Persons and of The Exploitation of the Prostitution of Other (1949)	27
2.9	Equal Remuneration Convention, 1951 (No. 100)	28
2.10	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	28
2.11	The Workers with Family Responsibility Convention, 1981 (No. 156)	29
2.12	Protocol Amending The Slavery Convention (1953)	30
2.13	Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery (1956)	30
2.14	Convention Concerning the Abolition of Forced Labour (1957)	30
2.15	Declaration of the Rights of the Child (1959)	31
2.16	United Nations International Convention on the elimination of all forms of Racial Discrimination (1963).	32
2.17	United Nations International Convention on the Elimination of All Forms of Racial Discrimination (1966)	32
2.18	International Covenant on Civil and Political Rights, 1966	33
2.19	International Covenant on Economic, Social and Cultural Rights, 1966	34
2.20	International Convention on the Suppression and Punishment of The Crime of Apartheid (1973)	36
2.21	Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (1981)	36
2.22	United Nations Convention of the Rights of the Child (1989)	37
2.23	Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (1990)	38
2.24	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)	38
2.25	ELIMINATION OF DISCRIMINATION AGAINST	39

	<b>WOMEN – CEDAW - THE INTERNATIONAL EXPERIENCE</b>	
2.25.1	Historical Development of International Law	39
2.25.2	United Nations Organization	41
2.26	The Preamble of the United Nations Charter	43
2.27	United Nations basis a distinct legal personality	44
2.28	General Assembly	44
2.29	Resolution of the General Assembly	45
2.30	General Principles of Treaty	46
2.31	Treaty / Convention	47
2.32	Reservation	50
2.33	Why a Treaty on Women ?	50
2.34	Glimpses of CEDAW	50
2.35	How we can use the convention ?	52
2.36	<b>PREAMBLE OF CEDAW</b>	53
2.37	Significance of Convention	53
2.38	Specific Features of The Convention	54
2.39	CEDAW Committee	56
2.40	Criticism Of The Convention	57
2.41	Conclusion	57
<b>Chapter – III</b>	<b>Discrimination : Lego philosophical Perspective</b>	<b>59 – 115</b>
3.1	Meaning of Discrimination	59
3.2	Experiences of Law Makers	67
3.3	Administrative Experience	68
3.4	Actions on the part of component of the State : The National Commission for Women has reviewed the following law	72
3.5	The Statistical Impact Throwing Light On the Aspects on the efforts made by Judiciary, Law Making Agency, Executives, National Commission For Women, Non Governmental Organizations, Etc.	74
3.6	Comments on the above Statistical Data	76
3.7	Work Participation Rate	77
3.8	Judicial Experience	80
3.9	Conclusion	114
<b>Chapter – IV</b>	<b>Trafficking in women</b>	<b>116 – 135</b>

4.1	Legislative Experience	117
4.2	Usual Reasons for Trafficking of Women	124
4.3	Judicial Experience	125
4.4	Administrative or Executive Experience	131
4.5	International Experiences	133
4.6	Conclusion	135
<b>Chapter - V</b>	<b>Education and Women</b>	<b>136 – 170</b>
5.1	Significance	136
5.2	Girl Child	138
5.3	Legislative Experience	139
5.4	Judicial Experience	142
5.5	Reference of International Instruments in the Judgment	149
5.6	Reference of Administrative Actions in the Judgment	150
5.7	Administrative Experience	155
5.8	Conclusion	168
<b>Chapter – VI</b>	<b>Employment and Social Security of Women</b>	<b>171 – 206</b>
6.1	Introduction	171
6.2	Legislative Experience	173
6.3	Administrative Experience	187
6.4	Self Employment and Women	188
6.5	Governmental Schemes	188
6.6	Institutional Mechanism	192
6.7	Judicial Experience	193
6.8	Profession and Women	199
6.9	Conclusion	201
<b>Chapter – VII</b>	<b>Facets of the Demon – Violence Against Women</b>	<b>207 – 253</b>
7.1	Introduction	207
7.2	Reasons for Domestic Violence	209
7.3	Access to Justice for Children	212
7.4	Child Labour (Prohibition and Regulation) Act, 1986	213
7.5	Child Sex Abuse	216
7.6	Inequality and Discrimination against Minority	219

	Women	
7.7	Rights of Dalit Woman	224
7.8	Domestic Violence	226
7.9	Female Infanticide and Feticide	227
7.10	Sati Prevention Act, 1987	232
7.11	Devdasi System	233
7.12	Rape Cases	235
7.13	Protection of Women against Domestic Violence Act, 2005	240
7.14	Sexual Harassment at Work Place	244
7.15	Practice of Declaring Woman as Witchcraft	242
7.16	Dowry and Cruelty	247
7.17	Abetment to Commit Suicide	249
7.18	Code of Criminal Procedure	250
7.19	The Child Marriage Restraint Act, 1929	251
7.20	The Bondage Labour System (Abolition) Act, 1976	252
7.21	Conclusion	253
<b>Chapter – VIII</b>	<b>Equality in Marriage and Family Laws</b>	<b>254 – 295</b>
8.1	Uniform Civil Code, A Constitution Point of View on Personal Laws	256
8.2	Is the Time Ripe for Code?	263
8.3	Judicial Perspective	265
8.4	Guardianship	268
8.5	Right of Nationality	269
8.6	Freedom for Marriage and Children	269
8.7	Other Rights	270
8.8	Treatment in Family	270
8.9	Succession and Property Rights	271
8.10	Nationality	275
8.11	Right to marry with a Person of Choice	276
8.12	Right to Choose After Marriage	277
8.13	Child Marriage	277
8.14	Polygamy and Monogamy	280
8.15	Compulsory Registration of Marriages	281
8.16	Adoption	282
8.17	Maintenance	283
8.18	Reconciliation	284
8.19	Divorce	285
8.20	Other Concepts	287
8.21	Right to Deny Sexual Relationship	288

8.22	Government Initiatives	289
8.23	Family Courts	292
8.24	General Recommendation No.21 of CEDAW	294
8.25	Conclusion	295
<b>Chapter – IX</b>	<b>Different Dimensions of Human Rights of Women</b>	<b>296 – 322</b>
9.1	Introduction	296
9.2	Health	298
9.3	Government Approach	299
9.4	State Initiatives	299
9.5	The Implementing Agencies	300
9.6	Economic and Social Rights of Women	302
9.7	Rights of Women to Participate in Sports and Cultural Activities	303
9.8	Human Rights of Rural Women	306
9.9	State Initiatives for Rural Women	307
9.10	Political Life and Public Life	309
9.11	Political and Public Life and CEDAW	312
9.12	The impact of the Efforts on All Courts	318
9.13	Conclusion	320
<b>Chapter – X</b>	<b>Reservation, Declaration and Monitoring Mechanism</b>	<b>323 – 354</b>
10.1	Reservation and Declaration of CEDAW	323
10.2	Monitoring Mechanism	338
<b>Chapter – XI</b>	<b>Suggestions to make De Jure Equality into De Facto and Concluding Comments</b>	<b>355 – 407</b>
11.1	Introduction	355
11.2	Government	358
11.2.1	Government (Department of Law)	368
11.2.2	Government (National Commission for Women)	371
11.2.3	Government (Department of Family Welfare)	372
11.2.4	Government (Finance Department)	374
11.2.5	Government (Education Department)	374
11.2.6	Government (Employment Department)	378
11.2.7	Government (Police Department)	379
11.2.8	Government (Medical Sector)	380
11.2.9	Government (Department of Child and Women)	381



	Development	
11.2.10	Government (Health Department)	384
11.2.11	Government (Rural Development Department)	384
11.2.12	Government (Labour Laws Department)	385
11.3	Judiciary	385
11.4	Parliament	388
11.5	Society	399
11.6	Media	400
11.7	United Nations Organization	400
11.8	Non Government Organization	403
11.9	Conclusion	404
	<b>Acronym</b>	<b>408</b>
	<b>Table of Cases</b>	<b>409 – 412</b>
	<b>Bibliography</b>	<b>413 – 417</b>

## CHAPTER - I

# HISTORICAL BACKGROUND AND INTRODUCTION OF THE PROBLEM

*Administration of International Instruments on Human Rights in India to ensure elimination of discrimination against Women with Special reference to CEDAW.*

## **CHAPTER - I**

### **HISTORICAL BACKGROUND AND INTRODUCTION OF THE PROBLEM**

#### **1.1 HISTORY IN INDIA :**

During the period which is known as vedic era, the family system was mainly patriarchal. In spite of the fact, the women were given respect in the society. On examining the social, political and religious conditions prevalent during the vedic period. It is evident that there were outstanding women figures, like Apala, Ghosha and Lopamudra. The story of Apala provides a good example of the independence enjoyed by the Women of that era which runs as under:

“Apala, a charming daughter of Rishi was endowed with fine qualities. Her father got her married. One day her husband called her and asked her to leave his place and to go back at her father’s house on the allegation that she had skin disease—a white spot on elbow and that her father did not reveal the fact of the disease to him. Apala tried to convince him that she did not have any skin disease, but all in vain. The insistence of the husband continued. Apala realised that her husband would not be convinced. Apala thought of appealing village elders and solve her problem, but she thought that it might not work and in

such a case she would have to undergo further humiliation. Apala thought of not to act against her self-respect and that she walked out from her husband's house as she did not choose to live without self-respect even in the house of her own husband. Instead of going back to her father's house Apala had chosen to live independent life with self-respect. She resided in a forest and offered her prayers to Sun God, sat in meditation, reciting verses and mantras she attended the highest point of the devotion. After several years the Sun God appeared before her, the white spot on her elbow had disappeared. The Miracle had deepen the devotion of Apala. She became a great Rishi and was ranked among great and famed Saint like Lopamudra, Bhadra, Vashishta and Vishwamitra. After spreading of the news, her husband came to take her home but, she declined stating that where her self-respect was hurt could never be her home." <sup>1</sup>

Apala is an example which proves the fact that women used to live independently enjoying freedom even in vedic times in our country. Moreover, it also reflects that the notion of men and women are borne equal was prevalent. The notions that a woman has to be dependent on her some or the other male family member and that a woman can not live alone, once her husband rejects or deserts her were not prevalent.

The incident, took place during vedic era, of Rishi Yajna Valkya has also established that women in those days had liberty and were treated equal with men. One of the wife of the Rishi named

---

1. Rashmiben Vyas 'Social Studies' (Std-V) Gujarat State Board of School Text Book, 5th Edition, 2002, pp.3 & 4.

Maitreyidevi had chosen the path of spiritual salvation and wife named Katyayanidevi had accepted the worldly happiness. The notable point is that, that the women had full liberty and equal right like men, even after her marriage to choose the path of life, she likes, which is suggesting that discrimination against women was not the practice of vedic era. <sup>2</sup>

During the era of Epics, which is also known as era of Mahabharat and Ramayan, women were not held in high esteem. The incident of abduction of Sita or the shameful humiliation of the Draupadi in an open court are squarely proving the fact of existence of disgusting discrimination against women and the suffering one had to undergo, on account of the fact that the victims were women.

However, the solace can be searched through the character to Vikarna (none else but the brother of evil Duryodhana) who raised voice of protest against the injustice and violence, and the character of Lord Krishna who came to rescue of Draupadi.

After the era of Epics, it can be seen that several towering personality like Gautam Budha, Mahavir etc, were incarnated. But, the emphasis was on religious preaching and spread of non-violence.

During the age of empires though the leaning was towards welfare of mankind in general, but it can easily be observed on birds', eye view of Indian History that the dignity of women in general, the esteem towards women was lessening down notably. It seems that the India has witnessed numerous episodes of discrimination against women on several aspects.

---

2. Ibid p.9

Summarizing Indian historical Background it is clear that unlike the western counterpart, the Indian woman is a part of a culture which goes back into the past. So a proper assessment of Indian woman today, necessarily involves a brief resume of cultural background of Indian women through ages. Women enjoyed considerable freedom and privileges in the spheres of family, religion and public life in the vedic age but this privileged position was completely changed in the dark ages that followed. Though advent of Buddhism saw a welcome change in women's position in society since it allowed women the freedom, to be educated and to travel as missionaries, it also considered women as evil to be avoided by men. The situation changed for worse with the muslim invasion in the eleventh century and the life of women became insecure and miserable.

Introduction of child marriage, rapid decline of female education and consequent growth of illiteracy, prohibition of widow marriage, the spread of custom of Sati, the prevalence of purdah, increasing demand for dowry and the growing incident of polygamous marriages brought about a general decline in the status and position of women.

In the 18<sup>th</sup> Century, at the dawn of British rule, the position of women in India was in an extremely sorry state. The problem of women received the attention of social reformers right from the beginning of the 19<sup>th</sup> Century. They raised their voice against the then prevailing evil systems like purdah, Sati, child marriage, and enforced widowhood. As a result legal sanctions were given for the removal of caste disabilities, widow remarriage, women's right to property etc. Gradually sati was also prohibited. It has to be noted here that these objectives did not include any

conception of equality in roles between man and woman. Very few reformers thought in terms of women's rights to participate in social functions outside the family frame work.

In spite of the fact that to-day, in India we the awakened part of the society do recognize man and woman as two wheels of the Chariot of life, for numerous various factors sorrow, suffering and subjection have been lamentable lot of Women.

"In India, a rape takes place every 54 minutes, a molestation every 26 minutes, a reported dowry death every 1 hour and 42 minutes and an act of cruelty every 33 minutes." <sup>3</sup>

Wife beating is reportedly wide spread, but fearing of breaking of matrimonial homes, women are hesitant to report battering.

"2 millions girls between the ages of 5 & 15 are introduced in to the commercial sex market each year." <sup>4</sup>

Thus, from the history immemorial times to till the day discrimination against women has remained a black side of the coin in our nation.

## 1.2 EUROPEAN HISTORY :

On viewing the European history and more particularly the history of England, it appears that in England in the year 1100, then in the year 1135, 1136, 1154 and so on and on different Kings had issued solemn charter promising to restore and confirm liberties to its subjects which were all without any consideration for liberty of women. Even internationally well-known Magna Carta of 1215,

---

3. The Times of India, Ahmedabad Edition dtd.30-5-1997, p.1.

4. Ibid p.1

which was having 63 clauses, had also nowhere specifically cared for freedom, equality and dignity of women. Rather a clause reads in the Magna Carta states otherwise.

“No one is to be taken or imprisoned on account of a woman’s appeal touching the death of anyone other than her husband(54)”<sup>5</sup>

The present researcher states that, there appears smell of discrimination against women in the clause.

However, a great solace is Magna Carta had provided as under:

“To no one will we sell, deny, or delay right of justice(40)”<sup>6</sup>

The impact of the Magna Carta was so powerful that whenever liberty seemed in danger, men spoke of the charter as their defense. The great and beneficent influence of Magna Carta in England and in every land across the sea in which, Englishmen have settled has come not from the detailed expression of the feudal relationship between Lord and Man, but from the more general clauses in which every generation could see its own protection and still it has nowhere specified protection of women. In England, the Petition of Right in 1628 and the Habeas Corpus Act of 1679 look directly back to Magna Carta, even when in 17<sup>th</sup> Century America individual states were shaping their own fundamental Laws, the very words of Magna Carta were worked into them. The fundamental rights of man embodied in the federal constitution of 1787 have echoes of the charter. Even as late as 1868 the 14<sup>th</sup> amendment can trace its ancestry to Magna Carta. The word “charter” implies a grant in

- 
5. Encyclopedia Britannica, Vol.14, 'Magna Carta', Encyclopaedia Britannica INC, William Benton, 1972, p.578.
  6. Encyclopedia Britannica, Vol.7, 'The American Declaration of Independence - 4th July, 1776', Encyclopaedia Britannica INC, William Benton, 1972, pp.160-161.



favour of the recipient. It is said that Magna Carta and its centuries of history that have made the word inseparable from the language of freedom had not offered any protection to women as sex.

For a long time, renowned thinkers, crusaders and social transformers did not accept that women have every right to basic rights and freedoms as their male compatriots. Not only that but it seems that they have endorsed the inequalities or injustice to women. Jean Jacques Rousseau, philosopher of the French revolution and ardent advocate of liberty and equality held that ignorance is entirely beneficial to women and that they should be excluded from politics.

The American Declaration of Independence of 4<sup>th</sup> July, 1776 recited that "All men are created equal." The shocking feature of the declaration is that it excluded women from its scope.<sup>7</sup> In August 1789 famous declaration of rights of man and citizen issued by the French national assembly which also had not covered women.<sup>8</sup>

The fact which needs to be noted is that the Magna Carta had its own impact in the history of culture and legal development of the England, America and several other European countries. It is pertinent to note that one can not lay one's hand, on any of the clause of the Magna Carta wherein it can be said that said clause was meant to protect the dignity of women or to grant right of equality, liberty to the women or to grant protection to the women against discrimination of women.

---

7. Encyclopedia Britannica 2005, CD, Article CD No.2, Declaration of Independence.

8. Ibid Declaration of the rights of man and citizen.

Therefore, it can safely be hold that throughout Europe where Magna Carta had its roots the discrimination against women was in existence.

The present researcher wishes to deal with dimensions of domestic violence, sexual harassment, right of birth, right of education, right of self-respect, fundamental freedoms of women, status of women in general, right of employment, dowry deaths, trafficking of women, all possible areas of Indian Laws and Indian women to ascertain the degree of discrimination against women and to suggest the remedies to the problem.

The words which have changed the history of the mankind in the whole world and which have direct nexus with principles of justice and concept of rule of Law were the golden gifts of revolution of France in the year 1789. They are "freedom, equality and fraternity". The three words are even today the great foundations in the constitution of India. It needs to be recorded that even this radical revolution had not granted any specific protection against discrimination to women. In view of the above discussion, it is clear that discrimination against women was so common throughout the world, which has continued till the day.

Literature is mirror of the society. It goes without saying that discriminatory treatment to Women is a worldwide phenomenon. In the last century poet 'Lord Tennison' while distinguishing functions of men and women had written :

*“Man for the field,  
Women for the hearth,  
He with the Sword,  
She with the niddle,  
He with the head,  
She with the heart,  
He to command,  
She to obey.”<sup>9</sup>*

The above words are self explanatory to describe the social situation of women in Europe.

Equal treatment and equality in Law are the cornerstones of the every society having ideals of social justice and human rights. The concepts of equality means much more than treating all persons in the same way. Persons placed under unequal situations can not be treated technically equally. It may add fuel to fire or it may perpetuate injustice rather than eradicating it. The goal of true equality or equality in spirit can rather be achieved by sincere attempts to meet with the situational imbalances. This broader view of equality is kept in the mind while the present research for true recognition and acceptance of the human rights of women.

Discrimination against Women is known to exist in every society and it is clearly affecting fundamental freedoms of women in the political, economic, domestic, social, cultural, civil or any other field like working place.

From cradle to grave there are series of preferential treatments to male – right to take birth, consume food, nutrition, health,

education, employment and other facilities. It can hardly be said that women are considered as person all most all the world over.

### **1.3 DISCRIMINATION AGAINST WOMEN:**

#### **A Statistical Survey**

The Human Development Report 1995 summarized the existing studies on the continuing discrimination against women. Some important information that emerged from this Report is being given here :

- 1 The number of illiterate women is double that of illiterate men.
- 2 Women suffer more than men from malnutrition
- 3 Near 500,000 maternal deaths take place every year in developing countries including nearly 300,00 in Asia and 150,000 in Africa.
- 4 Wage rate are generally lower for women.
- 5 Although women constitute half the electorate they hold only 10% of the seats in the world's parliament and 6% in national cabinets.
- 6 There is widespread legal discrimination against women in property ownership and other matters. In much of Latin America, the law excuses the murder of a woman by her husband if she is caught in the act of adultery.
- 7 Studies in four developing countries suggest/indicate that two-thirds or more of married women have suffered domestic violence.
- 8 Studies in four developing countries suggest that one woman in six is raped in her lifetime.

- 9 The UN High Commissioner for Refugees has reported that almost 80% of the international refugees whom it has assisted were women and children.
- 10 Due to discrimination in health, nutrition and at other levels, more than 100 million women are "missing".<sup>10</sup>

At this juncture let us also look at the Status of Women in India to assess that passage of time has not much assisted in attaining the goals of elimination of discrimination against women in India.

Status of Women in India-Select Indicators <sup>11</sup>				
1991			1951	
Female	Male		Female	Male
927	1000	Sex Ratio Females per 1000 Males	946	1000
58.1	57.7	Life Expectancy at Birth	31.7	32.5
18.3 19.5 (Combined)	23.3 (1981)	Age at Marriage	15.6	19.9
27.2	25.9	Death Rates (0.4 Years)	55.1	51.7
74	73	Infant Mortality Rate(1992)	131	123
324		Maternal Mortality Rate per Lakh live births		468

10. Resource book, Judicial Colloquia on Gender and Law, 2001, National Judicial Academy, p.33

11. Ibid p.36.

1991		1951		
39.19%	64.13%	Literacy	8.86%	27.16%
54.16(2001) 46.4 mm	61.8mm ( '93-'94)	School Enrolment	5.4mm	13.8mm
10.2 to Total		No of Women In Polytechnics	7.4 to total	
22.27	51.61	Work Participation Rate	(1971) 14.22 52.75	
40.27 Lakhs (1993)	14.8%	Women in Organized Sector	(1971) 19.3 Lakhs (11% to total)	
7.5% in 1990	Women in Central Governemnt		1971 in 2.5%	
8% (1999)	Women in Parliament		(1952) 5.47%	

The Key Policies and Programmes undertaken are to suggest the attempt to realize the goal but the fact needs to be noted that it has not helped in securing the desired results. The key policies and programmes are as below:

- 1 "Towards Equality" Report of the Committee on the Status of Women in India, 1974.
- 2 National Perspective Plan for Women (1988-2000).
- 3 Shramshakti - The Report of the National Commission for Self Employed Women and Women in the Informal Sector (1988).
- 4 Country Report, 1995 - prepared for the 4<sup>th</sup> World Conference on Women : Equality, Development & Peace, Beijing 1995.
- 5 "Platform for Action, Five Years After - An Assessment", Year 2000.

- 6 Report of the National Expert Committee on Women Prisoners (1986).
- 7 The National Plan of Action for the Girl Child (1991-2000).
- 8 The National Commission for Women Act, 1992.
- 9 Reservation for Women in Grassroot Level Democratic Institutions (73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments 1993).
- 10 Poverty Eradication Programmes.
- 11 Mahila Samriddhi Yojana (MSY) (1993)
- 12 National Credit Fund for Women (1993) (Rashtriya Mahila Kosh)
- 13 Legal Literacy Manuals (LLms)
- 14 National Policy for the Empowerment of Women, 2001<sup>12</sup>

The present researcher is to look into the aspect of administration of such international instruments made by UN on the Human rights in India and that the present researcher wants to study as to ensure elimination of discrimination against women, the international instrument on human right has had its administration in India and if yes, to what extent, it has been administered in India. Thus, the present researcher wishes to confine the study qua the international instruments made by UN, with reference to CEDAW and its administration in India to ensure elimination of discrimination against women.

#### **1.4 AIMS OF RESEARCH :**

The present researcher submits that in view of the international importance attached to the subject and the scenario at all levels it

---

12. Ibid p.37

was felt that the research needs to be carried out to meet with the following aims.

- 1 To study the different aspects and areas of discrimination against Women in India.
- 2 To study and analysis the administration of international instruments on human rights with special reference to CEDAW.
- 3 To answer the question as to elimination of discrimination against women has been ensured or not?
- 4 To answer as to whether the Laws made in India for elimination of discrimination against Women have achieved its objects ?
- 5 To identify the judicial activism and role of law makers for elimination of discrimination against women.
- 6 To determine the significance of momentum in India to ensure elimination of discrimination against women.
- 7 To ascertain as to the existing Laws in India are sufficient to meet with the objectives of present study ?
8. To critically study the reports produced by India on administration of CEDAW to the CEDAW Committee.

#### **1.5 OBJECTIVES OF RESEARCH :**

*The present researcher decides to conduct the present research to attain following ultimate goals/objectives :*

- 1 To suggest various kinds of remedies for effective administration of CEDAW in India.



- 2 To ascertain as to what revolution India needs to make to achieve the objective of elimination of discrimination against women in India.
- 3 To identify the role of Non Governmental Organizations for Social, Economical, Cultural sensitization of the present society to achieve the main objectives of elimination of discrimination against women.
- 4 To determine as to curb the menace of discrimination against women do India needs to provide more laws or more effective and more purposeful laws?
- 5 To assess as to the role of judiciary while interpreting existing laws and of law making agencies for total elimination of discrimination against women in India.
- 6 To determine as to can the ball be put to motion by sensitizing executor of laws in India.
- 7 To suggest as to by what other methods and modes we can ensure elimination of discrimination against women.

#### **1.6 HYPOTHETICAL ISSUES :**

- 1 Can one enlist aspects and areas of discrimination against women in India ?
- 2 What an analytic study of international instruments more particularly CEDAW on human rights reveals qua the present problem ?
- 3 Qua the present problem, what impact the administration of the CEDAW on human rights of women has ?

- 4 Have we ensured elimination of discrimination against Women in India ? If yes, to what extent ?
- 5 Are existing laws, existing human right momentum, Judicial activism and executive awareness sufficient to meet with the object of elimination of discrimination against women in India ?
- 6 What suggestions, modes, methods and remedies could be made available in the light of the present scenario to achieve the objectives ?

### **1.7 SCOPE OF THE STUDY :**

- 1 The present researcher is conducting the study with numerous objectives mentioned above. It is to cover the broaden aspect of discrimination against Women in India and to determine that whether the administration of International instruments on human rights and more particularly CEDAW has in any manner changed the Scenario in India.
- 2 Secondly, the present researcher is also anxious to enlist suggestions, remedies, methods and mode to effectively meet with the issues. It is needless to state that, it is to cover judicial, executive, social and law making aspects in India.
- 3 This study is not to include primary data which can be obtained by interviewing or by eliciting replies from the victims of discrimination against Women in India.
- 4 The individual instances, may be available through decided Court Cases, are not be analyzed by the present researcher but, the different principles laid down by the

Apex Court have been discussed to find out the extent of administration of CEDAW through Judicial verdicts by the Apex Court of India.

- 5 It is pertinent to note that the limitation of the present study is that at present the conclusion of the study has an academic value only at least until utilized by agencies empowered to implement it.

#### **1.8 RESEARCH METHODOLOGY & COLLECTION OF DATA :**

- 1 The research is to base upon comparative study and analytical study of social, cultural, civil and political life for Indian women and law implementing and interpreting aspects in India after CEDAW.
- 2 Studied women related laws in India including Constitution of India, its reviewing, its amendments, human rights conventions, CEDAW and its allied instruments, etc. collection of data is mainly procured from different reports on implementation to CEDAW.
- 3 The study is based on reference books, journal periodicals, reports, opinions and statistics available on the subject of research. Moreover, the reports tabled by the government of India to CEDAW Committee, report of National Commission for Women as inputs for India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic implementation report on CEDAW, report of Non-Governmental Organizations as alternative report, the concluding comments by CEDAW Committee, the platform for action report etc. have helped the present researcher.

- 4 At the end the suggestion, remedies, modes and methods to be employed to attain the laudable objectives are to be presented as suggestions and conclusion.

## **1.9 SIGNIFICANCE OF STUDY :**

### **1.9.1 INTERNATIONAL LEVEL :**

The study will ensure and deepen the analytical aspects of the subject and will facilitate the CEDAW Committee for making more effective suggestions for better implementation of CEDAW in India. Moreover, it will help securing more effective and purposeful international instruments on human rights for the developing countries like India.

### **1.9.2 NATIONAL LEVEL :**

The study is bound to be of great help and immense use to the nation at large to ensure the elimination of discrimination against women on family front, village front, State level, Nation level, on the social, cultural, domestic, political, public life and at working place also.

The mega object is to build a community of concerned scholars and activists for ushering in a humane and just society.

### **1.9.3 CONTRIBUTION TO KNOWLEDGE :**

The study and its overall outcome would surely contribute a lot in understanding the problem in a true perspective. It is surely to provide a very live link to the future researchers,

law teachers, law students, legislators, social activist, members of the Bar, Bench, Non Governmental Organizations and for any activity of brain storming on the subject in future.

It may also be of immense help to government bodies, social scientists, policy makers, people's and workers' organizations, so as to widen their options for action. The research work may also help in the area of local governance, women's studies and contemporary economic and political issues, at national as well as international level.

#### **1.10 ABSTRACT OF THE THESIS:**

The present researcher submits that the subject of the thesis has been researched basing upon the contribution by the Law Makers and the contribution of the judiciary at the Apex Court, as it is law of the land. Whenever the Apex Court has played dual role while its journey on the part of judicial activism, it has gifted the country what otherwise might not have been possible. In the case of Vishaka Hon'ble Supreme Court took the aid from certain articles of CEDAW and its judgment is to act as law on sexual harassment until law is made by the Law Maker on the subject. The present researcher has therefore, researched also keeping in the centre the development and progress made by India on the aspect of administration of CEDAW in India through the judgments of the Apex Court.

In view of article 18 of the CEDAW state parties to submit the action taken report on the legislative, judicial, administrative or other measures adopted to give effect to the provisions of the

CEDAW and the progress made on it on every four years. In view of it India has submitted its initial report to UNO in the year 1998 which was reviewed by CEDAW committee in January 2000. The second and third report on implementation of CEDAW is for the period of 1997-2005 which has also been submitted. Inputs for India's second periodic implementation report to CEDAW has been drawn by National Commission for women. Alternative Non Governmental Organization report on CEDAW has been submitted to the CEDAW Committee.

In view of all above the present researcher has thought it fit to divide the thesis into following Compartments.

1. Historical background of the problem and synoptic survey.
2. Foundational international instruments and CEDAW – the international experience.
3. Discrimination : Lego philosophical perspective.
4. Chapter IV onwards, different chapters on different aspects of CEDAW like trafficking, marriage, family laws, public and political life, health, social security & employment, education etc. and Violence against women.
5. Concluding Suggestions.

The research would be carried out mainly upon the above referred compartments and the division of sub topics. The concluding part would based on the innovative suggestions with sole objective to suggest ideas to implement CEDAW in India in still more effective way which is the need of the day.

**1.11 CONCLUSIONS:**

The present researcher shall enlist all the suggestions, remedies etc., by way of suggestions and conclusions in the last chapter.

## **CHAPTER – II**

# FOUNDATIONAL INTERNATIONAL INSTRUMENTS AND CEDAW - THE INTERNATIONAL EXPERIENCE



## CHAPTER – II

### FOUNDATIONAL INTERNATIONAL INSTRUMENTS AND CEDAW – THE INTERNATIONAL EXPERIENCE

#### 2.1 SIGNIFICANCE & INTRODUCTION :

**“Women constitute half the world population, perform nearly two thirds of work hours, receive one-tenth of the world’s income and own less than one hundredth percent of World’s property”**

**–A report of The united Nations 1980 <sup>1</sup>**

After the second world war, situation throughout the world was improving but, still the whole global has felt it necessary to have some measures by which universal peace can be agreed upon. Because of the injury caused on account of war, it was almost unanimously decided that it is now high time when the world should agree to certain international instruments of human rights. More particularly, to provide security and safety to marginalized section of society. In this chapter we are to make a small journey of foundational international instruments which are very important and can be termed as foundational instruments of human rights. The mention of the international instruments is made over here keeping in the centre the subject of research. The international instruments taking care of welfare, uplifting, development, security and rights of women in general are narrated over here.

---

1. G.B.Reddy, Women and the law, Gojia law agency 2<sup>nd</sup> (ed.) 1998 p.1.

## 2.2 THE COVENANT OF THE LEAGUE OF NATIONS (1919 - 1924)<sup>2</sup>:

The Covenant is the route from which present United Nations Organization came into being. In order to promote international cooperation and to achieve international peace and security by the acceptance of obligations of not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct amongst governments, and by the maintenance of justice and scrupulous respect for all treaty obligations in the dealings of organized people with one another, this Covenant was agreed upon.

It had 26 Articles. The Covenant was originally drafted by US President Woodrow Wilson and submitted on 14/02/1999.

## 2.3 SLAVERY CONVENTION (1926)<sup>3</sup>:

Declaration of the Signatories of the General Act of the Brussels Conference of 1889-90 having intention to put an end to the traffic in African Slaves. The signatories of the General Act of the Brussels conference of 1889 – 90, have affirmed their intention of securing the complete suppression of slavery in all its forms and of the slave trade by land and sea. It was based on the report of the temporary slavery commission appointed by the council of the League of Nations on June, 12, 1924.

It was to complete and to extend the work accomplished under the Brusails Act and to find a means of giving practical effect throughout the world to such intentions as were expressed in regard to slave trade and slavery by the signatories of the Convention of St.

---

2. Executed on 14<sup>th</sup> February, 1919

3. Done at Geneva, 25<sup>th</sup> September, 1926 at League of nations.

German EN Laye and recognizing that it is necessary to conclude to that and to more detailed arrangements then are contained in that Convention.

#### **2.4 CONVENTION CONCERNING FORCED OR COMPULSORY LABOUR (ILO NO.29)<sup>4</sup> :**

The General Conference of the International Labour Organization had convened at Geneva by the Governing Body of the International Labour Office. In its 14<sup>th</sup> sessions on 10<sup>th</sup> June 1930 it has decided adoption of certain proposals with regard to forced or compulsory labour.

#### **2.5 CHARTER OF THE UNITED NATIONS (1945)<sup>5</sup> :**

After the sad experiences of two world wars and after having witnessed untold sorrow and unforgettable scourge of wars the united wisdom of the mankind is reflected in the Charter. This Charter is the determination of peoples of the United Nations to establish an international organization with several purposes for and promises to a succeeding generations : to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and it is also to employ international machinery for the promotion of the economic and social advancement of all peoples.

---

4. Convened at Geneva by the Governing Body of ILO in its 14<sup>th</sup> Session on 10<sup>th</sup> June, 1930. Adopted at Geneva on 28<sup>th</sup> June, 1930.

5. Resolution of the Representative of Different Governments when they assembled in the City of San Francisco and have agreed to the Charter of United Nations.

## 2.6 UNIVERSAL DECLARATION ON HUMAN RIGHTS, 1948<sup>6</sup> : SETTING GOALS

In this declaration, the Preamble is written with the opening words as under:-

“Preamble. — Whereas 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.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas, it is essential to promote the development of friendly relations between nations.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to

---

6. Adopted and proclaimed by General Assembly Resolution No.217 A(iii) on 10<sup>th</sup> December, 1948. Referred here as UDHR, 1948.

promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedom is of the greatest importance for the full realization of this pledge.”

The declaration entitles everyone to all the rights and freedoms set forth in the declaration without distinction to any kind including sex, etc. birth or other status.<sup>7</sup> No one shall be subjected to torture and or to cruel, inhuman or degrading treatment, ETC.<sup>8</sup> It also speaks of Equality before Law.<sup>9</sup> It Spells on the right of everyone to nationality and the protection against arbitrarily deprivation of one’s nationality.<sup>10</sup> It recognizes the right of men and women to marry with their free and full consent as intending spouses.<sup>11</sup> It also throws light on everyone’s right to freedom of opinion.<sup>12</sup> It honours everyone’s right to social security and right to work with just and favourable conditions of work without any discrimination.<sup>13</sup> It also accords right to security to women in the event of widowhood and right to special care and assistance during motherhood.<sup>14</sup> At the end it deals with the heart of all rights i.e. ensuring elementary education as compulsory feature.<sup>15</sup>

---

7. Article 2 of UDHR, 1948.

8. Ibid Article 5.

9. Ibid Article7.

10. Ibid Article15.

11. Ibid Article16.

12. Ibid Article10.

13. Ibid Article22 & 23

14. Ibid Article 25

15. Ibid Article 26.

In view of the above referred Preamble and specific Articles mentioned above, it is crystal clear that the global readiness of waging war against discrimination against women was more than clear because had it not been so, the declaration as has come up in 1948 would not have come up. On viewing the language and more particularly insertion of assurances and guarantee which is clearly suggesting the path of progressive ideology the global had started traveling. In the history of universe this declaration shall have to be treated as beginning of an Era to Equality and beginning of an age to eliminate discrimination against women.

## **2.7 CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (1948) <sup>16</sup> :**

Genocide means killing members of some group, causing serious bodily or mental harm to the members of the group, imposing measures prevented to give birth within the group, forcibly transferring children of the group to another group, etc. Genocide, conspiracy to commit it, attempt to commit it, etc. are the acts punishable. This Convention is to recognize the fact that at all periods of history genocide has inflicted great losses on humanity. By this Convention is an attempt is made to liberate the mankind from most unpardonable heinous act against humanity by seeking international cooperation.

## **2.8 CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHER (1949) <sup>17</sup>:**

As such, for the suppression of the traffic in women and children, following instruments are in force :

---

16. Declaration made by the General Assembly of the United Nations in its Resolution 96 (1) dated 11<sup>th</sup> December, 1946.

17. International Agreement of 18<sup>th</sup> May, 1904. Amended by the Protocol, approved by the General Assembly of the United Nations on 3<sup>rd</sup> December, 1948.

1. International Agreement of 18/05/1904 for the suppression of the white slave traffic.
2. International Convention of 4<sup>th</sup> May, 1910 for the white slave traffic.
3. International Convention of 30<sup>th</sup> May, 1921 for the suppression of the traffic in women and children.
4. International Convention of 11<sup>th</sup> October, 1933 for the suppression of traffic in women of full age.

The main object of the present Convention is to punish any person who procures, entices or leads away another persons, may be with the consent of that person, for the purposes of prostitution and to gratify the patience of another.

#### **2.9 EQUAL REMUNERATION CONVENTION, 1951 (NO.100) <sup>18</sup>:**

The Convention has taken form of an international Convention at Geneva as, certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value was adopted by the governing body of the International Labour Organization in its 34<sup>th</sup> Session on 6<sup>th</sup> June, 1951.

#### **2.10 DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO.111) <sup>19</sup> :**

Discrimination constitutes a violation of rights enunciated by declaration of human rights. While considering declaration of Philadelphia it was affirmed that all human beings in respective of race, creed or sex have the right to pursue both their material well being and spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. Certain

---

18. Adopted on 29<sup>th</sup> June, 1951 by the General Conference of the ILO. Entry into force 23<sup>rd</sup> May, 1953.

19. Adopted on 25<sup>th</sup> June by the Genera Conference of the ILO at its forty second session. Entry into force : 15<sup>th</sup> June 1960, in accordance with Article8.

proposals with regard to discrimination in the field of employment and occupation, this Convention came into being.

### **2.11 THE WORKERS WITH FAMILY RESPONSIBILITY CONVENTION, 1981-(NO.156)<sup>20</sup> :**

The 14<sup>th</sup> paragraph of the Preamble of the United Nations Convention on the elimination of all forms of discrimination against women, 1979 is to the effect that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women. Equality of opportunity and treatment for men and women, need of appreciating the problems of workers with family responsibility while making national policy, need to create effective equality between men and women workers with family responsibility etc. are the based thoughts and ideas to make the Convention a reality. Workers with family responsibility if the convention which is as such, concerning equal opportunities and equal treatment for men and women workers with family responsibility which was adopted by the International Labour Organization on 23<sup>rd</sup> June, 1981.

These and many more Conventions, Recommendations and Declarations are concerned with setting up International Labour Standards concerning women workers. There are certain Conventions offering social security protection for women in pregnancy and child bearing wherefrom, the concept of maternity leave was evolved as the women are entitled to financial benefits and medical care. Some among them are the Maternity Protection Convention, 1990 (No.3) and the Maternity Protection Convention (Revised), 1952 (No.103, The Night Work (Women) (Revised) Convention, 1948 (No.89) which was to prohibit women working in

---

20. Adopted by the International Labour Conference on 23<sup>rd</sup> June, 1981. Entry into force : 11<sup>th</sup> August, 1983.



industrial undertakings at night. The 1990 protocol to the Convention exempt from the prohibition of night work. The Night Work Convention, 1990 (171) approaches the subject of night work without regard to the gender.

#### **2.12. PROTOCOL AMENDING THE SLAVERY CONVENTION (1953) <sup>21</sup> :**

The duty and functions assigned to League of Nations under the Slavery Convention, signed at Geneva were decided to be continued by United Nations Organization in the Protocol and this Protocol is specially meant to amend the earlier slavery convention as the title itself suggests.

#### **2.13 SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY (1956) <sup>22</sup> :**

Freedom is the birth right of every human being and hence no one shall be held in slavery or servitude and that slavery and the slave trade needs to be prohibited in all its form. It was felt that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world. In spite of the Convention of 1926, an International effort towards the abolition of slavery, the slave trade and institutions and practices similar to slavery were not eliminated in to. It is for that reason this supplementary convention was found necessary.

#### **2.14 CONVENTION CONCERNING THE ABOLITION OF FORCED LABOUR (1957) <sup>23</sup> :**

While considering the question of forced labour and in view of the provisions of the forced labour convention 1930 and keeping in the

---

21. Done at the Headquarters of United Nations, New York on 7<sup>th</sup> December, 1953.

22. Done at the European Office of the United Nations at Geneva, 7<sup>th</sup> September, 1956.

23. Proclaimed by General Assembly Resolution 1386 (XIV) of 20<sup>th</sup> November, 1959.

centre the fact that Slavery Convention 1926 provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that in view of the fact that it is necessary to pay wages regularly and any methods of payment which deprive the worker of a genuine possibility of terminating his employment needs to be prohibited. This Convention was necessitated and thus, the General Conference of the International Labour Organization has agreed upon to abolish forced labour by agreeing to the Convention.

#### **2.15 DECLARATION OF THE RIGHTS OF THE CHILD (1959) <sup>24</sup> :**

The Child by reasons of his physical and mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth. Such special safeguards have been stated in the Geneva Declaration of the rights of the child of 1924 and for the welfare of children such rights are even recognized in the Universal Declaration of Human rights. It is our duty to provide a happy childhood and enable a child to enjoy for his own good and for the good of society the rights and freedom set forth in the Declaration. The parents men, women and individual as well as voluntary organizations, local authorities, and national governments are required to recognize rights of children and strive further observance by legislative and other measures which needs to be progressively taken in accordance with the principles laid down in the Declaration.

---

24. Proclaimed by General Assembly Resolution 1386 (XIV) of 20<sup>th</sup> November, 1959.

**2.16 UNITED NATIONS INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1963)<sup>25</sup> :**

Any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous and that there is no justification for racial discrimination either in theory or in practice. Although, international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world continues nonetheless to give cause for serious concern. All forms of racial discriminations, prejudice of racial superiority or racial hate rate besides constitution a violation of fundamental human rights tend to jeopardize friendly relations among people, cooperation between nations and international peace and security. As racial discrimination harms not only those who are its objects but also those who practice it the declaration was proclaimed to built a world society free from all forms of racial segregation and discrimination, factors which create haterate and divisions among men, is one of the fundamental objectives of the united nations, in view of the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations.

**2.17 UNITED NATIONS INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1966)<sup>26</sup> :**

With a view to implement the principles embodied in the United Nations Declaration in the elimination of all forms of racial discrimination to secure the earlier adoption of practical measures, the discrimination between human beings on the grounds of race, colour or ethnic origin is since an obstacle to friendly and peaceful

---

25. Proclaimed by General Assembly Resolution 1904 (XVII) of 20<sup>th</sup> November, 1963.

26. Opened for signature at New York on the 17<sup>th</sup> March, 1966 and signed by the Authorized signatories of the respective Governments.

relations among nations and is capable of disturbing peace and security among people and the harmony of persons living side by side even within one and the same state and the existence of racial barriers is repugnant to the ideals of any human society the convention was signed by its signatory.

## 2.18 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966<sup>27</sup>:-

The Covenant that has undertaken to respect and to ensure all individuals the rights recognized in the Covenant without distinction of any kind of sex, birth or other status.<sup>28</sup> It ensures the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.<sup>29</sup> As it bars discrimination solely on the ground of sex, birth or other status.<sup>30</sup> It is to assure every human being the inherent right to life and restriction to impose the sentence to death on pregnant woman.<sup>31</sup> Sues an injunction stating therein that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or to .....<sup>32</sup> It is to make it clear that no one shall be subjected to unlawful attacks on his honour or reputation.<sup>33</sup> The later articles are respectively with reference to the right of men and women to marry with free and full consent and it is ensuring equality of rights and responsibility of spouses, right to every child of protection without any discrimination as to sex, etc. and right of the citizen without any unreasonable restriction to take part in public affairs, to vote, etc.<sup>34</sup> It is with reference to the declaration that all persons are equal before the law and are entitled without discrimination to the equal protection of the law and protection against discrimination on any ground as sex, birth or other status.<sup>35</sup>

27. Referred here as ICC, 1966

28. Article 2 of ICC, 1966

29. Ibid Article 3

30. Ibid Article 4

31. Ibid Article 6

32. Ibid Article 7

33. Ibid Article 17

34. Ibid Arts. 23, 24, & 25

35. Referred here as ICC, 1966, Article 66

The above-referred articles are categorically clarifying the situation prevalent at the international level on the aspect of protecting the women as a class against any discrimination and guaranteeing civil and political rights of everyone including women which would mean that protection against any distinction on the aspect of sex. This Covenant along with the Covenant of Economic, Social and Cultural Rights, 1966 have granted a very clear sky without any clouds whatsoever in favour of women to travel freely on the path of progress.

**2.19 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966:<sup>36</sup>**

“Preamble.— The State Parties to the present Covenant;

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family in the foundation of freedom, justice and peace in the world;

Recognizing that, these rights derive from the inherent dignity of the human person;

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights;

---

36. This is a Covenant which is adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December, 1966. Entry into force on 3<sup>rd</sup> January, 1976, in accordance with Article 27.

Considering the obligation of States under the charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms;

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in the present Covenant;"

It guarantees exercising of the right without discrimination of any kind as to sex, etc.<sup>37</sup> It honours equal right to man and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.<sup>38</sup> It emphasizes on equal pay for equal work, equal opportunity to everyone for promotion only on consideration of seniority and competence.<sup>39</sup> The later articles speak of right of everyone to social security and reorganization of widest possible protection, assistance to the family, free consent in marriage, and special protection to mothers during and / or after child's birth.<sup>40</sup> It assures everyone to an adequate standard of living inclusive of food, clothing, housing, etc.<sup>41</sup> It talks on the right of everyone to education with the main feature of primary education to be compulsory.<sup>42</sup> They recognize right for everyone to take part in cultural life, to take part in conducting of public affairs, to vote to have access to public services, etc.<sup>43</sup>

This Covenant like the earlier discussed Covenant has sincerely attempted to provide for equal and effective upliftment for women as a class. It is this covenant which has categorically recognized

---

37. Ibid Article3.

38. Ibid Article7.

39. Article 7 of ICESCR, 1966.

40. Ibid Article 9,10 & 11.

41. Ibid Article11.

42. Ibid Article13.

43. Ibid Article 15 & 25

equal right of women in the economic sphere along with in the social and cultural spheres.

**2.20 INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID (1973) <sup>44</sup> :**

Declaration on the granting of independence to colonial countries and people, in which the general assembly stated that the process of liberation is irresistible and irreversible and that, in the interest of human dignity, progress and justice, an end must be put to colonization and all practices of segregation and discrimination associated therewith are kept into consideration is the gist of this Declaration. Observing that the general assembly of the United Nations has adopted a number of resolutions in which the policies and practices of apartheid are condemned as a crime against humanity. It was emphasized that apartheid and its continued intensification and expansion seriously disturbed and threatened international peace and security. An international Convention on the suppression and punishment of the crime of apartheid would make it possible to take more effective measures at the international and national level with a view to the suppression and punishment of the crime of apartheid.

**2.21 DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (1981) <sup>45</sup> :**

The principles of non discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief along with the dignity and equality being inherent in all human beings, the basic principle of good governance with an object to promote understanding, tolerance and respect in matters relating

---

44. Adopted and opened for signature, ratification by General Assembly resolution 3068 (XXVIII) of November, 1973, entry into force 18<sup>th</sup> July, 1976, in accordance with Article XV.

45. Proclaimed by General Assembly Resolution 36/55 of 25 November, 1981.

to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible this declaration was shown daylight. It was resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief.

## **2.22 UNITED NATIONS CONVENTION OF THE RIGHTS OF THE CHILD (1989)<sup>46</sup>:**

The family as the fundamental proof of the society and the natural environment of growth and well being of all its members and particularly children should be afforded the necessary protection and assistance so that it can fully assume its responsibility within the community. The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. Recognizing the importance of international cooperation for improving the living conditions of children in every country in the developing countries, this Convention was necessitated. The Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster, placement and adoption nationally and internationally, the United Nations Standard Minimum Rules for the administration of Juvenile Justice (The Beijing Rules) and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict this Convention was found utmost necessary by the United Nations.

---

46. United Nations Convention on the Rights of the Child (1989).



**2.23 SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY (1990)<sup>47</sup>:**

This Second Optional Protocol to the International Covenant on Civil and Political Rights was brought into being with a sole aim to abolish the death penalty as it being inhuman penalty and it being clear violation of human rights. This was adopted by a Resolution at the New York at the Headquarters of United Nations Organization.

**2.24 DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES (1992)<sup>48</sup>:**

United Nations plays several important roles in different segments of life of the human being, one of which is to take care and to adopt necessary measures for the protection of rights of minority. The constant promotion and realization of the rights of person belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of the society as a whole and within a democratic frame work is based on the rule of law. This would contribute to the strengthening of friendship among people and States more particularly those who belong to minority. The need to ensure even more effective implementation of international human rights to instruments with regard to rights of persons belonging to national, ethnic, religious or linguistic minorities were emphasized by the signatories of the Declaration and that this Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities was proclaimed at the General Assembly of UNITED NATIONS ORGANIZATION to protect human rights of the minority.

---

47. Adopted by resolution 44-128 1 of 15 Dec., 1989 at the Forty-fourth session of the General Assembly of the United Nations and is open for signature at the United Nations Headquarters in New York by all States having signed the International Covenant on Civil and Political Rights.

48. Adopted by General Assembly resolution 47/135 of 18<sup>th</sup> December, 1992.

## 2.25 ELIMINATION OF DISCRIMINATION AGAINST WOMEN – CEDAW - THE INTERNATIONAL EXPERIENCE

### 2.25.1 HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW :

While doing research on the subject, the administration of International Instruments on Human Rights in India needs to be studied and more particularly CEDAW the brain child of UNITED NATIONS ORGANIZATION requires specific emphasis. As is well known, UNITED NATIONS ORGANIZATION has a close relationship in establishing, interpreting and emphasizing the human rights throughout the world. International Law is the main source which has created UNITED NATIONS ORGANIZATION and while taking care of the human rights as custodian and protector of human rights, UNITED NATIONS ORGANIZATION has executed numerous International Documents and therefore, international experience with close walk with the International Law needs to be analyzed.

Mutual relations of states during ancient periods were governed by certain rules based on the law of nature. Jews, Greeks, Romans and Hindus had practiced rules relating war and peace.<sup>49</sup>

Grotius (born in 1583 in Holland) - a great jurist from Holland, known as Father of Law of Nations (now International Law) has given theory of Natural Law, Just War and Unjust War, Freedom of Sea, Right and Duties of Individuals and of States, the Law of Universal State, succession and the concepts of good faith of treaties (PACTA SUNT SERVANDA) and of admissibility of avoidance of treaty applications consequent upon drastic changes in the original circumstances coupled with the principle that the international law regulates the relation between the sovereign status not only in time of peace but also in time of war.<sup>50</sup>

---

49. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.), 1999, p.31

50. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.) 1999, p.33

The expression 'International Law' and 'Law of Nations' are synonymous and are equivalent terms.<sup>51</sup>

International Law provides rights and duty for individual and is meant for the people throughout the world. International Law is ever changing - the requirement of the people living in this universe. The question as to the status of the international law has been replied by many jurists and authors.<sup>52</sup>

“One view is that International Law is not a true law. It is a code of rules, of conduct, of moral, force only. Another view is that international law is a true law and it is to be regarded as law in the same way as that of ordinary laws of a state which are binding upon the individuals. The reality is that, that the answer of the above question depends, in a major measure upon as to what is the definition of the term law. It alone would decide whether international law is a true law or not.”<sup>53</sup>

Even Ancient Indian literature particularly, *Manusmriti*, Kautilya's *Arthshastra*, *Ramayana* and *Mahabharata* lay down various Rules which are akin to modern International Law, and they were followed by the Rajyas in practice.<sup>54</sup>

U.N.O. : As is known United Nations Organization plays important role as protector, guarantors and creators of human rights for the human race of world. United Nations Organizations, shortly known as UNITED NATIONS ORGANIZATION has taken care of rights of women, children, labourers and suppressed and

---

51. Ibid p.1.

52. Ibid p. 2.

53. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.)1999, p.6

54. Ibid p.31.

oppressed class of the society through different treaties, conventions etc.

Previously the international law or the law of nations had only one sanction which was in form of war and reprisals which was resulting in destructions of numerous human lives. At present there are sanctions by the states through self help and collective sanctions through international organizations like United Nations Organization.<sup>55</sup>

Besides the United Nations, specialized agencies of the United Nations such as I.L.D., ICAD, World Health Organization, IPO and ITO have also been authorized to take action in accordance with the provisions of their constitutions against the state which fails to perform the obligation contained therein.<sup>56</sup>

It is submitted that although answer of the question as to whether there is any sanction in international law lies definitely in affirmative, it may be said that it is not as effective as one finds in the Municipality Law.<sup>57</sup>

### **2.25.2 UNITED NATIONS ORGANIZATION :**

On the failure of the League of Nations on the one hand and the horror and ruthless destruction caused by the Second World War on the other hand disturbed many minds especially in Allied countries. They expressed the desire to establish peace even when the War was in progress.<sup>58</sup>

In 1941 the efforts started which resulted in creation of United Nations Organization on 24/12/1945. The brief history is as under:-

---

55. Ibid p.13.

56. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.)1999, p.14

57. Ibid p.14.

58. Ibid p.315.

**“DECLARATION OF ST. JAMES PALACE (1941)**

On 12/06/1941 the representative of different countries met at St. James Place and signed a London Declaration.

**ATLANTIC CHARTER (1941) :**

On 14/08/1941, the American President, Roosevelt and British Prime Minister Churchill met 'somewhere at sea'. The joint declaration is known as Atlantic Charter.

**UNITED NATIONS DECLARATION (1942) :**

The United Nations Declaration (1942) was signed by President Roosevelt, Prime Minister Churchill, U.S.S.R and China. Next day, 21 other nations and later on 21 States adhered to this declaration. The declaration was based on the Atlantic Charter which had certain common principles in the national policies for a better future of world.

**MOSCOW DECLARATION (1943) :**

The attempt of creating a world in which 'men in all lands may live out their lives in freedom from fear and want.' On 30/10/1943 Moscow Declaration was signed for the maintenance of international peace and security.

**TEHRAN DECLARATION (1943) :**

On 01/12/1943, Tehran Declaration (Iran) was signed for international peace.

**DUMBARTON OAKS CONFERENCE (1944) :**

On 07/10/1944 a proposal for the structure of the world organization was submitted to all the United Nations government and to the people of all countries for the organization to be known as United Nations which shall have four principal bodies. They shall be General Assembly, Security Council, the International Court of Justice and a Secretariat.<sup>59</sup>

The conference held on 11/02/1945 decided preventing future war.

**SAN FRANCISCO CONFERENCE (1945) :**

It is known as the United Nations conference of international organizations which was consisted of delegates of 50 nations which met on 25/04/1945.

The United Nations came into existence on 24/10/1945 upon ratification of the Charter by 29 of the signatories including the 5 permanent members of the Security Council. It is to be noted that the name of the organization 'United Nations' was taken from declaration of the United Nations and adopted in tribute to the memory of Roosevelt, who justified it.<sup>60</sup>

**2.26 THE PREAMBLE OF THE UNITED NATIONS CHARTER :**

The Preamble of the United Nations Charter set forth the basic importance of the United Nations which are (a) to save succeeding generations from scourge of war, (b) to re-affirm faith in fundamental human rights; (c) to establish justice and respect for

---

59. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.) 1999, p.316

60. Ibid p.317.

international obligations; and (d) to promote social progress and better standard of life.<sup>61</sup>

## **2.27 UNITED NATIONS BASIS A DISTINCT LEGAL PERSONALITY :**

The achievement of the United Nations are as under :

Avoidance of Third World War.

Promotion of protection of human rights.

Decolonization.

Universalisation (Founder Member, 1951 States, Now 185 States)

Conclusion of Conventions and Treaties (over 300 treaties and conventions have been concluded under the auspices of the United Nations.

Thinking for the 3<sup>rd</sup> Generation.

Economic, Social and Cultural Development – eradication of penalty, illiteracy, unemployment, population control, health and food are some of the areas which have been covered by large number of specialized agencies of the United Nations.

Respect for International Law. (Work for International Court of Justice, a principle organ of the United Nations and codification of international law are major achievements).

## **2.28 GENERAL ASSEMBLY :**

General Assembly is one of the principal organs of the United Nations.<sup>62</sup>

---

61. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.) 1999, p.318

62. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.)1999, p.346

## 2.29 RESOLUTION OF THE GENERAL ASSEMBLY :

The Resolution of the General Assembly of the United Nations do not possess legal character and as such are not binding on the States. They do not create any legal obligations on its members in respect of the fact that they have been adopted unanimously or by overwhelming votes or even if the contents of it is a matter of common interest for all the States. <sup>63</sup>

At present there is a difference of opinion between the western and 3<sup>rd</sup> World War Countries regarding the competence of the resolutions of the General Assembly in creating customary rules of International Law. Third World War Countries are of the view that these resolutions constitute the expression of the will of the international community, and therefore, they themselves have a capacity to form custom and the declaration of general principle of law. General Assembly performs the functions of law making. Such resolutions are the universal declarations of Human Rights of 1948, The Declaration on the Prohibition on the use of Nuclear Weapons for War proposes of 1961, etc. By making international agreements and commanding them for signature and ratification through the normally treaty making practices of the States and making treaty through subsidiary law making bodies such as the International Law Commission and the United Nations Commission and the United Nations Commission on International Trade Law (UNCITRAL), the General Assembly of United Nations performs the functions of law making. International community must take into considerations such as laws made by the assembly at the time of determination of law. <sup>64</sup>

---

63. Ibid p.28

64. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.) 1999, p.30



It is the treaties / conventions which creates right of the people and obligations to be discharged by the member nations / states of the United Nations Organization. Let us understand the important terminologies used in international law.

### 2.30 GENERAL PRINCIPLES OF TREATY :

“PACTA SUNT SERVANDA : PACTA SUNT SERVANDA means that states are bound to fulfill in good faith the obligations assumed by them under treaties to carry obligations in good faith arising from treaties is one of the duties of the state.<sup>65</sup>

Free consent of the parties - The treaty shall be binding only upon those states which have given their consent. The consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments, constituting a treaty, ratification, acceptance, approval or accession or by any other means if so agreed. The treaty shall be void if free consent has not been obtained of the State.

In modern days, codifications of international laws are through international organizations are created on the basis of international agreement (charter, statute or other constituent instruments) for certain specific task and therefore, they are the accessions of state for performance of specific function. International organization are the accession of states and therefore, some times they are also known as Inter-Governmental

---

65. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.) 1999, p.289

Organizations (IGOs) whose members are official government delegates of states." <sup>66</sup>

"It is to be noted that the charter of the Hindu Nations is the principle source of the law of international organizations which lays down general principles and norms related not only to the Hindu nations, but, also to other international organizations.<sup>67</sup>

The legal capacity of international organizations, like that of individual foreign states, derives from instituting treaties and from general International Law."<sup>68</sup>

### 2.31 TREATY / CONVENTION :

Treaties are agreements between two or more states or between other subjects of international law by which they create or intend to create a relationship between themselves. <sup>69</sup>

The term treaty means a written agreement by which two or more states or international organizations create or intend to create a relation between themselves operating within the sphere of international law.<sup>70</sup>

"Treaty may be called a treaty but, at the same time, a variety of other names may be attributed to the term such as convention, agreement, protocol, declaration, agreements, accord, additional articles, aide memorie, code communiqué, compact, contract, instrument and optional clause." <sup>71</sup>

"Historically, treaties are the second source of international law, they develop as means whereby states could give to

---

66. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth Edition, 1999, p.302

67. Ibid p.304.

68. Ibid p.305.

69. Ibid p.21.

70. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.)1999, p.278.

71. Ibid p.278

rules for their mutual conduct a greater particularity than was provided by custom."<sup>72</sup>

As such there exists no body accepted by all states to make law applicable to the whole international community. Whereas, in a state there are law making agencies like Parliament in India to make laws applicable within the state. As such there are no formalities or the steps which are common in all the states of the world to make law. As against that for the formation of treaties which abides the states which are parties to it have certain steps for formation of treaties.<sup>73</sup>

Step - 1 : Accrediting of Persons by the Contracting States - It is through appointment of the representatives by the state.

Step - 2 : Negotiations - The accredited persons of contracting states proceed for negotiations.

Step - 3 : Adoption of the text - The states settle its form and content by drawing up a text setting out its provisions.

Step - 4 : Signature - After the adoption of text of treaty is required to be signed by the accredited representatives of the states. The effect of signature of a treaty may be different from treaty to treaty. It depends on whether or not the treaty is subject to ratification, acceptance or approval.<sup>74</sup>

Step - 5 : "When a treaty signed by the representatives of the state is confirmed by the state the said act of confirmation is called ratification."<sup>75</sup>

---

72. Human Rights Year Book, 1999, International Institute of Human Rights Soc., p.126.

73. Ibid p.283

74. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.)1999, p.284

75. Ibid p.285.

"Ratification is defined in the Vienna convention on the law of treaties 1969 as the international act so named whereby a state establishes on the international plane its consent to be bound by a treaty.<sup>76</sup>

The purpose of ratification is to give an opportunity to the state who are signatories to re-examine and review the treaty. Normally the signature on the treaty would mean that the signing state accepts it but, the ratification would grant a breathing time to the state which is required to amend its own laws if so required along with creating a public opinion in favour of the spirit of the treaty. However, in view of the concept of state sovereignty, the state can also review to ratify. However, in between the period of signature and ratification, the state is under a duty not to do any act which is likely to deter the object and purpose of the treaty.<sup>77</sup>

Different countries have different modes of ratification, "in India, the President ratifies the treaty on the advice of the Central Cabinet."<sup>78</sup>

Step - 6 : Accession - Adhesion : The state which is not a signatory can also become a party to a treaty by accession even without ratification. 'The act of accession therefore, includes signature as well as ratification.'<sup>79</sup>

---

76. A Human Rights Year Book, 1999, p.128.

77. A Human Rights Year Book, 1999, p.286.

78. Ibid p.286.

79. Dr. Agrawal H.O. 'International Law & Human Rights'. Central Law Publication, Vth (ed.) 1999, p.287.

Step - 7 : Entry into Force - This is in accordance with the provisions mentioned in the treaty.

Step - 8 : Registration and Publication - The treaty is required to be registered with the Secretary General of the United Nations after it has come into force.<sup>80</sup>

### **2.32 RESERVATION :**

When a state accepts a part of a treaty and thereby excludes the legal effect of certain provisions of the treaty in its application, it is known that the state has accepted a treaty with reservation.<sup>81</sup>

The state may accept a treaty subject to certain conditions unless the reservation is prescribed by the treaty. The state is free by virtue of having sovereignty to formulate such reservations as it thinks fit.<sup>82</sup>

### **2.33 WHY A TREATY ON WOMEN ?**

Firstly, women's human rights are not recognized easily by the society. Even though in the proclamation on the rights of men, rights in common are given but, society is not inclined to recognize human rights of women. Violation against rights of women occur to a great extent in the social economical sphere. This treaty focuses on systems, ideology and institutions that deny women their rights. The treaty is specifically made to focus rights of women and more particularly, human rights of women in general.

### **2.34 GLIMPSES OF CEDAW**

The meaning of CEDAW or the explanation of CEDAW is convention on elimination of all forms of discrimination against women. The convention was adopted by the United Nation General Assembly

---

80. Ibid p.288.

81. Ibid p.291.

82. Ibid p.291.

on 19<sup>th</sup> December, 1979 and on 3<sup>rd</sup> December, 1981 it came into the force in the form of an International Treaty. India has ratified the convention on 9<sup>th</sup> July, 1993 with two declaratory statements and one reservation. The declarations are as under : With regards to Article 5(a) and 16(1) of the CEDAW, the Government of the Republic of India declares that it shall abide by these provisions in conformity with its policy of noninterference in personal affair of any community without its personal initiative consent. The second declaration is with regard to Article 6(2) of the CEDAW. The Government of Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its varieties of customs, religions and level of literacy. The Reservation is with regard to Article 29 of the CEDAW. It is worthy to be noted that India's initial and second periodical reports were submitted in the year, 1998 and the same were reviewed by the Committee in January, 2000. As on 26/03/2004, 177 countries over 90 % of the members of the United Nations are party to the Convention. A committee on the CEDAW was composed of 23 experts known as CEDAW Committee. It is monitoring the implementation, effects and repercussions of the Conventions. 'GR' General Recommendations are the statements on the meaning of provisions of the Convention as to on what kind of information should be included in the State Party reports. The periodic report indicates the measures adopted by the State Party to give effect to the provisions of the Convention to be considered by the Committee. Under Article 21 the CEDAW Committee is empowered to formulate General Recommendation. State Parties to the Convention are obliged to report to committee one year after ratification and thereafter every four years. Up to

January 2004, the CEDAW has adopted 25 General Recommendations i.e. General Recommendations out of which, 4 General Recommendation that are known as General Recommendation -19, General Recommendation -21, General Recommendation -23 and General Recommendation -24 are the most important General Recommendation 12, 13, 16 & 17 too are important.

The Convention is a comprehensive bill of pride for women and the combined concerns that had been hitherto addressed in adhoc manner through the United Nations System.

CEDAW is an internal treaty with a view to give directions and suggestions to the member nations to enact, implement and to bring into effect elimination of discrimination against women in their local laws to see to it that the human rights of women are protected.

### **2.35 HOW WE CAN USE THE CONVENTION ?**

The convention is being continuously updated to include new insides and new issues that are brought to the committee's attention through the formulation of General Recommendations Like general recommendation 19 has taken care of taking into its swift discrimination against women which was in other way not articulated in the convention itself. It needs to be noted that the convention does not discuss or does not provide the specific types of discrimination that women may face in different cultures. However, it cannot be forgotten that it provides a framework within which a range of issues may be addressed, based on its core understanding of nondiscrimination and equality.

### **2.36 PREAMBLE OF CEDAW :**

We women, have consolidated our strengths and are making a political demand that we be given equal rights and choices to grow, develop and participate meaningfully in the life of our country and of our world.

CEDAW is a Convention which is also known as International bill of women's rights, 'THE WOMEN'S CONVENTION' and 'THE WOMEN'S BILL OF PRIDE'. The CEDAW related activities in India have begun around the Beijing conference.

The Convention promotes the substantial model of equality : (1) the equality of opportunity (2) the equality of access and equality of result. Despite years of commitment to the principle of equality between man and women, women, all over the world, cutting across the class, caste and race have so far not got their due claim and everywhere in the world there is demonstration of blanket discrimination against women which exist even in the modern society throughout the world.

### **2.37 SIGNIFICANCE OF CONVENTION :**

It is notable that in the preamble of the Convention itself it is explicitly acknowledged that extension of discrimination against women continue to exist. It has also emphasized the fact that such discrimination violates the principles of equality of rights and respect for human dignity. The convention's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and Convention of which the



Convention on the Elimination of all forms of Discrimination against women is the central and most comprehensive document.

### **2.38 SPECIFIC FEATURES OF THE CONVENTION :**

1. The Convention is an international comprehensive bill of rights for women, which makes state responsible for women's rights.
2. The Convention is based on the principle of equality between men and women. It therefore, extends the coverage of human rights to women and philosophical base for substantive equality and nondiscrimination as women's rights.
3. It mandates this right through legislative process meaning thereby, there is an avenue for drawing accountability for the guarantee of this right from the member Nations.
4. It recognizes that despite legal rights being granted to women, in many countries, discrimination persists and women access to legal rights are curtailed by denial of women rights to economical and social development.
5. The Convention recognizes that, the inequality of women is socially constructed and hence, it recognizes the fact of discrimination against women.
6. The Convention addresses the need to tackle power relations between women and men at all levels, from family to community, market and state and weaknesses in the system and institution.
7. The Convention also recognizes the negative impact of social, customary and cultural practices which are based on the idea of "inferiority or superiority" of either sex or of

stereotyped rules for women and men that deny women the exercise of their rights.

8. It disregards the distinction between private and public spheres by recognizing violations of rights of women in private sphere i.e. the home.
9. The most attractive feature of the Convention is that it imposes obligation on the State. The relationship between State and women is that of the relationship wherein the State cannot withdraw from the responsibilities imposed upon the State by way of the Treaty.

The Convention, in nutshell, obligates conformity of the principle of domestic legislation and principle of State obligation towards women. Let us put the articles as broad structure of the convention.

Article 1 - provides a definition of discrimination and forms a fundamental basis for eliminating the discrimination.

Article 2 to 4 - The nature of State obligation in the form of law policy and programs that the State needs to undertake in order to eliminate discrimination.

Article 5 & 15 - Specify the Equality before law and other different areas under which the governments are obligated to eliminate discrimination through measures described in Article 1 to 4. This includes sex roles and stereotype and customary practices detrimental to women.

Article 6 - Trafficking in women.

Article 7 - Political and Public life.

Article 8 – Participation at the international level.

Article 9 – Nationality

Article 10 – Education

Article 11 – Employment

Article 12 – Health care and Family Planning.

Article 13 – Economic and Social benefits.

Article 14 – Rural Women.

Article 16 – Marriage and Family Relationship (wherein the declaration is made by India)

Article 17 to 22 – Deal the establishment and functions of CEDAW (The Committee) & Articles

Article 23 to 30 – Deal largely with the administration and other procedural aspect of the Convention.

### **2.39 CEDAW COMMITTEE :**

The committee is composed of 23 experts nominated by their governments and elected by the State Parties as individuals (of high moral standing and competence in the field covered by the convention). At every four years, the State Parties are expected to submit a national report to the committee indicating the measure they have adopted to give effect to the provision of the Convention. During its annual session, the committee members discuss these reports with the government representative and explore with them areas for further action by the specific countries. The Convention was the culmination of more than 30 years of work

by the United Nations Commission on the status of women, (a body established in 1946 to monitor the situation of women and to promote women's rights). The committee has passed certain general recommendation which are twenty five so far.

#### **2.40 CRITICISM OF THE CONVENTION :**

The Convention is criticized for not having included all issues pertaining to women. It has to take up an issue and then to analyze as to which article of the convention is applicable to the particular issue as brevity and conclusiveness are lacking. At present, no mechanism is available within the United Nations to regulate the practice of declaration of reservation by the State Parties. Thus, there is no bar to reservation that undermine the basic principle of the Convention. At present under the guise of reservations there are so many states which are attempting not to implement the convention at all. The convention is termed to be teeth less tool. Lastly non submission of reports by the state parties does not suffer any consequences, as national as well as international level advocacy are missing.

#### **2.41 CONCLUSION :**

All these Conventions, Declarations, etc. have also played a very important role in reassuring and in some cases advancing the cause picked up by earlier Conventions and the World over crusade initiated by United Nations Organization which has its own role to bring the CEDAW into an effective area with several colours. It is however, to be placed on record that for want of change in the mind set of the society and in several cases for want of change in the mind set of Government, it was not possible to eliminate the

discrimination against women in full fledged manner, but, the fact remains that these all Conventions were good beginning as preparatory process of changing of mind set and to show the CEDAW a daylight.

It is now high time when women need to take up this role to see to it that the state in which they are residing are making full-fledged implementation of the convention so as to see to it that the true effect and implementation of the Convention is brought home. As such, there is no provision for the CEDAW to formulate General Recommendation. However, the said policy has been started and thus, by way of general recommendations broader meanings are given to the articles and now, this can be used to develop the jurisprudence in relation to the Convention.

It is time when we need to learn to use the Convention as an advocacy tool to interpret equality. We have to develop skills to use human right concepts an mechanism in order to monitor the implementation of the Convention, define rights, interpret needs, and identify obstacles and action to be taken by the State. It is also now the time wherein, the demand needs to be made and at the national level advocacy needs to be advanced which will establish women's right of development.

## CHAPTER – III

# DISCRIMINATION : LEGO PHILOSOPHICAL PERSPECTIVE

## CHAPTER – III

### DISCRIMINATION : LEGOPHILOSOPHICAL PERSPECTIVE

“Women are one half of the world but, until a century ago..... it was a man’s world. The laws were man’s laws, the government a man’s government, the country a man’s country.....The man’s world must become a man’s and woman’s world.

- Mouths Thoma,  
American Educator (1908)<sup>1</sup>

“All laws which prevent women from occupying such a station in society as her conscience shall dictate or which place her in a position inferior to that of man, are certainly to the great precept of nature, and therefore, of no force or authority.”

- Elizabeth Cady Stanton  
(History of Women Suffrage, 1881)<sup>2</sup>

#### 3.1 MEANING OF DISCRIMINATION :

The equality, fraternity and liberty are the three foundations upon which the modern concept of justice exists. Well the said is the legacy carried over from our forefathers, at least at Europe and Asia for last more than about 700 years. In this chapter the emphasis is on ongoing attempts of elimination of discrimination against women by analyzing it in trifacet perspectives of legislative experience, administrative experience and judicial experience. Discrimination is no where defined but as has been stated in Article 1, of CEDAW, discrimination is a term which would cover any kind of distinction, exclusion or restriction made on the basis of sex or marital status and that any act which has the effect or a

---

1. G.B. Reddy, Women and the Law, Gogia Law Agency, 2<sup>nd</sup> (ed.) 1998, p.115.  
2. Ibid p.9.

purpose of either impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms of women in any field. Political, economic, social, cultural and civil field are in addition to other field.

The as far as administration of CEDAW in India, is concerned, the protection against discrimination is as such, recognized in the Constitution of India in the Preamble itself and by way of provisions made in Article 14, 15, 16, 23 and by way of Directive Principles for state Policy in Article 38, 39, 41, 42, 44 & Article 51 in Constitutional duty for citizen. Dr. B. R. Ambedkar the founder father of the Constitution has stated while putting up the concept of equality before the august house of parliament for the first time in the Constitutional history of India.

“We must begin by acknowledging the fact that there is complete absence of two things in the Indian Society. One of these is equality. On the special plane, we have in India a society based on the principle of graded inequality which means elevation of some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who are living in abject poverty. On 26th January, 1950, we are going to enter into life of contradictions. In politics we have equality and in social and economic life we will have inequality. .... We must remove these contradictions at the earliest possible moment or else those who are suffering from inequality will blow up the structure of political



democracy which this assembly has so labouriously put up.”<sup>3</sup>

The concept of protective discrimination placed in the Constitution of India is the concept which helps bringing equality and removing discrimination in a true spirit. Had there been merely an abstract concept of equality it would have looked good for the academic purpose but, as a matter of fact, granting liberty to the State to give unequal treatments among unequal is the gist of the spirit of equality. In the welfare state it is the duty of the government to perform the task of balancing the claims of the parties who are normally in conflicting gestures. The concept of social justice introduced in the preamble by amendment is also to enhance the concept of true equal treatment by the state because it is only by way of protective and unequal treatment the weaker section can be brought footing with the powerful section of the society.

Article 15 of the Constitution of India speaks about clear and specific prohibition of discrimination. Right recognized by Article 15(1) is only available against the State whereas, right under Article 15(2) is even available against an individual. Article 15(3) is an empowering provision which empowers the State to make any special provisions for women and children. Article 15(3) is something by which State alone, without taking aid from any section of the society, can remove the discrimination existing in the society. The right to make a special provision for women and children is something by which equality can truly be brought in to practice of life. As

---

3. AIR 1976 SC p.490 in the matter of State of Kerala V. N.N. Thomas.

has been already established by the judgment this right is an advantage of the women and should only be interpreted in that spirit. It is clear that it is applicable to existing laws, procedural laws and that any other law which a State may make in future. Article 15(4) is, as such related, to empower the Government from making any special provision for the advancement of any socially and educationally backward classes of citizen along with for SC & ST.

As such, the women as a class are indeed socially and educationally backward class as, basing upon the sex, lot of discrimination exist in the social setup of the society and the right to education of women is largely affected on account of social stereotype fashions of the society.

Article 16 of Constitution of India is related to equality of opportunity in matters of public employment which gives guarantee of equality of opportunity in the matters of public employment and it does not confer right to obtain employment.

Art16(4) is providing that the State is not prevented from making any provision for the reservation of appointment of post in favour of any backward class or citizens which in the opinion of the State is not adequately represented in the services under the State.

The present researcher submits that it is now high time wherein the state should consider the women as backward class of citizen as women are not adequately represented in the services under the state.

Article 21 has expanded the greatest umbrella. Every woman is entitled to elimination of every kind of cultural hurdles and obstacles and to enjoy cultural, political, economic and social rights on the equal footing with men.

Article 23 of the Constitution of India specifically gives protection against trafficking in human being and it is of a shade which provides protection against any kind of exploitation.

Article 38(1) Promotes welfare of the people and social justice. By 44<sup>th</sup> amendment in 1978 Article 38(2) has been added directing the state to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.

Article 39(a) of the Constitution of India is directing the State to make policy to see to it that rights of adequate means of livelihood of men and women are equally protected. The directive polity of the state also ensures equal pay for equal work for men and women vide Article 39(d).

Article 39(e) is the protection wherein, the state is directed not to abuse or misuse the health and strength of workers men and women both.

Article 39A requires the operation of legal system which promotes equal justice, equal opportunity for securing justice and no citizen is denied the same for economic or other disability and to provide free legal aid.

Article 42 is taking care of just and humane conditions of work and maternity relief.

Article 44 speaks of Uniform Civil Code throughout the territory of India and Art51A(h)(j) of the Constitution of India provides opportunity against all kind of gender based discrimination. Article 51(e) of the Constitution Of India speaks of fundamental duty and direction to promote dignity of women is something which is core of several directions given for state policy, fundamental duties and protection granted in form of fundamental right to each women of this country. The present researcher submits that on plain reading of fundamental duties one would feel elevated that the Constitution of India has taken care of fixing the duty of every citizen and extending protection to dignity of women but, the million dollar question remain unanswered and that is whether these fundamental duties are enforceable in Court of law or not ?

As far as enforceability of fundamental duties by Court is concerned, the provisions are silent. However, the said fundamental duties have been many times taken note of by the Judiciary in different judgments. Therefore, ultimately it does not become absolutely useless.

By way of 73rd and 74th amendment to the Indian Constitution seats for women in the local body election like panchayat and municipality have been reserved. Under clause (3) of Article 243 - D, not less than 1/3rd of the total number of seats to be filled in, in election in every panchayat

shall be reserved for women as, it is also deserved in municipality.

The present researcher submits that on viewing the international instruments one would feel that still many more needs to be done by the states if the ideals enshrined in the CEDAW are to be fulfilled. But, then the political wheel is a question which would be only capable to give answer to the world.

What has been discussed above is mainly related to the Constitution of India. It is worthy to be noted that the latter amendment more particularly of reservation added in the Constitution of India by way of amendment whatever right from the inception of Constitution of India is gifted to women is something which seems to have been come in by influence of the atmosphere at the international level and the debate and discussion which at the international front was going on when the founder fathers of our Constitution were debating as to what should be included in Constitution of India. The clear impact of universal declaration for human right, 1948 is also suggestive that the founding fathers of Constitution of India were quite anxious to grant equality, to remove discrimination and to see to it that the equality is granted in favour of women in its true spirit. The fact which needs to be admitted is that much was left for the interpretation of the Constitution of India and one can proudly state that Court in our country and more particularly the Apex Court of our Country has indeed filled in true colours of guarantee of constitution. It has been rightly perceived that elimination of discrimination can only be

possible by elaborating the concept of inequality and putting into practice effective and substantial equality. As the interpretation of Constitution of India has played a key role in bringing into effect the spirit of CEDAW it needs to be noted that many of the judgments given by the Apex Court are absolutely matching with Article 1 and 2 of CEDAW. This would only mean that the judgments are given in influence of Article 1 and 2 of the CEDAW and therefore, it can very well be said that the elimination of discrimination has effectively taken place on account of the influence of CEDAW. While we are discussing the role played by the makers of legislature it cannot be forgotten that all favourable attempts have been made by the law makers by making different provisions in different law to eliminate discrimination against women. The promise of compulsory education and protection of property right of women etc. are all such examples or gifts of the Constitution to protect women from discrimination. Even though the Uniform Civil Code has yet remained a dream, it can very well hoped that the Uniform Civil Code will also come as true. Secondly, it cannot be forgotten that different protections granted to women have yet not reached women of all regions and women who live in different social setup, customs and trend of life which is something which we yet need to be attained. It should be fairly be recorded that after 1993, the consistent efforts by the State are going on to amend, implement, repeal, review and to make laws including personal laws which are the product of different articles of CEDAW.

While examining the wheel of law makers to administer CEDAW in India following items can be enlisted :

### **3.2 EXPERIENCES OF LAW MAKERS :**

1. The Indian Penal Code, Indian Evidence Act, Criminal Procedure Code etc. have been amended to add presumption in favour of women victim in case of rape, dowry death, suicide, cruelty, etc.
2. The Marriage Law (Amendment) Act, 2001 has amended the Hindu Marriage Act, Special Marriage Act, Parsi Marriage and Divorce Act along with Code of Criminal Procedure for speedy disposal of the application for maintenance. The ceiling that was provided in the Civil Procedure Code of Rs.500/- has been removed by this amendment and now, the quantum is left to wide discretion of the Judges for awarding just and appropriate maintenance to the women. The Indian Divorce Act which required women seeking divorce to prove adultery couple with cruelty / desertion as against which the men was able to seek divorce on one ground only was amended and by the said amendment uniform provisions to men and women with regard to divorce have been effected. The provisions which was previously existing for Christians to get confirmation of decree from the High Court has now been deleted. The Indian Succession Act was amended to enable the Christian widows to get share in the property. The Marriage Act (Amendment), 2003

amended the Hindu Marriage Act and the Special Marriage Act enabling the women to file cases in the district where they reside, thereby giving a go-bye to the general law of jurisdiction based on place where the cause of action arose. To meet with the problem of declining sex ratio and sex selective abortion, the Medical termination of Pregnancy Act, 1971 (MTP) and the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 popularly known as (P & PNDT) were amended in the year, 2002 and 2003 respectively. The act on protection against domestic violence has also been brought into law books. The reservation for women in national parliament and state legislature is also proposed which is popularly known as "Mahila Bill".<sup>4</sup>

The specific legislations to prohibit and prevent practices like Devdasi and Sati have also been passed.

3. Law and Domestic Violence.
4. Reservation of seat for women in Local Bodies and then after, resultant training to make women more empowered in their public life.

### **3.3 ADMINISTRATIVE EXPERIENCE :**

1. An inter-ministerial committee including National Commission for Women and Non Governmental Organizations working in this field have been constituted

---

4. Government of India's 2<sup>nd</sup> & 3<sup>rd</sup> Periodic Report on CEDAW – 1997 – 2005 published by Department of Women and Child Development, Ministry of Human Resource Development, Govt. of India in the year, 2005 at p.14



in May, 2005 to review existing laws to address discrimination and ensure quality to women.<sup>5</sup>

2. Establishment of Fast Tract Court, Mahila Court, Family Court, Juvenile Court, Women Police Stations, Legal Services Authority and more particularly law to provide free legal services to each woman, establishment of Human Rights Commission, Women Commission at the State and national level, etc. etc.
3. Attempting to make jail safe for women.
4. Mahila bill for reservation for women in parliament and legislature.
5. National Police for Empowerment of Women, 2001.
6. Gender Equity Police even at State Level.
7. Gender Budgeting.
8. Establishment of Family Court and more particularly provision of giving preference to women judges.
9. Parivarik Mahila Lok Adalat by National Commission for Women
10. Scheme like Mahila Samarkhya launched in 1989 aims primarily to translate the goals of the National Education Policy into concrete programs for education and empowerment of women in rural areas particularly amongst women in economically and socially marginalized groups.<sup>6</sup>

---

5. Ibid p.2 paragraph no.3

6. Ibid p.20 para. 65.

11. The National Nutrition Policy adopted in 1993 to meet with multifaceted problem of malpractices.<sup>7</sup>
12. The National Health Policy 2002 facilitates increase access of women to basic health care and provides holistic healthcare for women (reference Article 12 of the CEDAW)<sup>8</sup>
13. The national Population Policy, 2000.<sup>9</sup>
14. The National Policy on Education, 1986 (Revised in 1992)
15. The National Agricultural Policy announced in July, 2000, which seeks to main stream gender concerns to agriculture.<sup>10</sup>
16. The Government launched the Swa Shakti, rural Women's Development and Empowerment Project in 57 districts of 9 states for a period of 5 years.<sup>11</sup>
17. A scheme name Swadhar was launched in 2001 with a flexible and innovative approach catering to the requirements of women in difficult circumstances.<sup>12</sup>
18. Scheme named Swayamsiddha launched in the year, 2001 for Women Empowerment.<sup>13</sup>
19. Rashtriya Mahila Kosh (RMK) registered in 1993 which is a credit agency for women for economic empowerment of women at large.<sup>14</sup>
20. Swarnajayanti Gram Swarozgar Yojana (SGSY).<sup>15</sup>

---

7. Ibid p.61.

8. Ibid p.20 para. 61 & 62.

9. Ibid p.20 para. 63.

10. Ibid p.21 para.66.

11. Ibid p.23 para 78.

12. Ibid p.24 para 79.

13. Ibid p.24 para. 80.

14. Ibid p.24 para. 81.

15. Ibid p.24 para. 82.

21. Sampoorna Gramin Rozgar Yojana (SGRY) <sup>16</sup>

This yojana is to create employment opportunities for the women and this is between 1<sup>st</sup> April, 2001 and 31<sup>st</sup> March, 2005.

22. The Indira Avas Yojana (IAY) <sup>17</sup>

23. Janani Suraksha Yojana (JSY) – This is national maternity benefit scheme for the expectant mother to provide them financial help.

24. Urban Self Development Program (USDP) of Swarnajayanti Shehri Rozgar Yojana <sup>18</sup>

25. A task force on women and children headed by a Deputy Chairman, Planning Commission, further examine these recommendations of the Commission in respect of 14 Acts in detail and amendments have been effected in a few enactment.

26. The department of Women and Child Development has suggested amendment to the SATI (Prevention), Act, 1987 Indecent Representation of Women (Prostitution) Act, 1986 and Immoral Traffic (Prevention) Act, 1956.

27. The Ministry of Home Affairs have proposed amendment to certain sections relating to rape in Indian Penal Code, Indian Evidence Act and the Criminal Procedure Code.

---

16. Ibid p.24 para 82.

17. Ibid p.24 para 82.

18. Ibid p.25 para 82.

28. The Government has proposed to amend Section 66 of Factories Act to facilitate nightshift work for women also.<sup>19</sup>

**3.4 ACTIONS ON THE PART OF COMPONENT OF THE STATE : THE NATIONAL COMMISSION FOR WOMEN HAS REVIEWED THE FOLLOWING LAW :**

1. The activities of the National Commission for Women in investigating certain complaints relating to dowry death, dowry harassment, rape, etc. and organization of public hearing by different Non Governmental Organization under the activities being carried out by National Commission for Women are all the things which needs to be applauded.
2. Immoral Traffic (Prevention) Act, 1956.
3. The Dowry Prohibition Act, 1961.
4. The Indecent Representation of Women (Prohibition) 1986
5. The Commission of Sati (Prevention) Act, 1987
6. The Guardians and Wards Act, 1860
7. The Indian Penal Code, 1860
8. The Christian Marriage Act, 1872,
9. The Indian Succession Act, 1925
10. The Child Marriage Restraint Act, 1929

---

19. Ibid p.13 para. 36.

11. The Muslim Personal Law, (Shariat) Application Act, 1937
12. The Factories Act, 1948
13. The Minimum Wages Act, 1948
14. The Employees State Insurance Act,
15. The Special Marriage Act, 1954
16. The Hindu Marriage Act, 1955,
17. The Hindu Adoption and Maintenance Act, 1956
18. The Hindu Minority and Guardian Act, 1956
19. The Hindu Succession Act, 1956
20. The Maternity Benefit Act, 1961
21. The Foreign Act 1969
22. The Indian Divorce Act 1869
23. The Medical Termination of Pregnancy Act, 1971,
24. The Bondage Labour System, (Abolition) Act, 1979
25. The Equal Remuneration Act, 1976.
26. The Contract Labour (Regulation & Abolition) Act, 1979
27. The Family Court Act, 1984.
28. The Juvenile Justice Act, 1986
29. National Commission for Women Act, 1990

30. The interstate migrant workmen (Regulation of employment and conditions of service) Act, 1979
31. The prenatal diagnostic techniques (Regulation and Prevention of Misuse) Act, 1994
32. The Infant Male Substitute, Feeding Bottles and Infant Food (Regulation of production, supply, distribution) Act, 1992.

The discriminatory provisions of law are being progressively reviewed by several bodies such as the law commission, the legal department, Department for Women and Child Development, National Commission for Women and National Human Rights Commission. All the 41 legislation have a bearing on women, the National Commission for Women has reviewed and suggested an amendment in the discriminatory measures in 32 Acts.

### **3.5 THE STATISTICAL IMPACT THROWING LIGHT ON THE APSECTS ON THE EFFORTS MADE BY JUDICIARY, LAW MAKING AGENCY, EXECUTIVES, NATIONAL COMMISSION FOR WOMEN, NON GOVERNMENTAL ORGANIZATIONS, ETC. :**

Sr.No.	Indicator	Women	Men	Total	Women	Men	Total
--------	-----------	-------	-----	-------	-------	-----	-------

#### **DEMOGRAPHY AND VITAL STATISTICS :**

01.	Population (In Million 1991 & 2001)	407.1	439.2	846.3	496.4	532.2	1028.6
02.	Decennial Growth (1981 & 2001)	23.37	24.30	23.85	21.96	21.16	21.54
03.	Sex Ratio (1991 & 2001)	927			933		
04.	Life Expectancy at Birth (In year 1991 & 2001)	58.1	57.1		65.3	62.3	
05.	Mean Age at Marriage 1981 & 1991	18.3	23.3		19.5	23.9	

**HEALTH AND FAMILY WELFARE :**

06.	Birth Rate (per 1000 in 1981 & 2002)			35.6			25.0
07.	Death Rate (per 1000 in 1981 & 2002)	12.7	12.4	12.5	7.7	8.4	8.1
08.	Infant Mortality Rate (per 1000 live births in 1990 & 2002)	81	78	80	65	62	64
09.	Child Mortality Rate (per 1000 live births under 5 years of age in 1995 & 1998)	40.4	36.6	38.4	71.6	70.5	71.1
10.	Maternal Mortality Rate (per 100000 live births in 1997 & 1998)	408			407		

**LITERACY AND EDUCATION :**

11.	Literacy Rate (1991 & 2001) in percentage	39.23	64.13	52.21	53.67	75.26	64.84
12.	Gross Enrollment Ratio (1990-91 & 2002-03)						
	CLASS I – V	85.5	114.0	100.1	93.1	97.5	95.3
	CLASS VI – III	47.0	76.6	62.1	56.2	65.3	61.0
13.	Dropout rate (1990 – 91 & 2002 – 03)						
	CLASS I – V	46.0	40.1	42.6	33.7	35.8	34.9
	CLASS VI – III	65.1	59.1	60.9	52.3	53.4	52.8

**WORK AND EMPLOYMENT :**

14.	Work Participation rate (1991 & 2001) in percentage	22.3	51.6	37.5	25.6	51.7	39.1
15.	Organized Sector (Number in millions in 1981 & 1999) (DGE & T)	2.80 (12.2%)	20.5	22.85	4.83 (17.2%)	23.20	28.11
16.	Public Sector (Number in millions in 1981 & 1999) (Employment Review)	1.5 (8.7%)	14.0	15.5	2.8 (14.5%)	16.8	19.4
17.	Government (Number in millions in 1981 & 1997)	1.2 (11%)	9.7	10.9	1.6 (14.6%)	9.1	10.1

**DECISION MAKING :**

18.	Administration (No. in IAS&IPS in 1997 & 2000)	608 (7.6%)	7347	7955	645 (7.6%)	7860	8505
19.	PRIs (No. in figures in 1985 & 2001)	318 (33.5%)	630	948	725 (22.6%)	1997	2722
20.	Parliament (No. in 1991 & 2004)	77 (9.7%)	712	789	72 (9.2%)	712	784
21.	Central Council of Minister (No. in 1985 & 2001)	4 (10.5%)	56	40	8 (10.5%)	66	74

Source : X Plan, Government of India; Sample Registration System.<sup>20</sup>

**3.6 COMMENTS ON THE ABOVE STATISTICAL DATA :**

The present researcher submits that the statistical data prepared by Government of India prepared on the basis of Sample Registration System. Secondly, on viewing item no.1 it is clear that this is a comparative study of 10 years on the aspect of population. On viewing the figures shown for the year, 2001, there is rise in population in the same range i.e. 22% rise in women 21% rise in men and total rise is 21.5%. These figures are suggestive that there seems to be rise in the population and it also appears that this has been placed on record to show that the population of women has been increased. But, it appears to be labyrinth for the reason that even in the year, 2001 the government of India has not attained the result since the population of women is 48% whereas, the population of men is 52% which is suggestive that the population of men is still on the higher scale and to that extent even after 10 years there appears no success in this particular aspect.

The present researcher submits that on viewing item no.3 i.e. the Sex Ratio, which is also comparison between 1991 and 2001, in view of the fact that there is difference of 10 years and much water has

---

20. Ibid p.25 para. 84.



been passed during the 10 years, but, there appears no effective change in the sex ratio of women in the year, 1991 and in the year, 2001.

Even on the aspect of item no.11 i.e. related to literacy rate, much effective result are not seen since the figure are given in the percentage and though there appears rise in the literacy rate of women but, there since also appears rise in the literacy rate of men, it appears that this is a national level rise of literacy rate and this is not suggestive of any specific success having been achieved by the Government of India with reference to CEDAW. Additionally, in 1991, the literacy rate (total) was 52% whereas, in the year 2001 therefore, there appears rise in the total also therefore, this percentage does not speak of any success of the administration of CEDAW in India.

### **3.7 WORK PARTICIPATION RATE :**

This too is in percentage. The present researcher submits that if we view the percentage of work participation rate of women in the year, 1991, it is 22.3% whereas, in the year, 2001 it is 25.6% which is suggestive that during the 10 years the rise is only of 3%. This rise is quite negligible. Secondly, on viewing the total rise there seems to be rise of 2% and perhaps those 2% rise could be of women but, then viewing the time factor of 10 years this rise of 2% cannot be termed to be satisfactory as far as work participation rate is concerned.

Item no.15 is related to organized sectors work and employment picture. The difference here is of 15 years as the first figures are of 1981 and the second figure in the chart is of 1999. If we look at the

percentage for women in 1981 it is 12% and women in 1999 it is 17.2%. This difference is suggestive that there is only rise of 5% during last 18 years or during the gap of 18 years the progress is only of 5%. The present researcher submits that this difference is indeed not only negligible but, is clearly suggestive that the administration of the CEDAW cannot be termed to be satisfactory or effective one.

Item no.16 which has a relation with public sectors employment or work, here also, the time gap is of 18 years as one figure of 8.7% for women is of 1981 and another figure 14.5% is of 1999. Now, therefore, it is clear that for the period of 18 years the rise is only 6% in view of the efforts made by the Government on the administrative aspect, made by the judiciary by giving judgments and on the aspect of law making agencies which can be seen in view of the report placed before the CEDAW Committee by the Government of India. The rise is only 6%. Now, from the record and the reports placed before the CEDAW committee by the Government of India if we look, several efforts have been made. Therefore, if those efforts are to be treated as whole truth, then the result achieved is too poor and therefore, it can safely be concluded that India needs to make more and more efforts for effective implementation of CEDAW as 6% rise is too poor. Secondly, on the aspect of men also the rise is there for which there were no efforts as can be seen from the report of the Government of India. Therefore, the result cannot be termed to be more than 4% qua women and therefore, it gets reconfirmed that India needs to make more efforts.

Item no.17 is related to work and employment at government. Here also, the duration is 16 years. In 1981, 11% were working in the Government, in 1997, 14.6% women are working. On viewing the

total number it is clear that there is decrease in total percentage. On viewing the rise in working of women in the government sector it is only 3% but, how we can forget that the Government of India has not made any special employment policy or any special reservation of priority for women and there is no special policy for giving promotion to women by treating them prioritized sectors. And therefore, since no efforts for rise in the job of government are made in favour of women, the rise of the percentage cannot be credited in the account of government. Secondly, it is a matter of hard fact that during the last 16 years the social setup, stereotype customs, traditions, etc. have changed value of education has increased and more and more meritorious women are coming forward. Therefore, within the range of 16 years the rise is indeed negligible for almost nil and therefore, it is not worthy to be appreciated.

The last group is related to decision making. Item no.18 is related to women in administration in capacity of IAS and IPS. In 1997 7.6% women were IAS and IPS and in 2000 also same figure and same percentage has been maintained. This is suggesting us that the development during these three years is nil which too is clearly witnessing against the successful administration of CEDAW.

Item no.20 is related to women's role at Parliament. The time gap here is 13 years. During the 13 years there is absolutely no rise in percentage of women M.P. and that too at the cost of repetition, is clearly to the discredit of the Government.

Last item serial no.21 is related to a very important aspect of decisions making i.e. central council of minister. Here the time gap is of 16 years. In the year, 1985 10.5% women were ministers and in

anyone's surprise in the year, 2001 also 10.5% women are ministers. This means that during these 16 years the decision making development is nil until women are actively allowed to join in the decision making process of the country the CEDAW cannot be termed to have been effectively administered. And therefore, in view of the above facts and figures itself, it stands very clear that if we only look upon, the figures stated by the Government of India in its report the administration of CEDAW is surely very very poor.

### **3.8 JUDICIAL EXPERIENCE :**

Several components of the system have aimed to implement the CEDAW to eliminate discrimination against women and all of them have collectively given effective output to the society at large. The law implementing agencies are existing but, judiciary being law interpreting agency and legislative wing being law making agency have also contributed towards the implementation of CEDAW.

It is now well known that the Courts and more particularly, the higher Courts have assumed their role of judicial activists and have thus, contributed beyond their scope of merely interpreting the existing Statute. While performing the role of custodian and guardian of constitutional rights of the citizen and watching towers for performance of duties of the State, several judgments have been given by the different High Courts and by the Supreme Court in India wherein, arms of the existing laws have been extended to embrace within it the ideologies of equality, liberty and fraternity. Elimination of discrimination, being ultimate product of maintaining equality will have to be viewed as a negative checkpoint to attain the result of elimination of all forms of discrimination. The women, as a class,

being most oppressed and suppressed, dejected and rejected, exploited and underprivileged, need to be taken utmost care to see to it that the discrimination may not go any further.

The present researcher has concentrated on judgments of Hon'ble Apex Court of India in this part of chapter in view of the fact that the subject of the research is administration of CEDAW in India and its rate of success to eliminate all forms of discrimination against women can reasonably be relate to the contribution of judiciary. It is felt that a bird's eye view on different judgments delivered by the Apex Court would give us the accounts on the aspect of administration of CEDAW in India.

#### **STATE OF KERALA v. N. M. THOMAS** <sup>21</sup>

In this case Hon'ble the Supreme Court has observed that:

"Article 16(1) & (2), give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and (2). The power to make reservation which is conferred under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection posts. In providing for reservation of appointments or posts under Article 16(4) the State has to take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of administration. Article 16(2) is out of the way and to extend protective discrimination....."

---

21. AIR 1976 SC 490 pp. 491, 492

Article 16(4) serves not as an exemption but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for the free competition the forward sections are ordinarily entitled to."

The above noted judgment is to be referred as clarifying position on the aspect of reservation granted to any deprived section of the society and that the protective discrimination is a recognized factor and is treated as an emphatic statement of the Constitution of India.

**AIR INDIA v. NARGESH MIRZA** <sup>22</sup>

In this case Hon'ble the Supreme Court has observed that:

"What Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations.....  
The termination of the services 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. Such a course of action is extremely detestable and abhorrent to the notions of a civilized society."

The judgment has categorically uplifted the Indian Womanhood to the highest esteem which is surely a step ahead to remove the discrimination which is inherently lying in the social ideology of India and which is too common for the Indian society.

---

22. AIR 1981 SC 1829 pp 1830 & 1831

**C. MASILAMANI MUDALIAR v. IDOL OF SRI SWAMINATHASWAMI ETC.** <sup>23</sup>

In this case Hon'ble the Supreme Court has observed that:

"Hindu Succession Act (30 of 1956) Section 14(1), Section 14(2) - Applicability - Property conferred on wife and cousin wife under will before come into force of her pre-existing right to maintenance under Sastric law - Right must be construed to be in lieu of her pre-existing right to maintenance under Sastric law as envisaged in will - It cannot be construed as right acquired for the first time under will - Same blossoms into absolute ownership under Section 14(1) after coming into force of Act - As Section 14(1) is attracted Section 14(2) is not attracted."

This judgment has given innovative vision to construe right of Hindu Women.

**VALASAMMA POUL v. COCHIN UNIVERSITY** <sup>24</sup>

In this case Hon'ble the Supreme Court has observed that:

"The right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 of the Constitution, are to make the equality of the life of the poor, disadvantaged and disabled citizens of the society, meaningful..... on marriage by man and woman, they become members of the family and entitled to the social status as a married couple, recognition per se is not a

---

23. AIR 1996 SC 1697

24. A.I.R. 1996 SC 1011 pp 1011 & 1012

pre-condition but entitled to be considered, when evidence is available. It is common knowledge that with education or advance of economic status, young men and women marry against the wishes of parents and in many a case consent or recognition would scarcely be given by either or both of the parties or parents of both spouses. Recognition by family or community is not a pre-condition for married status."

The care of the Apex Court to make the life meaningful is very appealing. The right recognized on the international front in favour of women to marry with the man of her choice is also supported by holding that recognition by community or by parents is not a prerequisite for married status. This helps in saving the women from the social stigma attached to the marriages not accepted on account of realistic and traditional approaches of the near and dear ones.

**BODHISATTWA GAUTAM v. SUBHRACHAKRA BORTY** <sup>25</sup>

In this case Hon'ble the Supreme Court has observed that:

"Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power 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 also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained

---

25. AIR 1996 SC 1022 pp 922 & 923



in Article 21..... Despite introduction of Section 114-A in Evidence Act which enables a Court to raise a presumption that the woman who was the victim of rape had not consented and that the offence was committed against her will. The situation, has hardly improved. Conviction rates for rape are still lower than any other major crime and the woman, continue to argue even today that in rape cases the victimized women, rather than the rapists, were put on trial. A large number of women still fail to report rapes to the police because they fear embarrassing and insensitive treatment by the doctors, the law enforcement personnel and / or the cross-examining defense attorneys. The fear has to be allayed from the minds of women so that if and when this crime is committed, the victim may promptly report the matter to the police and on a charge sheet being submitted, the trial proceed speedily without causing any embarrassment to the prosecutrix who may come in the witness box without fear psychosis.....

The jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, is an offence against basic human rights as also the Fundamental Rights of Personal Liberty and life.”

Rape being a heinous crime and since is clear violation of the Human rights of women, needs to be dealt with red eyes. Apart from punishment there has to be other sanctions like the compensation that too, in a peculiar kind of cases as immediate resort. This has

helped in elaborating the concept of grant of interim compensation in fitting cases.

**VISHAKA v. STATE OF RAJASTHAN** <sup>26</sup>

In this case Hon'ble the Supreme Court has observed that:

“Article 32 – Sexual harassment of working woman – Amounts to violation of rights of gender equality and right to life and liberty – Also as a logical consequence amounts to violation of right to practice any profession, occupation or trade – Victim is, therefore, entitled to remedy of Article 32.

Article 14, Article 21, Article 10 – Guarantee of gender equality and right to work with human dignity – Nature and ambit – Construction – International conventions and norms can be relied upon.

Constitution of India, Article 32, Article 141, Article 14, Article 21 – Gender equality and guarantee against sexual harassment and abuse more particularly of working woman at work places – Law for effective enforcement absent – Supreme Court in exercise of powers under Article 32 laid down guidelines and norms – Guidelines and norms to be treated as law declared under Article 141 – Applicable to both public and private sector.”

By this judgment, rather each word of this judgment speaks of Gender Equality and Rule of Judicial Construction in case of no law on the recognition of rights of women. Right to work with human

---

26. AIR 1997 SC 3011 pp 3011 & 3012

dignity is beautifully recognized in this judgment. It is held that international conventions and norms are material for construing law and when there is no inconsistency between the two and when there is a void in the domestic law to take into and to apply international convention and instrument has been made rule. Guarantee of Gender Equality is to be weighed from the contents of international convention as in the instant case CEDAW has been utilized by the Court to effectively bring into motion the law of sexual harassment even in absence of specific domestic law. Article 51(c) and the enabling power of the Parliament to enact laws for implementing the international convention and norms by virtue of Article 253 read with entry no.14 of the Union List in the VIIth Schedule of the Constitution has been brought into daylight for the first time and guarantee against sexual harassment and Gender Equality to working women has been put into motion which is indeed an appreciable task, apart from it being progressive, innovative, original and crusading one.

**GAURAV JAIN v. UNION OF INDIA** <sup>27</sup>

In this case Hon'ble the Supreme Court has observed that:

“Constitution of India, Article 32 – Public interest litigation – Relief – Powers of Court – Petition seeking improvement in plight of prostitutes / fallen women and their progeny – Directions issued for prevention of induction of women, in various forms into prostitution; their rescue from the vile flesh trade; and rehabilitation through various welfare measures so as to provide them with dignity of person, means of livelihood and socio-economic empowerment.”

---

27. AIR 1997 SC 3021. p. 3022

In a public interest litigation improvement of plight of prostitutes is sought for wherein, prevention of induction of women and their rehabilitation has been thought over.

**APPAREL EXPORTS PROMOTION COUNCIL v. A. K. CHOPRA** <sup>28</sup>

In this case Hon'ble the Supreme Court has observed that:

“In cases of violation of human rights, the Courts for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.

Each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty – the two most precious Fundamental Rights guaranteed by the Constitution of India. The contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the Courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.”

---

28. AIR 1999 SC 625 p. 626

In the instant case, the word of caution is repeated against inhumane and technical interpretation of the word molestation. Wherein absence of actual molestation has been given undue importance without looking at the mental plight of a woman who had to undergo sexual harassment at workplace for the only reason that she is a female. The principle that the statement of victim needs to be appreciated keeping in the centre the principle that whenever the evidence of the victim inspires confidence, the Courts are obliged to rely on it. The principle of application of international instruments and conventions has been repeated.

**SECRETARY HARYANA STATE ELECTRICITY BOARD v. SURESH<sup>29</sup>**

In this case Hon'ble the Supreme Court has observed that:

“Constitution of India, Article 14 –Equality clause – Intended to secure socio – economic justice to the people – Courts are duty bound to give shape and offer reality to socialistic concept.....” Further, “As a matter of fact the socialistic concept of society is very well laid in Part III and Part IV of the Constitution and the Constitution being supreme, it is a bounden duty of the law courts to give shape and offer reality to such a concept.”

**MUNICIPAL CORPORATION OF DELHI v. FEMALE WORKERS<sup>30</sup>**

In this case Hon'ble the Supreme Court has observed that:

“.....- Direction as yet can be issued by Industrial Tribunal to Management of Municipal Corporation to

---

29. AIR 1999 SC 1160

30. AIR 2000 SC 1274 pp 1274 & 1275

extend benefits of Act to muster roll female employees in continuous service.

.....Tribunal cannot be countenanced since this is a narrow way of looking at the problem which essentially is human in nature and not in consonance with the working of the Constitution, which aims at providing social and economic justice to the citizens of this country. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably peaceably, undeterred by the fear of being

victimized for forced absence during the pre or post natal period.

The benefits available under Maternity Benefit Act have been made available to a class of employees of the petitioner – municipal corporation. The benefit cannot be denied to the women employees engaged on muster-roll, on the ground that they are not regular employees of the Corporation.

Since Article 42 specifically speaks of “just and humane conditions of work” and maternity relief”, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.....A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis.

That apart, no other City or Corporation would be more conscious than the city of Delhi that India is a signatory

to various International covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10<sup>th</sup> of December, 1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18<sup>th</sup> of December, 1979, the United Nations adopted the "Convention on the Elimination of all forms of discrimination against women". Principles which are contained in Article 11, of said convention have to be read into the contract of service between Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. ....In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages."

By way of this judgment, the Maternity Benefit Act which aims to provide a very dignified status to women so that she may not have any fear of being victimized during the pre or post natal period on account of her compulsion to remain absent. Secondly, to be a mother as hold is a universal right of every woman and honourable, peaceful and undeterred motherhood must be offered by the State to every mother as it is recognized as right of every woman on international front which has been effectively implemented by this judgment.



Coupled with the Act, Article 42 of the Constitution which confers “just and humane conditions of work” and maternity relief has been held to be the duty of the State and right of every woman. In this judgment, the benefits under the Maternity Benefit Act have been extended to women (muster roll) employees who were working on daily wages by emphasizing the international phenomena that motherhood is the most natural stage in the life of a woman and every woman has right to be a mother.

**RAMESHWARIDEVI V. STATE OF BIHAR** <sup>31</sup>

In this case Hon’ble the Supreme Court has observed that:

“Payment of Gratuity Act (39 of 1972), Section 4 – Family Pension and death – cum – retirement gratuity – Entitlement – Children born to deceased Hindu employee from second wife taken during subsistence of first marriage – Are entitled to share in family pension and gratuity – Government can grant pensionary and other benefits after holding enquiry about existence of second marriage – Need not wait for decision of Civil Court in that regard.”

In this judgment it is held that the children born out of second marriage during the subsistence of the marriage are entitled to family pension and gratuity as, u/s.16 of the Hindu Marriage Act, children of void marriage are legitimate. What is important is by way of the judgment Hon’ble the Apex Court has held that the government can grant pensionary and other benefits after holding inquiry about the existence of second marriage and it need not to wait for the decision of the Civil Court in that regard. In a way, the

---

31. AIR 2000SC 735

judgment has given an indirect or remote protection to the victim wife of the second marriage.

**ROHTASHSINGH v. RAMENDRI** <sup>32</sup>

In this case Hon'ble the Supreme Court has observed that:

".....-Maintenance allowance – Divorced woman continues to enjoy status of 'wife' for claiming maintenance – Plea that divorce was on account of desertion by wife, irrelevant."

This judgment has also granted safety and protection to the dejected wives by holding that divorced woman continues to enjoy status of wife for claiming maintenance and that the plea by the husbands that divorce was on account of desertion by wife is held irrelevant. The benefit of interpretation of Sec.125 of the Criminal Procedure Code has helped the wives to continue their status and claim maintenance without compulsion to live with the husband.

**CHAIRMAN RAILWAY BOARD v. CHANDRIMA DAS** <sup>33</sup>

In this case Hon'ble the Supreme Court has observed that:

".....Rape committed on a woman by railway employees in a building belonging to railways – Petition for compensation by victim against Govt. – Maintainable notwithstanding that suit could be filed for damages in Civil Court.

Constitution of India, Article 226, Article 21 – 'Violation of fundamental rights' – Gang rape on Bangladeshi woman by railway employees in railway building – Order allowing

---

32. AIR 2000SC 952.

33. AIR 2000SC 988. pp 988 & 989

compensation – Does not suffer from infirmity – Foreign nationals – Can be granted relief under public law for violation of fundamental rights on ground of Domestic Jurisprudence based on constitutional provisions and Human Rights Jurisprudence.

Where a Bangladeshi woman was gang raped by Indian railway employees in a railway building, the order allowing compensation to her does not suffer from any infirmity. Relief can be granted to her under public law as there was violation of fundamental rights firstly, on ground of Domestic Jurisprudence based on constitutional provisions and secondly, on the ground of Human rights Jurisprudence based on the Universal Declaration of Human Rights, 1948, which has the international recognition as the 'Moral Code of Conduct' having been adopted by the general Assembly of the United Nations. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and covenants have to be such as would help in effective implementation of those Rights. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence."

This judgment has again evolved human rights jurisprudence based on the universal declaration on human rights, 1948. As was held the principles laid down in the international instruments needs to be read

into domestic jurisprudence to give complete justice to the human who are victim of the offences against women.

**STATE OF KARNATAKA v. KRISHNAPPA** <sup>34</sup>

In this case Hon'ble the Supreme Court has observed that:

“.....'unsophisticated illiterate citizen belonging to weaker section of society' and 'a chronic addict to drinking' and committed offences in state of intoxication and was having old mother, wife, children depending on him – Neither 'special nor adequate' for resorting to proviso to Section 376(2).

This judgment has enlarged the scope of principles of penology where in it is held that the special and adequate reason cannot come to the rescue of wrongdoer and that the Courts are obliged to respect the legislative mandate in the matter of awarding sentence in the cases of crime against women.

**GAYATRI DEVI PANSARI v. STATE OF ORISSA** <sup>35</sup>

In this case Hon'ble the Supreme Court has observed that:

“Where the Government policy about allotment of 24 hours medical shops was to accord preference to lady candidates even by providing for reservation and the relevant Government order further stipulated for identification and reservation of 30% of day and night medical shops exclusively for ladies, the policy cannot be pedantically construed as disentitling the Government from giving preference to otherwise eligible

---

34. AIR 2000 SC 1470.

35. AIR 2000SC 1531.

woman candidate on mere basis that the shop in question was not identified and reserved for woman candidates. The substantial difference involved between a case of reservation on the one hand and an instance of showing a preference on the other cannot be overlooked. The Policy of the State Government, indisputably being to provide 30% of the 24 hours Medical Stores within a District in favour of ladies by virtue of specific orders passed, therefore, would itself provide sufficient and valid as well as legal basis for extending preference in favour of a lady applicant, as long as the ceiling limit is not violated. Otherwise, by the mere fact of any lapse or omission on the part of the ministerial officers to identify a shop, the legitimate claims of a lady applicant could not be allowed to suffer defeating the very purpose and object of reservation itself. Taking any other view of the Govt. order would amount to overriding and defeating the laudable object and aim of the State Government in formulating and providing welfare measures for the rehabilitation of women by making them self-reliant by extending to them employment opportunities."

This judgment is based on the principle that even after reservation is provided to women the government can even give preference to eligible ladies and that grant of reservation cannot be construed of having taken away rights of the government from giving preference to the eligible ladies. Thus, this judgment has recognized both the rights in favour of the women.

**LILY THOMAS v. UNION OF INDIA** <sup>36</sup>

In this case Hon'ble the Supreme Court has observed that:

"Muslim Law – Marriage – Plurality of marriages – Right not unconditionally conferred on husband – His capacity to do justice between co-wives is condition precedent.

Hindu Marriage Act (25 of 1955), Section 17 – Penal Code (45 of 1860), Section 494 – Bigamy – Married Hindu – Contracting second marriage after embracing Islam – Despite his conversion he would be guilty of offence under Section 17 of Hindu Marriage Act read with Sec.494 of the Penal Code – Since mere conversion does not automatically dissolve his first marriage.

Hindu Marriage Act (25 of 1955), Section 13 – Marriage – Dissolution – Conversion to other religion – Does not automatically bring about dissolution of marriage."

This judgment has dealt with the problem which is creation of right of an individual to convert his religion by holding that mere conversion of religion does not automatically dissolve the first marriage. The permission of the Muslim religion of the four wives has also been dealt with as it has been held therein that husband's capacity to do justice between co-wives is a condition precedent.

**BALWANT KAUR v. CHANAN SINGH** <sup>37</sup>

In this case Hon'ble the Supreme Court has observed that:

"Hindu Adoptions and Maintenance Act (78 of 1956), Section 19, Section 22 – Hindu Succession Act (30 of

---

36. AIR 2000 SC 1650.

37. AIR 2000SC 1908.

1956), Section 14(1) – Maintenance – Destitute widowed daughter – has a right to claim maintenance from her father both during his lifetime and also against his estate after his death – Property bequeathed to such widowed daughter by father – Would be in lieu of her pre-existing right of maintenance – Widowed daughter would therefore become absolute owner of bequeathed property even if Will granted life interest only.”

The head note is self explanatory.

**DANIAL LATIFI v. UNION OF INDIA** <sup>38</sup>

In this case Hon’ble the Supreme Court has observed that:

“While upholding the validity of the Act, Court holds that - [Muslim Women (Protection of Rights on Divorce ) Act, 1986] -

- 1) a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.”
- 2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.
- 3) “A divorced Muslim woman who has not remarried and who is not able to maintain

---

38. AIR 2001 SC 3958.

herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

- 4) the provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.”

In this judgment, the Muslim women protection of rights on divorce Act, 1987 has been upheld by the Court but, certain observations in form of interpretation has been placed on record as part of the judgment which are noted above. This part is very clearly suggesting the liability of Muslim husband and other relatives and the situation in case of remarriage etc. What has been emphatically placed is a right of Muslim Women to get maintenance does not come to an end.

**SHAMIM ARA v. STATE OF U.P.** <sup>39</sup>

In this case Hon'ble the Supreme Court has observed that:

“Muslim Law - Talaq - Law as ordained by Holy Quran is (i) that ‘talaq’ must be for a reasonable cause ; and (ii) that must be preceded by an attempt of reconciliation between her husband and the wife by two arbiters, one chosen by the wife from her family and the other by the

---

39. AIR 2002SC 3551.



husband from his - If their attempts fails, 'talaq' may be effected."

Even this head note is also an interpretation protecting the rights of Muslim Women and proper interpretation considering Gender equality as the substantial need of the society.

**K. PREMA SECTION RAO AND ANOTHER V. YADLA SRINIVASA RAO AND OTHERS.** <sup>40</sup>

This judgment is mainly on the principal of appreciation of evidence to be adopted by the Trial Court and the applicability of presumption u/s.113A of Indian Evidence Act about the abetment to suicide. In a way, this judgment is also on the aspect of gender equality and duty of Court to appreciate evidence in a peculiar way.

**K.A. ABDUL JALEEL v. T.A. SHAHIDA** <sup>41</sup>

In this case Hon'ble the Supreme Court has observed that:

"(A) Family Courts Act (66 of 1984), Section 7 - Jurisdiction - Words 'suit or proceeding between the parties to a marriage' - Cannot be read as 'parties to subsisting marriage' - suit relating to property of spouse / spouses - Divorce does not take it beyond jurisdiction of family Court.

The statement of object and reasons, clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective

---

40. AIR 2003 SC 11.

41. AIR 2003 SC 2525.

of the claim whether property is claimed during the subsistence of a marriage or otherwise. It is now a well settled principle of law that the jurisdiction of a Court created specially for resolution of disputes of certain kinds should be construed liberally. The words 'a suit or proceeding between the parties to a marriage' cannot therefore, be read as parties to a subsisting marriage. The restricted meaning if ascribed to Expln. (c) appended to Section 7 of the Act would frustrate the object wherefore the Family Court were set up. The dispute over parties between parties to a marriage cannot be confined to the parties to a subsisting marriage.

(B) Family Courts Act (66 of 1984), Section 7 - Muslim Women (Protection of Rights on Divorce ) Act (25 of 1986), Section 3 - suit relating to property of spouses - filed by divorced wife - maintainability - fact that wife has been awarded certain amount under Muslim Women Act - has no effect on suit - the two proceeding are absolutely separate and distinct."

In this judgment, interpretation of the Family Court Act is made in such an elaborate manner that wide coverage of this Act has been expanded by way of interpretation. Even after divorce the jurisdiction of the Family Court to try a suit relating to property of spouses remains intact and it does not go away. It is rather clarified that even after awarding of some amount under the Personal Law maintainability of the suit by divorce will not be affected as both the proceedings are absolutely separate and distinct. As such, family court is under influence of CEDAW. Lot of careful consideration have

been undergone and Family Court Act is not the Act under any personal law apart from it has been made as a dire need or it has been legislated in view of the very clear need for the same as carved out, the very effective way of grant of right to the parties even after decree of divorce is passed.

**HIRA LAL v. STATE (GOVERNMENT OF NCT) DELHI** <sup>42</sup>

In this case Hon'ble the Supreme Court has observed that:

“(C) Penal Code (45 of 1860), Section 304B, Section 498A, Section 306 - 'Cruelty' - is commons essential to both Ss. 304-B and 498-A - Even if accusation under Section 304-B fails - person can be convicted under Section 498-A - and also under Section 306 though no charge is framed.”

In this judgment, Hon'ble Supreme Court has stated as has already been stated earlier that even if there is no charge u/s.306 of the Indian Penal Code and there is only charge u/s.304-B and u/s.306 of the Indian Penal Code would be uphold. Apparently this judgment looks as academic analysis of difference sections of the Indian Penal Code but, if seen deeply it is clear that it is serious and deep concern of the Supreme Court over rising offences against women which should be serious concern of the society.

**JOHN VALLAMATTOM v. UNION OF INDIA** <sup>43</sup>

In this case Hon'ble the Supreme Court has observed that:

“(H) Constitution of India, Article 25, Article 44 - Religious freedom - Vis-à-vis uniform Civil Code - Premises behind

---

42. AIR 2003SC 2865.

43. AIR 2003 SC 2902.

Article 44 is that there is no necessary connection between religion and personal law in civilized society.

..... Article 25 of the constitution of India confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Arts. 25 of 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matter of a secular character cannot be brought within the guarantee enshrined under Arts.25 an 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Arts.25 and 26 is a suspect legislation.

(I) Constitution of India, Article 44 - Uniform civil code - Parliament is still to step in for framing a Common Civil Code in the country - is a matter of regret - common civil code will help the cause of national integration by removing the contradictions based on ideologies. Per V.N. Khare, Chief Justice of India."

In this judgment need of common Civil Courts in the country has been indicated by the Hon'ble Supreme Court as it will help the cause of national integration by removing the contradictions based on ideologies. It seems that this judgment is based on the fact that Article 44 of the Indian Constitution needs to be made true.

**STATE OF M.P. v. GOPAL D. TIRTHANI** <sup>44</sup>

In this case Hon'ble the Supreme Court has observed that:

From page no.2955 : "(E) Constitution of India, Article 14, Article 226 - Medical Council of India Regulations (1971), Regn.9 - M.P. Medical and Dental Post Graduate Admission (In Service Rules (2002), R.1 - Admission to P.G. Course - Eligibility criteria - Weightage to in-service doctors who have served in rural areas - length of service considered in case of male doctors is 5 years whereas for female doctors it is 3 years - women are well defined class and that too for specified discipline i.e. obstetrics and Gynecology and Anesthesia - Distinction made is based on intelligible differentia - rules relaxing criteria for female doctors are constitutionally valid."

In this case P.G. Admission (in-service) Rules (2002) has been challenging wherein more admission in P.G. Courses a specific rule for women candidate was made. It was decided that if the male candidate has completed 5 years services in rural area he would be eligible whereas in case of female candidate if she has rendered 3 years services in the rural area she would be treated as special candidate in case of P.G. admission in specific discipline of medical line. Hon'ble Supreme Court has upheld the rule as constitutional one mainly on the ground that women folk in rural areas have reluctance for being dealt with by male doctors and that they are more comfortable with female doctors and that if eligibility criteria in favour of female doctors are kept in the way it has been kept in the rule is more suitable to the need of the society. This kind of judgment

---

44. AIR 2003 SC 2952.

modifies and encourages more admissions of family doctors in P.G. which would serve twin purpose of granting more opportunities to women which is the need of the hour and providing better facilities to women folk of the society.

**SANABOINA SATYANARAYANA, V. GOVT. OF A.P. AND OTHERS.** <sup>45</sup>

In this judgment by the policy of the State Government the relief of remission cannot be granted to the convicts for crime against women. This was held to be proper and not violative of constitutional rights guaranteed under the Constitution of India. This kind of judgment would certainly encourage the government to have more stringent policies within the frame work of Constitution of India for the persons committing crime against women which itself would act as check on the system.

**VIJAY LAKSHMI V. PUNJAB UNIVERSITY** <sup>46</sup>

In the instant case classification between male and female for certain post was held not to be arbitrary or unjustified as the job sought to be achieved is precautionary, preventive and protective measure based on public morals and in favour of women at large upholding such kind of issue based on reasonable classification will show way to the other states who have not done so and the over all impact would be bringing gender equality and equity in each spheres of life and therefore, this judgment is one such contribution which has helped the administration of the Spirit of CEDAW.

**AIR INDIA CABIN CREW ASSOCIATION v. ESHAWINEE MERCHANT** <sup>47</sup>

In this case Hon'ble the Supreme Court has observed that:

---

45. AIR 2003 SC 3074.

46. AIR 2003 SC 3331.

47. AIR 2004 SC 187.

“The twin Arts.15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour. The Constitution does not prohibit the employer to consider sex in making the employment decisions where this is done pursuant to a property or legally chartered affirmative action plan.

Constitution of India, Article 51A(e) – Retirement age of air hostesses – Fixing of lower age of retirement than males not because of their falling physically appearance – but as a condition of service – Not a practice derogatory to dignity of women – Not violative of Article 51-A(e).

..... Special treatment to women is saved by Section 15(a) and (b) of Equal Remuneration Act.”

Through this judgment, the discrimination and positive measure or a special treatment has been differentiated and it has been made clear that legally chartered affirmative action plan is an appreciable aspect and it does not call for any interference by the Courts of law.

#### **JASBIR KAUR V. UNION OF INDIA** <sup>48</sup>

In this judgment it has been held that prescription of uniform to be worn by nurses is not violative of Article 14. It is also necessary to see to it that nobody should be permitted to claim any privileges under the guise of violation of constitutional right. The balance has been rightly carved out by the judgment.

---

48. AIR 2004 SC 293.

**STATE OF KARNATAKKA v. PUTTARAJA** <sup>49</sup>

In this case Hon'ble the Supreme Court has observed that:

“Penal Code (45 of 1860), Section 228A, Section 376 – Identity of victim of rape – Matter relating to – Disclosure of – Is punishable offence – Indicating name of victim in judgments – Inappropriate – preventing social victimization or ostracism of victim is object behind it.

Penal Code (45 of 1860), Section 376 – Sentence = Accused held guilty to have raped woman in advance stage of pregnancy – Sentence should have been highest prescribed – High Court reducing sentence to period already undergone which is of 46 days only, merely for reasons that accused is a coolie, agriculturist; young man aged 22 years old; occurrence took place in the year, 1985 – Not only unjustified but highly disproportionate sentence – Reasons cannot be described as ‘adequate and special reasons’ for reducing sentence below prescribed minimum – Sentence of 5 years imposed by trial Court restored since it was not questioned by State before High Court.

Prevention from social victimization is one of the aspect which can save women from the derogatory treatment because of the social notions and norms. As the identity of the victim plays major role in creating social isolation and victimization protection against the same has been given by way of this judgment.

---

49. AIR 2004 SC 433.



**STATE OF PUNJAB v. RAMDEVSINGH** <sup>50</sup>

In this case Hon'ble the Supreme Court has observed that:

“Section 376 – Right to life – Rape violative of the right – Sexual crime against woman – To be dealt sternly and severely.

Section 228A – Sexual offences – Publication of name of victim – In judgment even by High Court / Supreme Court – Not proper – Considering social objective of Section 228 A.”

Here, delay in lodging a rape case should not be taken as a formality or rule to discard prosecution case has been reiterated coupled with narrating seriousness of rape as a crime against basic human rights of women.

**SHAKSHI v. UNION OF INDIA** <sup>51</sup>

In this case Hon'ble the Supreme Court has observed that:

“Section 354, Section 377 – Criminal P.C. (2 of 1974), Section 327(2) (as amended by Act 43 of 1982), and Section 273 – Child sexual abuse case – Inquiry into trial of – Evidence to be recorded – Provisions of Section 327(2) which contemplate trial in camera shall apply – Video conferencing is permissible – Screen or some such arrangements may be made where victim or witnesses do not see body or face of accused – Questions put in cross-examination on behalf of accused which relate directly to incident, should be given in writing to Presiding Officer of Court who may put them to victim or witnesses

---

50. AIR 2004 SC 1290.

51. AIR 2004 SC 3566.

in a language which is clear and is not embarrassing – Victim of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required.”

Paragraphs 30, 31, 32 and 34 of the judgment have created indeed a novel aspect of criminal jurisprudence in case of child victims. The requirement of criminal procedure code to take evidence in presence of accused has been broadly interpreted and it is held that the victim should be protected from the compulsion of seeing the accused and from restructuring of the rape scene again in the mental world of the victim. Recording evidence by way of video conferencing, cross examination through Court, avoidance of embarrassment to victim and in case of child victim, sufficient brakes have been put forward as a part of human rights which needs to be appreciated.

**STATE OF HIMACHAL PRADESH v. KANTSHEKARI** <sup>52</sup>

In this case Hon’ble the Supreme Court has observed that:

“Rape – By teacher on his student – Victim became pregnant – Acquittal of accused by making reference to time of alleged rape as given by victim and her mother and date on which the child was born, not proper – Court making hypothetical calculations regarding dates to doubt testimony of victim and her mother when witnesses had stated approximate dates – Victim was not an intelligent girl as she had passed class 3 examination on third attempt – Her mother also an illiterate rustic woman – To examine their evidence with

---

52. AIR 2004 SC 4404.

microscopic approach would be an insult to justice oriented judicial system.

Mere delay in lodging FIR does not render prosecution version brittle.

Her testimony can be acted upon without corroboration.

In this judgment principal of appreciation of evidence in case of rape has been again reaffirmed that appreciation of evidence by the Court in case of rape if rustic and illiterate women victim steps in, has to be very humane and just. The testimony of such women witness can safely be acted upon without corroboration and that delay in lodging FIR does not always render prosecution version brittle has also been re-recognized by the Supreme Court.

#### **TULSIDAS KANOLKAR v. STATE OF GOA** <sup>53</sup>

In this case Hon'ble the Supreme Court has observed that:

From head note A, B & C : "The victim was mentally challenged girl of not even of twelve years of age and whose mental age was even not of 2 years. She was totally unaware of catastrophe which had fallen on her.

Hon'ble the Apex Court has categorized the word consent in Section 376 of Indian Penal Code and has held that all helpless resignation are not consent it may be compulsion, quiescence, non resistance or passive giving in out of fear, duress or mental retardation. In case of deficient or mentally challenged women gravity of the offence of rape is more serious. The present researcher is of the opinion that this kind of innovation interpretation

---

53. AIR 2004 SC 978.

indeed bring home true broader perspective of justice as has been laid down in CEDAW.

#### **GITHA HARIHARAN v. RESERVE BANK OF INDIA** <sup>54</sup>

In case of Gita Hariharan, rights of guardianship of mother was upheld to make section S-6 (a) of Hindu Minority and Guardian Ship Act consistent with Constitutional Safeguard of gender equality. Bandhua Mukti Morcha v. Union of India<sup>55</sup> and M.C. Mehta v. State of Tamilnadu<sup>56</sup> are the judgment preventing and monitoring child labour by giving due weightage to the international treaties.

#### **GOVERNMENT OF A. P. v. P. B. VIJAY KUMAR** <sup>57</sup>

In the judgment it has been held that Article 15(3) of Constitution of India Permits Special provision for women. Article 15(1) & Art 15(3) go together. The power conferred under Article 15(3) is wide enough to cover the entire range of state activity including employment under the state.

#### **WOMEN'S FORUM v. UNION OF INDIA** <sup>58</sup>

In this case Hon'ble the Supreme Court has observed that:

From Page No. 14 "Constitution of India - Arts. 32 and 31 - Rape on domestic working women - Compensation and rehabilitation of rape victims - Scheme regarding, directed to be evolved by National Commission for Women under Section 10 of National Commission for Women Act Within six months and thereupon, Union of India directed to examine the same and take necessary steps for its implementation - National Commission for

---

54. AIR 1999 SC 1149.

55. AIR 1997 SC 2218.

56. AIR 1996 SC 699.

57. AIR 1995 SC 1648.

58. AIR 1995 SC 14.

Women Act, 1990, s. 10 - Penal Code, 1860, Section 376-B read with Section 341."

This judgment has shown deep concern over increase in violence against women and the principle that compensation for victims of rape shall be awarded and that scheme of rehabilitated rape victims is necessary have been evolved as guidelines in the case of rape victims.

"Half of the Indian population are women, women have always been discriminated against & have suffered & are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude & yet they have been subjected to all inequities, indignities, inequality & discrimination."

- Justice K. Raman Swami, in *Madhu K. Ishwar v. State of Bihar*, [(1996) 5 SCC 148] <sup>59</sup>

"A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the state which is charged with the duty of securing a uniform Civil Code for the citizens of the Country and, unquestionably, it has the legislative competence to do so."

- Justice Y.V. Chandrachud in *Mohammed Ahmed Khan v. Shah Bano Begum* <sup>60</sup>

---

59. G.B. Reddy, *Women and the Law*, Gogia Law Agency, 2<sup>nd</sup> (ed.) 1998, p.2.

60. AIR 1985 SC 945

### 3.9 CONCLUSION :

The present researcher submits that on viewing the efforts made by different components of the State, Judiciary and the State itself it is clear that sincere efforts and serious concern is exhibited by all concerned to enforce equality and nondiscrimination. The demand from women's group to make law anti discriminatory which has specific remedy redressal, penal action and sanction therein, but, then all such things more or less remain bookish instead of becoming hard realities. The suggestion made by CEDAW Committee in its concluding comment for such kind of amendment is also taken care of but, then, the fact remains that social stereotypes have yet not been changed. Moreover, on viewing the statistical results it is very clear that firstly it is based on sample registration system and secondly, with all seriousness though the efforts are made the results are not very eye catching more particularly on the aspect of birth rate, maternal mortality rate, sex ratio, employment and decision making which is the most crucial among all these. Therefore, it is clear that the administration of CEDAW cannot be termed to be a happy stage of affairs. Several aspects like life expectancy of women, literacy, representation of women in local self governing institution, etc. have not reflected happy change. The aspect on employment, promotion, service security, general security of women in society, the aspect of security at marital home, etc. are such areas where we need to travel with all equipped position and that is where we need to think very seriously as to how we should not administer CEDAW in India.

The above journey is merely to give a glimpse as to what contribution has been given by the judiciary and that too from the

level of the highest judicial body of the justice delivery system of India. Barring a rare illustration which has not been referred by the present researcher, there is consistent journey in direction to meet with the goals set out by the CEDAW. The attempt is very clear to remove discrimination in to from the society and to provide protective umbrella to the women as a class. The present researcher is of the firm opinion that the social status of the women is highly elevated on account of the landmark judgments by the Supreme Court of India which have not only contributed to realize the spirit of CEDAW but, have additionally given guidance and encouragement to the higher judiciary and trial Courts of this country. Each effort has given something to the Indian Womanhood in form of tremendous opportunity full of gender equity and equality. The present researcher hopes that the journey needs to go on for many more years to come as we have to attend many more goals in the realm of gender justice.

## CHAPTER – IV

# TRAFFICKING IN WOMEN



## CHAPTER – IV

### TRAFFICKING IN WOMEN

Commercial, Sexual exploitation has over time come to be regarded as an extremely important aspect of the Law and the aspect developed by the Judiciary. Protection of women and children is considered to be utmost important. Apart from constitution of India, the Indian Penal Code, Indecent representation of Women (Prohibition) Act, 1956 and the Immoral Traffic (Prevention) Act, 1956 and the Juvenile Justice Act, 1986 are all very important part of legislature. Several attempts by legislature and judiciary followed by administrative active steps for public awareness and participation of the society to read our society from the menace have been continuously taken. But, the same menace has not been overcome. Human trafficking has history of remaining in existence in numerous forms in all countries, civilizations and cultures. This trade exploits the vulnerability of women and children and compels them to be tools of financial transactions which are mostly under some compulsion but, the fact remains that this is the trade which is complete violation of human rights. Shocking trend reported in India is that the minimum age for trafficked persons has fallen below 10 years.<sup>1</sup>

According to Article 1 (3), SAARC Convention on preventing and combating trafficking in women and children for prostitution, signed by India on 5<sup>th</sup> January, 2002 – “Trafficking means the moving, selling or buying of women or children for prostitution within and outside the country for monetary or other consideration with or without the consent of the person subjected to trafficking.”<sup>2</sup>

- 
1. S.K. Ghosh, The World of Prostitutes, APH Publishing Corporation, New Delhi, 1996, p.15.
  2. Judicial Handbook on Trafficking of Women and Children for commercial, sexual exploitation, National Human Rights Commission, DWCD UNICEF, developed with assistance from National Law School of India University, Bangalore, April, 2004, p.9.

The Immoral Traffic (Prevention) Act, 1956 does not define trafficking but, the ingredients of trafficking such as, sexual exploitation and abuse of persons, running of a brothel, living on the earnings of a prostitute, procuring, inducing or taking a person for the sake of prostitution, detaining a person for prostitution, etc. are contained in various sections of the Act.

#### **4.1 LEGISLATIVE EXPERIENCE :**

In the Constitution of India and in some other laws, the issue of prostitution has been tackled. In some parts of India women are forced under the guise of custom or tradition and at some places the economic need or distress or the need of individual or family is the root cause for throwing the women in trafficking. The Constitution of India very clearly, by way of Article 23 (1) prohibits traffic in human beings and forced labour. Traffic in human beings and beggar and other similar forms of forced labour are dealt with and commission or omission of an act prohibited is treated as offence.

Articles 32 and 226 have attempted to meet with the situation, more particularly, as and when the assistance is sought by way of Public Interest Litigation. In view of Immoral Traffic (Prevention) Act, 1956, certain provisions have also taken care of the menace. The meaning of the prostitution is given as sexual exploitation or abuse of persons for commercial purposes is provided. Keeping brothel or allowing premises to be used as brothel have punitive implications. Living on earnings of prostitution, procuring, inducing or taking person for the sake of prostitution are punishable one. To detain a

person in premises where prostitution is carried on, seduction of a person in custody are offences under Immoral Traffic Prevention Act, 1956, more particularly, vide sections 6 and 9. Section 366, 366-A, 367, 370, 371, 372 and 373 are all dealing with kidnapping, abducting or inducing women to compel her marriage, procurement of minor girl, buying and disposing of any person as a slave, habitual dealings in slaves, selling and buying minors for purposes of prostitution, etc. are the offences provided in Indian Penal Code. There are numerous reasons for compelling women to be a prostitute. Some of them are attraction for city life, sham marriages, being a victim of a trap of brothel keeper, trusting the policeman who turns to be an abettor of brothel keeper, sexual abuse, becoming victim of beauty parlour, massage parlour, becoming prey of temptation of becoming film actress or model, coming in trap of organ trade, purchase and sale of girl child under the guise of adoption, coming into trap of drug addicts, becoming the victim of sex scandal, illiteracy, unemployment of the main bread earner, desertion by husband, subjected to sexual abuse, etc. are the usual reasons by which a woman against her wish is compelled to come into the sex trade. Originally, suppression of immoral traffic in women and girls Act, 1956 was in existence in India but, the amendment brought in law books in the year, 1986 has changed the name of the Act to Immoral Traffic (Prevention) Act, 1956. After the Act, any male or female who is subjected to sexual exploitation for the commercial purposes have been offered umbrella of the Act. The Penal Provisions have been made more strict and the rehabilitation

of the victims alongwith correctional treatment have been given due weightage by taking care of involvement of children and minor into the trafficking. Interrogation of women by the women police officer or else at least in presence of women social worker, medical examinations of all the persons who are caught at the brothel at the time of search and to procure, induce or take a person for prostitution are made punishable. Offence against the will of the victim or subjecting the minor child is viewed seriously and presumption of law in case of the child of the child must have been exploited for prostitution has been added. Discretionary powers granted to the court of conducting the trial as summary trial, appointment of special police officer involvement of social worker or constitution of advisory body are the provisions which have attempted its best to grant correctional treatment and to prohibit induction of women in the profession against her wish.

Section 3, 4, 5, 6, 7, 8 & 15 of Immoral Traffic (Prevention) Act, and Section 251 and 252 of the Criminal procedure Code are important provisions. If a person is found with a child in a brothel the presumption would be that the child was detained in the premises where prostitution is carried on and would be punishable. The presumption will be obviously against the offender and it is his duty to disprove the same or to rebut the presumption. In case the child has been found to be sexually abused then, it would be presumed that the said child was used or exploited for prostitution. Prostitution in public places is prohibited and a person who has custody, charge or care of

or is in the possession of authority over any other person and who abets or aids or causes seduction for prostitution, such a person would be punished in view of amendment having been carried out in the Immoral Traffic (Prevention) Act, in 1986. The state has been given duty to provide for corrective institution wherein, the female offender would be kept in custody. The person living on the earning of prostitution has been viewed seriously and provisions under the Act for separate enforcement machinery are provided in this Act. Rescue Rehabilitation, Correctional Treatment, Safety during the investigation, interrogation, care after the arrest, etc. have also been provided in the Act. As such, in the Immoral Traffic (Prevention) Act, 1956 (herein after to be known as ITPA, 1956) has, as such, not specifically defined trafficking. But, it has dealt with trafficking considering its different forms. Sexual exploitation, abuse of persons, running of a brothel, living on the earnings of a prostitute, procuring, inducing or taking a person for the sake of prostitution, detaining a person for prostitution have all been provided in different sections of the Act.

Trafficking in persons is meant as recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

prostitution of other or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The above referred meaning has been given in Article 3 of the UN Protocol to prevent, suppress and punish trafficking in persons, specially women and children.

According to Article 1(3) SAARC Convention on preventing and combating trafficking in women and children for prostitution signed by India on 5<sup>th</sup> January, 2002 – “Trafficking means the moving, selling or buying of women and children for prostitution within and outside the country for monetary or other consideration with or without the consent of the person subjected to trafficking.” In view of the international concept the basic ingredients of trafficking are exploitation, abuse and commercial exploitation. If we look at the definition of the word prostitute in the ITPA, 1956, it is clear that this definition has included within it the elements of sexual exploitation for abuse of persons for commercial purposes. In view of this definition and considering the amendment made in 1986 in the Act it is quite clear that the Indian Law has taken care of all necessary ingredients which needs to be taken to penalize trafficking in general has taken care of. Section 3 of ITPA which is related to punishment for keeping a brothel or allowing premises to be used as brothel is also such wherein, necessary care has been taken to see to it that if any persons who keeps or manages or acts or assists in keeping or management of brothel shall be punishable. Secondly, any person under the guise of tenant, lessee, occupier or person in-charge of any

premises is either using or knowingly allows any person to use such premises or any party thereof as brothel is also punishable. Section 4, punishment for living on the earnings of prostitution is also such, wherein, any person over the age of 18 years knowingly lives wholly or in part on the earnings of a prostitution of any other person is punishable. Section 5 is penalizing the person for procuring inducing or taking person for the sake of prostitution. Herein this section, the punishment has been divided into two compartments ; (1)If a person is taken for the sake of prostitution is doing so willingly and is not doing so willingly. In case of not doing so willing the punishment is more, secondly in case of a child, meaning thereby, if the person in respect of whom an offence has been committed is a child, the punishment provided is to be extended up to life imprisonment. This section is suggestive that trafficking of children has been viewed extremely seriously by the law. Section 6 is related to detaining a person in premises wherein prostitution is carried on. If a person is detaining another in premises wherein prostitution is carried on or when any person is detained without or with his consent in any brothel or in any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person is made punishable under the Act. In case of person found with a child in a brothel the presumption is laid down in the Law in favour of the child. In case of a child or a minor found in a brothel and upon medical examination if it is detected that the child or a minor have been sexually abused it shall be presumed that the child or minor has been detained for the purposes of prostitution or has been sexually

exploited for commercial purposes. Even in case of withholding from a women any jewelry, wearing apparel, money, or other property belonging to her or threatening to the women with legal proceedings are all prohibited and / or penalizing provisions have been made to render protection to the women by adding into a presumption against a person who detained that the detention was with the purpose of sexual intercourse or the intention to compel or induce her to remain in the brothel was in the mind of the person who is detaining. Further, it has also been provided that no suit, prosecution or other legal proceeding would lie against such women or girl. This all would collectively mean that the women who are victim of trafficking and the children who are victim of trafficking have been protected by the Act.

Thus, in viewing the provisions laid down in the Constitution, provisions as discussed above in the Indian Penal Code and different provisions more particularly the amendment in the year 1986 in the ITPA, 1956 are such which seems to be quite sound and matching with the international standards laid down by different international instruments.

It has to be remembered that women and children may be trafficked for several other purposes which may be inclusive of for the forced labour may be bonded child labour in garment, carpet and other such industries, factories or work sites where the tenderness of children are more suitable in abstracting the work. It could be with a view to take domestic work from the children in inhumane manner which may be with violent conditions including sexual abuse. Thirdly, such trafficking



could be with the view to use the women and children in forced labour at the construction site with a negligible wages and thereby earning very high range of profits. The trafficking could be with a view to have forced employment in entertainment industries, in bars, in massage parlours and all such similar establishments. It can be with a purpose of compelling the children to beg. Certain children loose their limbs to meet with the requirement of the begging industry. Drug paddling is also another area as looking to the nexus between trafficking women and trafficking in drugs it can easily be presumed that such trafficked children and women are may be forced to paddle drugs as well. Use of the child's limbs in organ trade use for camel jocking to use the women and children for fraudulent and forced marriages purchase and sale of babies for adoption are all the areas which are other than prostitution but, still closely walk with the menace of prostitution.

#### **4.2 USUAL REASONS FOR TRAFFICKING OF WOMEN :**

1. Poverty
2. Harmful cultural practices
3. female illiteracy
4. Unemployment of bread earning male member.
5. Sudden causes creating vacuum of income in the family like accident or some other serious illness to the male member of the family.
6. Desertion of the woman by the parent, by the husband
7. Abandoned children by the father compels the mother to earn by any means

8. Traditional practices like Devdasis, Jogins, etc.
9. Cross Border Trafficking
10. Weak Law Enforcement and increase in crime rate in general
11. Attraction of urban life
12. False concept or notion for career in acting, modeling, etc.
13. The male of the family migrate to abroad or to urban areas for better earning and then neither send the income nor takes care of the family.
14. Increase in tourism
15. Fear of HIV / AIDS wherein newer, fresher and younger girls are chosen by the customer.
16. Physical violence and sexual abuse in the family itself
17. Low wages or no wages or unemployment
18. Marital breakdown and attached social stigma
19. Prone to being trafficked themselves
20. No access to education and basic needs of life
21. Ignorance of the consequences and false belief of status symbols

#### **4.3 JUDICIAL EXPERIENCE :**

If we keep in centre the common parlance in which the judicial experience have moved, we can safely say that most of the cases have been registered against the victim women u/s.8 of ITPA. Section 7 & 8 are as such, quite important and are often used. Section 7 is related to prostitution in or in the vicinity of public places whereas, Section 8 is seducing or soliciting for purpose of prostitution. If we look at the usual experiences at the Trial Court, it can safely be termed that in

the trial Court these two sections have not been always rightly used. Sometime on viewing the decisions of Trial Court it seems that the decisions are against the object latter and spirit of ITPA. It seems that the fact looses the sight that the prostitute is in fact a victim if she will be viewed as accused she will be further victimized. The conclusion derived by the Investigating officers is hardly making any investigation as to any duress, force or compulsion exist in the life of the prostitute. If that is taken care of the object and spirit of the Act would be rightly saluted. Sometimes, the victim woman plead guilty and pays the fine when she is represented by a lawyer, but, the fact should not loose our sight that such a lawyer is always engaged by a person behind the screen i.e. the pimp or person who exploits women. While either releasing the so-called accused woman on bail or while recording their guilty plea, it needs to be taken care of as to the admission of the guilt of the victim woman does not flow from the pocket of the pimp or the person who exploits the woman or who lives on the earning of prostitution or it should not be merely brainchild of a lawyer who has been engaged by the person who exploits and compels the woman to be a prostitute. Normally, the person i.e. the customer who makes use of prostitute is also liable for prosecution and punishment but, it is rarely done. Sometimes, it is observed that the brothel keeper traffickers or the pimps go scot-free on account of improper interpretation which is not matching with the very object for which International Instruments to prohibit and to penalize trafficking have been signed. Secondly, sometimes, mere flirtation or behaving to attract the attention of opposite sex is termed as

prostitution which is improper. Sometimes, persons of two opposite sexes if found in compromising position then, also they are booked under this Act which is also improper. Thirdly, the proof of sexual intercourse is not sufficient. What is needed is offering of body by woman for sexual intercourse was on higher basis. Therefore, until the above things are properly found the investigating officers should restrain themselves from applying the Act and thereby attaching social stigma against the women and thereby ultimately compelling them or throwing them into the prostitution which too, is one of the causes because of which the prostitution may increase.

The Court who deals with the offences under ITPA must take necessary care that :

1. The plea of woman of guilty must be voluntary one and not an induced, forced or coerced one.
2. It is within discretion of the concerned Magistrate to reject the plea of guilt or to accept the plea.
3. Every woman is entitled to legal aid.
4. Every such proceedings must be held in camera.
5. The same lawyer for the trafficker and for trafficked woman should be avoided.
6. The Magistrate must not be silent spectator but should be very active in more particularly in questioning the investigating officer as to why most of the cases are registered under Section 7 and 8 of the ITPA and why no trafficker is booked.

7. The Magistrate may not accept the cyclostyle FIR and can reject the Police Report if so required to meet with the objective of the Act.
8. The Magistrate must have full, just and appropriate application of mind while framing the charge under the ITPA.
9. Exploitation of woman who was once caught under the Act will have to be viewed seriously.
10. Human right of the prostitute will have to be taken care of.
11. The participation of Non Government Organization and Social Activist Group should be encouraged.
12. The right of basic human dignity enshrined under Article 21 of the Constitution of India should be protected.
13. Sensitivity and serious application of mind is needed in imposition of fine more particularly for the traffickers. But, at the same time heavy fine should not be imposed against the prostitute or else the trafficker or the pimp would further exploit the woman under the guise of the burden he has to face to pay the heavy fines to relieve the prostitute.

### **VISHALJEET v. UNION OF INDIA <sup>3</sup>**

By way of this direction, Zonal Advisory Committee was directed to be setup by Hon'ble the Supreme Court to provide rehabilitative homes for Devdasis and Joginis. Article 32, 23(1), 35(A)(ii), 39(E) & (F), ITPA, Juvenile Justice Act, 1986, etc. were at test and it was directed by Hon'ble The Supreme Court that Central Bureau of Investigation may carry out the inquiry against police officers in whose areas Devdasi and Jogin traditions are flourishing.

---

3. AIR 1990 SC 1412.

Another direction to provide homes, medical aid and education to the woman who is engaged in flesh trade, in this judgment the further direction was also to provide homes to children of prostitutes and beggars. Hon'ble the supreme Court held that desired results have not been achieved in spite of various enactments and that the inquiry to be made through Central Bureau of Investigation throughout the country and that the State Governments need to take appropriate and speedy action. By the direction Hon'ble the Apex Court has setup advisory committee within respective zones to make suggestions, to take necessary steps to provide homes, and that the State Government and Union Government should device a machinery for ensuring the proper implementation of the suggestions which may be made by such committee.

#### **GUARAV JAIN v. UNION OF INDIA <sup>4</sup>**

In this matter the plea for separate hostels and school were made by way of Public Interest Litigation but Hon'ble the Supreme Court has rejected the said plea and held that it is necessary that accommodation in hostels and other reformatory homes be made adequately available. In this matter a committee was directed to be constituted to examine the material aspects of problem of the prostitutes and their children and it was also directed to submit a report containing the recommendation.

#### **DR. UPENDRA BAKSHI v. STATE OF U.P. <sup>5</sup>**

In this PIL Hon'ble Supreme Court has issued various directions regarding administration and facilities provided at the Government institutions and Remand Homes.

---

4. AIR 1989 SC 292.

5. AIR 1986 SC 191.

**SAHYOG MAHILA MANDAL v. STATE OF GUJARAT <sup>6</sup>**

In the instant case the petitioner is a trust which is an organization of 214 women the sex workers or the women in prostitution. It was alleged by the petitioner that the police is taking advantage of the extension of city limits and building of schools, temples and mosques in the area to commit atrocities on the women in the area and the police is violating rights of the women and is causing harassment and doing arrest arbitrarily. In this matter, it was held that the restriction imposed on personal liberty by Section 7 is in the interest of general public and is imposed by law enacted by the parliament in the background of the convention for suppression for the traffic in persons and of the exploitation of prostitutions of other signed and ratified by India and the deprivation of liberty to carry on prostitution in public places. The right to privacy is not absolute or unlimited and must be balanced with the needs of the community and with other rights. A prohibition on commercial sex will not ordinarily encroach upon intimate and / or meaningful human relationship. The direction was given to form state level committee for rehabilitation of such women and in this matter right to do the profession of once choice was thus, rejected in the light of International Instrument and the obligations of the state which emerge from such international institutions.

**GAURAV JAIN v. UNION OF INDIA <sup>7</sup>**

In this matter, Supreme Court has given direction to the Government with regard to children of prostitutes. As can be seen above, the Apex Court and different High Courts have given judgments considering the interest of society at large, interest of the prostitutes

---

6. GLR 2000 1764 / 236

7. 1997 (8) SCC 114

and their children and in the larger interest of the sex workers by giving directions to the State to make committee to give recommendations and to look into rehabilitation schemes. The above judgments suggest that judiciary has played a wonderful role but, such a wonderful role has been played at the Apex Court.

The present researcher submits that the lower judiciary needs to be awakened, trained and educate to look at the true perspective of the Act and to safeguard the interest of prostitution. One must take all necessary care or beyond necessary care when the matter of the prostitute is placed before the Court.

#### **4.4 ADMINISTRATIVE OR EXECUTIVE EXPERIENCE :**

1. National Network of Nodal officers has been formed in all states and union territories to monitor the problem of trafficking.
2. In October 2001 an information kit in trafficking in women and children has been prepared to inform the society about various aspects of trafficking.
3. The government and Non Government Organization have held several awareness workshops.
4. The Government did media campaign using TV, Video and Print Media.
5. The Central Government, National Human Right Commission, Non Government Organizations, The UNICEF and other United Nation Agencies have collectively worked on different dimensions of the problem.
6. Sensitization program in January, 2003 was organized on Prevention of Sex Tourism and Trafficking.



7. Government has resolved to implement the global goals of ethics for tourism.
8. Integrated child development services scheme with special project have been started.
9. An action plan for counseling in partnership with various government agencies is in progress.
10. Sensitization program to awaken general public is actively going on. <sup>8</sup>
11. Multisectoral approach for prevention, rescue, rehabilitation and reintegration of the victim women and children by the Union of India.
12. Different Programs to deal with poverty : <sup>9</sup>
  1. Swarnajayanti Gramin Yojna
  2. Swarnajayanti Shehri Rojgar Yojna
  3. Employment Guarantee Scheme
  4. Food for work program
  5. Self employment and training
  6. Microcredit for setting up micro enterprises
  7. Rural and Urban poverty alleviation programs
  8. Subsidy for distribution of food grains
13. Scheme like Balika Samruddhi Yojna, Kishori Shakti Yojna for help, survival, education and empowerment of girl children
14. Scheme named as Swadhar launched in December, 2001
15. Grant in Aid scheme by DWCD
16. State Government's Special Rehabilitation Measures
17. Action plan for the welfare and rehabilitation of women and children
18. Family counseling centre
19. Legal Services Authority for free legal aid

---

8. Government of India's Second and Third Periodic Report, (1997-2005), Ministry of Human Resource Development, GOI, 2005 p.51.

9. Ibid pp. 147, 148 & 149.

20. Training and orientation programs
21. Awareness program with police, judiciary, executive
22. Gender Justice Program <sup>10</sup>
23. Administrative Instructions have been issued to the managers of all hotels and lodges in India to report to the police stations within 24 hours of the arrival of any foreigner in their hotel.<sup>11</sup>
24. The NGOs are working to assist the victims of AIDS and to see to it that it prevents the further spread of HIV / Aids.
25. At the international level cross border trafficking is also attempted to be curtailed by joint project of two neighbour countries.
26. National Policy for the empowerment of women, 2001
27. The Asian Development Bank and other such institutions are working on the project with the Government of India to combat trafficking in women and children
28. The Government of India has drafted the platform of action on the question of prostitution and child trafficking in India in 1988 <sup>12</sup>
29. Government of India has formed a Committee to look into the problems of trafficking in women and children and of forced prostitutions in Indian Brothel wherein, the help of NGOs and different forums working on the aspect are together.

#### **4.5 INTERNATIONAL EXPERIENCES :**

1. The Regional initiative at SAARC has drawn a platform of action in accordance with the World Congress on

---

10. Ibid p. 150.

11. Ibid p. 44.

12. The National Alliance of Women (NAWO) alternative NGO report on CEDAW, initial submission to the CEDAW Committee, January, 2000 India.

commercial, sexual exploitation of women and children, CEDAW and UDHR.

2. The attempt to make standard rules of treatment of victims including medical health for physical and mental trauma, repatriation and reintegration, information and legal rights are to be made.
3. The SAARC countries along with the women groups made Maale Declaration (Declaration made at the 9<sup>th</sup> SAARC Summit at Maale, Maldives, 1997) deep concern and commitment on the issue of trafficking in women and children was shown.
4. In this 9<sup>th</sup> SAARC Summit, SAARC nations agreed to establish a regional Convention on combating the crime of trafficking in women and children for prostitution.
5. Government of India drafted the Convention with inputs from other member nations in the expert committee for the same.
6. Non Governmental Organizations have emphasized that the trafficking issue needs to be seen in the context of free mobility of capital, technology, expertise and sex tourism.

In spite of all the efforts of law makers, judiciary and executives, the fact remains that the social stigma attached to women victim of trafficking are without any remedy and the problem of refusal by the family members to accept such a woman has also been not met with and thirdly, under the guise for recruitment for domestic work or marriage the exploitation of women does not come on the screen which needs to be specifically dealt with.

#### 4.6 CONCLUSION :

Article 6 of the CEDAW requires the State Parties to take all appropriate measures including legislation to suppress all forms of traffic in women and exploitation of women in prostitution. Poverty, violence, tension, social stigma are all side product of the menace of trafficking. Apart from prostitution or trafficking, there remains lamenting fit and great deal of suffering alongwith number of health problems for the women. It is expected that the SAARC convention needs to broaden its scope and notion of trafficking. One should remember that trafficking has several dimensions and purposes and that prostitution is only one amongst them. The political, civil, social and other human rights of the woman needs to be protected with all firmness. It is now high time when we need to change our focus to traffickers instead of further victimizing the victim woman. The Conventions which are being made for welfare of women should not become restricting order for women against her movement from one country to another country. Lastly, one should never forget that trafficking and other such menace and shame of culture is a product of global patriarchies, economic liberalization and the media invasions on some of the aspects, wherein, woman's body becomes a commodity for profit earning purposes.

**CHAPTER - V**

**EDUCATION AND WOMEN**

## CHAPTER – V

### EDUCATION AND WOMEN

#### 5.1 SIGNIFICANCE :

The right of education for all people has been specifically made out in several international instruments. Article 10 of the CEDAW specifically provides that women should not be discriminated against and shall have equal opportunity in the field of education. The State Parties are duty bound to take appropriate measures to grant equal rights to women and to eliminate discrimination from each aspect of social political and civil life. In view of Article 10 it stands clear that the Article is commanding the State Parties to see to it that women get equal access to studies, to make their careers, all kind of vocational training, qualification and further studies are justly and freely available to women. Moreover, the State should see to it that society get rid of the stereotype concept by revising the text books, school programs and teaching methods. Co-education scholarship, study grants, etc. should be made available by the State Parties and that the State Party should reduce the dropout rates of girl child and that it should secure equal and active participation of women in sports, physical education and other fields which are branded for men.

Education is as such, very important for anyone and everyone as, it expands the scope for a human being to better understand, appreciate and analyze the things which would

in-turn help developing one's own personality. In case of women, it has an additional factor other than all above i.e. the women will get economical independence and that economical independence is extremely valuable in view of the social stereotypes and the vices women have to undergo in man-oriented society. In India, education has been given due importance right from freedom struggle of India. Mahatma Gandhiji, Karvaji are in the root of giving a new turn to women's image in the society. They brought out Indian women from the four corners of their houses and made them to feel that they are the important persons to participate in an important event of the nation viz. the struggle to get freedom. There were so many other contemporary dignitaries who too were strong believers of advancement of the cause of women's education and for that reason, it was felt necessary to promote and propagate the idea of women education. At that point of time, it was necessary looking to the situation of nation as a whole and since then women participated actively in the civil life and the political life of the country. Since then, the education to women was treated as one of the most important aspect of our national social life. When the ideology of the Constitution of India was in its infancy, the ideas about equality of men and women were properly placed in Constitution of India and as has been reflected in Article 14, 15, 16, 19 etc. of the Constitution of India women have every right to take education on equal footing with men. As a matter of fact there were lot many social hurdles and obstacles for women to make progress and more particularly to get education.

## 5.2 GIRL CHILD :

The Convention on the Rights of the Child popularly known as (Convention on the Rights of the Child) is the international instrument dealing specifically with child. It is an international human right instrument which combines social and economic rights with civil and political rights in the same instrument. The gist of the instrument is to recognize the right enshrined as guaranteed to both, boys and girls, without discrimination. It is observed that the girl child, who is also a beneficiary of the said instrument, is hardly getting the right recognized in the instrument.

Availability of education results into expanding the horizon of opportunity, better economic and bargaining power of the women which greatly empowers them in increasing their status.

Girls' enrollment in schools is an important factor for a woman's social, economic and political empowerment. There are yet several children throughout the world who have not been given formal education and most of them are girls.

Schooling is imperative for girls education as sexual harassment, threatening by teachers and fellow students, fear, pregnancy, acquiring HIV, Gender based violence are all causes for school dropouts.

Education helps women to fight with poverty, widowhood, old age, conflicts, breakage in marriage, sexual exploitation, sexual abuse and so on and on.



### 5.3 LEGISLATIVE EXPERIENCE :

It cannot be forgotten that in attaining the goals set out in CEDAW and to appreciate its administration in India one needs to assess each dimension of different experience. VIIth schedule of the Indian Constitution is to throw light on division of subjects for making laws under the Indian Constitution. Union list empowers the Parliament to make law on the subject listed in this list. Whereas, the State Legislatures have rights to legislate on any of the matter mentioned in the State list but, the Parliaments and State Legislatures have powers to make laws on the subject mentioned in the concurrent list.

Education was a State subject until 1976 but, by 42<sup>nd</sup> Constitutional Amendment, the subject of the education is enlisted in the concurrent list which has empowered the Parliament to legislate on the education and thus the dream of free and compulsory education has started being realized. In view of the Article 41, 45, 46, 21A, India is proceeding towards being egalitarian society where all have equal rights. The Constitution of India is not merely a law book. It is a command given by people of India, to people of India and for people of India. Article 21 of Constitution of India wherein, life and liberty are guaranteed to each citizen must be construed in the light of the directive principles in Part-IV of the Constitution. So far as the right to education is concerned, there were several articles in Part-IV which expressly speak of it. Article 41 says that the, "State shall within the limit of its economic capacity and development make effective

provision for securing the right to work, to educating and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underserved wants.

Article 45 : "The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Article 21A inserted vide 86<sup>th</sup> amendment, 2002 on 13/12/2002 in Constitution of India recognized right to education upto the age of 14 years as fundamental right which was placed at Article 45 as directive principle. Article 21A reads as under :

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

Article 45 requires the State to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete age of fourteen years. The status of above discussed transformation of right to education from directive principle to fundamental right has been originated from a judgment of Supreme Court which we shall discuss later.

Article 46 requires :

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the scheduled castes and the scheduled tribes, and shall, protect them from social injustice and all forms of exploitation.”

Article 41 is also related to right to education. Article 41 says that :

“The State shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved wants.”

Constitution of India has given great weightage to free and compulsory education for all Indians up to the age of 14 years. These have helped as protection against gender biased education policy. The directive of State Policy of the Indian constitution to provide free and compulsory education up to the age of 14 years is to make a fundamental duty of parents to provide opportunities for children in the 6 to 14 years age group. The Bill was examined by the Parliamentary Standing Committee on human resource development and wider public debate on the implications on the proposed legislation

was felt required to be initiated and that this process is under way.<sup>1</sup>

#### 5.4 JUDICIAL EXPERIENCE

The Judicial Experience plays a very vital role in deciding the fundamental duties, fundamental rights and directive principles of the State Policies. It also helps in expanding, construing, interpreting and / or going on into the philosophical depth of each provision of law. As far as Constitution is concerned, there are numerous judgments more particularly of the Hon'ble Supreme Court which have evolved a near jurisprudence on the subject. On the right of education judgment in the matter of Unni Krishnan J.P. v. State of A.P. has played a wonderful role. The present researcher submits that discussion this judgment alone would suffice the purpose to travel into the jurisprudence developed by the Apex on the aspect of right of education as has been enshrined in Constitution of India. In the matter of Unni Krishnan, J.P. v. State of Andhra Pradesh <sup>2</sup>. In this matter several other previous matters on the right of education or on the directive principles of state policy qua education have been discussed at length. It would be fitting to discuss all the judgments in the reference and in the contents it has been mentioned in the referred judgment.

#### **MS. MOHINI JAIN v. STATE OF KARNATAKA <sup>3</sup>**

In this judgment Hon'ble Supreme Court has held that the right education flows directly from right to life. Every citizen of this

- 
1. Responses to questions on India's first Report on CEDAW, Permanent Mission of India to the UN 22<sup>nd</sup> Session of CEDAW, (New York 24 – 31 January, 2000) Internal p.17, response to question no.37.
  2. AIR 1993 SC 2178, Dr. N. Maheshwara Swamy, Supreme Court Safeguards to Educational Institutions, Asia Law House, Hyderabad, 3<sup>rd</sup> (ed.) 2003-04, p.236.
  3. Ibid p.236, (1992) 3 SCC 666

Country can call upon the state to provide him the education of his choice and that it is the duty of the state to provide adequate number of medical colleges, engineering colleges and other educational institutions in view of the fact that right to education is implicit in the right to life and personal liberty guaranteed by Article 21.

In the judgment of Unni Krishnan, Hon'ble the Supreme Court has shown their disagreement to the judgment of Mohini Jain and has held that right to education is implicit in the right to life and personal liberty guaranteed in Article 21. but, the said right is to be construed in light of directive principles enshrined in Part IV of the Constitution of India. In this judgment, correctness of the decision of Mohini Jain was the issue. Hon'ble the Apex Court had framed mainly three questions :

1. Whether the Constitution of India guarantees a fundamental right to education to its citizens ?
2. Whether a citizen of India has the fundamental right to establish and run an educational institution under Article 19(1)(g) or any other provision in the Constitution ?
3. Whether the grant of permission to establish and grant of affiliation by a university imposes an obligation upon and educational institution to act fairly in the matter of admission of students ?

For the purpose of this chapter, since we are concerned with question no.1, let us see as to what has been decided by the Hon'ble Supreme Court in the referred matter.

Hon'ble Supreme Court has decided, on the question no.1 as under :

"The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its contents and parameters have to be determined in light of Article 45 and 41. In other words, every child / citizen of this country has a right to free education until he completes the age of 14 years. Thereafter, his right to education is subject to the limits of economic capacity and development of the state." <sup>4</sup>

This judgment is as such, a departure from a very very idealistic view taken by Hon'ble Supreme Court in Mohini Jain's case. The question has been looked in the manner that when India has not been able to introduce compulsory and universal primary education in the country even after five decades of the Constitution coming into force and in spite of a clear and specific directive principle to this effect, the exercise seems to be impossible to implement. It seems that in the referred matter the Court has taken more realistic view and the whole matter has been put in proper perspective. The Court has mainly reiterated the proposition that having regard to the fundamental significance of education, the life of an individual and nation the right of education is implicit in, and flows from, the right to life guaranteed by Article 21. But, the parameters of this right, which are not absolute, have to be determined in the light of directive principles contained in

---

4. Ibid p.326.

Article 41, 45 and 46. It seems that the Court has limited the State obligation to provide educational facilities as follows :

1. Every citizen has a right to free education until he completes the age of 14 years.
2. Beyond this age, the state obligation to provide education is subject to the limits of economic capacity and development of the state.

The obligation created by Article 41, 45 and 46 can be discharged by the State either by establishing institutions of its own or by aiding, recognizing and / or granting affiliation to private educational institutions. Taking note of the inadequate outlay on education and limited economic capacity of the state to finance education, the Court has ruled that private educational institution both aided and unaided are necessity in India but, commercialization of education cannot and should not be permitted, as has been held by Hon'ble Supreme Court in the referred matter.

Now let us see the role played by the Court while pronouncing the judicial verdict by narrating into it the importance and significance of the education. To highlight the importance and significance of education, Hon'ble Supreme Court in the judgment of Unni Krishnan has referred in following manner :

“The importance of education was emphasized in the ‘Nithi Sattakam’ by Bharthuhari (1<sup>st</sup> Century B.C.) in the following words :

'Translation: Education is the special manifestation of men, education is the treasure which can be preserved without fear of loss, education secures material treasure, happiness and fame, education is the teacher of teacher, education is God Incarnate, education secures honour at the hands of state not money. A man without education is equal to animal.' <sup>5</sup>

Education is enlightenment. It is the one that lends dignity to a man as was rightly observed by Gajendra Gadker : J (as he then was) in University of Delhi v. Ramnath (1964 2 SCR 703 at pg.710) (AIR 1963 SC 1873 p.1875 para 6). Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development." <sup>6</sup>

**OLIVER BROWN v. BOARD OF EDUCATION OF TOPEKA**  
**(U.S. Supreme Court Reports (1953) 98 Law.(ed.) 847 at page 880)**

It was observed by the Hon'ble Supreme Court of United States in this judgment that :

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition our importance to

---

5. Ibid pp.295 & 296,

6. Ibid p.245, para.39,



education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." <sup>7</sup>

The immortal Poet Valluvar whose Tirukkural will surpass all ages and transcend all religions said of education :

"Learning is excellence of wealth that none destroy; To man nought else affords reality of joy." <sup>8</sup>

The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter. <sup>9</sup>

An old Sanskrit adage states :

" 'That is Education which leads to liberation' – liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation from prejudices which bring the Vision of the Truth." <sup>10</sup>

---

7. Ibid p.238, para.16,

8. Ibid p.237, para.9,

9. Ibid p.237, para.11,

10. Ibid p.237, para.12,

In the context of a democratic form of government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity/ Even several decades ago, our leaders harped upon universal primary education as a desideratum for national progress. It is rather sad that in this great land of ours where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy should be appalling. Today, the frontiers of knowledge are enlarging with incredible swiftness. The foremost need to be satisfied by our education is, therefore, the eradication of illiteracy which persists in a depressing measure. Any effort taken in this direction cannot be deemed to be too much. <sup>11</sup>

Victories are gained, peace is preserved, progress is achieved, civilization is built up and history is made not on the battlefields where ghastly murders are committed in the name of patriotism, not in the Council Chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seedbeds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land. <sup>12</sup>

With a view to place emphasize on importance of right of education at the international level in this judgment in paragraph 46 and 47 two different international instruments

---

11. Ibid pp.237 & 238 para.13,

12. Ibid p. 238 para.14,

have been cited. Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights the principal Global Treaty wherein, also primary education shall be compulsory and available free to all has been provided have been cited.

#### 5.5 REFERENCE OF INTERNATIONAL INSTRUMENTS IN THE JUDGMENT:

Article 26 (1) of the Universal Declaration of Human Rights States :

“Everyone has the right to education. Technical and professional and professional educational shall be made generally available and higher education shall be equally accessible to all on the basis of merit.” <sup>13</sup>

In the World of Science and the Rule of Law by John Ziman 1986 Edition at page 49 it is stated :

“The principal global treaty which covers this right is the International Covenant on Economic, Social and Cultural Rights, whose Article 13 recognized the general right to education enunciated by the Universal Declaration on Human Rights, but then goes on to add the following more specific provisions;

(2) *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right :*

---

13. Ibid p. 251 para.46,

- (a) *Primary education shall be compulsory and available free to all;*
- (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education :*
- (c) *Higher education shall be made equally accessible to all on the progressive introduction of free education;*
- (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education ;*
- (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.*

*The status of this Article is a useful reminder of the problems inherent in any attempt to create a 'social' right of this kind for individuals against their states. " <sup>14</sup>*

## **5.6 REFERENCE OF ADMINISTRATIVE ACTIONS IN THE JUDGMENT :**

In this judgment, the actions on the part of the Government or the administrative actions have also been referred and discussed. As has been discussed in this judgment it is held that most of the state has enacted legislation for compulsory

---

14. Ibid p. 251 para.47,

education. At the end of the sixth five year plan (1985), primary education for ages 6 – 11 is free in all states, and for age group 11 to 14 it is free in all except Orissa, Uttar Pradesh and West Bengal. It is discussed that free education in all states is provided at the primary and secondary stages for girls, Scheduled Caste and Scheduled Tribes. Moreover, the contemporary picture is also discussed which is the outcome of administrative action taken for the purpose. As has been referred in the judgment the literacy rate has risen from 16.6% in 1951 to 36.6% according to the 1981 census.

Moreover, in this judgment the percentage of access to school for minorities and girls, the role of educational institutions the causes for dropouts, the real problem of socio and economical constraint and the poverty being a major cause, etc. has also been discussed which is over and above the discussion on the aspect of law.

The judgment has even referred the government strong wheel by discussing therein, the 6<sup>th</sup> Five Year Plan Document wherein, serious reference to desirability of a time bound plan to achieve universal enrollment, the 7<sup>th</sup> Plan and the National Policy on Education, 1986 have also been mentioned. It is indeed matter of taking note of the fact that Hon'ble Supreme Court has made a beautiful thesis on the aspect of education in India by discussing therein the Constitutional provision coupled with the administrative measures taken by the government. Not only that but the Hon'ble Supreme Court has

placed on record as a part of the judgment the comparative study on many aspects of education.

"2. *Concerted efforts to reach the target has led to manifold increase in institutions, teachers and students as shown in the table below :*

Number of Institutions (in lakhs)		
	1950-51	1990-91
Primary Schools (Class I-V)	2.10	5.58
Upper Primary Schools (Class VI – VIII)	0.13	1.46
Total	2.23	7.04
Number of Teachers (In Lakhs)		
Primary Schools	5.38	16.36
Upper Primary Schools	0.36	10.59
Total	6.24	26.95
Gross Enrolment		
Primary Enrolment (in lakhs)	192	991
Gross Enrolment Ratio	43.1%	101.03%
Upper Primary State		
Total Enrolment (in lakhs)	31	333
Gross Enrolment Ratio	12.9%	60.11%

3. This increase provided Indian Education System with one of the largest systems in the world, providing accessibility within 1 kilometer. walking distance of Primary schools to 8.26 lakhs habitations containing about 94% of the country's population. Growth in enrolment in the decade of 80s showed an acceleration that has now brought enrolment rates close of 100% at primary stage." <sup>15</sup>

15. Ibid p. 253 para.54,

Thus, in the above judgment important significance and Constitutional background, rights, directive principles laid down in the Constitution, etc. have been discussed at length. It is a thesis on the subject of right of education.

**BANDHUA MUKTI MORCHA v. UNION OF INDIA** <sup>16</sup>

In this matter, Hon'ble Supreme Court has given direction to the Government to evolve principles and policy for progressive elimination of child labour for the children below age of 14 years in various employments. Hon'ble the Apex Court directed the Government of India to convene meeting of concerned Ministries of respective State Governments and their Principal Secretaries holding concerned Department to evolve the principles and policy and steps consistence with the scheme laid down to provide compulsory education to all children either by the industries itself or in coordination with it by the State Government to children employed in the factories, mines or any other industries, organized or unorganized labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational professional and higher education. Hon'ble the Supreme Court has also directed that it is the duty of the State to provide facilities and opportunities to children driven towards child labour to develop their personality as responsible citizens and while imposing ban of employment, necessary directions were issued to the State for compulsory education.

---

16. AIR 1997 SC 2218.

**M.C. MEHTA v. STATE OF TAMIL NADU**<sup>17</sup>

In this matter, Hon'ble Supreme Court has discussed Article 41 of the Constitution of India regarding the right to work and Article 47 relating to raising the standard of living of population, and Article 39(e)(f) as to non abuse of tender age of children and giving opportunities and facilities to them to develop in healthy manner, the wish expressed by the Constitution in Article 41 and desire of primary education expressed in Article 45 and the status of fundamental rights given by Hon'ble Supreme Court to right of education have all been reiterated. In view of what has been discussed above, it stands very clear that the judiciary has played wonderful role with reference to right of education. While discussion right of education, the right of education of women and girl child have also been elaborately discussed. Moreover, the importance and significance of education has also been given an appropriate place in this judgment. Thus, the above referred judgments are literary pieces exhibiting the inherent quality of conveying the great message to the society at large. In this mater Hon'ble the Supreme Court has directed the state to see that working hours of child are not more than 4 to 6 hours and that every child should received education 2 hours each day at the State's cost.

The present researcher submits that, education is the most effective instrument to broaden one's horizon and foster values. Education helps an individual in enlarging his choice and to have more scopes in the life which may help a person to realize his potential. Education also helps oppressed section

---

17. AIR 1997 SC 699.



to liberate. It promotes social and economic development and therefore, Government of India and Universal Declaration have enshrined this right. Education is the road by which lot many social changes can be brought into. More particularly, education of women would serve several purposes but, one among them is to bring all necessary social changes.

### 5.7 ADMINISTRATIVE EXPERIENCE :

The Government is trying its best to give remedies to the social issue of Gender Deprivation, denial and discrimination by enlarging the scope for education to women.

1. The national Policy of Education was made in 1986.
2. This policy is revised in the year 1992.
3. The text books of the schools are reviewed to remove gender bias and stereotypes within it.
4. Early childhood care and education are imputed as directive principles of state policies.
5. Free and Compulsory education for children in the age group of 6 to 14 is enshrined as a fundamental right.
6. Rate of female illiteracy is coming down.
7. Sarva Siksha Abhiyan launched to provide education to all.
8. Government reiterates its commitment to gradually increase allocation on education to 6% of Gross Domestic Product <sup>18</sup>
9. 40% of budget on education spent for girls and women <sup>19</sup>
10. The National Policy on Education (1986) : This policy provides that all children would be provided free and compulsory education until 14 years of age.

---

18. Indian Trust for renovation and social change, search for a vision statement on women's empowerment, National Commission for Women, p.98.

19. Ibid p. 98.

11. In 1992 with the help of World Bank, new education policy was revised.
12. In view of 1991 census, the problem of illiteracy among women can be seen. Number of illiterate women was 200 million out of total figure of 329 million. <sup>20</sup>
13. The literacy rate for women is 39.29% which is almost half that of men (64.13%)<sup>21</sup>
14. According to the 6<sup>th</sup> annual survey the number of girls enrolled in primary classes in 1993 was 41.3% <sup>22</sup>
15. The gross enrollment ratio at the primary level is 100% for boys whereas, 78% for girls <sup>23</sup>
16. Mean years of schooling are only 1.2 for women while the figure for men is 3.5 <sup>24</sup>
17. Enrollment at secondary level is 55 girls per 100 boys <sup>25</sup>
18. Dropout ratio of girls is little more than 1/3<sup>rd</sup> of number of girls enrolling at primary stage. More than half i.e. (57%) dropout before completing upper primary levels. Of the remaining 43% who reach the higher secondary stage another 10% dropout before the end of the school <sup>26</sup>
19. The program of action (1992) – Revised National Policy on Education states that it was important for the Government to formulate and implement a new education policy for the country, the program of action (1992), underlines the need to promote women’s education by focusing on the existing gender disparity in education, particularly the literacy rates and enrollment rates at the elementary level.
20. Increase of schools in urban areas and rural areas
21. For enabling girls to attend formal schooling the formal education system has been expanded known as Non

---

20. National Alliance for Women (NAWO) alternative NGO report on CEDAW, January, 2000, p.39.

21. Ibid p.40.

22. Ibid p.40.

23. Ibid p.40.

24. Ibid p.40

25. Ibid p.40

26. Ibid p.40

Formul Education runs exclusively for girls which is getting 90% assistance from the Central Government.

22. The total enrollment in any Non Formul Education Centre by March, 1994 was 6.4 million.<sup>27</sup>
23. Mid day meal : A program of nutritional support to primary education was launched on 15<sup>th</sup> August, 1995 to give a boost to primary education. It is expected that the program will be extended to all primary schools in India.<sup>28</sup>
24. Mahila Samakhya : This program is to create an environment for women to seek knowledge and information in order to make informed choices and create circumstances in which women can learn at their own pace and rhythm.
25. Decentralized planning for elementary education : This is with special gender focus to universalize gender education.
26. Lok Zumbis : A program of universal primary education in educationally backward Rajasthan,
27. Siksha Karmi Project in Rajasthan aims to revitalize and expand primary education specially in remote and backward villages of the State of Rajasthan.<sup>29</sup>
28. Basic education project (in 10 Districts of UP)<sup>30</sup>
29. Primary education project (Andhra Pradesh)<sup>31</sup>
30. Bihar Education Project : Mahila Samakhya<sup>32</sup>
31. Distance Education : The National Open School has formulated an innovative project aimed at providing alternative schooling to (1) neoliterate who have acquire functional literacy (2) early school dropouts (3) dropouts

---

27. Initial Report of Government of India 1998 reviewed by CEDAW Committee, January, 2000, p.43.

28. Initial Report of Government of India 1998 reviewed by CEDAW Committee, January, 2000, p.43.

29. Ibid p.44.

31. Ibid p.46.

30. Ibid p.46.

32. Ibid p.46.

from the nonformal education system (4) learners who have attended nonformal education program <sup>33</sup>

32. Vocationalization at Higher Secondary Level <sup>34</sup>
  33. Vocational training programs which emphasize entrepreneurship. <sup>35</sup>
  34. The Central Social Welfare Board working with NGOs for women runs a vocational training scheme. A certificate by the Directorates of Technical Education of the State is being issued which offer better scope of employment in the formal sector for women.
  35. Vocational Training Scheme like trycem (40% reservation for women) <sup>36</sup>
  36. Norad and Step (DWCD) <sup>37</sup>
  37. Nehru Rojgar Yojna <sup>38</sup>
  38. EDP Programs of Banks <sup>39</sup>
  39. SIDBI <sup>40</sup>
- All these schemes are women specific or provide reservation for women
40. Ministry of labour runs a vocational training program through vocational training institute for women, State Governments <sup>41</sup>
  41. A scheme for vocational rehabilitation centre for handicapped women launched in 1986 - 87 to provide rehabilitation to handicapped women through vocational training. <sup>42</sup>
  42. Polytechniques run by the State Government. Out of 450 polytechniques in the Country 45 are exclusively earmarked for women. <sup>43</sup>

---

33. Ibid p.46.

34. Ibid p.46.

35. Ibid p.46.

36. Ibid p.46.

37. Ibid p.46.

38. Ibid p.46.

39. Ibid p.46.

40. Ibid p.46.

41. Ibid p.46.

42. Ibid p.46.

43. Ibid p.46.

43. After vocational training counseling centres are working to give counseling <sup>44</sup>
44. Curriculum Revision and revision of training material
45. Sensitization of teachers
46. National Council for educational research and training institute and National Institute for Educational Planning and Administration are mainly working for curriculum revision, revision of training material and sensitization of teacher.
47. The Draft National Policy on women
48. UGC assist 22 universities in running centres for women study which act as catalyst / resource agents to assist the universities to engender their curriculum, research agenda and community development activities.
49. Universities like Indira Gandhi Open University is working for empowerment of women by providing distance education.
50. UGC Schemes supporting special refresher and orientation programs for teachers from different disciplines.
51. UGC has relaxed age restriction for women to improve their opportunities to participate in academic programs and to enable the women to enter vocation after marriage and child birth.
52. In order to provide free and compulsory education for all children in the 6 to 14 years age group, the government has made education a fundamental right in the year, 2002. Article 21A of the 86<sup>th</sup> Amendment Act to the Constitutions obligates the State to provide free and compulsory education to all children in the age group of 6 to 14 years. The passing of this enactment has been an important

---

44. Ibid p.46.

milestone on the path towards universalization towards elementary education.

53. Allocation of resources in terms of government investment has increased from 3.49% in 1997 to 4.33% of the Gross Domestic Product in 2001 to 2002. In 2001-02 it declined to 3.82 and marginally increased to 3.97% in 2002-03.
54. Elementary education received the highest priority with more than half (2.02%). The investment being at this level.<sup>45</sup>

Let us see the year-wise position of the investment of Government in Elementary, Secondary, Adult and university and higher education from the Gross Domestic Product.

#### EXPENDITURE BY LEVEL OF EDUCATION IN INDIA (IN MILLION) <sup>46</sup>

Year	Elementary		Secondary /Higher Secondary		Adult Education		University & Higher Education		Total	
	Expenditure	% to GDP	Expenditure	% to GDP	Expenditure	% to GDP	Expenditure	% to GDP	Expenditure	% to GDP
1997-98	240832	1.73	156635	1.13	2098	0.2	85957	0.62	485521	3.49
1998-99	301911	1.89	201010	1.26	1894	0.01	110974	0.69	615789	3.85
1999-00	340688	1.93	254479	1.44	1865	0.01	151129	0.86	748161	4.25
2000-01	392746	2.06	260575	1.37	2261	0.01	169282	0.89	824864	4.33
2001-02	400194	1.91	251635	1.20	3596	0.02	143233	0.69	798657	3.82
2002-03	430434	1.93	283013	1.26	4158	0.02	170999	0.76	892204	3.97

55. Early Childhood Care and Education (ECCE) : This is the program mainly for the children born in the families living below the poverty line for the development of such children more particularly, catering to their health, nutrition, physical, mental social and emotional needs.
56. integrated Child Development Scheme (ICDS) : Balwadis, Crèches, Preprimary schools, etc. are run by Government

45. Government of India's 2<sup>nd</sup> & 3<sup>rd</sup> Periodic Report on CEDAW – DWCD GOI, 1997-2005, p.51.

46. Ibid p.51.

and Non Governmental Organizations for the development of children.

57. Sarva Shiksha Abhiyan (SSA) : This is meant for education for all and it is meant for free and compulsory elementary education which has been launched in 2001 aiming to ensure universal access, retention and quality improvement in education. The children in the age group of 6 to 14 years are included in this program. This has aim that this age group of children do complete 5 years of schooling by 2007, 8 years of schooling by 2010. In view of this program new schools are being opened up in the habitation where it is lacking and it is also to strengthen the school existing by providing additional classrooms, toilets, drinking water and special brands for school maintenance and improvement. In this program, tribal councils, NGOs. Teachers, communities, activists and women organizations are being approached.
58. National program for education of girls at elementary level (NPEGEL) : This program is mainly for SC and ST females and more particularly meant for the area where female literacy is below 10% in rural and urban slums. This is specially meant as one of the component of Sarva Shiksha Abhiyan with specific view to extend gender care and additional support for the education of underprivileged and disadvantaged girls at elementary level. where gender disparity is higher than the national average and where rural female literacy is less is the are for this particular program. This is meant to enable girls to come to school, devise alternate schooling for girls who are not able to

reach the areas of the school to provide flexible timings and remedial teaching even at residential camps.

59. District Primary Education Program (DPEP) : This has started in 1994 to reduce gender and social disparities and universalizing access, retention and achievement with emphasis on decentralized management, participatory processes, empowerment and capacity building at all levels.
60. national program of nutritional support to primary education known as 'Mid Day Meal' started in 1995 to boost up the universalization of primary education by increasing enrollment, retention and attendance and simultaneously, impacting upon nutritional status of students in primary classes 1 to 5. The program is for the whole country. In 1997 to 1998. This scheme has shown positive impact for all children but, specifically for girls.
61. The Government is making more and more schools at primary and secondary level. Even the secondary level schools have been given appropriate facilities for advancement of higher education also. More schools in rural areas and in the habitation where schools are not there to see to it that no child has school more far than 1 km.
62. Balika Sumriddhi Yojna (BSY) : Launched in 1997 and reviewed in 1999. This is mainly for the families to which girl children are born. A post delivery grant of Rs.500 is deposited in a bank in the name of girl child up to 2 girl children per family which can be recovered by the girl child only on her attaining 18 years of age. This is perhaps



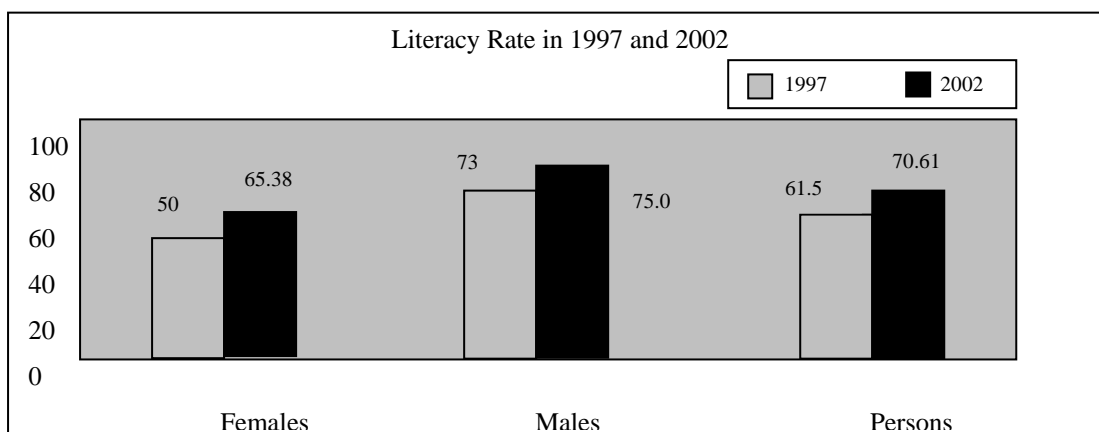
to encourage the birth of girl child. This would also help survival of a girl child and enhance access to education and it would prevent child marriage as, the availability of the amount to the girl child is possible if she is unmarried.

63. National Literacy Mission (NLM) : Set up in 1988 to impart functional literacy to nonliterate in the age group of 15 to 35 years. As the figure suggests, this program has given benefit to women to make them functional literates.
64. Mahila Samakhya (MS) : A scheme started in 1989 for education and empowerment of women in rural areas more particularly, for those belonging to socially and economically marginalized groups. In this scheme mahila sanghs at village level provide the space to meet, reflect and articulate their need and make informed choices. This scheme has provided for early childhood and pre school cum credit facilities, non formal education centre, mahila sikshan kendras, learning to adults and girls, skill development program for illiterate women, etc. The positive impact of the program lies in women having enhance access to quality education and having built and strengthened their capability to effectively participate in village level educational program.
65. Special Measures for SC / ST and Disabled Children: Several Educational schemes for children of the disadvantaged sections like SCs, socially and educationally backward classes, street children and children with disabilities.
66. Government is also committed to provided equal access to and free education for girls and women at all levels

including vocational and technical education and training in job oriented trades.

67. Kasturba Gandhi Balika Vidhyalaya (KGBY) : This is a scheme by Central Government wherein, residential school with boarding facilities at the elementary level mainly belonging to SC, ST, OBC and minority areas to provide quality education for girls.
68. National Scholarship for Disabled : In the year, 2002-03 with a view to assist disabled student to pursue post metric, technical and professional courses national Scholarship Scheme has been introduced by the Government.
69. 'JHoola' (Swing) : This is a program implemented by U.P. Government to transform school routines into fun filled learning experiences for the girl students. This has helped in reducing the dropouts in the schools.
70. Attendance Incentives : The Tamilnadu Government has started giving attendance incentive of Rs.500/- per year to S.C. and S.T. girl students. On entering grade VI girl students are given Rs.1,000/- per year. This too is only for S.C. and S.T. Girls.
71. Special Stipends : Special stipends and bus services are provided to married girl students in government schools in Delhi.
72. Scheme for Pre and Subsidize Bicycles for girl students is also implemented in several states.

The literacy chart reflecting the literacy rate is as under : <sup>47</sup>



During 1997 to 2002, the Literacy Rate in general has increased from 61.5% to 70.6% but, the literacy rate for women has increased from 50% to 65.38% as against 73% to 75.9% for men. This reflects 15% rise in women's literacy.

The dropout ratio has not been successfully declined. The children in school are not even completing 5 years of schooling. This is the area where disparity exists and this area needs to be attended with lot of care and caution and if the dropout is reduced, then, it itself would be great services to the nations. For girls the reasons for dropout include the distance of school from the residence, inadequate number of female teachers, lack of toilet facilities, etc. The Government at Central as well as State Levels are making lots of efforts to address the above problem.

The Teacher pupil ratio has not changed significantly at the primary school stage between 1997-98 and 2002-03. Despite the decrease in number of students per teacher in

47. Ibid p.56.

several states, the ratio increased steeply from 47 to 83 students in Bihar followed by Jharkhand, Uttar Pradesh, West Bengal and Chattisgarh indicating that in these states the appointment of teachers has not kept pace with the increase enrollment of students in schools.<sup>48</sup>

Access to higher education for girls is expanding and girl students are enrolling themselves in various courses including professional courses like, engineering, medicine, technology, etc. The proportion of the admission of girl students has risen from 35.3% to 40%. In spite of the fact that the enrollment of the girl students has increased but, the engineering courses, technical courses, etc. are still dominated by boys.

73. Adult literacy program <sup>49</sup> : Made effective from 1988 to spread adult literacy which is towards total literacy campaign of the National Literacy Mission. State level initiatives<sup>50</sup>. The National Policy of Education, 1986 gives overriding priority to removal of women's illiteracy and obstacles inhabiting their access to and retention in elementary education. Even the public private partnership has been built up during the 10<sup>th</sup> plan to achieve the objectives of universalisation of elementary education.
- 1) Bihar Education Project
  - 2) Lok Zumbis in Rajasthan
  - 3) School teaching Programs started by Eklavya in Madhya Pradesh.
  - 4) Probe – Action based project for rural communities in Maharashtra.

---

48. Ibid p.58.

49. Platform for action 10 years after India Country Report, DWCD, p.18.

50. Ibid p.21.

- 5) Madhya Pradesh Education Guarantee Scheme : The Madhyapradesh Education Guarantee Scheme started in 1997, received international recognition with the award of common wealth gold medal for best international innovation, 1998 given by the Common Wealth Association of public administration and management.
74. Uttar Pradesh Basic Education Project
75. Girl Child Education Project (USAID)
76. Non Governmental Organization Forum for street and working children in Delhi.
77. Andhra Pradesh Education Project
78. District Primary Education Program
79. Tribal girls passing by class 5 are given bicycle for commuting to school if they join class VI in Madhya Pradesh.
80. Schooling has been made completely free for girls in most of the states up to the higher secondary stage. The participation of girls in secondary education has been increasing steadily from 13.3% in 1950-51 to 39.9% in 2001-02. The special schemes for promoting girls education are as under :
- 1) In the first 3 five year plans, girls education was given special component with earmarked allocation
  - 2) In the 8<sup>th</sup> five year plan a central scheme for nonformal education for out of school children in the 6 to 14 years of age was launched.

- 3) Free education for girls in the higher secondary stage in all states and up to graduation and university level in several states exist.
- 4) Free text books to SC and ST girls and free uniform to ST / SC Children <sup>51</sup>
- 5) Special Educational Development Program for SC girls in low literacy districts (1996-97) : Seeks to establish residential schools to encourage first generation learners.

## 5.8 CONCLUSION :

Access to education empowers women reaching out more particularly, to the women who are deprived of educational opportunity hence, it must be on the high agenda of any state party. Extending to women of all ages, increasing access to women in different situation and making education affordable or rather absolutely free to all women of all strata should be always matter of deep concern for the State Parties. Women of all ages, without any prior qualification should be able to join different courses aiming to improve their knowledge and skill. The idea of lifelong learning is though new, is the need of the hour as up till now, role of the institution imparting education is restricted to formal education like undergraduate, postgraduate, teaching and at the most research. Nonformal education, supplementary education, further education needs to be added in the State Agenda for education with progressive outlook. The education should be with objectives to create courses for wider range of people from illiterates to professionals and to improve the knowledge

---

51. Ibid p.22.

and skills of people in general – to improve and create employability – to strengthen basic literacy and skill of each person may be semilliterate and even illiterate – to initiate community outreach activities – to improve competence – to improve employability – further education to the educated – education for better living – education to improve awareness of the people in the community – education which can avoid school dropouts, etc.

The gender gap in school enrollment mostly emerges from traditional gender rules, stereotypes and prevalent patriarchy norms. The primary parental responsibility towards a daughter is to find a husband for her and with a view to make a girl child successful housewife, the family expects the girl to take responsibility for household work and the direct and indirect cost of schooling, distance of school and want of trained female teacher, lack of infrastructural facilities of the school would all affect the schooling of the children which is particularly absolute truth for girl children. The poor quality of schooling sometime does not help the child to be able to read and write, then, where is the question of school playing the role of eliminating the gender gap, ensuring regular attendance, retention of girl student, etc.

Monitoring resources of the community, patent lifestyle of a particular society, constant efforts of awakening society, etc. are very essential aspects.

The present researcher submits that it is quite difficult to efficiently manage the increasing work on account of

addition of new programs and expansion of existing programs, to develop need based curriculum, to find out trained teachers, to maintain effective teacher – tutor relations, to understand and predict the future needs, to create partnership with educational institutions, industries, economic sectors, resource persons and the outcome of the education.

The present researcher submits that despite this recognition, education in women continues to be a low priority and remains unfunded in many countries. Women and girls tend to face the situation of fewer resources, less encouragement and little assistance in accessing their rights to education.



**CHAPTER – VI**

EMPLOYMENT AND  
SOCIAL SECURITY OF WOMEN

## CHAPTER – VI

### EMPLOYMENT AND SOCIAL SECURITY OF WOMEN

#### 6.1 INTRODUCTION :

The world has become global village, the prevalent competition in different trade and mercantile techniques, low price product, throat cutting competitions, and the new mode which are indeed cheaper mode of transport etc. have now created a situation wherein, a small scale profit orienting activity cannot sustain. Most of the women live below the poverty line. Different policies evolved by different governments and different strategies, plans, programs, etc. evolved by the State Parties. National and international treaties and instruments have attempted to bring into effect notable improvement which has redrawn the map of social economic situation of the world market. But, the fact remains that women are still not brought in effective decision making processes of the State Parties. Powered places and the situation wherein the women as such, can prove her worth are not available to women. Over and above this, violence against women, sexual harassment at work place, media's attack on dignity of women, illiteracy are continuing against women. Women are normally working in informal sector, agricultural, small scale or cottage industry, electronic industry, traditional sector which are by virtue of stereotypes have been branded or have been labeled as women's work zone. Normally no formal training or no special economic policies are made because of which the home and cottage industries,

food processing, household workings or all other jobs which are stereotype popular jobs for women have been branded as work for women and are put to progressive race. In case of job, the usual tendency is that the job of receptionist, telephone operator, nurse, teacher, etc. are feminine jobs, but, it goes unnoticed that given fair and just opportunities, women have successfully proved themselves to be able prime minister, able president, successful pilot, police officer, administrator and even captains in the ships. Article 11 of CEDAW is directing the State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure equality of men and women. The right of equality is expected to be extended to women in the selection method, in employment opportunities, in right of promotion, job security, benefits, service conditions, to receive vocational training and to have free choice of profession and employment with assurance that there will be equal remuneration, benefits, treatment in case of equal work or similar work. The social security must be granted to women in case of retirement, unemployment, sickness, old age, invalidity, paid leave, protection of health, safety in working conditions, etc. as of right. By virtue of CEDAW discrimination against women on the grounds of marriage and maternity will have to be prevented by the State Parties and that the right of maternity leave, other social benefits, supporting social services, special protection to women during pregnancy, protection against dismissal and other discriminations on the grounds of pregnancy or of maternity leave, etc. will be prohibited and the State Parties are directed to make

protective legislation relating to the matters to prevent discrimination against women.

## **6.2 LEGISLATIVE EXPERIENCE :**

### **1) CONSTITUTION OF INDIA AND INTERNATIONAL DOCUMENTS :**

The Constitution of India too has provided certain safety measures securing the right of women as a special class. Article 14, 15 and 16, 21 have already been discussed in the previous chapters which are all assuring equality before law and protection to women as special class. Article 19 does not impose any restriction of choice of profession and employment for women but, certain labour legislation with a view to offer protection to women restrict the employer from involving women in hazardous form of work. These restrictions are based on the ILO (International Labour Organization Convention) wherein India is a party. Article 46 directs the State to promote with special care the educational and economic interest of weaker sections of the society. Peculiar and special causes in various labour laws which are meant for offering protection, equality and welfare to women workers are with a sole view to protect interest of women. The provisions in Factories Act, Mines Act, Plantation Act, Shops and Establishment Act, etc. are result of this direction of ILO. Article 39(d) provides that the State shall in particular, direct its policy towards securing that there is equal work for both, men and

women. It also further secures equal pay for equal work. Article 39(e) enjoins the state to protect the health and strength of workers men and women and ensure that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 42 directs the State to make provision for securing just and humane condition for work and for maternity benefit. Even the Preamble specifically mandates to secure social, economic and political justice along with equality of status and of opportunity to all the citizens irrespective of sex. As such, Constitution of India by virtue of the concept of equality before law, prohibits gender discrimination by Article 15 (3). State is empowered to make special laws for the interest of women and children. Article 16(4) secures rights for selection as proactive protection i.e. at the stage of recruitment and even after recruitment for the purpose of promotion. Constitution of India also gives mandate to the State to see to it that the participation of the workers actively remained in the system which also takes care of necessary guidelines given by different international treaties and instruments for taking care of interests, benefits and rights of women in general. Apart from other provisions in the constitution of India Article 32 and Article 226 respectively empower the Supreme Court and the State High Courts to protect right of women as in case of violation of fundamental rights it provides remedy to all citizens. Article 141 is empowering the Supreme Court by giving a very special power

wherein, the judgment of the Supreme Court would become law of the land and thus, by using Article 141 also Hon'ble Supreme Court can give directions which has force of legislature.

The Constitution of India also seeks to protect the child against various forms of exploitation. Vide Article 24, it mandates that, "No child below the age of 14 years shall be employed to work in any factory or mine or engage in any other hazardous employments. Article 23 prohibits traffick in human beings and forced labour contravention of which is punishable offence. Article 39 provides safeguards by directing the State to make policies to secure the tender age of children from any kind of exploitation and forced labour and that the policies which can protect childhood and youth against exploitation, moral and material abandonment."

The Universal Declaration of Human Rights recognizes that children are entitled to special care and assistance. The United Nations convention on the rights of child, 1989 reiterates these rights to freedom from exploitation while emphasizing that the child needs special safeguards and care. Vide the convention on the rights of a child, the right of a child is required to be protected by State parties from economic exploitation and from performing any work that is likely to be hazardous or to interfere with child's education or to be harmful to the child's health or physical, mental, spiritual and moral or social development.

## 2) **EQUAL REMUNERATION FOR WOMEN:**

Discrimination against women has been multi-phased and almost pervading all around. The worst exploitation is always with reference to payment of remuneration. In India there were hardly any employment wherein, women were not paid less than men even if the kind of work is of similar nature. The constitutional mandate exists but, the mindset was such which was not allowing to bring into effect the concept of equal remuneration. The Equal Remuneration Act passed in 1976. The Act was amended in 1987 to bring into effect nondiscrimination in case of promotion, training, transfer, etc. On account of the passing of the Act it is now mandatory for the employer to pay equal wages to men and women and to prohibit any kind of discrimination against women on ground of sex on any aspect of the employment, may be recruitment, promotion, training, transfer, etc.

Remuneration and same work or work of the similar nature are the main expressions which are inclusive of basic wage or salary and any additional emoluments payable whether in cash or in kind to a person employed in respect of employment of work done in such employment. Same work or work of similar nature is also defined which is any skill, effort and responsibility required from the worker. The Act has also taken care of the situation existing prior to the commencement of Act

and that it has laid down that in any establishment or employment if women workers were paid less for the same work or work of similar nature only on the ground of sex then, the higher rates be paid. It is also directed by way of the Act that no employer while making recruitment for the same work or in any conditions of services subsequent to recruitment such as promotion, transfer, training, etc. Will make any discrimination against women except where the employment of women in such work is prohibited or restricted by any law for the time being in force. The other provisions in the Act is to over all implement the object of the Equal Remuneration Act, 1976 i.e. to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental thereto. With a view to effectively implement the Act voluntary organizations are also authorized to file the complaint for the violation of the Act. Even the Court also can suo motto take cognizance of an offence punishable under the Act. It is matter to be noted that so many states have appointed competent authority, setup advisory committee and different reports required under the Act are also called for but, the implementation at the state level does not seems to be a happy situation. The provision-to see to it that the salary is not adversely affected while implementing the Act and that the employer may not escape from the grip of the Act by



reducing the salary of women and by defending that the work of women is not of similar nature, in form of necessary checkpoints have been added, but, the fact remains that the Act cannot be termed to be effectively implemented. The table below shows the position of implementation of the Equal Remuneration Act.

### POSITION OF IMPLEMENTATION OF EQUAL REMUNERATION ACT <sup>1</sup>

	No. of Inspections	No. of Violations Detected / Rectified	No. of Prosecutions	No. of cases disposed of
States / UTs @	2,30,714	13,889	9,870	9,96,442
Central Sphere @ @	24,301	25,705	26,985	5,96,43,317
	No. of Convictions	No. of Acquittals	No. of Cases	No. of Claims Withdrawn Certificate cases filed
States / UTs	410	01	03	287
Central Sphere	3,274	62	01	12

### 3) MATERNITY BENEFIT ACT, 1961 :

The Act is to regulate the employment of women in certain establishments, for leave to pregnant women for certain periods before and after child births and to provide for maternity benefits and for certain other benefits.

Article 42 of the Constitution of India directs the State to make provision for securing just and humane conditions of work and for maternity relief. The Act has passed in 1961 and has been amended in 1970, 1972, 1973, 1976, 1988 and even in 1995 for introducing into it more and more effective and beneficial provisions for women to

1. Initial Report of the Government of India, 1998 : Reviewed by CEDAW Committee (January, 2000), p.52.

meet with the International Standard laid down by different international Instruments protecting rights of women. Prior to 1961 maternity protection was provided under different statutes and even under different Central Statutes like Mines Maternity Benefit Act, 1941, The Employees State Insurance Act, 1948 and Plantation Act, 1951. There were diversities in all these Acts with a view of bringing uniformity and to effectively advance the extension of maternity benefit to working women the Act was passed. The amendments bring into the act certain establishments, to expand the ambit of the act and to incorporate the recommendations of a working groups of Economic Administration Reform Commission and to increase the maternity benefits. The philosophy behind the Act is that the pregnant woman is entitled to payment of maternity benefits at the average of daily wage for the period of her actual absence i.e. to say the period immediately preceding and including the day of her delivery and for six weeks immediately following that day. It has been made an obligation of the employer to pay and a right of the pregnant woman to receive maternity benefits. The maximum period of entitlement of maternity benefit is 12 weeks, medical bonus, and for premature delivery and for miscarriage six weeks Secondly, a woman after she returns to work is also entitled for two breaks for nursing the child until the child attains the age of 15 months. Moreover, there is prohibition to discharge or dismiss or to issue of notice on the ground of woman's availing

maternity benefit. The construction of the sections should be done as far as possible in its ordinary natural sense. However, in other circumstances, the rule of the interpretation should be looking at the intention or the object of the law. Leave of six weeks for the medical termination of pregnancy has also been provided in the law. Leave for illness due to pregnancy, delivery, etc. is also provided in this Act.

In view of this Act, no work of arduous nature, long hours of standing or the kind of the work which is likely to interfere with pregnancy or normal development of fetus or the kind of work which is likely to cause miscarriage or likely to affect health of a pregnant woman are permitted. It is provided that such kind of work would not be assigned to pregnant women prior to one month of her proceeding for the benefit period of six week i.e. prior to one month of the six weeks. Secondly, if so advised by a medical expert, then, in such case advanced maternity benefit can be given to the concerned pregnant worker.

#### **4) PAYMENT OF GRATUITY :**

Provision for payment of gratuity has been made in the Payment of Gratuity Act, 1972. The Act is applicable to the employer and employee. It is taking care of social security of the employee which entitles the employee to get amount of gratuity on termination of his employment on any grounds like super annuation,

retirement, resignation, death or disablement on account of accident or disease.

**5) E S I ACT :**

The Employees State Insurance Act, 1948 also grants certain benefits to the workers wherein, employer and employee are required to make prescribed contribution for the social security of the employee and his family members because of sickness, disablement other medical reasons, maternity, etc. to provide a kind of security payment to the employee.

**6) WORKMEN'S COMPENSATION ACT :**

The Workmen's Compensation Act, is to take care of the event like death, permanent or partial disablement or even temporary disablement to the worker if so occurred during the course of employment. Even in case of certain occupational diseases, this compensation can be provided to the worker. Article 39(a) directs the State to direct its policy towards securing that the citizens, men and women, equally have the right to adequate means of livelihood.

Apart from these provisions all other labour legislatures and other Acts legislated for the purpose of social security and for the purpose of rights of women during employment are equally applicable to men and women. This clearly establishes the intentions of the law makers to see to it that overall upliftment of the women

take place and that discrimination against women stands eliminated.

**7) SEXUAL HARASSMENT AT WORK PLACE:**

Sexual harassment at the work place as such, did not have any specific relief offered by the Indian Laws. Hon'ble Supreme Court in the matter of Vishakha has laid down numerous guidelines to remedied the legislative vacuum. Definition of women's right is sec.2 (d) of the Protection of Human Rights Act, 1993 has been highlighted by the Court and that this is also one such attempt to protect the women from the sexual harassment which has become very usual. In view of the CEDAW and in view of Article 14, 15,16 and 21 Gender Equality were attempted to be given by different Courts, but, by way of this judgment and more particularly, by way of judicial activism of the Supreme Court benefit through Article 141 of the Constitution has also been given. In the land mark judgment of vishakha focusing CEDAW also.

**8) CHILD LABOUR (PROHIBITION AND REGULATION) ACT. 1986 :**

This Act protects the interest of the children. Supreme court through it's verdict in the matter of M. C. Mehta <sup>2</sup> (already discussed in the previous chapter) has directed that the children should not be employed in the match factories. Taking the realistic view, Hon'ble Supreme Court, in this matter, has directed that the children can

---

2. AIR 1997 SC 699.

be employed in the process of packing of match sticks and fire works away from the place of manufacturing. A fixed minimum wage not less than the 60% of the wages payable to the adult for doing the same job was directed to be paid. Facilities for education, recreation and medical care were also directed to be provided. The State was also asked to set up a contributory welfare fund contribution which would be made by the concerned match factories and the State.

Despite this, in the year, 1992, when an explosion took place in a factory in Shivakashi, children were continued to be employed in the manufacturing process wherein several injured and several died. The Supreme Court therein took suo motto cognizance and directed the State Government to pay the compensation. In this matter, Hon'ble Apex court said that employers who violate the provisions of the Child Labour Act, 1986 must be asked to pay compensation for every child employed in contravention of the provision of the Act.

#### 9) OTHER LABOUR LAWS :

**The Plantation Labour Act, 1951** has provided to women workers time off for feeding the baby. **The Bidi and Cigar Workers (Condition of Employment) Act, 1966** has provided for facility of crèche for the benefit of women workers and has also provided for maternity benefits for the women working at home front. In view of the **Contract Labour (Regulation & Abolition) Act, 1970**, it is

restricted to take work from women beyond 9 hours except midwives and nurses in plantation. **The interstate migrant worker (Regulation of Employment and Condition of Service) Act, 1979**, requires facility of separate toilets and washing facilities for women workers. **The Factories Act, 1948** has provided not to engage women for cleaning, lubricating or adjusting part of prime or transmission machinery. The Factory Act, 1948 prohibits the employment of women in factories where cotton opener is at work, where excessively heavy weight is to be handled, and where cleaning, lubricating or adjusting of heavy machinery while the said machinery is in motion is required. **The Mines Act, 1952**, commands that employment in mines below ground is prohibited for women workers. **Employees State Insurance (General) Regulations, 1950**, provides claim for maternity benefit in case of miscarriage, sickness out of pregnancy, premature birth of child, etc. In the Employees State Insurance Act, maternity benefit is to be extended to the worker who is working in nonseasonal factories employing more than 20 people. The State Government and the Central Government are empowered to make necessary regulations to prohibit, restrict or regulate the employment of women when the said employment or the said work is likely to result into danger to life, safety or health of women workers. Under certain enactments, night working hours for women are prohibited. However,

the State Governments are empowered to permit the same if so required.

**Bonded Labour System (Abolition) Act**, was passed by the Parliament in 1976 which provides for the abolition of bonded labour, bonded labour system and bonded debt. Wherever the bonded labours have been reported necessary care to see to it that economic and social rehabilitation is offered and that necessary action is taken.

Child labour is since a burning issue **Child Labour (Prohibition and Regulation) Act, 1986** has been passed which is aiming mainly to withdraw and rehabilitate children working in certain processes and occupations which are hazardous for children. It is to see to it that they are joined in the main stream of the formal education system with a view to see to it that the children get their right of education.

**The minimum Wages Act**, do provide equal protection to men and women but, it needs to be remembered that the women should be conscious enough for their right and more particularly in developing economy of women's leaning towards informal economy. Informal economy is a recent concept but, on viewing the overall situation it is clear that more and more women are tending towards informal economy which has as such, relations with secured contract. Therefore, the unorganized sectors and the sectors related to informal



economy are such wherein, protection to women should found more and more scope. As such, poverty along with lack of education comes in the way of girls to seek employment in the informal sector also. Wherever, women are diverted towards jobs as secured income there, minimal pay and maximum exploitation with long working hours are very common. This creates unequal power relationship. This too needs to be curbed. The developing countries do need to take appropriate care for the vice of inequality and poverty in this age of trade, liberalization and global integration.

**Industrial Dispute Act, Payment of Gratuity Act, Marine Regulation Act,** and several other labour legislations have also extended the protective umbrella to women in general. In all the labour legislations, the concept of leave more particularly, earned leave, half pay leave, medical leave, casual leave, maternity leave and now paternity leave are provided which all are such measures which are taking care of social security aspect of each worker and more particularly women worker. These days, postal insurance, group insurance and other schemes offering insurance against the risk one is having in this fast life are all tend to protect and thus, the overall impact of different laws is to provide protection to all workers and more particularly, women.

### 6.3 ADMINISTRATIVE EXPERIENCE :

#### 1) INTRODUCTION:

Neglect and discrimination in the childhood make girls vulnerable and it becomes beginning of life long downward journey of deprivation from the social main stream. The dire need for more policy efforts and programs and program implementation to relieve women from exploitation can not be ruled out. Humane and just Working conditions provide them access to better employment opportunities. In view of the CEDAW and obligations arising from such other different instruments, the Government has put into implementation numerous policies and programs, Favoring Women Workers. It seems that while making and implementing such programs, the Government has taken care of the fact that poverty is one reason but, lack of regularization is another strong factor which is responsible for making women more vulnerable to gender based discrimination than their counterparts in the formal sector. On account of the social stereotypes women get very poor opportunities for their studies and higher education. As a result of it they face tough time while contesting against their male counterparts. On account of lack of opportunity it becomes absolutely impossible for women to secure higher positions wherein she can exhibit her merits or qualities of leadership, management etc. Employment opportunities are, better available to urban women. Rural women are mainly

farmers but, they hardly own farm land as a result they do not become entitled to agricultural credit in spite of the fact that women produce food for the world. In view of the above background it is necessary now to look into whether the policies and programs made by the Government are capable to meet with the situation that arises on account of social inequities.

#### **6.4 SELF EMPLOYMENT AND WOMEN:**

Education is the gateway for the women to enter into professional competence and to secure employment opportunities for her. The Government has therefore, introduced various vocational training facilities for women, which have been expanded and diversified over the period of time. The vocational training centers are ITI / ITC for women. The training for basic skills, advanced skills and instructional training is given which is having employment potentials. The trainings are imparted for the non conventional areas also, like agricultural draftsmanship, desktop publishing, fruit and vegetable preservation etc.

#### **6.5 GOVERNMENTAL SCHEMES :**

- 1) Certain schemes and benefits are granted by Central Government, State Government and even by local body to unorganized and self employed women workers.
- 2) Certain State Governments have made scheme of maternity benefit to women agricultural workers.

- 3) Scheme for day child care services are promoted by certain governments.
- 4) Regional Vocational Training Institute for disabled Women are setup as per the scheme of the Government to promote speedy rehabilitation to the disabled women by providing training, job and self employment services to such women.
- 5) Integrated child development services provide a package of services like supplementary nutrition, immunization, health checkup and referral services for children under 6 years of age and for expectant and lactating mothers in public sectors.<sup>3</sup>
- 6) Policy of Health Insurance for workers in informal employment.
- 7) National Authority for Elimination of Child Labour.
- 8) National Child Labour Projects – Special Schools have been set up under this project.
- 9) The Ministry of Social Justice and Empowerment runs a Grant In Aid Scheme for supporting and strengthening Non Governmental Organizations. Engaged in the welfare and development of street children. The International Labour Organization Convention No.29 (Forced Labour Convention, 1930) has been ratified by Government of India on 30/11/1954.<sup>4</sup>

---

3. Ibid p. 59, para 214.

4. Government of Indias' 2<sup>nd</sup> & 3<sup>rd</sup> Periodic Report on CEDAW, 1997-2005, para 232, p. 62.

- 10) Vigilance Committees in sub divisions of State for bonded labourers.
- 11) Financial support by Central and State Government for rehabilitation of bonded labour.
- 12) Ministry of Labour announced in 1996 increase in amount to be made available to released adult and child labourers.
- 13) There exists wide disparity in the work participation heads between men and women. The female work participation rate increased from 22.7% in 1995 to 25.7% 2001 as against the marginal increase from 51.6% to 51.9% for men.

#### WORK PARTICIPATION RATE IN INDIA (1991-2001) <sup>5</sup>

		Persons	Males	Females
1991	Total	37.68	51.56	22.73
	Rural	40.24	52.50	27.2
	Urban	30.44	48.95	9.74
2001	Total	39.26	51.93	25.68
	Rural	41.97	52.36	30.98
	Urban	32.23	50.85	11.55

Source : Annual Report of Ministry of Labour 2003-04

- 14) The Rashtriya Mahila Kosh (RMK) set up in 1993 – a National Level Mechanizm to meet the credit needs of poor and asset-less women in the informal sector.<sup>6</sup>
- 15) Swarnajayanti Gram Swarojgar Yogna, 1999 – To provide bank subsidy to beneficiaries family. <sup>7</sup>

---

5. Ibid p. 63, para 236.

6. Inputs for India's Second Periodic Implementation Report to CEDAW, National Commission for Women, New Delhi, D.S. Miyan as Coordinator, p.29.

7. Ibid p.30

- 16) Jawahar Gram Samruddhi Yojna – reserves 30% of employment opportunities for woman. <sup>8</sup>
- 17) National Maternity Benefit Scheme – Rs.500/- to each expectant mother for the first two live births given under the scheme which is going on since 1995. <sup>9</sup>
- 18) National old age Pension Scheme – This is to assist the women if no regular means for subsistence or very little means are there and those who are above 65 years of age. <sup>10</sup>
- 19) Swarna Jayanti Shehri Rojgar Yojna – For Urban Poor Women. <sup>11</sup>
- 20) Public hearing by jury system to understand the impact of globalization by National Commission for Women. <sup>12</sup>
- 21) Organization of Self Help Group (SHG) in the 9<sup>th</sup> Plan. <sup>13</sup>
- 22) The Problem of child labour continues to be an area of great concern for the Government. More than 90% child labourers are found concentrated in rural areas in occupations like agriculture and allied occupatios like cultivation, live stock, forestry and fisheries. According to the 1971 census, the estimated figure of working children was 10.7 million which increased to 13.6 million as per the 1981 census but, declined to 11.28 million as per 1991 census. <sup>14</sup>

---

8. Ibid p.30

9. Ibid p.30

10. Ibid p.30

14. Government of Indias' 2<sup>nd</sup> & 3<sup>rd</sup> Periodic Report on CEDAW, 1997-2005, para 232, p. 64.

11. Ibid p.30

12. Ibid p.31

13. Ibid p.30

- 23) The scheme for child welfare and to save their childhood to enable them to join in the main stream of education are on which may eliminate child labour in the days to come.<sup>15</sup>

#### **6.6 INSTITUTIONAL MECHANISM :**

- 1) Non Governmental Organizations are also being given specific grant to maintain child care centers. Through the Central Social Welfare Board assistance to voluntary agencies to run child care services.
- 2) Certain urban and semi urban areas are provided contribution from National crèche Fund to create crèches in the different parts of the country.
- 3) To provide credit institution such as the Small Industries Development Bank of India (SIDBI) and the National Bank for Rural Development (NABARD) setup specialized to provide windows for micro credit as fiscal assistance to women.
- 4) Unorganized Sector Workers Bill, 2003 and Bill on Home Based Workers are such illustrations which are administrative actions to secure the right of working women in the field of informal employment, unorganized sectors and even for the domestic workers.
- 5) Unorganized Sector workers social security Scheme. This scheme provides pension, personal accident insurance and medical insurance for the workers.

---

15. Inputs for India's Second Periodic Implementation Report to CEDAW, National Commission for Women, New Delhi, D.S. Miyan as Coordinator, p.

- 6) To enable the women to be economically independent 10<sup>th</sup> Plan ensures provision of training, employment and income generation, part from organizing women under poverty alleviation programs and by offering them support measures and projects to enhance their capacities. Affirmative action for reservation of 30% for women in public sector and projects and special subsidy for increasing access to credit for women are going on. The National Policy for Empowerment of Women, 2001 requires full and active participation and equal access to women in all fields, more particularly, in decision bodies at every level legislative, executive, judicial, corporate, statutory bodies and advisory commissions, committee, board, trust, etc. Further, women friendly personnel policy also is to be drawn to encourage participation of women in developmental process.<sup>16</sup>

#### **6.7 JUDICIAL EXPERIENCE :**

Let us examine the role played by judicial verdict of the apex court to give crucial colours to the field of women and employment, rights of women, protection to women, duties of employer and powers of the state.

#### **VISHAKHA v. STATE OF RAJASTHAN <sup>17</sup>**

Sexual harassments being one of the evils of modern society has been dealt with by Hon'ble the Supreme Court under Article 141 read with CEDAW in a case before it. Since the

---

16. Inputs for India's Second Periodic Implementation Report to CEDAW, National Commission for Women, New Delhi, D.S. Miyan as Coordinator, p.28.

17. 1997 (6) SCC 241.



legislative vacuum in India on the subject of sexual harassment it was quite difficult to take any action to lawfully curb sexual harassment of working women. In this judgment Hon'ble Apex Court has laid down several guidelines to remedy the legislative vacuum. Sexual harassment has been defined as including any unwelcome sexually determined behaviour (whether directly or by implication) like physical contact or advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or nonverbal conduct of sexual nature. As such, women's right has been defined in the protection of human rights Act, 1993. But, in the instant case, Supreme Court has referred to the CEDAW along with referring Article 14, 15 and 21 of the Constitution of India.

As a result of this judgment any women employee who is subjected to sexual harassment of any kind can take recourse to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty employer and other persons responsible for the harassment.

In view of this judgment, all the public as well as private employer need to constitute Sexual Harassment Committee in their undertakings or in the industry to deal with the grievances raised by the working women of sexual harassment.

**ASSOCIATE BANK'S OFFICER'S ASSOCIATION v. STATE BANK OF INDIA AND OTHERS** <sup>18</sup>

In this matter, it is held that equal pay for equal work for both men and women is one of the directive principles of State

---

18. AIR 1998 SC 32.

Policy laid down in Article 39(d) of the Constitution of India. Article 37 makes it non justifiable. Yet, it must be borne in mind by the legislature while making laws.

It is further held that historically, equal pay for work of equal value has been a slogan of the women's movement. Equal pay laws, therefore, usually deal with sex based discrimination in the pay scales of men and women doing the same or equal work in the same organization. Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers which is to prevent discrimination on the ground of sex against women in the matter of employment. The same doctrine has also sought to protect disadvantaged group against similar discrimination. It is held that,

"The principle is to be applied in cases of irrational discrimination but, if an organization can provide basis or explanation for the difference the principle would not be applicable."

**RANDHIRSINGH v. UNION OF INDIA**<sup>19</sup>

In this matter, Hon'ble Supreme Court has construed Article 14 and 16 in the light of the Preamble to the Constitution to read into it the Principle of Equal Pay for Equal Work.

In the above referred case Article 39(d) and Article 37 of the constitution of India have also been referred to.

---

<sup>19</sup> AIR 1982 SC 879.

**M/S. MACKINNON MACKENZIE & CO. LTD. v. AUDREY D’COSTA & ANOTHER**<sup>20</sup>

In this matter, the Equal Remuneration Act was applied to held that stenographers of either sex were performing the same work or the work of similar nature and hence, difference in pay scale is not sustainable or has no ground whatsoever and therefore, the said is to be set aside and equal remuneration for men and women performing the same work or work of similar nature has to be seen.

**MRS. NEERA MATHUR v. LIFE CORP OF INDIA**<sup>21</sup>

In this Judgment the Apex Court recognized the right to privacy of a women employee. When Neera, after having been appointed, applied for maternity leave, she was served with a termination notice on her return to her duty. On viewing the questionnaire for the employment, the Supreme Court was shocked to notice the question in the questionnaire form which was related to mensal cycles and past pregnancies. Supreme Court hold it to invasion of privacy of a person which could not be made.

**RAM BAHADUR THAKUR (P) LTD. v. CHIEF INSPECTOR OF PLANTATIONS**<sup>22</sup>

This case is under Maternity Benefit Act, 1961 wherein, it is held that computation of maternity benefit has to be made for all the days including Sundays and rest days which may be wage less holidays comprised in the actual period of absence of the woman extending up to 6 weeks preceding and including the date of delivery as also for all the days falling within 6 weeks

---

20. AIR 1987 SC 1281.

21. AIR 1992 SC 392

22. 1982 (2) LLJ 20.

immediately following the date of delivery thereby, ensuring that the woman worker get for the said period not only the amount equaling 100% of the wages which she was previously earning but, also the benefit of wages for all Sundays and rest days falling within the aforesaid two periods. It was held that Maternity Benefit Act will have to be given interpretation which will advance the purpose of the act and therefore, rejected the contention of the employer and held the woman worker to be qualified to get maternity benefit.

**OMANA OOMEN & OTHERS v. F.A.C.T. LTD.** <sup>23</sup>

This case is about sexual discrimination in employments. In this case, the trainees of the company were comprised of both male and female. The female trainees were excluded from the internal examination only on the ground of sex. Whereas, the male trainees were absorbed as technicians after an internal examination being held for the purpose. This act on the part of the employer was held to be not in accordance with the provisions of law and non-absorption of female trainees as technicians entirely on the basis of sex is violative of Article 14 and 15 of Constitution of India.

Even in the matter of C.B. Uthamma v. Union of India wherein Ms. Uthamma approached the Supreme Court against gender inequality and as ISS she pointed out several rules in Indian Foreign Services (recruitment, seniority and promotion) Rules, 1961 which lead to she being denied to promotion to cadre I of IFS Services. The Supreme Court shut down the above rules on the ground that they violated the fundamental

---

23. 1991 (2) LLJ 541.

right of female employees to equal treatment in matters of public employment. Hon'ble the Supreme Court observed as under in this matter which is most relevant. I quote, "At the first blush, this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker section forgetting how our struggle for national freedom was also a battle against women's thralldom. Freedom is indivisible, so is justice. That our foundaing faith enshrined in Article 14 and 16 should have been tragically ignored vis a vis half of India's humanity, viz. our women, is a sad reflection on the distance between Constitution in the book and law in action."

There are numerous decided cases wherein, the principles of gender equality and that permissible discrimination in favour of women have been granted favour by the Hon'ble Apex Court. All such cases which are mentioned herein below have already been discussed at length in the chapter of discrimination. However, since these judgments are throwing focus on the subject matter of social security and employment of women, they are placed herein below in capsule form.

In the matter of *State of Kerala v. N.M. Thomas*, it was decided that providing reservation for selection post is permissible. In the matter of *Air India v. Nargis Mirza* – no discrimination based on sex, *Vishakha v. State of Rajasthan* and *Apparel Exports Promotion Council* – sexual harassment of working women amounts to violation of rights of gender equality and right to work with dignity, *Municipal Corporation of Delhi v. Female*

Workers – maternity benefits are to be extended to the muster roll female employees, *Gayatri Devi Pansari v. State of Orissa* – even if reservation is granted, preferential treatment to women or in favour of women is permissible, *Vijaya Lakshmi v. Punjab University* – classification in favour of female was upheld, *Air India Cabin Crew Association* – discriminatory treatment and not preferential treatment is prohibited, *Government of Andhra Pradesh v. P.P. Vijaykumar* – Special provision for women is permissible in employment, *Women’s Forum* – the scheme for compensation and rehabilitation in case of rape on domestic working woman was directed.

Thus, in the above discussed matters, certain principles have been evolved by Hon’ble the Apex Court to give complete justice and to eliminate discrimination against women in the field of employment.

#### **6.8 PROFESSION AND WOMEN :**

So far the present researcher has viewed the situation prevalent in the field of employment as far as female are concerned but, the aspect of gender equality or inequality in the profession are also worthy to be looked into to take real assessment of the situation. The situation in the medical profession is not happy one. In spite of several judgments, at the time of admission, selection process, at the time of grant of degree, PG Courses, practical training, lot of sexual harassment and sexual exploitation takes place by seniors and many unhealthy practices are complained of.

In the legal profession also there is sizable increase of women. The legal profession being predominantly of male, it hardly needs to be doubted that female lawyers do not suffer discrimination. It is common observation that the women lawyers are perceived as less intelligent and less serious than men and that they are simply in the profession pass time. Female lawyers have to work atleast hundred time harder than man to reach a particular level in the profession which is more easily attainable for male lawyers. The obstacles are some time invisible which is attitude related obstacles, exploitation by senior lawyers of female juniors are very common. Allocation of work between two juniors is mostly based on sex, the cases of serious nature and of criminal law are not given to women by the litigant or by the seniors. Stereotypes are faced by women, female lawyer face unhealthy comments related to her body, external beauty, sexual appeal, etc. and that in general women are treated as show pieces who are perceived to spent a little time in court till they get married. Physical or verbal sexual harassment by lawyers, court personnels and all those who are related to administration of justice are found very common and each woman lawyer even after having got degree of LL.B. had has to undergo certain specific kind of comments which is very embarrassing since related to character assassination, related to sexual appeal and in obscene and vulgar language. The smallest incident of lady lawyer becomes matter of gossiping and would adversely affect her in giving direct effect of ruining the career of a lady lawyer. The comments or remarks or jokes in the Court room, in the lawyer's firms, in the

chamber, which are all demeaning either to the lady lawyer or women in general. It is felt by one and all concerned that judges attach more credibility to the arguments of male lawyers over female lawyers. Gender specific bias against women in the court or in chambers in a case involving violence against women is also so common and that judges rarely intervene to stop gender bias behaviour in the Court room. It can also be termed that judges do not correct behaviour of the lawyers and some time of the litigants which smell gender bias.

It seems it is very much necessary to provide equal opportunities to lady lawyers. professional code of conduct need to be included to observe gender in equality, gender differences in appointment, and career affecting activities should be curbed. Specific training should be given to judges to encourage lady lawyers in the Court and to maintain gender equality in the Court and to awaken and sensitize them to restrain gender bias behaviour in his court house.

## **6.9 CONCLUSION:**

In view of what has been discussed it is clear that the rights of the women are protected and that State is prevented from subjecting women from any kind of discriminatory treatments. Not only that, but the international treaties and Conventions or the Instruments also obligate upon the government to see to it that proper legislations are made to protect the interest of women and more particularly to offer her necessary social



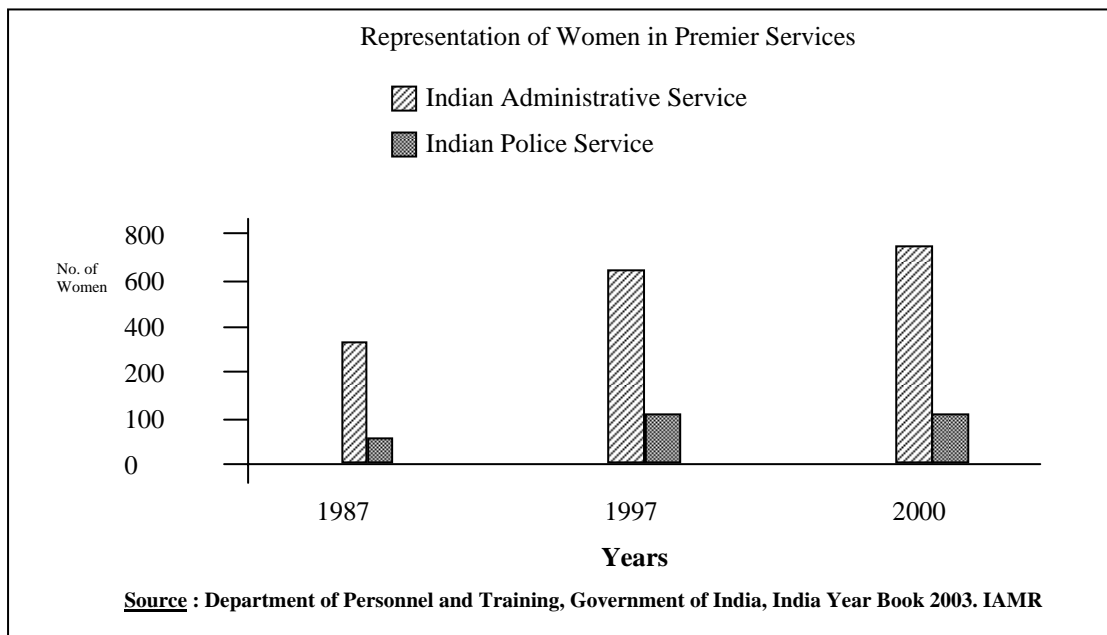
security and protection in the field of employment, self employment, entrepreneurship, skilled or unskilled filed.

Right to work is not a fundamental right but, the present researcher submits that the right to work should also be made fundamental right so as to get proper enforcement of the same right which at present, can not be termed to be implemented on satisfactory level which is evident from the prevalent discrimination against to women.

In spite of numerous policies, programs and innovative ideas having been made effective by the State as well as Central Government and activism on the part of the Non Governmental Organizations and other social activist groups it seems that the gender discrimination has not been eliminated. The attempts on part of all concerned are going on and we can hope for better tomorrow.

In the sphere of industrial law the women have been assigned a special position in view of the specific characteristic of physical and mental state being different from males existing in women. The Supreme Law of our country i.e. Constitution of India is having numerous provisions which are for interest and welfare of women and which are to prohibit gender discrimination. It cannot go unnoticed that in spite of several favours, the interpretation which helps gender justice, signature or ratification of international instruments favouring right and interest of women and lot of awareness programs and policies by the government, by the Non Governmental Organizations, the result of rise in decision making processes by

women or rise in higher kind of services or service of high quality by women or active participation of women in high ranking services is not achieved. The representation of the women in the decision making level through the Indian Administrative Service and the Indian Police Service which stood at 5.4% in 1987 increased to 7.6% in the year, 2000. All employees in Central, State and Local Governments come to 17.47% women in the year, 2001. The table prepared to reflect the representation of women in premium services is given below which is reflecting as to the situation of poor representation of women in high quality of services. <sup>24</sup>



There is only one women judge in the Supreme Court of India out of 24 judges and 25 women judges in the High Courts across the country out of total of 250 judges as on 13<sup>th</sup> January, 2005. <sup>25</sup>

24. Platform for Action 10 years after India Country Report, DWCD Ministry of Human Resource Development, Govt. of India. P.53

25. Ibid p. 54

Thus, on the aspect of employment no substantial achievement has been attained and that we have miles to go before we sleep. Neither in judicial nor in any other front women have been given proper and satisfactory representation which is indeed cutting sorry figure by the system. We need to correct it by accommodating more and more women in all sorts of employment with fullest implementation of all labour legislation made in favour of women and by implementing different principles laid down by the Hon'ble Apex Court as far as the sphere of employment is concerned. After our country has adopted new economic policy in the year, 1991 the liberation in economy has entered into India's economy. After the liberation, globalization, urbanization are resultant. The effects of all these formation in technology which is profit orienting and that all these developments have given greatest implications and effect to the industry as a whole which in turn, has reflected on the interest of workers in general and female workers in specific. Even today, the personal decision like what to work, where to work, whether to work or not, marriage, reproduction, knowledge, education, etc. are not exclusively decided by the woman herself, but, the family, community and society play a very vital role in enabling the woman to decide this way or that way. Certain problems of rural life also have its own effect. Feminization of certain jobs and industry, incidents of personal life of women like marriage, divorce, child birth, etc. are all quite important. Poverty, inflation, unemployment, difference in treatment by the society, claiming equality by women some time result into unemployment, low paid jobs,

long working hours, physical and mental trauma for the woman, insecurity, etc. for the women are routine. In this background, it hardly need to state that the labour legislations and other legislations fall short to remove total discrimination against women for want of strong social will, for want of change in social setup and mindset of the people and for want of commitment on the part of the society as a whole. Grant of equal property and inheritance right in favour of women, schemes for women empowerment, schemes for promoting women savings, legislation for the right of home based workers are not novel now. The law which is protecting right of each working woman in India without bringing the State Law in between, child care facilities, bonded labour, to eliminate child labour, to provide right to work as fundamental right, etc. requires overall reorientation of development strategies and very vocal and demanding laws in favour of women inclusive of domestic women are the need of the hour without which the aspiration expressed by CEDAW would not stand satisfied as, it is an admitted position that women have been adversely affected by recent economic globalization which has created new challenges for enforcement of human rights at the National and International level, more particularly, for the working women. To meet with the new challenges the Government need to implement many more new programs which should have inherent caliber to meet with the challenge. The suggestion of more participation of women in decision making and in the employment of public sector, the representation of women in employment in ratio with the population rate and granting special reservation and

preferential treatment to women in recruitment, promotion, transfer, etc. are all the suggestions which are meant to attain the goal enshrined in the CEDAW.

**CHAPTER – VII**

FACETS OF THE DEMON  
- VIOLENCE AGAINST WOMEN

## CHAPTER – VII

### FACETS OF THE DEMON – VIOLENCE AGAINST WOMEN.

#### 7.1 INTRODUCTION:

In 1990 violence against women became a topic of grave concern for the world. In 1993 the United Nations general assembly passed the declaration on the elimination of violence against women. The CEDAW was ratified by India and the CEDAW committee passed general recommendation no – 19 for violence against women. International Conference on Population and Development (ICPD-1994) recognized gender violence as a hurdle to women's reproductive and sexual health. Beijing conference on women (Fourth world Conference) has also deliberated on the issue.

In 1996, 46<sup>th</sup> World Health Assembly declared violence of public health priority. In 1998 United Nations Development Fund for Women launched a campaign to draw global attention to the issue. The Universal irony about women's equality is a fact that societies all over the world expect women to be strong enough to be equal partners to men in every aspect, but after very little support system to achieve such equality and even at some of the places the hypocritical support is offered which is in fact a very dangerous eye wash.

There are different forms of violence against women like sexual violence. Domestic violence, dowry death, physical and mental torture, cruelty, sexual trafficking, female foeticides – son preference, declaring women a dayan and any and

every kind of public humiliation. Until 1993, the international community did not take cognizance of a very serious factor against women i.e. violence against women. It is only in 1993 the General Assembly of United Nations Organization adopted the declaration on the elimination of violence against women and until that point most governments tend to regard violence against women as only a domestic or private matter and an indoor affair of each family wherein, as was perceived the State need not to intervene. But, subsequently, the Declaration on violence against women has defined as to what can be termed as violence against women. 'Any act which is based on gender and which results into violence which may be physical, psychological or sexual or if it results into suffering of women and that such suffering could be occurred in public or private life it would amount to violence against women'. The threats and apprehension, etc. also form script of the concept of violence against women and thus, the different areas where violence against women is likely to take place is included in the concept and is made popular world wide. Family life, community life, personal life, public life, career in service, house front on any other sphere can be the platform of violence is the women are subjected and subjected to slavery or inferiorstatus from centuries together and today also the situation has not changed its colour has not changed its colour but it might have gone fade. The CEDAW has shown its deep concern to the issue and general recommendation – 19 exclusively deals with domestic violence against women.



## 7.2 REASONS FOR DOMESTIC VIOLENCE :

Domestic violence exist in almost all societies and hence, there is world level concern for it. The issue affect one half of human race but it is not seen as a human right problem of magnitude but, is being treated as personal issue on usual affairs of the family.

1. Dowry
2. Negligence of police
3. physical inequality with men
4. cultural stereotype
5. Women themselves believe that her husband is their God and physical violence is proof of love.
6. Society's attitude of treating women as cow and encourage the woman who obeys the dictates of her husband considering him to be her owner.
7. Parents' attitude as most of the parents counsel their daughters to suffer in silence everything.
8. Women's mentality that the suffering at in laws has only one substitute and i.e. suicide.
9. Defects in our criminal justice delivery system.
10. So called sacrifice and subservience expected from women under the guise of culture, family name, family honour, custom and traditions.
11. Lack of political will to legislate pro-women laws.
12. Lack of administrative will to implement existing laws.
13. Lack of sense of gender justice in police, judiciary and other officers concerned with different aspects of crime against women.

14. Lack of coordination and collaboration amongst government, Non Governmental Organizations, judiciary, educationalists, people from health care sectors, legislators, audio and visual media and general public.

Thousands of women are being subjugated, threatened, slapped, beaten, injured, humiliated, raped, sexually abused, subjected to cruelty of all kinds and subjected to socio cultural pressures, victimized under the guise of tradition, family pride, family honour, duty of women, expectation of womanhood and all such are grounds on which the crime against women goes on increasing and does not find any solution whatsoever in existing system.

A Non Government Organization 'Sakshi' undertook a comprehensive interaction with judges through a questionnaire. This questionnaire or this study report is known as Purple Report. The said purple report and the facts and figures – findings of that report are since very relevant have been noted below :

#### **“HIGHLIGHTS OF JUDICIAL RESPONSES IN THE PURPLE REPORT”**

##### Domestic Violence

1. 74% felt that preservation of family should be a primary concern for women even if there was violence in marriage.
2. 51% felt that women who stayed with men who abused them were partly to blame for their situations.

3. 49% felt that a husband who slapped his wife on one occasion in the course of their marriage did not constitute cruelty.

In giving advice on what a judge would say to his married daughter (or female relative) who was in a situation of violence

1. 90% said that they would not opt for legal redress in case of domestic violence involving their daughter or other female relative.
2. 92% believed domestic violence was an under reported crime and more pervasive than the statistics suggested.
3. 34% felt that domestic violence needed to be addressed in a gender equality – training program for judges.

**WOMEN AND SEXUAL CRIMES:**

1. 76% opined that sexual intercourse without a women's consent was an adequate definition of rape.
2. 50% felt that child sexual abuse was not common.
3. 68% observed that 'provocative' clothes were an invitation to a sexual assault.
4. 55% believed that moral character of a woman was relevant in sexual abuse cases.
5. 97% felt that women feared reporting a case of sexual assault.

**DOWRY:**

1. 11% felt that daughters should not inherit property on an equal basis with sons.
2. 34% felt dowry still had inherent cultural value.
3. 88% believed dowry related offences were on the increase.

**WOMEN IN COURTROOM:**

1. 62% felt that the courtroom atmosphere was not conducive for women to speak openly about violence.
2. 28% believed that demanding remarks or jokes about women were made both within the court and in chambers.
3. 41% felt that women had access to justice in cases of violence less than 40% of time.

**CONVENTION OF ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW):**

1. 78% had never heard of CEDAW while 78% judges had not heard of CEDAW, the 22% who had, knew it only by name, but were unaware of its contents." <sup>1</sup>

**7.3 ACCESS TO JUSTICE FOR CHILDREN :**

The Universal Declaration of Human Rights recognizes that children are entitled to special care and assistance. The United Nations Convention on the rights of child, 1989 reiterates these rights to freedom from exploitation while emphasizing that the child needs special safeguards and

---

1. Article on 'Human Rights Year 2002' Edited by P.H. Parekh, International Institute of Human Rights Society' (Regd.) Universal Law Publishing Co. Pvt. Ltd. p. 90-91

care. Vide the Convention on the rights of a child, the right of a child is required to be protected by State parties from economic exploitation and from performing any work that is likely to be hazardous or to interfere with child's education or to be harmful to the child's health or physical, mental, spiritual and moral or social development.

The Constitution of India also seeks to protect the child against various forms of exploitation. Vide Article 24, it mandates that, "No child below the age of 14 years shall be employed to work in any factory or mine or engage in any other hazardous employments. Article 23 prohibits traffick in human beings and forced labour contravention of which is a punishable offence. Article 39 provides safeguards by directing the State to make policies to secure the tender age of children from any kind of exploitation and forced labour and that the policies which can protect childhood and youth against exploitation, moral and material abandonment."

#### **7.4 CHILD LABOUR (PROHIBITION AND REGULATION) ACT. 1986 :**

This Act protects the interest of the children. Supreme Court through it's verdict in the matter of M.C. Mehta (already discussed in the previous chapter) has directed that the children should not be employed in the match factories. Taking the realistic view, Hon'ble Supreme Court, in this matter, has directed that the children can be employed in the process of packing of match sticks and fire works away from the place of manufacturing. A fixed minimum wage not less than the 60% of the wages payable to the adult for doing the

same job was directed to be paid. Facilities for education, recreation and medical care were also directed to be provided. The State was also asked to set up a contributory welfare fund -contribution which would be made by the concerned match factories and the State.

Despite this, in the year, 1992, when an explosion took place in a factory in Shivakashi, children were continued to be employed in the manufacturing process wherein several injured and several died. The Supreme Court therein took suo motto cognizance and directed the State Government to pay the compensation. In this matter, Hon'ble Apex Court said that employers who violate the provisions of the Child Labour Act, 1986 must be asked to pay compensation for every child employed in contravention of the provision of the Act. <sup>2</sup>

As is known the right to speedy trial has been held to be a fundamental right under Article 21 of the Constitution of India. This fundamental right of speedy trial has to be viewed more seriously in case of juvenile. The right to be treated with special care and attention, which flows from various international Conventions and from the Constitution. The provisions would be rendered meaning less if the child was to undergo the rigors of the trial for years. This right also found its importance while Hon'ble the Apex Court delivered a judgment in the matter of Arnitdas v. State of Bihar <sup>3</sup>. The Court held herein that, whether the person is juvenile or not is to be decided not from the date of commission of the act or omission but, the date he is brought before the competent authority. It is further observed that the children accused must not be kept in jail as,

---

2. M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699.

3. 2000 (5) SCC 48

the atmosphere of jail is highly injurious for the mental state of children. The primary object must be to place the children in an environment conducive to his rehabilitation and providing scope for corrective action.

Prior to Juvenile Justice Act, 1986 (The Central Act) each State had its own act to deal with the treatment of juvenile delinquents. But, on coming into operation of the Juvenile Justice Act in 1987 two authorities came into being for administration of Justice for juvenile. (1) The Juvenile Welfare Board and (2) The Juvenile Courts. The Act of 1986 has been replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 which is comprehensive Code and applicable throughout the nation except the State of Jammu and Kashmir. It seems that this Act has taken into the sweep of domestic law the United Nations Convention on the rights of child which has been ratified by India. Along with this, other international instruments like The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 and the United Nations Rules for the protection of Juvenile deprived of their Liberty are also included in this new concept developed to deal with the juvenile delinquents. It also seems that the directives given by the Supreme Court are also incorporated in the Act as, is the latter act juvenile is not to be sent to the jail but, to a special home or a place of safety which is defined as any place or institution not being a police lock up or jail where the person in-charge is willing temporarily to take care of the juvenile and which is found by the competent authority to be a place of safety for the juvenile.

You call it observation home, safety house, juvenile house but, the test would be that it should be a special home which provides safety to the juvenile delinquents. The whole ideology of the latter act is that the child is not responsible for his action, omission or behaviour and that the State needs to intervene in a child's life. The Act deals with the care, protection, treatment, development and rehabilitation not only of delinquent children but, also children in need of care and protection. The Juvenile Justice Board, Child Welfare Committees, Special Homes set up by Non Governmental Organizations for the rehabilitation and social integration of children etc. is now much popular in the society and it also seems that it works quite satisfactory. The fact remains that we still need to look upon the voluntary organization which are eager to actively involve in health, education and welfare activities of children.

The access of justice to the children is as such, sharpening day by day. The legal Services Authority do take care of this situation and as has been provided in Sec.12 of the Act, children are entitled to free and competent legal services.

#### **7.5 CHILD SEX ABUSE:**

In the current situation the burning problem qua children is of child sexual abuse. Child sexual abuse includes all forms of consensual or nonconsensual contacts of a minor with a sexual purpose. It may include talking abusive language, touching, fondling or all forms of pornotration. It is a crime of violence committed primarily against children acted in an



aggressive sexual way. All abuses need not be verbal it can be only visual and appearing to be innocent one. We need to educate the society that the child sexual abuse happens to any child may be boy or a girl and that it can exist in rural as well as in the urban metros. The abuser can be anybody from your family public transport driver, your near and dear ones who is a close family friend and plays a role of a person utmost interested in the welfare of the particular child. The victim child face problem of trauma, social stigma and ridicule. The tragedy is that the legal system existing today does not have any specific law for the child abuse what to talk of punishment. The remedial measures like mental health institution are also yet to be created. These would all collectively mean that we need to do lot many things to protect the child from sexual abuse. In a landmark judgment delivered in the case of Sakshi v. Union of India and others <sup>4</sup> Hon'ble the Apex Court spelt out certain guidelines to be followed by Courts while recording the statements of victims of sexual abuse who are minors which it self is a jurisprudence or as a code of conduct for the Court while dealing with the matter related to children. The detailed discussion of the judgment is to be done under the topic of rape cases. This kind of judgment is as such a happy situation but, the fact remains that merely the principles laid down in judgment will not create a child friendly atmosphere at all stages. What is required to be done is awareness and sensitization programs for different authorities for the victim child, policies and programs to enforce and to bring about coordination and effective communication between the law making,

---

4. (2004) 5 SCC 518.

enforcement authorities and the medical authorities, etc. In camera hearings is sine-quo-non in the same way special time bound trial court program is equally an essential step to proceed ahead to secure the very objectives of rendering effective and meaningful justice to the victim children.

Certain facts about child abuse is of numerous type physical abuse includes beating burning or punching a child. Emotional abuse may involve criticizing, insulting, rejecting or withholding law from a child sexual abuse includes rape, touching, fondling or involving a child in pornography neglect includes failure to provide for a child basic, physical or emotional or educational need. Living a young child home alone or failing to provide needed medical care.

Normally one who knows the child abuses the child may be parent neighbour or relative it normally happens in the home of the child himself so many cases of child abuse are not reported. Child abuse may adversely affect in several activity behaviour development of the child.

As such, rights of a child is an integral part of human right. Exploitation, abuse of children, child labour, etc. are the worst forms of child abuse. In 1959, United Nations passed in independent declaration on the rights of a child and several Constitutional safeguards to protect the interest of children have been passed in India. The National Committee on Child Labour was set up in 1979 which has opined that poverty resulting in insufficient family income and the want to supplement it forces the children to work and even though

education for children is free and / or compulsory the parents are vary of educating their children in the lower economic strata of the society. Because an educated child becomes a liability not only in the form of an additional expenditure on the child's education, however insignificant, but, also in the form of loss of income due to the child's inability to work during the period of education. The Constitutional safeguards or control on child labour have been frustrated because children on many occasions due to social economic reasons are forced to work for their very existence. It seems a rational and pragmatic approach is necessary towards the problem. Most important is creation of an awareness not only amongst the parents and the society in general but, also amongst children an awareness of their rights and awareness that if their rights are violated there is a remedy available to them. This is a monumental task considering our social economic conditions. But, the fact remains that children are the keystone of the arch of our society and that we must be very very alert to protect the human rights of children and thereby taking care of rights and remedy for the problems of children which are in numerous fold.

#### **7.6 INEQUALITY AND DISCRIMINATION AGAINST MINORITY WOMEN:**

The women's community all over the world is a voiceless community. Muslim Women's progress is hindered by the promale divorce laws whereas, Hindu Women are sufferers on account of dowry deaths. The primary difference in the majority and minority communities is the issue of crime against women. While bride burning was common in Hindus, in Muslims

it was triple talaq. The victims are the same always – the women. But, we have to remember that we live in a society wherein talking about water, rural women's issues, difference of urban life and rural life, attack of media, attack of new culture, influence of the western culture or anything if you talk that is acceptable but, when you talk about rights of women and the daily indignities they are compelled to suffer, it is not an acceptable issue and the society is not ready to listen to the problems.

Education formal and informal is lacking so sadly in women which act as impediment in the creation of awareness amongst minority women. The need to educate women about their rights is the need of the top priority. Divorce becomes easier for Muslim men when their women are often unaware of the Quranic ruling on the subject. Mostly, their information is based on the Maulvi's interpretation which is out and out to help the vices of men oriented society. The advice is often being given to forego the meher or to forego the right of getting maintenance in exchange of retaining custody of children. On account of the tremendous grip of religious beliefs, women take Maulvi's words as final and binding and on account of lack of education they are totally unaware and unknown towards the injunction issued by Quran. As such, a class of people firmly believe that the idea of giving unilateral divorce by Muslim husband by three pronouncements is alien to Quran. In the same way, not to take amount of meher or waiving the right of getting amount of meher in case of khulla is wrong. The communal violence is another aspect wherein

also women are worst affected. Non-acceptance of the ideology of family planning under the guise of 'Allah will be displeased by restricting the birth of children' is another problem which too generate agony for the minority women because, minority women are not educated and are not placed properly in the society and have no economic independence. Therefore, if they have more children they will have to suffer more discrimination, injustice, insecurity in their lives and with a view to protect the interest of children women waive their lawful rights in exchange of false assurances for the protection of children. The cultural backwardness in the community is the root cause because of which injustice within the community, continuation victimization from within is continuing fate of women. The question of security and protection as women of minority becomes extremely of high alert in case of communal riots. The trials and tribulations faced by the marginalized community specially the minority women on the social, political and economic fronts is so serious that the question of giving any right or go-bye to the age-old parda system is such for which one cannot muster the courage to start the crusade against the age old system. Self esteem and self confidence of minority women is extremely poor for the reasons that the programs, planning and projects made by the Government hardly reach to the minority women for the reason that there is no community support to the minority women and on some of the events, the Muslim women and other minority women are in very vulnerable situation. Heart ranching experiences which are very sad and speak about inhuman treatment by their own counterpart

from their own community only makes humanity to cry. As such, the community or religion may be any but, secondary position of woman is common, but, in Muslim community on account of availability of privilege to Muslim husband for triple talaq the sufferings have gone too much deeper and because of which thousands of women who face discrimination at every path of life have no courage even to question the person who is the root cause of all kind of suffering. It also seems that child marriage, bring all kinds of agony. Secondly, the rights flowing from personal law gives unequal right to men and women. It goes without saying that such kind of discriminating situation itself, gives birth to all kind of sufferings, agony, sorrows, grievances of Muslim women. Economic dependence of the women also does not allow their personality to grow. Unemployment or the situation of very poor kind of employment like milk vending and kite making or household works are usual fate of minority women. The State's action of not granting needed favours to minority women or to any woman for that matter also needs lot many corrections. Financial help would also give great help to women. Hostile atmosphere, the situation of sailing against the wind and lack of education and enlightenment, negligence to the need of minority of women, obstacles to women who desire to make her political career are all the saga of struggle of women of minority community. The women of minority community need not necessarily be a Muslim woman she could be a dalit woman as well. The experiences of untouchability, caste system, exploitation of upper class, etc. are also the challenges which the society will have to meet

with. Customs like not permitting dalit women to wear footwear and that the custom of child marriage and the custom of not taking formal education for girls, etc. are making the situation worst. Domestic violence, beating of the husband, father, brother, sexual exploitation by own family members, maximum working hours with minimum salary, sexual harassment for continuance of the job, etc. are all the same issues which compel the women to go on fighting even for her basic rights. It is now high time when in the Muslim community the revolution need to be spread. It seems that uniform civil code may be the right answer to several problems. Even a common illiterate Muslim woman does ask as to why the consent of the woman is obtained by the Maulvi only in the marriage and why in the divorce it is not being taken and why right of unilateral divorce is only in favour of men. It seems that the problems of Muslim women flows from the situation that men enjoy all the rights and privileges and women have none. Rather exploitation and suffering is the fate of women.

It is now high time that we should expand definition of equality and the women's right to be treated as fundamental rights. Rights of minorities, stopping violations of human rights, stopping exploitation of underprivileged and marginalized people has to be the ingredients of the new culture and new society which we wish to form for the coming generation. The right of minority to live in peace and security in democratic nation is the demand of the day. With redressal from discrimination against minorities is required.

## 7.7 RIGHTS OF DALIT WOMAN :

In a way dalit woman live in silence. This is the silence which is of pain, suffering and helplessness. The dignity of dalit women is something which for centuries together the Indian Culture is trying to find out. Their pains, difficulties and problem have root in the historical cultural development of India and the patriarchic system of the society. Social structure, caste hierarchy, patriarchy, difference between men and women superiority of the men over women are all common features which exist in each caste, community, group and society, but, as far as dalit is concerned it is slightly on higher degree for the reason that the caste system has oppressed and suppressed the dalit people and untouchability which was a sin in the language of human right was continuing at least until the movement of freedom struggle initiated by Mahatma Gandhiji. In the rural area it has then after also continued but, that continuation is in small amount. The customs and traditions of dalit community are of very peculiar kind. Very rigid and orthodox stand of society and a specific term used for second marriage which is not recognized by the dalit community, which marriage is known as 'Nathru'. Unnatural deaths occurring in adolescence girls and young married women of dalit community have also become very common in the community. Violence is also experienced by the dalit women and they also have to undergo the same kind of physical and mental torture for which the women of other communities are complaining. In this community remarriages in widows are as such prevented or at least are not



encouraged. As a result of it the problem of widowhood along with the problem in case of second marriage which is being termed unlawful are to be faced by the society. The dalit women when are at work are sufferers of heavy exploitation and sexual harassment not only by her employer but by different persons surrounding her which is also matter of great concern. The facility for physical development is not easily available to the dalit women and because of poverty the dalit woman have no property in stock upon which she can obtain bank loan or loan from other financial institution. It is for this reason that the dalit women are great sufferers.

In this community Nati Panchayat exist which resolves issues between two parties. In this Nati Panchyat, participation of women is nil which needs to be added. Women are not owing any land or property or they do not have money or any other movable properties like ornaments etc. in her hands, for Which reason the economic empowerment has not been achieved so far. What is required is to give different programmes and project to enhance knowledge, information and capacity of the Dalit women to see to it that her exploitation and sexual abuse at work place does not deprive her from economic empowerment which is as a matter of fact her right. It seems it is essential to give land ownerships or loans to dalit women and to set up their organization or union to empower them.

## 7.8 DOMESTIC VIOLENCE:

The family is as such, an altar at which a woman had to sacrifice her life and such subservience is demanded from the woman in the name of culture, tradition, custom and all aspects of oppression and exploitation of women are fully in motion under the name of family honour. Domestic violence, dowry demands, maintenance and other certain offences against women are all based on this particular hard reality of the Indian Social Life. The situation in India is quite volatile wherein, female are equated with the cow who is supposed to follow the dictates of its owner and if not dictated the cow would be subjugated by force. Not only that the society so believe but, even woman herself also believes that abuse on the part of husband is the privilege of husband because, the Indian Culture has taught women that husband is God on earth and that once a daughter is given away by the father, she is to suffer all kind of indignities, injustice, discrimination in silence and woman who makes any grievances against these usual phenomena cannot be termed to be a cultured daughter or woman.

In the international scenario family and society are closely associated. The declaration on human right defines family as under:

“The family is natural and fundamental group unit of society and is entitled to protection by society and the State.”<sup>5</sup> The violence against the women in family has numerous ugly faces. Let us look it upon:

---

5. United Declaration of Human Rights, 1948 Article 16 - 3

## 7.9 FEMALE INFANTICIDE AND FETICIDE :

Female infanticide exist in some part of the country. The reason for this practice is the preference of son over daughter. The reason for preference for son is the cultural background of India and the vices of men oriented society. Since, the son is required in each family, the scientific devices of determination of the sex of unborn child is being misused to kill the female fetus. In some of the States like Punjab, Haryana, Delhi, etc. the social awakening of the issue is nil. The government has enacted the pre-conception and pre-natal diagnostic techniques (Prohibition of Sex Selection) Act, 1994 which is popularly known as PCPNDT Act. This Act has been amended in the year, 2003 to see to it that the misuse of scientific techniques are strictly handled and the responsible doctors and technical experts be penalized in proper way so as to see to it that this evil is totally curbed.

By special efforts of Central Government as well as State Government, by using print media and by using visual media, so many schemes and scripts are being prepared to convey the message that preference for son is not healthy sign of civilized society and it seems that the message is being percolated, the government has also put into practice certain schemes to encourage the parents of daughters and to see to it that daughters are given special priority by offering special concessions through special schemes of government for their education to marriage.

After the amendment in 2003 the Act is known as Pre Conception and Pre-Natal Diagnostic Techniques (Prevention of Sex Selection) Act 1994. The Preamble of the amended act reads as follows :

“An act to provide for the prohibition of sex selection, before or after conception and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of their misuse for sex determination leading to female feticides and for matters connected therewith or incidental thereto.”

In the matter of Centre for Enquiry into Health and Allied Themes and others v. Union of India and others, <sup>6</sup> Hon'ble supreme Court has observed that :

“ It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that the gentle touch of a daughter and her voice has soothing effects on the parents. One of the reasons may be the marriage problems faced by the parents coupled with dowry demand by the so-called educated and / or rich persons who are well-placed in society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk

---

6. AIR 2003 SC 3309.

continues in a different form by taking advantage of medical techniques. Unfortunately, developed medical science is misused to get rid of girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence; foetus of a girl child is aborted by qualified or unqualified doctors or compounders. This is prevailing without hindrance."

Hon'ble Supreme Court in its landmark judgment of Centre for Enquiry into Health and Allied Themes and others v. Union of India and others, has mainly given directions to Central Supervisory Board, Appropriate Authorities, Advisory Bodies, State Government and Central Government to implement the Act and to bring awareness on the subject matter of Act and to educate the people on the rights of girl child to take birth. The sex ratio in India is 933 whereas the same for Russia is 1140, for USA it is 1029 and for Japan it is 1041. Even for the less developed countries like Indonesia and Brazil the sex ratio is 1004 and 1025. Our neighbour Pakistan is doing better than us where the sex ratio is 938 women per thousand male. <sup>7</sup>

Major State-wise Sex Ratio of Child (Age Group 0-4) In India (2000-2002) <sup>8</sup>			
India & Bigger States	Total	Rural	Urban
Andhra Paredesh	954	956	948
Assam	943	941	966
Bihar	910	912	888
Gujarat	855	871	818

7. Material of national judicial Academy, Bhopal, Training the Trainers Program on Gender Justice, Issues with special reference to PC & PNDT Act, 1994 assembled and edited by Prof. Dr. N.R. Madhav Menon, Director N.J.A. Article PC & PNDT Act, 1994, the MTP Act, 1971 and their implementation to check female foesticide by Manju Goel, High Court of Delhi, p.106.

8. Ibid p. 106

Major State-wise Sex Ratio at Birth by Residence in India (1998-2000,1999-2001 and 2000-2002) <sup>9</sup>									
India and Bigger States	1998-2000			1999-2001			2000-2002		
	Total	Rur.	Urban	Total	Rural	Urban	Total	Rural	Urban
Andhra Pradesh	960	956	972	934	937	925	945	939	967
Assam	984	986	962	962	967	902	945	947	913
Bihar	896	894	922	873	869	910	870	870	863
Gujarat	851	859	828	837	853	794	844	866	788
Haryana	797	807	755	803	814	758	804	817	745
H.P.	902	907	823	858	863	785	826	826	826
Karnataka	942	952	917	935	947	900	952	950	957
Kerala	930	912	986	927	918	956	911	913	904
M.P.	907	908	903	915	925	857	920	933	849
Maharashtra	913	919	903	915	919	908	899	904	891
Orissa	928	932	885	920	926	873	944	950	889
Punjab	792	799	767	775	82	750	775	781	757
Rajasthan	877	885	830	885	886	876	890	886	917
Tamilnadu	931	944	901	926	936	904	926	946	883
Uttar Pradesh	868	864	893	870	869	881	864	862	875
West Bengal	952	958	921	956	961	934	949	957	915
India	898	901	886	894	899	871	892	898	868

The above picture establishes that the sex ration in rural as well as urban life is declining in all of all states and in India as whole which is evident that the PN & PNDT Act is not successful. The Act has, as it seems, no impact at all. The society has tremendous son preference based on age old ideologies and hence now it is time to serve womanhood of the country by educating the people to remove san preference from their mind. **The Medical Termination of Pregnancy Act, 1971**, provides as to under what circumstances, the abortion is permitted. The declining sex ratio in India is a matter of grave concern. Son preference has existed traditionally in India on account of social, economic, religious and cultural factors like oldage security, performance of religious rights, family honour, family business, prestige issue, the cultural setup of compulsion on the part of the daughter to leave for husband's house etc.

9. Material of national judicial Academy, Bhopal, Training the Trainers Program on Gender Justice, Issues with special reference to PC & PNDT Act, 1994 assembled and edited by Prof. Dr. N.R. Madhav Menon, Director N.J.A. Article PC & PNDT Act, 1994, the MTP Act, 1971 and their implementation to check female foesticide by Manju Goel, High Court of Delhi, p.107.

are all the causes because of which the magnitude of the problem has continued and as seems would continue until proper awakening programs are organized, until the society at large is educated for the purpose of the Act of prohibition of sex selection before or after conception and to prevent misuse of the techniques for sex determination and elimination of female fetus will not be survived. Moreover, the successful implementation of the Act is possible only if the concerned administrative persons, medical community, legal fraternity and all those who are sitting in Government to control and regulate the affair are eager for the effective implementation of the Act.

<b>SEX RATIO OF DIFFERENT STATES OF INDIA<sup>10</sup></b>		
<b>State</b>	<b>Overall Sex Ratio</b>	<b>Child Sex Ratio (0 to 6 years)</b>
India	933	927
Andaman Nicobar Islands	846	965
Andhra Pradesh	978	964
Arunachal Pradesh	901	961
Assam	932	964
Bihar	921	938
Chandigarh	773	845
Chhatisgarh	990	975
Dadra & Nagar Haveli	811	973
Daman & Diu	709	925
Delhi	821	865
Goa	960	933
Gujarat	921	878
Haryana	861	820
Himachal Pradesh	970	897
Jammu & Kashmir	900	927
Jharkhand	941	966
Karnataka	964	949
Kerala	1058	963
Lakshadweep	947	974
Madhya Pradesh	920	929
Maharashtra	922	917
Manipur	978	961
Meghalaya	975	975
Mizoram	938	971
Nagaland	909	975

10. Combat Law, The Human Rights Magazine, Volume 2 Issue 6, February – March, 2004, p.76.

Orissa	972	950
Pondicherry	1001	958
Punjab	857	793
Rajasthan	922	909
Sikkim	875	986
Tamilnadu	986	939
Tripura	950	975
Uttar Pradesh	898	916
Uttaranchal	964	906
West Bengal	934	963
<b>Source : Census of India, 2001</b>		

The fact also can not go out of sight that under the guise of need of medical termination of pregnancy lots of girls have been missed which too is one aspect of violence against women. Mostly the male members of the family and the elders even if female but since under the influence of male oriented society decide to miss the girl child in the womb of the mother is incident of misuse and abuse of the law.

#### **7.10 SATI PREVENTION ACT, 1987 :**

This Act is to prevent commission of Sati which gives wide powers to the District Collector so as to see to it that not only no another incident of sati occurrence takes place but, the existing structure which is meant for devotion of sati can also be demolished by the District Collector. Sati means burning or burying alive of widow along with the body of her deceased husband. The object of the Commission of Sati (Prevention) Act, 1988 is that it is an act to provide for more effective prevention of the commission of sati and its glorification and for matters connected herewith or incidental thereto. As such, the practice is nowhere enjoined by any of the religions of India as an imperative duty but, some how or other the glorification of sati has perhaps continued. In an incident prior



to the Act, a young widow Roopkunwar Deorala in Rajasthan committed sati and this was treated as solemn act. There were people out to establish a temple of Sati Mata Roopkunwar and upon which the whole issue has been discussed a lot. It was shock for the people of India and to Indian secularism and humanism that even in this modern age commission of sati took place and glorification was on. It was felt that before this practice of commission of sati became demon, it has to be prohibited, prevented and crushed with a hammer hand and it is for that reason the Act came into being. Attempt to commit sati, abetment of sati, glorification of sati, taking donations for the sati temple are all prohibited and punishable under the Act. Rules have also been made under the Act. Thus one more chapter of domestic violence against women was closed down for ever through the iron hands of law makers.

#### **7.11 DEVDASI SYSTEM :**

At one point of time the belief was that it would amount to gain great spiritual merit if one can give or donate one's daughter to an idol. This particular notion was in fact attached to another notion that such a woman must actually marry a human being. This kind of donated daughters were named as devdasis in some part of India. In some other parts of India the system is also known as Basavi, Jogini, Parvathi, Mathamma and Tyaamma. This kind of practice of dedication of woman as devdasi was more prevalent in South India. However, the same practice on another name was prevalent in the Bombay State also. several legislations passed to restrain or to prohibit this kind of practice. Bombay Devdasi Protection Act, 1934,

Bombay Protection (Extension) Act, 1957, Madras Devdasi (Prevention of Dedication) Act, 1947 and Andhra Pradesh (Prohibition of dedication) Act, 1988 passed with a sole purpose to prohibit this kind of practices.

Women in India have been treated as a thing a commodity rather than a human being. The question of grant of human right to women or women's human right has been dealt with in latter part of this century. Prior to that, not only at the national level but, even at the international level women were treated inferior to men and as a second class citizen. Even today the situation has not improved. On looking at the verses of Ramayana and Mahabharata this situation can very well be visualized that women were treated as bond slaves and the three male persons, father, husband and son have right over the women was the prevalent belief upon which the whole Indian society is existing even today. It is for this reason women have been targeted for violence and discrimination. It is not only question of gender or sex but, it has even relation with religion, community, caste, etc. because, as can be seen the dalit and adavasi women have been subjected to violence more frequently than the women of sophisticated class of the society. One of the estimate suggests that only 5% of the cases are registered for violence against women in Indian Society because, the experience is that the women who go with the grievance of subjecting her of violence is dishonoured, disbelieved, insulted and is further abused and if can be put in words of Hon'ble Supreme Court it always adds insult to the injury to which the women had to undergo on account of the

fact that she on account of her sex is subject to violence which she is unable to retarded at.

### **7.12 RAPE CASES:**

In spite of the sad picture mentioned above, in the pruple report there are rays of hope which can be found from different judgments of Hon'ble the Apex Court wherein, Hon'ble the Apex Court has established a neojurisprudence with reference to appreciation of evidence in cases of rape, medical evidence, compensation and the whole theory as to in what manner the seriousness should attach to the cases of domestic violence have been decided by different judgments. In the matter of State of Punjab v. Gurmeet Singh & others <sup>11</sup> Hon'ble the Supreme Court has laid down wonderful principles which should be made applicable by all courts in relation to the rape cases. It has been held that, "A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female." Hon'ble the Supreme Court has held in numerous cases as to rape is the worst form of violence on women and that it is perhaps worst than killing her. The trauma which women would have to undergo, the social degradation which the victim woman is likely to face and the necessary ideas of social handicap and that social and psychological impact on the life of women of the incident like rape have been thoroughly discussed in different cases. Hon'ble the Supreme Court has decided in the matter of Delhi Domestic Working Women's Forum as to the necessity of formulation of a scheme by the Government and that at the time of conviction when a person found guilty of

---

11. JT 1996 (2) SCC 384.

having committed the offence of rape the Court shall award compensation.

In numerous matters Hon'ble Supreme Court has also held that a prosecutrix of a sex offence cannot be put at par with an accomplice. She is in fact a victim of crime and that she is a competent witness and that her evidence must receive the same weight as is attached to an injured in case of physical violence. Hon'ble Supreme Court has also held that normally the version of victim woman should be believed by the Court and not believing the version of the victim woman is not proper rule of appreciation of evidence. The role of judges has also been referred in the above referred matter of Gurmeet Singh (Supra). While setting aside the acquittal and while convicting the accused, Supreme Court held that holding trials in camera is mandatory and it is always desirable that rape cases are heard by lady judges as far as possible.

In the matter of State of Andhra Pradesh v. Gangula Sathya Murthi <sup>12</sup> Hon'ble the Supreme Court held that, "Courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statements of witnesses, which are not fatal in nature to throw out allegations of rape. This is all the more important because of the rate of crime against women in general and rape in particular is on increase. It is an irony that while we are celebrating Women's Rights in all sphere we show little or no

---

12. JT 1996 (10) SC 550.

concern for her honour. It is a sad reflection and we must emphasize that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in totality of the background of the entire case and not in isolation." In a case of Howra Railway Station Rape Hon'ble Supreme Court has also held that it is violation of the fundamental right guaranteed under Article 21 and that there is vicarious liability to pay compensation for rape as it took in the premises of the Government which has control over the said premises.

The role of the doctor has also been discussed and that it has been held that the Government hospitals cannot refuse to conduct medical examination of rape victims. The principle which has been laid down is mainly based on the theory that if the evidence of the prosecutrix inspires confidence of the court the corroboration is not at all requisite. Secondly, the theory that a victim woman will not speak untruth because that would amount to invite allegation and the social stigma against her own self which normally no woman would do. Therefore, normally the deposition of the prosecutrix should be believed.

In the matter of *Bharvad Bhoginbhai Hirjibhai v. State of Gujarat*<sup>13</sup> Hon'ble the Supreme Court has held that it would amount to add insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world.

---

13. 1983 (3) SCC 217

The Hon'ble Supreme Court in a landmark Judgment delivered in the case of Sakshi v. Union of India and Others,<sup>14</sup> spelt out certain guidelines to be followed by Courts while recording the statements of victims of sexual abuse who are minors. These are as under:

- " (i) Permitting use of a videotaped interview of the child's statement by the Judge (in the presence of a child support person)
- (ii) Allow a child to testify via closed circuit television or behind a screen to obtain full and candid account of the acts complained of.
- (iii) The cross examination of a minor should only be carried out by the Judge based on written questions submitted by the defence upon perusal of the testimony of the minor.
- (iv) Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child.

1. The provisions of sub Section (2) of the Section 327 Criminal Procedure Code shall in addition to the offences mentioned in the Subsection, would also apply in inquiry or trial of offences under Section 354 and 377 Indian Penal Code.

2. In holding trial of child sex abuse or rape :

- (i) a screen, or some such arrangement may be made where the victim or witnesses (who may

- be equally vulnerable like the victim) do not see the body or the face of the accused;
- (ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or the witness in a language which is clear and not embarrassing
  - (iii) the victim of child abuse or rape, while giving testimony in Court should be allowed sufficient breaks as and when required".<sup>15</sup>

In this matter Hon'ble the Supreme Court has given certain guidelines in case of rape upon the child victim what care is necessary to be taken by the court has been discussed in great detail and it has been held that the Court should take all necessary care that no mental embarrassment is caused to victim child, there may be curtain between the accused and the child victim or the use of the video recording of the statement of the child victim can be used, and all such modes and manners which are necessary to inspire faith of the child victim should be adopted by the Court, no cross examination should be permitted of the child victim by the defense counsel but, rather the defense counsel should be directed to give his questions in writing which he is desirous to ask during the course of cross examination to the presiding officer and the said questions can then be asked by the Presiding Officer.

There are numerous judgments given by the Apex Court and the Higher Courts which give greatest solace that the

implementation of the CEDAW and the spirit of CEDAW has been effectively and rightly brought in the Law Books by the landmark judgments of the Supreme Court. It is yet a sad story that in certain cases trial courts do not adopt required theory in cases of rape. However, it can be hoped that the neojurisprudence developed by the judgments of the Supreme Court, the trial court will not be able to deliver justice in a right perspective as required.

### **7.13 PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005:**

The Act is an important marker in the history of women's movement in India. This has given the definition of the word 'domestic violence' wherein, several acts like any act, omission or commission or conduct harms, injures, danger to health, safety, life, limb or well being, whether mental or physical of the aggrieved person and it includes physical, sexual, verbal, emotional, economic abuse or harassment or harm have been covered and that it has widened the scope of the word and that it has been broadened from the concept of dowry death or cruelty to its real point which would certainly help the suffering of women. Secondly, the achievement of this Act is to widen the scope of protection against violence beyond the category of wives and extending it to mothers, daughters, sisters and even other relatives staying in the same home and to the women who are not in formal relationship of wife. All aged women, unmarried girls, widowed and divorced sisters can now seek protection from their relatives. Against domestic violence.



The point which has been missed sight of the law maker is that firstly, the jurisdiction has been given to the Magistrate which could have been given to the family courts wherein, district Judges are presiding officer. Secondly, the protection officer is the main person through whom effective implementation of the Act is expected. Here it needs to be remembered that the protection officer if would not necessarily function with efficiency, honesty and gender sensitivity. Therefore, in the event that appointment of protection officers will be made in a casual and cursory manner, it will become a mere government formality and will not carry the Act to its peak. Until the court attach greater credence and acceptability to women's i.e. the victim's testimony the purpose of making such Act will not be served because the lofty aspiration in the Act is not the only requisite. What is necessary is the honest desire to implement the Act. Recommendation i.e. popularly known as general recommendation No.19 of CEDAW states that gender based violence is a form of discrimination that seriously limits women's ability to enjoy rights and freedom on the basis of equality with men. At this juncture it would be fitting to take note of the fact that definition of violence against women has been framed by the United Nations. Article 1 of the Declaration on the elimination of violence against women defines it as, "Any act of gender based violence, that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such act, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." <sup>16</sup>

---

16. Violence against women in India, A review of trends, patters and responses, UNFA, International Centre for research for Women (ICRW) for UNFPA, India. April, 2004. p.2.

Crime against women is the direct violence against women. The following speaking information spells the seriousness of it.

1. Crimes against women (CAW) have been increasing over the years.
2. Cruelty by the husband and his relatives consistently records the highest crime rate.
3. Every day : 337 cases of Crime Against Women are reported ; 42 women are raped; and 18 cases of dowry deaths occur.<sup>17</sup>
4. Every hour : 5 women face cruelty at home; 4 molestation cases are reported. <sup>18</sup>
5. One – fourth of all rape victims are children
6. In 1996, Capital Delhi was the worst, with the crime rate of 223 cases per million persons and the highest rates of kidnapping / abduction among women and girls being reported.<sup>19</sup>
7. Cases of sexual harassment are being recorded increasingly in recent years

In 1998, the National Crime Records Bureau reported that the growth rate of crimes against women would be higher than the population growth rate by 2010. This implies that progressively a greater number of women are becoming victims of violence. Registered crimes against women have shown an increase of 8.4% between 1997 and 1998 and 3.3% between 1998 and 1999. The pie chart below shows the distribution of crimes against women for 1999. <sup>20</sup>

---

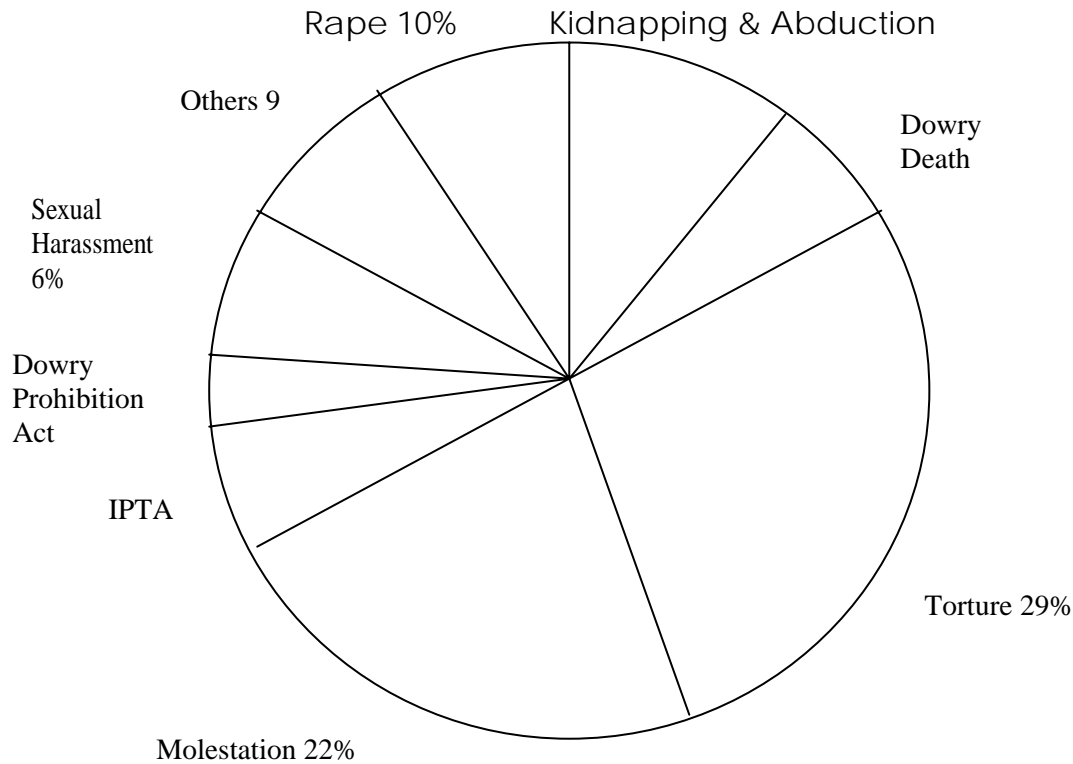
17. Ibid p. 2.

18. Ibid p. 2.

19. Ibid p. 2.

20. Violence against women in India, A review of trends, patters and responses, UNFA, International Centre for research for Women (ICRW) for UNFPA, India. April, 2004. p.5

### Total Recorded Crimes Against Women 1999



As such, Indian Penal Code, Dowry Prohibition Act, Criminal Procedure Code and Indian Evidence Act were taking care of criminal acts constitute domestic violence but, now that since specific Act has come into being, with small ifs and buts, the hope of Indian women has increased for better gender equality. It also needs to be remembered that acts and policies by the Government alone cannot help unless the judiciary takes it up seriously and unless the implementing authority become gender sensitive the problem is not likely to be solve. The fact cannot go unnoticed that crime against women is on rise and there are so many crimes against women which are not being reported on account of fear of social stigma and for the sake of family reputation and family honour. The gender stereotypes prevalent in the society give

birth to several forms of violence. The overall system which is meant to favour women is influenced by patriarchic norm of the society wherein, violence against women is not taken up seriously and is something which is expected to be condoned by good women. The legal services, training to officers concerning with the administration of justice and investigation, legal literacy, monitoring agencies, etc. will have to be awakened. The programs by the government like Mahila Samakhya and many more discussed in the previous chapters have also not achieved the desired result. It appears that the non-government organization, support groups and social activist groups should be more vigilant to see to it that women get their due and she is not subjected to any further difficulties more particularly, violence against her shall have to be stopped for all the time to come.

#### **7.14 SEXUAL HARASSMENT AT WORK PLACE :**

Sexual harassment at work place is as such, a very burning problem and is clear violation of human right of women. The judgment of Vishakha which has already been discussed in previous chapter, has shown way to the government, but, up till now no law has been made to meet with this burning problem. However, the only solace which one can get is that that it is only on account of the judgment and subsequent development certain safeguards have been offered to working women. Civil Service Conduct Rules and other such regulations have been amended to include within it the concept of sexual harassment. It has also been established that the judiciary will not take it lightly. However, this claim can

only be put up for the highest and higher judiciary but, at trial level there is still requirement of proper insight and understanding about the seriousness of the problem. It needs to be clarified that for want of law on sexual harassment at work place effective measures have not been initiated but, the committees established by different employers to deal with complaints of sexual harassment at work place is a good beginning and it seems that at least that has awakened people at large about the rights of women when women are doing job her rights at work place should be at par with rights of working men and this particular aspect has largely helped working women to have hope of equality with men at work place. At this juncture, it cannot be forgotten that women are too powerless to protest. Further, often the system works so much in the favour of those in authority that it is impossible for the victimized woman to get justice. Employers, managers, supervisors, contractors, owners, directors often seek sexual gratification as they are the persons in the employment who are in a position to grant promotions, to prevent from the danger of transfer, to fill in the work reports, and to assure continuity in job and such are the persons against whom women are more vulnerable victims. The landlords at the villages, the shroff at the villages, rural elite, a man of upper caste, a contractor to employ agricultural labourers, local politicians, religious leaders, heads of the religious institutions and such other persons are the persons who does highest sexual harassment to women against whom minimum complaints are lodged for the reason that if women would complaint against such so called leading persons she would

not only loose reputation but, even subjected to further sexual exploitation and that the persons against whom the complaint might have been lodged would go unpunished and that such victim women will always loose her employment. The unemployment being burning issue and the responsibility being on the shoulders of women to feed the economic needs of the family the victim women have no go but, to tolerate her own sexual exploitation and harassment. Not only the law in the field is required but even lot of awareness coupled with security by the law is also required along with social awakening on the issue.

#### **7.15 PRACTICE OF DECLARING A WOMAN AS WITCHCRAFT**

This is one of the biggest social evil in the village life of India, more particularly in the backward state like Bihar, Orissa and certain deep north eastern parts of the country. The belief is prevalent that certain women whose lives are not satisfactory are becoming witch and such kind of women are eating their own son or such kind of women are evil power who take away the lives of innocent children and innocent villagers. By certain leaders the woman is declared as witch. Thereafter, there is total social boycott of that woman and anything and everything done by that woman would be termed as an activity which is to destroy someone. If some sudden death takes place, such women are held responsible. Severe kind of inhuman violence takes place and such women are subjected to most inhuman and derogatory treatment. This is one of the causes wherein, the women are made to suffer violence. A very shameful part of it is that a peculiar kind of

people are well-known for taking out the witch from the body of woman and they are further subjecting the woman of different kind of violence including taking her life, taking away her limbs and many more kind of violence to which such women are subjected to. In some of the states like Bihar an act known as 'Dayan Pratibandhan Dhara' is in practice and on operation of this Act the concerned State Government is deriving the satisfaction of having rendered protection to such kind of women. But, as a matter of fact, the evil is so much wide spread that it does not go out of the minds of people and until the mindset of people gets changed, this kind of troubles goes on troubling women in the rural area who are absolutely unsecured against such kind of beliefs and such kind of religious evils.

#### **7.16 DOWRY AND CRUELTY :**

At present dowry is the evil which all concerned wish to curb. Dowry is so deep rooted in our society that today almost in every community or in every corner of the country this evil has its roots. Previously the idea to give some share to the daughter at the time of her marriage came into being as daughters were uneducated and had no possibility of any gainful employment to supplement the family income or to become economically independent. During those days, the father out of affection or other considerations used to give some cash or kind or small portion of the family property to a daughter with a view to see to it that it can help her strengthening her matrimonial tie, establishing her status in in-laws house and to make it useful asset for daughter to meet

with the requirement of the rainy days. Dowry Prohibition Act, 1961 is mainly to prohibit the practice of giving and taking dowry. In the Indian Penal Code also the death which occurs on account of demand of dowry is made punishable by bringing into the Indian Penal Code an amendment which stipulates that in case of death of women more particularly, unnatural death of a woman and if the said death is caused by burns or bodily injuries or occurs otherwise, then, under normal circumstances within 7 years of marriage and if she has been subjected to cruelty or harassment by her husband or relatives, soon before her death, in connection with demand of death, then, such death shall be called a 'dowry death'. When the husband or his relatives subject a wife to cruelty, which is a willful conduct, as is likely to drive the woman to commit suicide or to cause a grave injury or danger to life, limb or the health of the woman or harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand or any property or valuable security shall be liable to be punished to imprisonment of 3 years. This has been provided in sec.498A of the Indian Penal Code.

The amendment in the Indian Penal Code for the dowry death is supported by an iron jacket inserted in Indian Evidence Act by narrating the circumstances in which the death would be presumed to be a dowry death. It is observed that despite several judgments effective and meaningful judgments having been given by higher courts, amendments made in the procedural law and insertion of the presumption in the Indian



Evidence Act, certain principles of appreciation of evidence in case of offences against women, the result of total elimination of discrimination and eradication of dowry system has not been achieved. It is felt by one and all that there is a need of change in mindset. Legal Literacy may help but, then, it is equally necessary that people themselves view upon dowry offences as wrong against the whole society. The dowry related violence has also to be viewed very seriously by investigating authority, by executing authority, by the judiciary and more and more laws which have teeth within should be brought on law book by the law making agencies.

#### **7.17 ABETMENT TO COMMIT SUICIDE :**

It is provided in Section - 306 of Indian Penal Code wherein also, the scope of booking the offenders is quite wide but, the scope is hardly being utilized. If we look upon the ratio of punishment, it hardly goes beyond 7 percent which is self explaining that we need to take the section, interpretation, appreciation and execution of it, more seriously. The alarm that section 306 of Indian Penal Code should not be misused, is equally to be taken care of. But, the present researcher submits that the presumption given under the Indian Evidence Act with reference to abetment to suicide is not so far sharply and effectively gained. To curb the offences against women this section is yet to be utilized with bigger, greater and sincere force.

### 7.18 CODE OF CRIMINAL PROCEDURE :

By way of sec.198 of code of the Criminal Procedure, 1973, certain offences are taken cognizance of. In some of the offences the cognizance of an offence cannot be taken until the complaint is made by a special group of concerned person or relative or exactly aggrieved person. This is criticized in a democratic setup and this is also coming in the way of all kind of social development which a developing country like India would aspire. Each offence must be made an offence against society and it cannot be presumed that until an aggrieved person like in case of bigamy the wife is aggrieved, becomes complainant the offence is not offence. The offence remains an offence and for which purpose at the instance of any socially awakened person the cognizance must be permissible in the procedural code. Even in these days, an active Non Governmental Organization, if takes up the issue, such taking up of issue in the larger interest of society must enable the judicial machinery to take cognizance of the offence and to this extent the criminal Procedure Code will have to be amended to.

The biggest lacuna in the provision of maintenance to wife, parent and children was the ceiling of the amount for which the award can be passed. It has to be appreciated that in view of the amendment which must have been carried out in the law books under the influence of CEDAW, there now remains no ceiling and it remains absolutely on the discretion of the judicial officer.

The present researcher submits that this itself is the greatest gift to the society, because if the amount is limited which can be ordered to be paid, in that case the wrong doer and more particularly a rich wrong doer will not mind doing wrong. Rather, in some cases he would be encouraged to do so and therefore, it is clear that the amendment brought in the law books is quite reasonable, just and proper and of course was much needed also. Secondly more stringent procedures have to be made in case of sell of young girls and for any offence committed by giving an aspiration to a girl under the guise of marriage and without any intention to marry.

Kidnapping of the children should not be viewed lightly, but, very strict procedural hazard should be imposed upon by the procedural law so that even pending the trial, the wrong doer cannot escape under the guise of his personal liberty.

#### **7.19 THE CHILD MARRIAGE RESTRAINT ACT, 1929:**

The Act will have to be amended to see to it that proper administrative control is imposed by the state by appointing appropriate officers exclusively for the purpose of prevention of child marriage. The persons present at the child marriage, the priest performing the child marriage, the Surpanch of the village or area where the child marriage is performed, the police of the area should all be held responsible for the child marriage in the area and that the burden to prove their non involvement or innocence should be on the shoulder of such persons. These all would collectively put better control on the child marriages. The Claim the now child marriages do not

take place has been falsified by many event of child marriage. To be more specific the news paper that too of capital of India has published a photograph of two children minor to have come to temple to seek blessing of Good Below the photograph of a children couple the report reads as under:

“The Medical Termination of Pregnancy Act, 1971 It should be amended to bring into its scope consent of the women concerned as necessary ingredient for termination of pregnancy. It is observed that under the guise of medical termination of pregnancy female festide goes on increasing. This too will have to be curbed by bringing about an appropriate amendment in the Act”.<sup>21</sup>

#### **7.20 THE BONDAGE LABOUR SYSTEM (ABOLITION) ACT, 1976 :**

Women who were bonded labourers when freed, should be offered special, distinct and welfare aimed rehabilitation schemes, vocational trainings to set up new way of life and kind of compensation from the fine recovered from the employer who has compelled the bonded labour. Secondly, there has to be a kind of provision for the sexual exploitation and compulsion to women to force her to act against her desire. This Act will also have to look at the special difficulties which freed female labourer is likely to face and to make the scheme fitting to that requirement or to take all necessary care to create employment opportunities for such women so as to see to it that further bondage stands avoided.

---

21. Times of India Delhi Edition.

## 7.21 CONCLUSION:

There are so many acts related to women. Some of them have been discussed in various chapters in the thesis by the present researcher. There are certain acts wherein, the provisions existing at present are not insufficient but, the implementation of the said provisions are improper. As a result of which, it does not derive the fruits as it should have been derived. Secondly it is also important to take note that certain laws are not implemented or are not properly interpreted. It is only at the later occasion when the word used in the provision of the existing law was rightly interpreted by the Apex Court of the Country in that case, it has achieved the goal for which it were provided. Meaning thereby that until the attack is made on all the aspects like making the law, executing the law, implementing the law and then, ultimately, interpreting the law, the success will not be attained to eliminate violence against women from all the sphere. All the acts related to women are as such, discussed in different chapters because there are certain laws, the provisions of which need to be appreciated. There are certain laws wherein, certain suggestions are made by the present researcher. The last chapter of suggestions is such wherein the laws which only require certain constructive suggestion have been taken care of and therefore, those acts are not discussed over here. Since there is a separate chapter on marriage laws, the said are also not discussed over here.

**CHAPTER – VIII**

**EQUALITY IN MARRIAGE AND  
FAMILY LAWS**

## CHAPTER – VIII

### EQUALITY IN MARRIAGE LAWS

“The institution of marriage is one of the sound social institutions to bring harmony and integration in social fabric..... Therefore, due recognition would be accorded for social morality and integration.....”

- Justice K. Ramaswami In Valsamma Paul v. Cochin University (1996) 3 SCC 545 <sup>1</sup>

“Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously because it is basically an economic problem of a class which suffers both from ego and complex..... Social ostracisation is needed to curtail increasing malady of bride burning.”

- Justice R.M. Sahai In Ashok Kumar v. State of Rajasthan (1991)1 SCC 166 <sup>2</sup>

Marriage has been, since ancient time, one of the most important kind of social institution. Marriage in Indian culture suggest eternity of relationship between male and female. It is a heavenly bondage. Stability of marriage is as such, in the interest of individuals, family and society at large. The subsistence of institution of marriage is the great sign of civilization and it is for that reason that in each religion and community the spouses are advised to forget the differences and live their marital life. It is more so in case of having children as the fate of children is attached to parents and subsistence of

---

1. G.B. Reddy, *Women and the Law*, Gogia Law Agency, 2<sup>nd</sup> (ed.) 1998, p.9.

2. *Ibid* p.95.

marriage helps children in their natural development. Breaking of marriages creates lot many problems not only for the respective spouses but, even for children out of the said wedlock. Their psychology get so much perturbed and disturbed that it is observed that such children, departed from parents, have formed the habit of committing crime or behaving unusual which then, becomes responsibility for the society and remain absolutely unable to contribute to the society.

In India there are numerous laws on marriage and family relations. Pluralism is the glaring aspect of Indian marriage laws which exists on account of numerous religion in India as all marriage laws are based on religion.

Constitution of India, the right to religion has been considered as a constitutional right and therefore, every citizen has a right to propagate and to sustain faith in one's religion of one's choice. As such, each religion has its own laws on marriage, divorce, child custody, guardianship, maintenance and the property rights of husband and wife. Some of the laws are based on religion but, there are some laws which are based on customary practices and usage. As such, Indian Constitution guarantees equality to women but, as a matter of fact, no equality in practice whatsoever has been granted to Indian Women. Four major religions need to be mentioned, Hindu, Muslim, Christian and Parsi. All the rights which can be termed to be related with family relationship are mentioned in respective personal laws. All the personal laws, except the Mohammedan Law, requires the age of marriage to be 18 and 21 years for girls and boys respectively. The Child Marriages Restraint act, 1978 is to restrict the



child marriages. But, as a matter of fact the child marriage is a continuing phenomena as, it is deeply rooted in certain parts of culture of India like Rajasthan. Secondly, all the religions have accepted the concept of maintenance to be given to the wife by the husband. Thirdly, in all the religions consent is treated as requisite for a valid marriage, but, looking to the social pattern India has, the consent of women has hardly any relevance. Meaning thereby, that it is always decision of the elder in the family and not at all the decision of concerned woman to part with consent or not. And thus, though the custom as well as law, require to take consent of woman for marriage, the same is not at all practically being taken. In India, marriage is a sacred institution and each component of society is interested in continuation of the marriage and subsistence of institution of marriage. Perhaps, it is for that reason, each and every personal law has emphasized on the aspect of reconciliation and thereby, preservation of marriage before granting decree for divorce or in other words, the decree for divorce is provided to be granted in each personal religion as a last resort and when no other remedy is left out by which the reconciliation between disputing spouses can be arrived at.

## **8.1 UNIFORM CIVIL CODE, A CONSTITUTIONAL POINT OF VIEW ON PERSONAL LAWS :**

### **1. HISTORICAL BACKDROP:**

In the ancient times, administration of justice and law making was from the religious centers like, Churches and Temples. Religion had extremely commanding position over all the transactions of people. Religious

heads and their commands were considered as divine gifts, divine verdict and straightaway given from the God himself and were not subject to any transformation or change. Before centuries ago, the geographical situation was such that people used to remain in groups to be known as communities wherein, people used to follow commands which used to be uniform as mainly given by the head of the community, subsequently known as Priest or Guru. It is only after the Muslim Rule and then after the British rule the Indian Laws have started facing diversities, disparities and discrepancies as their used to be invasion of the people of different religion then the people who resided in the country and who were to be ruled.

As such, the political policies of British were not to interfere as far as possible in the area of personal laws, rituals and rites.

Lord Mackolay, an able administrator has stated as under:

“We propose no rash innovation, we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this – uniformity where you can have it – diversity where you must have – but, in all cases certainty.”

While the process of sunset of the British Reign was on, the framers of constitution have started the exercise to find out as to in what best mode and manner people of India can give to themselves, by themselves and for themselves a state of commands, ideology, directive principles to themselves to govern themselves.

The need for Uniform Civil Code was ideologically expected by all concerned. It was felt that one of the factors that has kept India lagging behind on many counts was the grip of the Personal Laws based on religion on the life of people which kept the nation divided into water-tight-compartments on many aspects of life. It was perceived at the dawn of freedom that Uniform Civil Code should be guaranteed within a period of 5 to 10 years in the same manner as the right to free and compulsory education has been guaranteed within 10 years. Article 44 of the Constitution of India is a directive principle of State Policy may be implemented by the State, but, the said is not binding or compulsory. Article 44 stipulates that the State shall endeavour to secure for the citizens a Uniform Civil Code through the territory of India. Today, the laws related to personal affairs like marriage, divorce, judicial separation, succession, adoption and maintenance for different religion are very far from uniform. The ideal is to make it uniform law applicable to all the people irrespective of religion and caste. It was in 1954 Pandit Jawaharlal Nehru had a tough time to introduce the

Hindu Code Bill in the Parliament instead of a Uniform Civil Code. He said :

“I do not think that at present moment the time is ripe in India for me to try to push it through.”

However, by way of Hindu Code Bill, the majority of the citizens have been brought in the codified personal laws instead of un-codified theories of Hindu law believed by the then dignitaries who were Hindu fundamentalists to be not the law but, the command given by Bhagwan Manu himself for all Hindus of this Country. Though Uniform Civil Code is given as directive principle of the State Policy, but, in view of Article 12, 13, 14, 15(3) and even the Preamble of the Constitution having watch-word of welfare State and Social Justice, the provision of Uniform Civil Code becomes a mandate.

In view of the international developments more particularly, after the Second World War and since India has signed and ratified numerous international instruments on human rights it appears necessary for India to be away from religious fanaticism and continuous disparity, injustice, discrimination to female sex under the guise of religious command. India being a developing country cannot even think of a situation wherein, one Indian woman can be divorced even on telephone by triple recital of a word, another woman can seek divorce on the adultery of the husband only if she can

prove cruelty of the husband as well and that a third Indian woman can stand on equal footing with the man and can claim that it is not easy to give her divorce on whimsy and baseless desire of her husband. This inter se discrepancy, disparity and resultant insecurity will have to be given an appropriate answer when India as a secular state has salient features of social justice in the Constitution of India.

## **2. WHY UNIFORM CIVIL CODE?**

1. Simplicity
2. Certainty
3. Equality and justice
4. Secularism
5. National Solidarity and unity
6. Progressive Human Rights
7. Broader perspective

In view of what has been discussed above, Preamble and more particularly the concept of welfare State and social justice, concept of equality and the enabling provisions in favour of State to make laws to favour women, the directive principles of State Policy under Article 44 is now to be read as constitutional command given to the State, the Code seems to be moral mandate.

Moreover, Uniform Civil Code is the devise which assures gender justice and elimination of discrimination against

women. The personal laws, having unbelievable disparities and inherent injustices will have to be repealed and a new ideology of Uniform Civil Code will have to come into being.

It is a happy state of affairs that even sensitization and awakening process in favour of Uniform Civil Code has given us the gift of the Marriage Law (Amendment) Act, 2001 which has amended the Indian Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936, The special Marriage Act, 1954 and Hindu Marriage Act, 1955 which stipulates to dispose of application for maintenance within 60 days from the date of services of summons.

The security and uniformity in case of marriage, divorce, adoption, succession, maintenance, etc. would certainly take us from 18<sup>th</sup> century to the 21<sup>st</sup> century which is the need of the hour.

In the matter of Shah Bano Begum,<sup>3</sup> Hon'ble Supreme Court interpreted the right of Muslim Women to get maintenance even beyond the period of iddat. Here Hon'ble Court suggested the necessity of framing Uniform Civil Code throughout the territory of India.

In the matter of Jordan Diengdeh,<sup>4</sup> Hon'ble the Apex Court suggested for a complete reform of law of marriage and for introducing mutual consent and irretrievable breakdown of marriage as grounds for divorce.

---

3. A.I.R. 1985 SC 945.

4. A.I.R. 1985 SC 935.

In the matter of Sarla Mudgal,<sup>5</sup> Hon'ble the Supreme Court requested the Government of India through the Prime Minister to have a fresh look at Article 44.

The case of Lily Thomas <sup>6</sup> has clarified that in Sarla Mudgal's case, no direction for codification of Code was given, only it was reported.

It is said that man is a social animal and one does not love anything more than one's culture. The culture of India is in diversity of faith, system, custom, rights, rituals, etc. The minority also have every right for the subsistence of their culture, rituals and rights which all would go away on accepting the Uniform Civil Code.

What has been guaranteed by Article 25 would no more exist if, one is compelled to keep aside the faith which is life. It is the religious faith which is in the foundation of different identities of an individual. Though, it seems that the ethnic problem and the reasons for communal disturbances is religion and the Uniform Civil Code will be able to put an end to it, but, it stands nullified when the identity of an individual becomes the most important factor of the existence and satisfaction of an individual.

The freedom of religion is a charm which will grant individual dignity to a person which comes from the satisfaction of a different being from individuals.

---

5. A.I.R. 1995 SC 1531.

6. A.I.R. 1995 SC 1531.

## 8.2 IS THE TIME RIPE FOR CODE? :

The question as to the Uniform Civil Code should be legislated or not can find its reply in the statement of Pandit Jawaharlal Nehru wherein, it was stated by him that at that moment the time was not ripe in India for Uniform Civil Code. Hon'ble the Supreme Court on India in the matter of Sarla Mudgal v. Union of India<sup>5</sup> has lamented that:

"It appears that even 41 years thereafter, the rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since, 1949. The governments – which have come and gone have so far failed to make any efforts towards 'Unified Personal Law for all Indian'."

While emphasizing the importance of marriage institutions, Hon'ble the Supreme Court has stated that marriage is the very foundation of the civilized society. The relation once formed, the law steps in and binds the parties to various obligations and liabilities there under. Marriage is an institution in the maintenance of which the public at large is deeply interested. It is the foundation of the family and in turn of the society without which no civilization can exist.

While noting the open inducement which is the curse of existing system of personal laws, the Hon'ble Apex Court has opined that since monogamy is the law for Hindus and the Muslim Law permits as many as four wives in India, errant Hindu husband embraces Islam to circumvent the provisions of Hindu



law and to escape from penal consequences. The opinion rendered by the Hon'ble Supreme Court is the law of the land. It has been said that :

“One wonders how long will it take for the Government of the day to implement the mandate of the framers of the Constitution under Article 44 of the constitution of India. The traditional Hindu Law – personal law of the Hindus – governing inheritance, succession and marriage was given go-bye as back as in 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely or keep in abeyance, the introduction of a Uniform Civil Code in the country.”

Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas, Article 44 to divest religions from social relations and personal laws. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Article 25, 26 and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin in the same manner as in the case of Muslims or the Christians. The Hindus along with Sikhs, Buddhists, and Jains have forsaken their sentiments in the cause of national unity and integration, some other communities would not, though the constitution enjoins the establishment of a common Civil Code, for the whole of India.

While discussing the political history of India, the necessity of supplementing the personal laws by introducing Civil Code was opined as a duty and a constitutional mandate under Article 44 of the Constitution of India. It was requested by the Apex Court to the government of India to have a fresh look at Article 44 of the Constitution of India.

There cannot be any doubt that the Uniform Civil Code will render most appreciable services to Indian Women. The Convention against Elimination of Discrimination against women is ratified by India with reservation and declaration that Indian government will not interfere in the affairs of personal religion of any community without its initiatives or consent and in view of that policy no government has acted strongly to bring into effect Uniform Civil Code which is surely a clear violation of social, cultural, economical, educational, civil and political rights of Indian women.

### **8.3 JUDICIAL PERSPECTIVE :**

The Courts in general have always attempted to see to it that the institution of marriage remains intact and the marriages need not to be dissolved. Further, the rights flowing from matrimonial and family relation must granted. There are examples and examples wherein the courts and more particularly, the Supreme Court have charted the route from which the gender justice can travel.

**ARAB AHMEDIAH ABDULLAH v. ARBA BAIG MOHMUNA** <sup>7</sup>

In this matter, the court held that, the word provision used for reasonable and fair provision of maintenance to be paid to the wife is suggestive of the intention of the Parliament to see to it that a divorcee wife gets sufficient means of livelihood after divorce and that she is not thrown out on the street without roof on her head and without any means of sustaining herself and her children. Here the word provision has been meant for providing in advance for meeting some needs.

**SHAKILA PARVEEN v. HYDERALI** <sup>8</sup>

Here Hon'ble the Supreme Court has considered the objects and reasons of Protection of Brides on Divorce Act for Muslim women. It has emphasized the Preamble and plain language of section 3 and has held that, it cannot be said that the Muslim Women Act, in any way adversely affect the personal right of the Muslim divorced woman. The expression during iddat period has been construed here as not only during the iddat period but, till Muslim female enters into remarriage.

**NOORSABA KHATUN v. MOHAMMED KASIM** <sup>9</sup>

Hon'ble Supreme Court has opined in this judgment that children of Muslim parents are entitled to claim maintenance under section 125 Criminal Procedure Code for the period till they attain majority or are able to maintain themselves which ever is earlier and in case of females till they get married and this right has not been held to have been restricted, affected or controlled by the Divorcee Wife's Right to claim

---

7. AIR 1988 Guj.141

8. (1999) 9 SCC 544.

9. 1997 (6) SCC 233.

maintenance to maintain the infant children in her custody for a period of two years from the date of birth of child concerned under section 3(1)(b) of the 1986 Act. In short it is held that the Muslim Women's Act, 1986 does not in any way, affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under section 125 Criminal Procedure Code as mentioned above. The principle laid down in the matter by Hon'ble the Apex Court has charted a route for the courts in the country to deliver total justice to Muslim women as, it is held that, Muslim women (Protection of rights on Divorce) Act, 1986 cannot affect the beneficial legislation contemplated under section 125 Criminal Procedure Code as it would be unreasonable, unfair, inequitable and even preposterous to deny the benefit of Section 125 Criminal Procedure Code to the children only on the ground that they are born of Muslim parents.

In the matter of Palchuri Hanumayanna Tadikamalla Kotlingam <sup>10</sup>, Hon'ble the Supreme Court has interpreted the provision of section 14(1) of the Hindu Succession Act, wherein, the right on the property bequeathed to a wife to will stand enlarged into absolute right and that makes the Hindu woman to be an absolute owner of the said property.

In the matter of C. Masilamani Mudliar <sup>11</sup>, Hon'ble Supreme Court has observed that :

"The Personal Law in India has conferred inferior status on women and that the right of tribal women to inherit property is recognized in case of tribal women."

---

10. A.I.R. 2001 SC 3062.

11. A.I.R. 1996 SC 1697.

Danial Latifi's case, which has already been discussed, is also related to Constitutional validity of Muslim Women (Protection of Rights on Divorce) Act, 1986, upheld the right of a Muslim married woman to claim maintenance from her divorced husband not only the period of iddat but, even after the period of iddat is completed.

There are numerous judgments on marriage laws and family laws but, as many of them have been already discussed in another chapters, they have not been repeated herein this chapter.

#### **8.4 GUARDIANSHIP :**

Guardianship is controlled by Hindu Law, Muslim Law and the Guardian and Wards Act. In case of Hindus the first Guardian is Father and in his absence, the mother. Hon'ble the Supreme Court, as has been discussed earlier, has interpreted the word so effectively that the word after or in absence has been given such a logical meaning and such interpretation as rightly served the purpose. In case of Muslim the father is sole guardian of his children and in case of Guardian and Wards Act, 1890, which governs all communities other than Hindus and Muslims. In Muslims, father's right to guardianship is supreme and primary. However, it needs to remember that the concept developed by the judiciary through different judgments is that the welfare of the child is of the paramount consideration and nothing can be above it.

### **8.5 RIGHT OF NATIONALITY :**

Right of choosing one's nationality should be recognized for women as it is recognized for men. Nationality is a very important event of one's life which grants right of full participation in the society. Generally nationality is conferred on the person who is born in that country. Sometimes, nationality can also be acquired on certain other grounds. Right to vote, right to contest election and right to be in a public office with a position are all denied to the person who does not have nationality. It also grants certain public benefits and a choice of resident to the person upon whom nationality has been conferred. Equality demands that an adult women should be capable to change her nationality but, nationality on account of marriage or dissolution or because of change of nationality by the husband or father of a woman should not be removed from women. It is arbitral removal of the right of women which does not happen in case of men and it is for that reasons that continuance of that would be clear cut deprivation of the human rights of women and it is discrimination on the ground of sex against women which should be removed.

### **8.6 FREEDOM FOR MARRIAGE AND CHILDREN :**

Article 16 of CEDAW also requires to grant women same right to enter into marriage, to freely choose a spouse with full and free consent of the woman, rights and responsibilities during marriage and its resolution equal to man, equal rights and responsibilities as parents in respect of their marital status in

matters relating to their children to decide number and spacing of children should also be equally available to women, moreover, women must have equal access to the information, education and hence to enable them to exercise this right related to family life of women.

#### **8.7 OTHER RIGHTS :**

Rights and responsibility with regard to guardianship, wardship, trusteeship and adoption of children or similar institution equal as that the men are having women should also have same personal right as husband and wife including the right to choose a family name, a profession and an occupation and rights of both the spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration, equally. Uniform minimum age for marriage, to make registration of marriages in an official registry compulsory, appears to be a must now.

#### **8.8 TREATMENT IN FAMILY :**

The form and the concept of the family can vary from region to region within a State. The treatment of women in the family both at law and in private must be in accordance with the principles of equality and justice for all people in view of the Convention. Whatever the legal system, religion, custom or tradition may be but, the principles of equality should not be evaporated. The dignity of women flows from the equality of men and women which is the basic human right of women.

Certain religions and customs even permit forced marriages or even remarriages and shadow marriages. In the same way marriage for consideration and marriage created because of poverty forces, more particularly, with foreigners are very shameful parts of the system. Financial security is also sometime treated as consideration. In most of the religion, husband is accorded status of head of the family and thus, he becomes primary decision maker. As against that wife is treated as secondary person in the family and is treated as person to implement the decision of her husband or the male member of the family. This is suggestive of clear inequality against women which will have to be tackled by the State Parties. In cases of divorce, fathers can safely escape from their responsibility of carrying, protecting and maintaining their children and the said responsibility comes on the shoulder of women which also compels women to take out any other short cuts to meet her liability. To preserve individuality and identity of women it is necessary to recognize her right to choose her name and to choose her profession or employment in view of her ability, qualification and aspiration. These violations of women's rights recognized by the Convention, will have to be prohibited without any delay.

#### **8.9 SUCCESSION AND PROPERTY RIGHTS :**

Women have equal right to conclude contracts, to administer property, to own, manage, enjoy and dispose of the property, with all financial independence. Women should have equal share on the property earned during marriage. In most of the cases it so happens that man manages and owns the



property and in case of divorce women are deprived of their right and on the ground of certain technical defects, the rights of having equal property to women is not granted. The concept of joint property is as good as in case of other joint owners. There is no concept of matrimonial home which seldom bring women on street in case of dispute with husband. The national earning of house-wives is now accepted even by Courts but, the property on the sole name of husband earned during matrimonial life is to be answered by appropriately amending the personal laws on marriage. Generally, the law of inheritance is not very satisfactory but, by virtue of an amendment brought into effect in the year, 2005 in the Hindu Succession Act, women have been declared as coparcener and thus, to that extent as far as Hindu religion is concerned women have been given inheritance right equal to men. Equal rights by amending Parsi Marriage and Divorce (Amendment) Act, 1986 and Indian Succession Act to women of other personal laws have been granted. The law on inheritance, adoption, divorce and monogamy a compulsory feature are the fits of personal laws to Hindu, Parsi and Christian Women.

The concept of equality in family is such which as such, flows from the Constitution of India. Article 14 provides for equality before, law which is squarely applicable to women in India. As far as families are concerned let us see as to in Indian Families do women enjoy equality before law which has been guaranteed to them by the constitution of India. The normal experience is that the equality word has remained moral loss

and golden dream for women in our Country as far as the indoor affairs of family are concerned. The daughters are considered as aliened in the family who is to go in somebody's house and hence, she is not treated with equality like son in the family. Indian have not proved to have given equal treatment to Hindu son and daughter more particularly, in giving education, offering opportunity for progress and allowing to use the resources available with the family. Primary education is as such, now recognized as fundamental right which too has remained a dream for an average village girl of this country. Female child is normally not allowed to go to school as, her utility is better considered to keep her at home, in training her for household jobs and training her to help elderly family members of the family and investing her time in rearing and bringing up the younger siblings of the family.

The status of men and women in the family is apparently different. And it is needless to record that the status of women is at a very very low range and the secondary treatment flows from the family environment itself. It is felt that the economical independence can curb the evil of discrimination against women in her own family. But, the independence is impossible without education. The women have been kept to be in the boundaries of merciful loving mother, duty bound daughters or as duty performing dolls as wives and you give any name may be sister, daughter, wife or mother or even granny, the only expectation from women in the family is to look after the household responsibilities, to remain in four walls of the house and to rear up the children of the family. The Indian society

has not accepted women as an individual being. Even her personal sentiments like liking, disliking, esteem pride, liberty, independence, are all defined by male members of the family may be father husband, son, son-in-law, father in law, etc. The women in our society is as such victim of men's greed, attraction for luster, desire for sex, the cause for creating sex, anger and many vices in men. The fact remains that all unpleasant events happen and the responsibility is always in the women.

Many a times the question arises do we need to make any new laws to achieve the concept of equality at home for women ?

The answer is that the constitutional provisions are as such, quite satisfactory. Everyday a new law keeps on pouring but, until the mindsets of people are changed nothing can happen. The present researcher submits that the laws are not insufficient in our country. The attempts on the part of judiciary to open up the eye of society through judicial activism is also appreciable but, the social awakening requires to be done which can bring a sea change in the mind set of the people and thorough understanding of women's status in the family. It is the family from which true concept of honour for women and importance for women in our day to day life can be made realize. Awakening to bring gender equality is the need of the day. The parents need to be educated not only to permit the girl child to take birth but, to give equal treatment to son and daughter. The recognition of women rights of women begins at home and the sense of equality cannot be

poured by any outside agency. Every family needs to teach the son of that family to respect, to honour the status of girl child in the family and it is only from that flow of each house the ocean of transformation in the mindset of patriarchic society would come which would glitter India.

Subjugation, injustice, unequal treatment, exploitation, physical and mental both by the family members themselves, denial of right of education, unequal treatment to women and to face great struggle for not only primary studies but, further studies is very very routine for each Indian girl. Exceptions are extremely few. May be they are minority.

Right to self respect to Indian women are absolutely unavailable to women at home. The domestic violence is a burning issue. Every Indian woman is subjected to physical violence at her home front by family members themselves. The domestic violence would include, physical, sexual, mental, emotional, psychological or social abuse of women and it is always by one or another male family member.

#### **8.10 NATIONALITY :**

Article 9 of CEDAW is related to equal rights of women to acquire change or retain her nationality. The said right is to be examined vis-à-vis the right of men on the aspect. This Article of CEDAW assures women that on account of marriage with either foreigner or on account of the fact that the husband has changed his nationality, the nationality of wife would not be affected and it would not automatically stand changed.

The State Parties are directed to grant equal right to women with men with respect to the nationality of their children as well. CEDAW has emphasized that nationality of adult women should be capable of change and should not be arbitrarily removed because of marriage or divorce or because of her husband or father changes his nationality.

#### **8.11 RIGHT TO MARRY WITH A PERSON OF CHOICE :**

Article 5 of CEDAW is related to equality before law which grants equal right in case of marriage to women at par with men. Women have right to choose their spouses and they are also entitled to enter into marriage as it is a part of her fundamental right. It has been observed that custom, tradition, religious belief and the precedents about marriage and remarriage in the caste and community play a vital role in women's life. Apart from this the economical status of the parents, the social status of parents and parents' capacity to give dowry etc. also play a vital role in the life of every Indian woman. In case of marriages, it is observed that the male members are the primary decision makers and the women are normally to follow the decision already taken by the male members of the family. This kind of practices are against the spirit of CEDAW. The ideal position is that every woman should be granted full, free and fair right, the right in its totality to select her spouse and the right should not only be protected but should also be able to strictly enforce by the law.

### **8.12 RIGHT TO CHOOSE NAME AFTER MARRIAGE :**

Each party to marriage should have right to choose his or her name and thereby preserving individuality and identity of the person. The days have gone when by laws or custom a woman was obliged to change her name on marriage or its dissolution. The spirit of CEDAW requires as even the Constitution of India provides liberty to enjoy the right of choosing one's own name, surname as a very vital right and it to be treated as basic human right. Whether women are married or unmarried or divorcee but, she has every right to select her name, surname and to develop her distinguished identity in the society.

The hard reality is that this right has not accepted as such neither the persons at the government department who can record or register change in name are accepting this principle nor the persons in the society influenced by patriarchic system are accepting this. But, it should be appreciated that there are now many who accept this right and many women who have made distinguished career in their lives have continued their maiden identity or have made their new mixed identity by adding the surname of husband with the maiden surname and thereby have a joint identity representing the maiden family's identity coupled with identity of in-laws family.

### **8.13 CHILD MARRIAGE :**

According to World Health Organization when minors particularly girls marry and have children their health can be adversely affected and their education can be affected as

well as the economic autonomy is restricted and this would frustrate the very spirit of liberty of women. In view of this child marriage should not be permitted. Rather no marriage should be permitted before one attains majority and capacity to act. In India under the guise of customs, religion and prevalent practices, child marriage do take place which needs to be prohibited and has as such been prohibited by the Child Marriage Restrain Act.

Raja Ram Mohan Rai, Ishwarchand Vidhyasagar, Brahma Samaj, Arya Samaj, etc. have crusaded against the custom of child marriage. To curb the evil of child marriage India has an Act known as Child Marriage Restraint Act, 1929. But, child marriage is indeed not strange in today's India also more particularly in the village life. Despite the existence of the Act, child marriages are performed on large scale in several corners of the country and more particularly, in Rajasthan, Uttar Pradesh, Chattisgarh, Orissa, Bihar, etc. The unknown survey states that in 1998-99 out of 4.5 million marriages every year in India 3 million marriages are of girls having age group of 15 to 19 years. In the past marriages which normally take place in tribal areas of India child marriages are very common. National Commission for Women, Human Rights Commission and numerous Non Governmental Organizations. Are working to curb the evil but, they have yet to hold the filed. Early marriages not only violate the right of an individual to marry with a person of choice as in the childhood one is more swayed away or influenced by the choice of parents or close elderly family members as the minor has yet to develop

his own choices. Secondly, early marriages are a whole curse for the health of women in general. The lack of deterrence in the Act, the light view having been taken by the police, administrators, the officers to control and curb the evil, the evil goes on and has not been curbed at all. The child marriage is a criminal act but, if the said marriage takes place then, as such, it is not void ab initio but, the girl will have right to annul the marriage within one year of having attained majority. This aspect as such, does not create satisfactory restraint of prohibition against the child marriage for want of deterrence and proper checkpoint on this. The media like radio, television can play significant role as checkpoint to reduce or even to eliminate evil of child marriage.

A right to marry person of one's choice is not truly made effective. In spite of the spread of progressive ideology, there are strain instances wherein, it has been found that a woman is tortured by her parental relatives as well as by her in laws only because of the reason that she has married with the person of her choice. It is now not unknown that most of the habeas corpus petitions are filed by parents to harass a person who has married their daughter or in some cases even to harass the daughter herself. Even several criminal cases of theft, some times breach of trust, etc. are also filed to settle the account with the daughter with the daughter who has questioned the so-called family honour by marrying with the person of her choice. The social ego of parents always come in way of unmarried divorcee or widowed daughter to marry with the person of her choice.



#### 8.14 POLYGAMY AND MONOGAMY :

Article 14 – equality before law exists in the Constitution of India, Article 5(a) of CEDAW obligates the State Party to observe equality before law in the local laws of the country. But, still however, there appears inequality before the law when polygamist marriages are permitted on the ground of tradition, religion or custom. But, it needs to be noted that this kind of marriages contravenes the women's right of equality. Women suffer a lot by way of emotions, finance, security, stability and many more things in this kind of marriages.

As such, monogamy is common to Indian society but, in Muslim Personal Law polygamy is permitted by the religion. It is different that in case a Muslim chooses to become government public servant he is duty bound to observe monogamy but, that is as a civil servant. Except this indirect compulsion on Muslim men in case of he being a public servant, there is no compulsion whatsoever on the male of Muslim Community against the monogamy. This right of monogamy is wedded to Muslim men alone and to Muslim women the right is not granted. The compulsion which is applicable to Muslim Public Servant is not applicable to other Muslim males. Even the prohibition in a way, does not become applicable to Muslim community alone as most of the persons of Muslim community are illiterate and have no inclination to whatsoever to take up government job. And therefore, this restriction is hardly a restriction for Muslims. The question of social security, mental security, etc. which arise out of

polygamy are well known and it does not require any discussion at all as, it is as clear as daylight. The answer can be found from Uniform Civil Code which is yet to see the daylight.

#### **8.15 COMPULSORY REGISTRATION OF MARRIAGES :**

Low level of literacy, illiteracy in some of the areas and community, cultural pluralism, social backwardness, etc. are the reasons put forward in inability to effectively bring into effect compulsory registration of marriages. As is to be discussed in the chapter of Reservations and Declarations since India has not shown any inclination and has declared its inability to bring into compulsory registration of marriages on account of its varieties of customs and traditions and inability to bring any law, more particularly, in the realm of personal law without consent or initiation of a particular community the compulsory registration of marriages have not been so far brought in law books. Compulsory registration of marriage has not been provided for by all religions and in the personal laws wherein it has been provided there also it is voluntary. Absence of compulsory registration of marriages have created lot many hurdles in the way of Indian women to have security in the matrimonial right and to enjoy the rights in marriage. Certain questions like legality of marriage, conclusive proof of marriage, questions of paternity, etc. can easily be decided if compulsory registration of marriages are provided. Indian Christian Marriage Act, Parsi Marriage and Divorce Act, Special Marriage Act and Hindu Marriage Act have provisions for registration of marriages but, the said

provisions are for voluntary registrations of marriages which should be in form of compulsory registration of marriages.

Lack of compulsory registration of marriages leads to a situation in which there are difficulties to find out proof of marriage and to decide the resultant rights flowing from the said lawful marriage. The State is not doing so under the guise of varieties of customs and under the guise of noninterference polity in the personal laws but, the time has come wherein, this defense has to be put aside and the declaration should be withdrawn made in the CEDAW.

#### **8.16 ADOPTION :**

Hindu community has recognized the right of adoption of children through Hindu Adoption Law. Other communities more particularly Christian and Muslim communities have not recognized the concept of adoption at all. In Hindu uncodified law, the object of adoption was to ensure spiritual benefit and performance of the spiritual rituals and rites and to continue the line of the family and thus, originally to adopt the son was permitted but, to adopt a daughter was unknown. Today adoption of a child of one's choice which is the frame work given in the Hindu Adoption Law, the right is recognized. The Parsi Personal Law also recognizes the right of adoption. But, the said is for limited purpose for issueless male. A widow can take in adoption a child for a very limited purpose and limited time as is recognized in Parsi Law.

### **8.17 MAINTENANCE :**

Every woman has right of maintenance as has been recognized in section 125 of Criminal Procedure Code. The object of the section is to prevent restitution, pregnancy and starvation in the life of woman. Vide this section all Indian women except the Muslim women are entitled to claim maintenance from her husbands. Previously, there was a ceiling of Rs.500/- but, on account of the amendment in the law, now that, there is no ceiling and the amount of the maintenance is left to the discretion of the concerned Magistrate. In most of the states, the family courts have been made functional and therefore, the family courts are deciding this right of women. However, the family courts have not given results as was expected from the family Courts. The provisions that this entitles the wife to get maintenance if she is living in adultery has been widely misused and has granted cause to the husband to refuse the right of woman of maintenance under the guise of adultery. This has also tempted the husband to advance false ground of wife living in adultery only to harass the woman and hence, this proviso should be deleted from this section. Until it is deleted there has to be some kind of amendment wherein, if the husband is unable to prove the ground of adultery which he has taken up as his defense then, in that case the Magistrate should be enable by adding a provision that he can order the payments for damages towards loss of reputation and mental harassment in favour of the wife.

All personal laws have provided right of maintenance to wife. This right is mainly for pendent lite the litigation i.e. during the pendency of the litigation and secondly, after the divorce proceeding comes to an end which is known as permanent alimony or permanent maintenance which could be in form of some lump-sum amount to be paid once for all or it could be on monthly basis as the case may be.

Normally, the right of maintenance is something which is in favour of wife as, the maintenance is to be recovered from the husband. Under the Hindu Law and under the Parsi Law the spouses have right of claiming maintenance inter se i.e. claiming maintenance is an inter-spousal obligation. This is a very typical feature and in a way even giving equality to men as well, as, in case the husband has no sufficient means to maintain himself as against that the wife is working and earning, these two laws entitle the husband to claim maintenance from such wife.

#### **8.18 RECONCILIATION :**

In almost all the personal laws, reconciliation in case of dispute between spouses have been given utmost importance and experts like judges, social workers, welfare officers, psychiatrists, counselors are all mainly emphasizing on the aspect of reconciliation. The concept of reconciliation in the Indian Personal Law are based on the theory of marriages are made in heaven and no earthly power can depart the persons who have been joined from the power of heaven which is the philosophy behind this. Secondly, the interest of

children out of the wedlock are of paramount consideration. Their welfare, development is likely to be adversely affected in case of partition between parents. In case of divorce between parents, it has been observed that children are becoming criminal or their psychology is adversely affected. Therefore, the reconciliation has been given due weightage almost in all personal laws except the Muslim law wherein, the triple recitation of 'talaq' would suffice the lawful departure between the spouses.

#### **8.19 DIVORCE :**

The Parsi (marriage and divorce) Act, 1936 has been amended from the recommendation from the Parsi Panchayat to enlarge the scope of some of the provisions to make the law in parity with Hindu Marriage Act, 1955.

There are certain grounds as grounds for divorce available in Hindu Law to both the spouses. But, two additional grounds have been given to the wife. The personal law of Parsi Marriage and Divorce Act as amended in 1987 is having the same ground to obtain divorce. The Indian Divorce Act, 1869 governs marriage and divorce of Christian in India. Both husband and wife can obtain divorce under the Act. But, the husband is entitled to get divorce if wife has committed adultery but, wife can seek divorce based on the adultery of husband only if the wife has pleaded adultery of the husband along with cruelty of husband. This is the disparity in the Christian marriage Act which needs a change.

Under the Muslim Personal Law there are different kinds of talaq which is an absolute, unlimited and unilateral right of the husband to repudiate the marriage at his exclusive will. This itself is great injustice to women. However, on dissolution of marriage women of all community are entitled to claim maintenance if they are unable to maintain themselves. But, in the opinion of the present researcher right of maintenance is not the only sufficient share which should come in the favour of women. The women of any personal law must have right in parity with the male member of the same personal law to get divorce or to get judicial separation or any other right of that matter. How it can go unnoticed that Muslim women no longer come under the purview of even section 125 of the Criminal Procedure Code as a result of the enacting of Muslim Women (Protection of rights on Divorce) Act, 1986 after the Shahabanu Judgment. It is indeed matter of great pain that Muslim women are entitled to get maintenance only until the iddat period. This disparity itself is suggestive of discrimination against Muslim women which shall have to be therefore, deleted. The provision of oral divorce recognized by Muslim personal law which is only a right that is unilateral right of Muslim male of three recitations of the word talaq is extremely inhuman right or extreme inhumanity against Muslim women. As such, comparing all the personal laws the Hindu Marriage Act has taken better care of the rights of women more particularly, equality in favour of Hindu women is better prevalent but, it cannot be forgotten that even Hindu Law has exempted Adivasis (tribals) from the rule of monogamy and to

that extent the said law has caused injustice to women and even it has permitted exploitation of tribal women.

The aspect of restitution of conjugal rights, judicial separation, divorce or divorce by mutual consent are as such available to both the spouses which needs to be appreciated. Now that after the latest amendment the divorce by mutual consent has been introduced in all the personal law except the Muslim law and to that extent except the Muslim law have brought into it equality before law in favour of women on the aspect of taking divorce by mutual consent.

After the amendment in all the personal laws the petition for maintenance is to be decided within 60 days from the date of summons to the other side. This amendment has brought in an appreciable parity among different personal laws.

#### **8.20 OTHER CONCEPTS :**

There is lot of difference among the personal laws, more particularly, in the concept of joint family, coparcenary family, etc. Muslim law, Christian Law and Parsi law have not provided the concept of joint family and coparcenary family. The Hindu uncodified law has given the two concepts. It needs to be appreciated that in the recent past only in the year 2005 Hindu women have been given right of being coparcener of the Hindu coparcenary family. Prior to the amendment only male Hindus can be termed as coparcener but, now on account of the amendment even Hindu daughter can be termed to be a coparcener which needs lots of appreciation.



### 8.21 RIGHT TO DENY SEXUAL RELATIONSHIP :

In India marital rape is too common as, the act of marital rape is not expressly or impliedly prohibited. In the matrimony the consent of wife for sexual relation is considered as irrelevant by the advocates of male oriented society wherein, the wife is treated as a doll or bonded labour for household work and for sexual pleasure of male. The difference between muscle power might be a cause which gives right to men and does not grant right to women to deny sexual relationship. The helpless wives are many a time subjected to physical violence by her spouse along with sexual violence in case of exercise of right by women to deny the sexual relationship. The social and cultural construction of concept of gender and unequal muscle power between men and women is the cause of the burning issue. In case of child marriages, the violation of human right of women is more than common and marital rape in such cases should really be treated as quite serious thing.

Principally speaking even and prostitute has right to deny sexual relationship but, the men oriented society is not ready to accept the women beyond commodity and her denial for sexual relationship would fetch more price for the sellers of womanhood. Despite denial of woman she is subjected to sexual relationship and though such act is a rape the woman is hardly able to prove rape against her and physical violence of her body, disease like AIDS, unexplainable physical, moral and mental torture, etc. are very common in fate of such

women. The custodial rape, sexual attack and other sexual abuses are also the routine news these days which too do not care for right of women to deny sexual relationship.

## 8.22 GOVERNMENT INITIATIVES :

1. The Government of India and then after the State Government create the special department for women welfare. The department for women and child development has been created by the Government in 1985 which is meant to formulate plans, schemes, projects and policies for the welfare of women and children with active co-ordination of the Non Governmental Organizations and social activist groups working for the cause of women and children. Certain amendments of legislation and enactments of legislation leaning towards interest of women can be credited to this department.

This department is criticized for its budgeting and nomenclature. The budget for women and children has to be separated and it will be possible in case of the division of the department.

2. **The National Commission of Women Act, 1990** has also been passed by which National Commission for Women and State Commission for Women have been created which too are safeguarding the rights and interests of women which is also providing relief to women by looking to their concern and by conducting research,

investigation, etc. in cases of injustice to women, apart from doing work of legal literacy, legal awareness, holding public hearing and conducting inquiries in fitting cases.

3. **Central Social Welfare Board** and **State Social Welfare Board** have also been setup which too are carrying out activities of women welfare along with initiating schemes and projects for rural and backward women. There are certain State Level Schemes and initiatives which too are meant for welfare of women like in Gujarat a scheme to be known as Kuvarbai's Mameru is continuing with a view to give basic items in form of gift from the government to the daughters of a poor person who is unable to spend money for the marriages of his daughter.
4. The State Legislative Assembly, Lok Sabha, Rajya Sabha, etc. are also formulating Committees for the empowerment of women and all such committees are also looking after the interest of women.
5. **Family Courts, Free Legal Aid schemes or scheme for legal counseling center for women, Legal Services Committees and State Legal Services Authorities** are also meant to take care of the interest of women in general and to provide counseling and free legal services to women in the situation where women so require.

**TRAINING :**

6. Different training programs for gender sensitivity at different levels are also going on which too are helping in creating awareness in people at large.
7. The State Law Commission and National Law Commission are also helping the legislators to either create law, repeal law or to amend law as and when necessary.
8. Different Non Governmental Organizations have been permitted to run rehabilitation centres and schemes of family counseling centres.
9. Short stay home, hostels for working women are also set up and maintained by the State Government.
10. Mahila Police Station and in some of the states Mahila Adalat are also functioning to take up special cases by women or for women.
11. A special cell for crime against women headed by Mahila Officers is also functioning for this kind of cases. Harassment both mental and physical in a marital relationship and offences relating to marriage are also dealt with by the special cell run by the Government.
12. **The National Empowerment Policy for Women, 2001** is to encourage changes in personal laws with the view to eliminate discrimination against women and the efforts

to see to it that community takes initiatives for necessary amendment in the personal law.

13. **The National Commission for Women** is also encouraging Parivarik Mahila Lok Adalat which too is a scheme by which the family disputes are dealt with by such kind of Lok Adalat wherein decree once drawn becomes final and binding to all the parties to a particular dispute.

The National Commission for women has also reviewed several laws having discrimination within and has suggested amendment to several personal laws. The National Policy on Empowerment of Women, 2001 commits to make the registration of marriages compulsory and to eliminate child marriages by 2010. As such, there is no central legislation for compulsory registration of marriages. Some of the States are enforcing compulsory registration either through State Laws or through executive orders.

14. 10<sup>th</sup> Plan of India makes special efforts to consider necessary amendment in legislations relating to ownership of property and inheritance by evolving consensus on the subject and to make them gender just.

### 8.23 FAMILY COURTS :

There are several states wherein Family Courts have been established under the Family Courts Act. In this act it has been emphasized that preference would be given to the lady

judges. This seems to be with the view of the principles laid down in CEDAW. The idea of elimination of discrimination against women and equality of women with men are in the foundation of the Family Courts Act. The Non Governmental Organizations and social activist groups have moved to have Family Court Act and thus, family courts have been established under the Act. The provision of appointing family counselors has nowhere been effectively implemented. Mostly the persons having political contacts or the persons having other contacts have been appointed as counselors and they do not do as such, any job which can be termed to be a job of counselor. Mostly it is found that such counselors are doing the job of persuading the women to take fiscal benefit and sign the divorce. Sometimes, the fiscal bargaining suitable to the husbands are persuaded through the counselors and thus, the very object of the family counselors or consultants which has been provided in the Act, largely stand frustrated. Secondly, as is observed, the petitions filed by the women may be for maintenance or for any other rights arising from family relationship are not given due seriousness. The petitions of maintenance, guardianship, divorce, conjugal rights, etc. are taken up very mechanically and they are not viewed as human rights of women. Mostly, through the family courts also, women are not getting justice and rather instead of having sensitive approach or instead of having gender sensitization to the issues of women, the technicality is attached to the issues raised in the petition and that the success rate of the family court is not of that satisfactory degree as it should have been. Secondly, the maintenance petitions have been brought to

the family court i.e. to bring the maintenance petitions from the usual magisterial courts to the courts where the District Judge is presiding over was to see to it that women do not suffer post to pillar. But, when the criminal causes like complaint under section 498 A kidnapping, abduction, rape, dowry death, abetment to suicide, etc. all offences against women and others had to be filed at the criminal courts since jurisdiction of trying such matters have not been vested in the family court, the object here does not stand satisfied rather it stands defeated. In this view of the matter, the idea of Family Court has not delivered fruits as had been desired prior to the constitution of Family Courts.

#### **8.24 GENERAL RECOMMENDATION NO.21 OF CEDAW :**

Vide General Recommendation No.21, this convention has thrown its focus on the equality of human rights for women and men in the society and in the family. Several international treaties have shown deep concern for the human rights of women. In the instant convention also importance of culture and traditions in shaping the thinking and behaviour of men and women and the significant part they played in restricting the exercise of basic rights by women is taken care of. It needs to be noted that the year, 1994 was celebrated as international year of the family as has been so declared by the General Assembly. In view of the fact that the year was celebrated as international year of the family, the attempt was made to examine as to women's basic rights have any significance and that the said rights have been complied by the State Parties or not.

## 8.25 CONCLUSION :

We cannot overlook the need of making our personal laws gender sensitized and the necessity to deal with the respective personal laws. It is matter of great pain that all human rights of women are concerned with the family in which she resides where her entity is not acceptable. Right of her property, right to divorce, marriage, residence, etc. all are in purview of personal law which as has been declared by Government of India are left to initiatives and consent, if any, by the respective community and therefore, for want of initiatives the human rights of women in India are jeopardized.

The reforming law has close relationship with the social cultural stereotypes and the stereotypes have close relations with the mindset. Therefore, unless the mindsets are changed, nothing can be changed and there appears no sincere efforts from any corner to change the mindset which is the utmost requisite for bringing into effect the necessary structure leaning to the interest of women.

Policy of noninterference in personal or religious affairs when becoming license to violate the human rights of women, it is the time for the Government to wake up and accept the challenge to lead India and its culture to a glorious stage where women's right are treated as human right and gender justice become Dharma.



**CHAPTER – IX**

**DIFFERENT DIMENSIONS OF  
HUMAN RIGHTS OF WOMEN**

## CHAPTER – IX

### DIFFERENT DIMENSIONS OF HUMAN RIGHTS OF WOMEN

“Motherhood and childhood are entitled to especial care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

- Article 25 (2) of Universal Declaration of Human Rights <sup>1</sup>

#### 9.1 INTRODUCTION :

By virtue of CEDAW, different dimensions of human rights of women have been provided. As such, the fundamental is that women should be able to enjoy all rights equal to men. Equality is the gist and the object to be achieved is elimination of discrimination against women. It is now known to one and all that all kinds of social stereotypes are the product of the social setup, the vices of patriarchic system, the economical disparity, the impact of cultural stereotypes i.e. the difference of treatment to men and women by the society and that lack of opportunities to the women and inability of the law makers, law implementers and law interpreters to bring into effect effective equality before law in favour of women. Different aspects like health, women’s social, economical, political and cultural rights, rights of women in the field of sports other activities, family rights, property rights, civil rights, etc. and more particularly, rights of rural women are forming different dimensions of the main concept of equality. In this chapter, the present researcher has attempted to look upon different dimensions of the human rights of women in India by assessing

---

1. G.B. Reddy, *women and the Law*, Gogia Law Agency, 2<sup>nd</sup> (ed.) 1998, p.115.

the administration of CEDAW by the measurement of implementation of the scheme and the principles laid down in CEDAW.

Today, women in India are joining in all fields and contributing a lot in advancement of our nation. Women are pilots, doctors, engineers, teachers, officers, politicians, Prime Minister, judges, governor and what not. But, it is yet not absolutely evaporated from the mind of the society that the true place of women is not only at home and a true job of women is not only in kitchen and producing and rearing the children but, the time has changed. Today's age is an age of liberty and equality. Removal of all discrimination against women is the need of the hour. The women of today wish to possess all social, political, economical, cultural rights equally with men as it is felt by women that why having a job and managing a family should be either of and why not both together. Why not sharing of family rights and responsibilities by men and women together? The concept of women to have exclusive liability of household and rearing of children has created hostile atmosphere against the women, for which reason, women are allotted and are expected to look after domestic field alone and for the said reason women are made economically dependant on some of the male members of the family. Thus, the economic dependence along with physical inequality between men and women has given rise to so many offences against women.

In spite of providing effective machinery by giving lots of training and holding sensitization programs to the

implementing and interpreting officers of law and even with the addition of the new laws and amending the existing laws, to curb the evil of serious rise in offences against women, the rise is on and on. There is not a single State in India where the figures of the crime against women is not on rise in spite of the fact that the said facts and figures are being maintained and declared by Government department for the purposes. This is suggestive of the fact that the crime against women is indeed on serious rise. The offences against women as discussed earlier are relating from slight injury to unnatural death of women. This situation is clearly reflecting no change in the mindset of the society at large. The overall situation can be accessed and understood by looking into different dimensions of the human rights of women.

## **9.2 HEALTH :**

Article 12 of the CEDAW relates to ensure women's right of equal access to healthcare. Violence against women puts their health and lives at a risk. Certain traditional practices which are perpetuated by culture and tradition are extremely harmful to the health of women. These practices mainly include dietary restrictions for pregnant women, preference for male child, and tendency to give more and more nutritious food to the male child alone. The objective has to be taking special care for women on the aspect of nutrition, sanitation, drinking water and planning and management of health system and program to ensure women's access to quality health care services including aids and other serious kind of problems. Gender based violence has to be treated as a

public health issue and mal nutrition at all stages in the life cycle of a woman whether it is urban area or rural area are also the issues to be focused improving the child sex ratio and reduction at female mortality at all stages as priority issues.

### **9.3 GOVERNMENT APPROACH :**

(1) The National Commission for Women in collaboration with United Nation's Population Fund organized discussion on the health issues of women and girls. Wherein, sharply declining girl child sex ratio was particularly highlighted. (2) Training and protocol are to equip the health care providers to proactively respond to health issues of women. (3) The mental health issues along with the physical health issue are also attended to seriously. (4) Health is to be understood keeping in mind physical and emotional component. The importance of mental health has been increasing day by day. Rights of disabled women have also been recognized as one of the important segment of the health of women. Reproductive rights and sexual health of women, women's rights on HIV and AIDS, women's right to know about sexual health and reproductive rights, right of safe motherhood, right of abortion, etc. are all different segments concerning to a common topic of health. Health for all by 2000 A.D. is the goal to which India is committed to achieve. Several policies, programs and schemes have been started and are acted upon to achieve the goal of health for all by 2000 A.D.

### **9.4 STATE INITIATIVES :**

1. National Health Policy, 2002 <sup>2</sup>

---

2. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, para.246, p.65.

2. Reproductive and Child Health Program (RCH) (Second phase from 2003) <sup>3</sup>
3. National Rural Health Mission (NRHM) (2005-2012) <sup>4</sup>
4. Integrated Child Development Services (ICDS) <sup>5</sup>
5. Family Welfare Program <sup>6</sup>
6. National Population Policy, 2000 <sup>7</sup>
7. The National Nutrition Policy (1993) and the National Plan of Action on Nutrition (1995) <sup>8</sup>
8. The National Nutrition Mission <sup>9</sup>

#### 9.5 THE IMPLEMENTING AGENCIES :

1. Food and Nutrition Board.
2. Different Projects and Schemes undertaken by Non Governmental Organizations.
3. Public Sector Institution takes up the project in partnership with United Nations Development Fund for Women, United Nations Development Program, United Nations Population Fund and other such international organizations the aim of whom is Public Health.
4. National AIDS Control Organization.
5. Central Government and State Government Health Department and other departments looking after the public health.
6. The different authorities under different Act like Pre-conception and Prenatal Diagnostic Technique (Prohibition of Sex selection) Act and other acts taking care of health of women, sex selection, etc.

---

2. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, para.246, p.65.

3. Ibid para.247, p.66.

4. Ibid para.248, p.66.

5. Ibid para.249, p.66.

6. Ibid para.250, p.66.

7. Ibid para.251, p.67.

8. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, para.255, p.68.

9. Ibid para.256, p.68.

On taking note of the fact of uneven sex ratio in the nation and the declination in sex ratio in both rural and urban areas it is suggestive that in spite of the programs and policies made by the State, the overall improvement in the public health sector and more particularly, equal access to the health care to women has not been achieved. Tremendous son preference could be one of the ground, but, lack of political will and lack of sincerity in implementing the projects and planning for equal access to women for public healthcare are other grounds which also play a very effective role. Certain States have shown very poor sex ratio which is obviously for the cultural stereotypes which needs to be removed by changing the mindset of people at large.

“The sex ratio in the age group 0-6years is 927 female for 1000 males with a similar pattern at the State Level which is lower than the overall sex ratio. However, there are certain States / districts with an alarming low sex ratio. The ratio is least in Punjab with just 798 female per 1000 male children, followed with Haryana (819), Chandigarh (845) and Delhi (868). This clearly indicates a strong son preference, wide spread prevalence of pre-natal sex determination and selection practices and existing of socio cultural practices like dowry and law status accorded to women in decision making.”<sup>10</sup>

---

10. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, p.70.

On some of the aspects the Government might have attained the goals, but, they cannot be termed to be on the satisfactory level. It seems that the enforcement machinery have not attained the goal of protecting, safeguarding and granting equal access to healthcare to women and protection of the right and interest of women at large in India.

#### **9.6 ECONOMIC AND SOCIAL RIGHTS OF WOMEN :**

As such women workers are mainly classified in agricultural industry, small scale, household industries and private employment. The details about the employment skills, rights in employments and the problems being faced by women in employment have all been discussed at length in the previous chapter. In this chapter, it has been taken to see it as dimension of human right. On viewing the overall impact, the present researcher submits that the rights and safety measures which are put up in different labour laws and Constitution of India will have to be reviewed in the new perspective and until that is done, the economical and social rights of the women can hardly be protected. Women, yet do not have access in civil rights. The rights to hold property is though enshrined in the Constitution at par with men but, in practice, there are a very few instances wherein, property is on the name of woman. This is suggestive of the fact that yet, the social mind setup has not changed which needs to be changed. Some of the State Governments have also declared certain concession as far as stamp duty or other government revenues are concerned to encourage women ownership of the property but, yet the result is not that effective. The social stereotype, cultural



stereotypes, son preference, etc. have tremendous impact on the social rights of women. Even if the law gives enough, the society is miser to release and it is for that reason the social and economic right of women are not treated even today in our society as human rights. In these modern days also, on opening up the schools for girls in village is something which is seen with great dislike. Recently a school in Bhopal when opened up for the girls alone, the superstitious elements were brought into and certain people with vested interest wanted the school to be closed. In one such another incident the school had to be declared as closed by the administration itself under the guise of dayan and ghost in that particular land of the school. On account of the fact that most of the properties are not on the name of women, the women have no access to the loans and other financial assistance by different agencies which would have further helped women to have access to their right on equal footing with men in economic activities of the country. The sectors wherein the women are playing main roles are most neglected sectors. Such sectors like fishing, household industries, small scale industries etc. should be given special encouragement when it is headed by women. This and all other things will have to be viewed quite seriously by the State to bring into reality the promises given to the world through CEDAW.

#### **9.7 RIGHTS OF WOMEN TO PARTICIPATE IN SPORTS AND CULTURAL ACTIVITIES :**

“278. The laws do not restrict women from participating in sports and cultural activities. There

are many women in sports such as athletics, hockey, cricket, tennis, basketball, badminton, etc. there are many national players and they have represented the country in the international games. Women in the field of art, music, dance and cultural life have always been recognized. Rural women also participate in music, dance and cultural activities during local festivals. The socio cultural norms, public private divide and segregation, restriction on mobility, economic dependency and burden of the household chores, hinder women's participation in recreational and sports activities." <sup>11</sup>

The name of P.T. Usha and lastly Sania Mirza have become internationally famous for their active participation in sports. But, can it be said that these two names or other few names are symbol or proof of the fact that the State has successfully launched necessary measures to encourage women to have their full participation in the cultural and sports field of the nation? The answer is plainly no because, only a few names are shining in the sky of the sports and cultural activities which only suggest that those women have come up on their personal merit and not on account of any encouragement provided by the State. The State initiatives and measures do not seem to have played any role in development of these women. It is however, to be noted that Sania Mirza who is a proud participant of the sports field i.e. who played excellently well at international level in tennis is being severely criticized

---

11. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, p.73

for her dressing and since she belong to very conservative Community she has also been debarred from the community only on that ground. This aspect is suggestive that the social stereotype or the cultural stereotypes play such a negative role wherein, instead of taking pride for such women the society or the background to which Sania Mirza belongs criticize and discourage her. On viewing the State Initiatives it appears that the amendment in the succession Act more particularly, amendment in the Hindu succession Act treating the daughter as coparcener brought into effect in 2005 would be a step in right direction so as to see to it that women's economic and social status is improved and women's direct access to land in rural economy would enhance government's five years plan, certain policy directives help women to constitute women group and to manage common property resources. The National Social Assistance Program (NSAP), the national old age pension schemes (NOAPS) where allowance is given to a person above 60 years of age, the National Family Benefit Scheme (NFBS) and the National Maternity Benefit Scheme (NMBS) ensure social security assistance to women below the poverty line.<sup>12</sup>

Apart from this following other measures have also been initiated by the Government to provide alternative system of credit to self helped women groups :

Rashtriya Mahila Kosh helps women for credit facilities, Public Sector Banks requires to earmark some percentage of their net bank credit for women, Khadi and village industries commission provides some fiscal assistance for the project of

---

12. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, para 287, p.75

women entrepreneurs, scheme like State poverty eradication mission by the State Governments, etc.<sup>13</sup> are all such measures which are initiated by the Government or with the help of the Government to uplift the social status of the women and to provide better relief and benefits in the economical sector to women in general.

#### **9.8 HUMAN RIGHTS OF RURAL WOMEN :**

Article 14 of the CEDAW direct the State Parties to specially look into improvement, betterment of the position of rural women. Rural women constitute nearly 70% of the female population in the country, the majority being poor.<sup>14</sup> The hard reality of disadvantageous position of rural women more particularly, on socio economic factor, cultural factors and on many other factors government has attempted to provide all kind of facilities through its policy planning, and projects to see to it that this disadvantageous group gets protection against the existing situation. Different programs for health, education, employment and political participation of women have been initiated including amendment in some legislations like 73<sup>rd</sup> and 74<sup>th</sup> amendment for reservation of women in selection of Local Bodies which as is known having more concern with rural life. As such, rural women are the biggest victim of the existing patriarchy and the resultant cultural and customary practices being adopted under the guise of age old system. Women of Schedule Caste and Schedule Tribes being poor, also are the victim who are affected because of the vices in the patriarchic system. Apart from national agricultural policy, 2000 and the scheme floated by 9<sup>th</sup> plan to empower women

---

13. Ibid para.283, 285, p.74

14. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, New Delhi, para 289, p.75.

to improve their access to inputs, technology and other farming sources, the Government has launched a number of programs to eradicate poverty and to encourage women to take benefit of self employment program, social security program, development program, etc.

### 9.9 STATE INITIATIVES FOR RURAL WOMEN :

1. Swarna Jayanti Gram Swarojgar Yojna (SGSY) <sup>15</sup>
2. National Foot for Work Program <sup>16</sup>
3. Sampurna Gramin Rojgar Yojna <sup>17</sup>
4. Social Security Program <sup>18</sup>
5. National Social Assistance Program <sup>19</sup>
6. Annapurna Scheme <sup>20</sup>
7. Rural Housing Scheme like Indira Avas Yojna <sup>21</sup>
8. Awareness Generation projects for Rural and Poor Women <sup>22</sup>
9. Condensed Course for education for adult women<sup>23</sup>
10. Creche Program <sup>24</sup>
11. Border Area Projects <sup>25</sup>
12. Welfare Extension Projects <sup>26</sup>
13. Kishori Shakti Yojna <sup>27</sup>
14. Rashtriya Mahila Kosh <sup>28</sup>
15. Swavlamban Program <sup>29</sup>
16. Swayamsiddha Scheme <sup>30</sup>
17. Women Component Plan <sup>31</sup>
18. Mahila Samakhya Program <sup>32</sup>

---

15. Ibid p.76.

16. Ibid p.76.

17. Ibid p.77.

18. Ibid p.77.

19. Ibid p.77.

20. Ibid p.77.

21. Ibid p.77.

22. Ibid p.77.

23. Ibid p.78.

24. Ibid p.78.

25. Ibid p.78.

26. Ibid p.78.

27. Ibid p.78.

28. Ibid p.79.

29. Ibid p.79.

30. Ibid p.79.

31. Ibid p.80.

32. Ibid p.80.

Severe grip of patriarchic system of the society, lack of opportunity to women, lack of education to women, prevalence of false beliefs of religion, customary practices prevalent in rural life, cultural backwardness in the Schuler Caste and Schedule Tribe and poor people in rural life, etc. are the main causes because of which the rural women, more particularly Schuler Caste, Schedule Tribe and Poor rural women are unable to come forward and to join the main stream of the nation.

"319. 89.5% of the female work force is concentrated in agricultural sector, yet, they are landless. Recognizing this, the 10<sup>th</sup> plan focuses on effective implementation on land reform legislations, sealing and distribution of surplus lands and issue of joint title deeds under Government Schemes. During the 10<sup>th</sup> plan period free houses under Indira Avas Yojna would be provided largely to Schuler Caste, Schedule Tribe and below poverty line families. For other below poverty line families there would be a gradual shift to a credit linked housing program. There is a need to create institutional capability in the rural housing sector with reference to designing of houses, supply of raw material and construction. The rural communities have to be involved in the lay out and designs of houses. The houses should have

provisions for rain water, harvesting, water supply and sanitation.”<sup>33</sup>

#### **9.10 POLITICAL LIFE AND PUBLIC LIFE :**

Constitution of India has as such, accepted the principles of equality and equal opportunities for men and women. The question which needs to be examined is the equality guaranteed by the Constitution of India has been translated into reality or not ? The reply is in negative. Up till the amendment 73<sup>rd</sup> and 74<sup>th</sup> made in constitution of India and thereby granting reservation of seats for women in the election of local bodies, women were treated as decorative pieces in the political parties. Political parties were merely making use of women who were participating in the political life for achieving certain interest and gain for the political parties. Constitution of India has also recognized right of women to vote but, then such rights are utilized or determined by the intervention of village elites, community heads, political affiliation or the controlling institution at particular area. Thus, the rights granted by the constitution are not freely utilized by women. Secondly, rise of criminalization in political life of India is also a hurdle in the way of women. While examining the fact of the public life, it is found that women have almost no access to any decision making areas. The positions like Indian Administrative Service, Indian Police Service, Indian Railway Service, etc. and in the educational field like Principal, Vice Chancellor, etc. are hardly given to women and the gender lens always come in between while deciding to place women on an important position. The 73<sup>rd</sup> Constitutional amendment

---

<sup>33</sup> Ibid p.81.

provided for the increased participation of women in political institutions at the village, taluka and district levels whereas, 74<sup>th</sup> amendment of the constitution of India is providing of increased participation in Municipalities and Nagar Palikas in the city. Article 19 grants right to form association or union whereas Article 14, 15, 16 of Constitution of India and the representation of People's Act, 1951, give right to contest election to women in general and the representation of Peoples' Act 1951 provide for equal participation of women in political processes. Article 15(3), Article 16(4) for positive discrimination in favour of women and Article 51(A) by directing to renounce practices that are derogatory to the dignity and status of women are constitutional safeguards and guarantee for women for their advancement in political and public life. While assessing the political participation of women in India it can be noted that in 1952 to 57 women members in Rajya Sabha were 7.3% whereas, in Lok Sabha they were 4.4%. In 1999, in Rajya Sabha 7.3% and in Lok Sabha 8.95.<sup>34</sup>

The above referred figures speak of the fact that from 1952 to 1999 during the journey of 47 years, no remarkable achievement can be termed to have been attained to as, in view of the political participation of the women in Rajya Sabha there is no rise at all whereas, in Lok Sabha the rise is only double. This has to be appreciated in view of the fact that the women population is at least 47% and the participation is only 8.9% which is suggestive that the participation is not enough.

---

34. Law and Empowerment of Women, Dr. Shyamraj Pappu in the Sovereign of All India Seminar on Access to Justice p.141.



Higher Education <sup>35</sup>

Level	Male	Female	Total
Universities			
Vice Chancellors	210	8	218
Registrars	215	3	218
Faculties in IIT's	1708	58	1766

Gender breakdown of Judges in the  
Supreme Court and High Court in 2000 <sup>36</sup>

Level	Male	Female	Total
Supreme Court	21	0	2
High Court	419	4	423

These two tables are suggestive of extreme poor participation of women in decision making and in the judiciary. In the High Court 4% female judges are there wherein the crime against women goes on rise. The social stereotypes and cultural stereotypes have not been changed, the patriarchic pattern of the society has not changed, the laws favouring female have also been added, certain other legislations like the Family Court Act, required female judges. In view of the direction by Hon'ble Supreme Court cases like rape should preferably be allotted to lady judges. In view of all this the lower ratio or very very poor ratio of female participation in judiciary is also alarming and this has to be changed. These two tables are only suggestive that the participation of women in public life has not at all been improved and cannot be termed to be satisfactory rather it is extremely poor.

35. Alternative Report on CEDAW, Initial submission to the CEDAW Committee January, 2000, India Coordinated by the National Alliance Of Women (NAOW) p.37.

36. Ibid p.37.

### 9.11 POLITICAL AND PUBLIC LIFE AND CEDAW :

The General Recommendations of CEDAW are as such, statements on the meaning on the Convention provision, on what kind of information should be included in State Party reports, on convention related issues such as impact of Conventions, reservation. In view of the meaning attached to General Recommendations, it can be said to be collective desire to emphasize certain requisites which are passed by way of General Recommendations. G.R. No.23 is related to political and public life participation of women. The Convention on the elimination of all forms of discrimination against women places special importance on the participation of women in the public life of their countries. The Preamble to the Convention states in part : "Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economical and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity." The Convention in its Preamble also gives greatest importance to women's participation in decision making by emphasizing the requirement of maximum participation of women in public life on equal terms with men in all fields. Article 7 of the CEDAW obliges the State Parties to take all appropriate measures to eliminate discrimination of women in political and public life and to ensure that they enjoy equality

with men in political and public life. The political and public life of a country is indeed a very broad concept wherein, political powers with reference to legislative, judicial, executive and administrative powers are included. The public administration has several aspects and the need of women's participation in all the aspects or the overall development of the society cannot be negated. Women have been assigned to the private or domestic sphere associated with reproduction and the raising of children and in all societies this activities have been treated as inferior. Public life is respected and honoured and that it is looked upon with attachment of higher status in comparison to domestic life. The cultural frame work of values and religious beliefs, the lack of services and man's failure to share the task associated with the organization of the household and the care and raising of children, cultural traditions etc. have boost women into the domestic life. It may be as a matter of fact inability on the part of men to successfully perform that role but, then it has not been given due importance rather it has been treated as inferior task to the task of public and political life. The present researcher submits that stereotyping has confined women to the domestic front only and the principle of equality of men and women affirmed in the Constitution and in several international Instruments has not helped women to enjoy their right of equality. Their low level of participation in public and political life have not removed the de facto position. Failure to achieve full and equal participation of women may be unintentional and the result of the outcome of the practices and procedure which always project and promote men and

which always discourage women. CEDAW also obliges state parties to pass legislations to enable the women to participate in political life. In India since it is only possible by reservation, the efforts have been made by amending the Constitution of India and thus, reservation is granted for the elections of Local Bodies. The Higher Forum of decision making is legislative Assembly and Parliament but, it is a sorry state of affairs that the popularly known Mahila Bill which is meant to give reservation to women up to 33% to be elected in legislative Assembly and Parliament has not passed in any of the house. Not only that, but there appears to be no political will to pass such bill and thus, to bring into reality the promise of CEDAW of enabling the women to be elected and thus, to encourage women in political participation and decision making process of the country.

The concept of the right to participate in political and public life does not necessarily mean the public and political life of State level or National level only. The importance of participation of women in international affairs is equally important. Women must be given opportunity to represent their governments at the international level and to participate in the work of international organizations. Governments are obliged to ensure the presence of women at all level and in all areas of international affairs under Article 8 of the CEDAW. It is required that in economic, military affairs, multilateral and bilateral diplomacy, in official delegations, in regional and international conferences women should be given fair opportunities to represent their countries. There are numerous

permanent missions to the United Nation also wherein, no women have been nominated. In the same way in the expert meeting and conferences also women are not nominated. Inclusion of women in international negotiations, peace keeping activities, levels of preventive diplomacy, mediation, conciliation, humanitarian assistance, international justice delivery system, will certainly make a great difference which would be of great help to have proper gender perspective and analysis necessary to attain the goals of CEDAW.

A specific Convention on the political rights of women 1953 and the Covenant on political rights and other such conventions are the conventions which are taking care of right of full and free participation of women in public and political life of the States.

The attempts by the executives to implement the directions of CEDAW are as such, quite glaring. The law making process and the law amending process is also aimed to achieve these goals. The right of women of employment, education, economic and social life etc. have also played a vital role in pushing women to public and political life of India. However, decision making is the area which is yet a dry area for women.

Numerous judicial pronouncement have also done commendable work. Number of rules and regulations and provisions of law which were discriminatory against women have been declared unconstitutional by the Indian Courts which has also helped women in public life. The matter of *Air India v. Nargis Mirza*, the matter of *Vishakha and others v.*

State of Rajasthan, the case of Apparel Export Promotion Council, etc. are such wherein, Hon'ble Apex Court has given such verdict wherein, it has been established that obligation under CEDAW are integral schemes of the fundamental rights and directive principles and that women's right of participation in political and public life are fundamental rights which are equal to the rights of male.

The obligation to promote the full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels declares the eradication of all forms of discrimination on grounds of sex as priority objective of the international community.<sup>37</sup>

It is not the situation that India has never appointed women ambassadors or women ministers or Prime Minister or Indian Women Delegates in international conferences but, the fact is that it is extremely less like the participation of women in public life is also very less which may be known on viewing the figures. Apart from the constitutional amendment granting reservation of 1/3<sup>rd</sup> of all seats Panchayat (Extension to the Scheduled Areas) Act, 1996 has been enacted to cover the triable areas. The Governments initiatives to provide safeguards to the community who are dependant on land and forest product, the right to Information Act, 2005 and some such other different funds at the district level and State level are all such things which are out to provide help to women to join the main political stream of the nation. The ministry of Rural Development and Panchayati Raj and the Ministry of Urban Development and the departments of

---

37. Vienna Declaration on Human Rights, Art. 18

different State Governments organize number of training programs, work shops and seminars to built the capacity of elected women representative at the local level. This is to strengthen them for the administrative capability and decision making processes for women.

Further, women also should be granted rights in civil matters, a legal capacity identical to that of men and same opportunities to exercise her rights with all kinds of rights related to property, which would also mean to see to it that women are getting benefits of all social security programs, different training programs, educational programs, literacy programs, community services, to increase their knowledge, access to the outer world and technical proficiency. Women should also be made enable to participate in all community activities and free and equal access to economic opportunities through employment may be a self employment or may be the agricultural field. Women should also be made entitled by the State Parties to adequate living conditions and it should be specifically with special relation to housing, sanitation, electricity, water supply, transport and communication. All above would collectively place together can be termed that women should be entitled to all kind of opportunities in equal terms as are available to men without having any hurdle of social, cultural or religious stereotypes or impositions of any kind of vices of patriarchic pattern of society.

## 9.12 THE IMPACT OF THE EFFORTS ON ALL COURTS :

“The overall women’s participation in Panchayats at all three levels of local governance in the country has increased to around 33 per cent as mandate in the 73<sup>rd</sup> Constitutional Amendment. However, their representation varies widely across States. While most States have at least 33 per cent women as a direct consequence of reservation, some States have exceeded the 33 per cent quota. Karnataka has a representation as high as 45 per cent, 42 per cent and 38 per cent in the village, taluka/block and district Panchayats respectively. In Kerala, upto 36.4 percent of elected women representatives at the local bodies are women and in West Bengal, 35.4 percent are women. In Uttar Pradesh, 54 percent of the Zilla Parishad Presidents are women. It is encouraging to note that several States that had less than one-third women at the Gram Panchayat level in the first tenure had performed well in the second by exceeding the mandated proportion. They include Rajasthan, Assam, Gujarat, Haryana, Himachal Pradesh and Madhya Pradesh. In Bihar the Panchayat elections were held for the first time in the year 2001 and despite an overall climate of resistance and large-scale violence in the State, about 125,000 women contested for about 40,000 seats reserved for them.”<sup>38</sup>

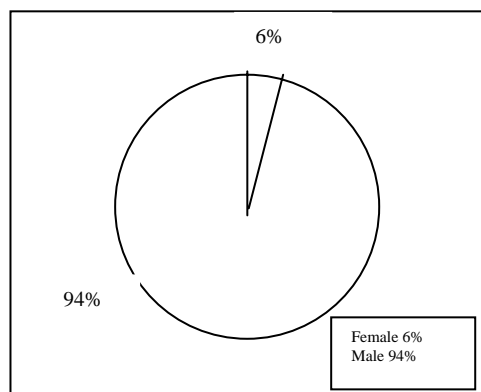
---

38. Government of India’s 2<sup>nd</sup> & 3<sup>rd</sup> Periodic Report on the CEDAW, 1997-2005, DWCDMinistry of Human Resources Development, Government of India, 2005, p.48.



“Though the number of women contesting parliamentary elections increased from 295 in 1999 to 355 in 2004, their numbers still continue to be very low in comparison to that of men.”<sup>39</sup>

#### Women in decision making Committees



“Women’s representation and participation in various decision-making levels continues to be low, though there has been an increase in their numbers in the services. From 1997 a noticeable increase has been seen in the Indian audit and accounts service (from 19.94% in 1997 to 22.31% in 2002), Indian Economic Service (from 16.24% in 1996 to 21.56% in 2003) and Indian Statistical Service (from 7.17% in 1997 to 12.94% in 2002) in the Indian Administrative Service their numbers have increased from 512 (10.22%) in 1997 to 535 (10.42%) in 2000. Their representation in the Indian Police Service remains extremely low at 3.83 per cent in 2002 as against 3.24 per cent in 1997. There is one

---

39. Ibid p.48.

woman judge in the Supreme Court and 25 woman judges in the High Courts out of a total of 25 and 514 judges respectively, as on 31/05/2005."<sup>40</sup>

The above picture cannot be termed to be happy state of affair. Women around the world have yet not have full participation in political and public life in spite of execution of numerous international instruments to the effect and in spite of numerous amendments having been brought in the State Legislation. It seems that customary impact, social stereotype, poverty, lack of formal education, trend of domestic obligation to be the first and formal duty of womanhood, lack of political will, etc. are the main reasons because of which effective participation of women is lacking very sadly. It also seems that this situation will have to be changed to achieve the goal of CEDAW.

### **9.13 CONCLUSION :**

We have seen different dimensions of human rights of women. While viewing the impact of all schemes, projects, planning, law making and law implementing and law interpreting on the human rights of women it is clear that it cut a sorry figure. Nowhere, on no sphere or on no aspect the situation seems to be satisfactory. Everywhere the political will, sincere efforts and involvement in the process and dedication on part of all concerned is lacking very seriously. The present researcher submits that until that dedication and involvement and / or strong desire would come nothing can be attained and at

---

40. *ibid* p.49.

present the sorry figure which has been cut off on the aspect of different dimensions of human rights of women clearly conveys that we have miles to go and centuries to pass to reach at the destination or to reach at the Everest of the full implementation of CEDAW which is in fact obligation of India as signing State Party.

Thus, on preparing the balance sheet of implementation of Article 3, 7, 12, 13 and 14 it seems that the liability is higher than the asset and thus, India as a signing State Party needs to do more and more to see to it that it takes all appropriate measures including legislation to ensure the full development of an advancement of women to guarantee them the exercise and enjoyment of human rights and fundamental freedom on basis of equality with men in the sphere of political, social, economic, cultural, sports, public, etc. fields. Rights of participation in public and political rights to women to enable them to participate in the formulation of Government Policy and implementation thereof and rights of women to hold a public office and perform all public functions at all level of Government, to have equal and effective access to healthcare services and services of family planning to secure rights of women for getting finance, bank loans and to participate in recreational activities, course, etc. with special care to see to it that all such rights are available to rural women also in the same spirit and manner as can be granted to urban women are necessary.

The present researcher submits that the overall study of different dimensions of human rights of women, initiative take

to eliminate discrimination against women of all courts, the impact thereof do not chart out a happy situation. The fact remains that the progress is ongoing but, it is too slow to look to be as good as no progress. As a sensitive society we must rise, and start working with any further waste of time and energy.

## CHAPTER - X

# RESERVATION, DECLARATION AND MONITORING MECHANISM

**CHAPTER – X**  
**RESERVATION, DECLARATION**  
**AND**  
**MONITORING MECHANISM**

**10.1 RESERVATIONS AND DECLARATION OF CEDAW:**

**1. INTRODUCTION:**

India has ratified and acceded to several international treaties, Conventions, Declarations, etc. some of them have been ratified by India with its declaratory statements and reservations. Such kind of reservations and declarations should have been permitted in the particular instrument.

Strictly speaking about CEDAW, India has ratified this Convention on 09/07/1993 with two declaratory statements and one reservation.

The declarations are as under :

“With regard to Article 5 (a) and Article 16(1) of the CEDAW the Government of Republic of India declare that it shall abide by these provisions in conformity with its Policy of Non Interference in the Personal Affairs of any Community without its initiative and consent.”

Article 5(a) is to the effect that the State Parties have been obligated to take all appropriate measures to

modify the social and cultural patterns, conduct of men and women, with a view to achieving the elimination of prejudices and custom and all other practices which are based on the idea of the inferiority or the superiority of either of the sex or on stereotype roles of men and women. The Indian society, culture and tradition are mainly based on the concept that men is superior to women or in other words women are secondary personality of the society. The social and cultural patterns are shaped in the manner that the prime importance shall have to be given to man in the family. Thinking and behaviour of men and women is shaped in the manner in which the social beliefs are prevalent. For centuries together, the prides and prejudices in favour of men are prevalent and even women themselves believe that they should act secondary and they should give all prime importance to men in family. The bringing up of girl child is also in the tune that until women give priority to men she cannot be termed to be a cultured women. This and many other kind of prejudices have developed certain customs and practices which are further canvassing the ideology of man being superior and women being inferior. Several attempts have been made by the Government to change this kind of patterns by introducing new lessons in the text books of children and in primary education a new pattern has been attempted to be introduced whereby the psychology of a child is attempted to be moulded wherein, the children would feel that both sexes are

equal and they enjoy equal importance. This kind of customary exercise, pride and prejudices, social and cultural patterns come in the way of women to enjoy their basic human rights. In some of the communities and in some geographical areas women are not even treated as human beings. India is a society strongly influenced by its custom of each community. It has a plurality in the society where there are numerous religions. The Constitution of India though, has a secular feature inherently and expressly within it, the rule or influence of the customs, practices, and social beliefs have not lost its importance or it has not reduced. Rather those rules and customs mould social patterns and which ultimately becomes a peculiar identity of a particular community which some times leads to honour killing for the sake of community or for the sake of group or family. The government of India has declared that it shall abide by to ensure implementation of this provisions. Which means that the Government of India has declared its intention to abide by or to implement the CEDAW giving effect to this provision. But, it has stuck to its policy of noninterference in the personal affairs of any community without its initiative and consent.

The present researcher believes that this kind of attitude on the part of the government if does not expand this kind of customary pattern, it at least does not reduce



and to that extent the implementation of CEDAW would be hampered.

Article 16(1) is related to the obligation of the State Party to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on a basis of equality of men and women. Government of India has given its declaration with reference to Article 16(i) which has the same hurdle as Government of India has declared with reference to this Article also in the tune with Article 5(a). Since Article 16 is also declared by the Govt. of India to be the Article which cannot be implemented without initiative and consent on the part of the community. The comments given above is applicable to this Article also. Further, CEDAW Committee has resolved a general recommendation no.21 which is on the subject matter of equality in marriage and family relations. CEDAW affirms the equality of human rights for women and men in society and in family, and hence this declaration is against the spirit of CEDAW.

In view of Article 16(2) it is important that the Government of Republic Of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its varieties of customs and level of literacy. There are certain other Conventions and Declarations which also confer great significance on the

equality in family and equal status of women within it. This include the universal declaration of Human Rights, the international Covenant on Civil and Political rights, the Convention on the Nationality of married women, the Convention of Consent to Marriage, Minimum age for marriage and registration of marriages and the Recommendation thereon and the Nairobi forward looking strategies for advancement of women. The CEDAW is such a convention which not only recalls the inalienable rights of women which are embodied in the above referred Conventions and Declaration, but, the CEDAW accept the importance of culture and tradition in shaping the thinking and behaviour of men and women and the significant part they play in restricting the exercise of basic rights by women and therefore, this is in a way a step ahead and that it has very clearly emphasized the need of change in the culture and tradition and stereotypes prevalent in a particular society. The Govt. of India has declared that in principle it supports the principle of compulsory registration of marriages, but, it is not practical in a vast country like India with its variety of customs, religion and level of literacy but, it has forgotten the very emphasis of changing in stereotypes, cultural and social pattern, way of thinking of society in general and its impact on human mind. CEDAW has gone to the deep foundation and that it has tried to create a situation wherein, the stereotype, the social pattern which are defective, which are favouring to men or which are treating

women as inferior would go away and until those wrong notions go away society cannot change because, this is not a structure wherein, by changing the colour the pattern would change. It is the basic system, the basic pattern which is defective and the very attack of CEDAW is on that. Therefore, declaring inability to implement a very progressive ideology meant for welfare of women only on the ground that in view of customs, religion and level of literacy the change is not possible and that too a change like compulsory registration will straight go to the identity of women, legal status of women which in turn would relate to maintenance, custody, guardianship and many more such other issues, and hence this is something which government of India should reconsider and such kind of declaration must be withdrawn. This declaration is since the basic things upon which the system as such exists or collapses and therefore, compulsory registration of marriages would be a very very vital feature of a cultured society wherein, equality is inherently existing right in the foundation of the system and thus, the Declarations discussed above should be withdrawn in the larger interest of Indian society.

## **2. RESERVATIONS :**

Article 29(1) is related to an obligation created upon the state Parties in case of any dispute between two or more State Parties concerning the interpretation or application of the present Convention, which is not

settled by negotiation shall at the request of one of them, be submitted to arbitration. If within 6 months from the date of request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the court. Govt. of India has here, reserved by way of putting up a reservation that it does not consider itself bound by paragraph 1 of this Article. Meaning thereby, in case of dispute between two or more State Parties about interpretation or application of the present Convention, to either settle it by negotiation or to submit it to arbitration and lastly refer it to the International Court of Justice. In this reservation, it seems that the Govt. of India has at this juncture not accepted the plans or the idea but, it may later accept it and it may later on withdraw its reservation because, after all succumbing to the jurisdiction of the International Court is also necessary for International fraternity.

Above are the Reservation and Declarations while accepting CEDAW by India. The significance, importance and vices of it has been discussed. However, the suggestions upon the said declarations and Reservation would be taken up by the present researcher in the next chapter hereafter.

### 3. PLATFORM FOR ACTION (THE 4<sup>TH</sup> WORLD CONFERENCE ON WOMEN, 1995) :

The Beijing platform for action popularly known as PFA was mainly for gender equality which was accepted by India without any reservation. The fourth world Conference on women held in Beijing in 1995 wherein the Beijing platform for action was introduced and it was accepted by India. Then after at the policy level, gender main streaming measures to ensure gender concerns have been initiated. And in all areas of public expenditure policy, the idea was mooted. The tenth Plan has initiated actions with the concept of women's component plan and gender budgeting exercises to develop a gender perspective in planning. Elimination of gender discrimination and empowerment of women has been also activated through this movement. The gender development indicator are as under :

#### SELECTED GENDER DEVELOPMENT INDICATORS <sup>1</sup>

Sr. No.	Indicators	Female	Male	Total	Female	Male	Total
Demography and Vital Statistics							
1	Population (in million 1991 & 2001) (Census)	407.1	439.2	846.3	495.7	531.3	1027.0
2	Decennial Growth (1981 & 2001)(Census)	24.93	24.41	24.58	21.79	23.93	21.34
3	Sex Ratio (1991 & 2001) (Census)	927			933		
4	Juvenile Sex Ratio (1991 & 2001) (Census)	945			927		
5	Life Expectancy at Birth (in years in 1991 & 2001) (Census)	58.1	57.1		65.3	62.3	
6	Mean Age at Marriage 1981 & 1991 (Census)	17.9	23.3		19.3	24.0	

1. Platform for Action 10 years after India Country Report, p .xi

	Health and Family Welfare						
7	Birth Rate (per 1000 in 1981 & 2002) (SRS)			35.6			25.0
8	Death rate (per 1000 in 1981 & 2002) (SRS)	12.7	12.4	12.5	7.7	8.4	8.1
9	Infant Mortality Rate (per 1000 live births in 1990 & 2002) (SRS)	81	78	80	65	62	64
10	Child Mortality Rate (per 1000 live births in 1985 & 2001) (SRS)	40.4	36.6	38.4	71.6	70.5	71.1
11	Maternal Mortality Rate (per 100000 live births in 1997 & 1998) (SRS)	408			407		
	Literacy and Education						
12	Literacy Rate (1991 & 2001) in percentage (Census)	39.29	64.13	52.21	53.67	75.26	64.84
13	Gross Enrolment Ratio (1990-91 & 2002-03)						
	Classes I-V {Ministry of HRD}	85.5	114.0	100.1	93.1	97.5	95.3
	Classes VI-VIII {Ministry of HRD}	47.0	76.6	62.1	56.2	65.3	61.0
14	Dropout rate (1990-91 & 2002-03) in%						
	Classes I-V {Ministry of HRD}	46.0	40.1	42.6	33.7	35.8	34.9
	Classes VI-VIII {Ministry of HRD}	65.1	59.1	60.9	52.3	53.4	52.8
	Work and Employment						
15	Work Participation Rate (1991 & 2001) in percentage	22.3	51.6	37.4	25.6	57.9	39.2
16	Organised sector (number in millions in 1981 & 1999) (DGE&T)	2.80 (12.2%)	20.5	22.85	4.83 (17.2%)	23.20	28.11
17	Public Sector (number in millions in 1981 & 1999) (Employment Review)	1.5 (8.7%)	14.0	15.5	2.8 (14.5%)	16.8	19.4
18	Government (number in millions in 1981 & 1997)	1.2 (11%)	9.7	10.9	1.6 (14.6%)	9.1	10.1
	Women's Representation in Decision Making						
19	Administration (no. in IAS & IPS in 1997 & 2000)	579 (7.6%)	7347	8036	645 (7.6%)	7860	8460
20	PRIs (no. in figures in 1985 & 2001)	318 (33.5)	630	948	725 (22.6%)	1997	2722
21	Parliament (no. in 1991 & 2004)	77 (9.7%)	712	789	72 (9.2%)	712	784
22	Central Council of Minister (no. in 1985 & 2001)	4 (10%)	36	40	8 (10.8%)	66	74
	Source Office of the Registrar General of India						

2001 was declared as women's empowerment year wherein, the slogan of 'Empowered Women Empowered Society' was given. Social norms and social tradition wherefrom gender equality arises have all been attempted to curb directly or indirectly. The object of national policy for the empowerment of women, 2001 is to bring social changes in attitude towards the women and women empowerment.

After ratifying the Beijing platform for action, India has taken measures to implement the Beijing Declaration and platform for Action by emphasizing the area of poverty, education, training, health, violence, economy, decision making process, human rights, media, environment related to women and issues related to girl child. Different plans, policies and institutional mechanism have been adopted for the advancement of women.

"375. The institutional mechanisms for the advancement of women include different institutional setup by the Central Government, State Government and Local Governments. viz. Department of Women and Child Development, National Commission and State Commission for Women, National Institution of Public Cooperation and Child Development, Central Social Welfare Advisory Board, State social Welfare Advisory Board,

Panchayati Raj Institution and Urban Local Self Government Bodies, National Human Rights Commission, Rashtriya Mahila Kosh, etc. institution mechanism and policies such as Gender Budgeting, Gender main Streaming etc. are used for integrating gender perspective in policy and planning. The Planning Commission carries out periodical reviews of programs and policies impacting on women. An number of Commissions and Committees are setup on specific issues, viz. a Focal Point on Human Rights of Woman has been set up in the National Human Rights commission and an inter ministerial committee under the aegis of Department of Women & Child Development to monitor the fulfillment of obligations under the CEDAW etc. voluntary sector and women's group are being involved in the formulation and implementation of various schemes and programs. Different department of govt. also work in partnership with bilateral, multilateral and United Nations agencies on women specific and women related projects." <sup>2</sup>

India has ratified Convention on rights of the Child in 1992 and CEDAW in 1993. Creation of Certain institutions

---

2. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, p.94.



like National Human Rights Commission, 1994, National Commission for Minorities, 1992, National Commission for ST & SC, 1990 and creation of rights of older women through National Policy on older persons, 1999, direction to media to develop the code of conduct, to encourage gender sensitivity, provision of 50% representation of women in the Film Censor Board, Pornography made a punishable offence in the Income Tax Act and restriction on media to exhibit domestic violence, etc. are the safeguards taken to effectively implement CEDAW. The additional commitment of Indian Government to improve the situation of women and girls at Beijing are for

1. Increased education budget to 6% of Gross Domestic Product
2. Universalized Mother and Child Care Program
3. Formulate and operationalize a National Policy on Women.
4. Setup a commissioner for women's right to act as a public defender of public human right. <sup>3</sup>

The government commits to pursue the national policy on empowerment of women, 2001 and the plan of action adopted to give effect to this policy, strengthen gender budgeting and the women component plan and adopt planning strategies that enhance socio economic gain for women for the empowerment of women.

---

3. Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic report, 1997-2005, DWCD, p.96.

#### 4. **GENDER INJUSTICE TO OLDER WOMEN :**

CEDAW recognizes that disability combined with gender stereotype causes multiple disadvantages. The treaty monitoring body makes it more than clear that all provisions contained in CEDAW are applicable to women with disability as it is applicable to other women. The main stream gender movement, which has had a significant effect on improving the status of non-disabled women, has had a minimal impact on the lives of women with disability who are one of the most marginalized groups with multiple disadvantage of gender, of disability and of poverty. Women and girls with disability face greater discrimination within the family than men and boys with disabilities. They are denied access to healthcare, education, vocational training, employment, income generation opportunities, and are excluded from social and community activities. They encounter further discrimination and greater risk of physical and sexual abuse, denial of their reproductive rights and reduce opportunity to marriage and family life. Disabled women are underrepresented in the membership of self health organization and scarcely visible in leadership and executive roles. Here the disability would mean physical and mental disability both. The disability of mental faculty is something wherein, no special attention has been paid by the state or family more particularly, when it is the case of older women of the family she stands ignored and

neglected in comparison with male member of the same age.

**5. GENDER EQUITY POLICY :**

The State of Gujarat is one such state which has made its own Gender Equity Policy for the State. The policy was discussed by the cabinet and for further deliberation it has been kept pending. The glimpses of the policy are mainly that Gujarat is perhaps the first such state wherein, the stake holders or partners like Non Governmental Organizations, academic experts, etc. have been added in the policy making process. This Gender Equity Policy is based on admission and acceptance of hard reality by the state. The State has created Gender Resource Centre being run by the State Government. It has made the review of the policy to assess the implementation of the women empowerment policy, to emphasize gender mainstreaming, gender budgeting, gender analysis and that it contains detailed plan of action to achieve gender equity and gender equality. This is to ensure equal participation of men and women and to lead to attitudinal changes and creating enabling conditions for women to assure economic security leading to social empowerment and enhance social status. The action points are mainly, to create more employment for women, promotion of joint ownership of land and property on the joint names, special hostels for working women, facility to women employees of crèches,

convenient working hours, encourage cooperative and nationalized banks to provide credit to women, training program to be made more gender sensitive, training to women to fill in form for election candidature, provide social security support to home based women workers, promote women participation in decision making, to create state level women empowerment fund, gender sensitization in pre-service and in-service training, specific time limit for cases of domestic violence, pre-criminal complaint registration counseling centers, new formats of postmortem reports in rape cases by RMOs in tune with recommendation of National Human Rights Commission and to promote more and more pre-counseling centers for women. Apart from all these gender sensitivity shall be made one of the features to test the efficiency of suitability of the candidature for judges, medical officers, police inspectors, Forensic Science Laboratory Officers, professors, principals, teachers, etc. Special legal services cell for women in custody to introduce special curriculum on gender in PTC, CPA, B.Ed. etc. and to review and develop gender sensitive curriculum and text book for better class room transactions are all the modes and manners in which the gender equity policy of the State is attempting to bring into effect gender equity and equality in the State of Gujarat. <sup>4</sup>

---

4. Draft Gender Equity Policy, Gujarat State, Women and Child Development Department, Govt. of Gujarat, 2004.

## **6. CONCLUSION:**

In view of all above factors it is clear that the reservation, declaration of Govt. of India with reference to CEDAW are though not very happy situation and non withdrawal of that as such, slightly an adamant attitude of the government but, still however, the same government has ratified in Beijing Conference, platform for action without reservation is a happy sign. The beginning of making gender equity policy even at the state level is also a happy situation. The inclusion of women of older age and women with disability SC & ST Women at the state level policy for elimination of gender discrimination is also a very healthy sign. It can not be doubted that it is hightime when the declaration & reservation against CEDAW should be withdrawn by India.

## **10.2 MONITORING, MECHANISM:**

### **1. INTRODUCTION:**

Up to a decade after the CEDAW came into force, no implementing, monitoring or mechanism machinery were put to motion. It is only in 1993 when U.N. World Conference on Human Rights held in Vienna it was discussed that women's rights are human rights and the need of an optional complain procedure under the Convention has to be begun. This deliberation went on, on the international level because, after CEDAW came into being, it was felt that there is no optional machinery

by which implementation or monitoring of CEDAW can be looked into. Some optional machineries were felt necessary by the international community.

Let us firstly know something about the CEDAW Committee.

## **2. CEDAW COMMITTEE:**

Monitoring of implementation of the obligations by the State Parties was much more necessary. Therefore, a CEDAW Committee was formulated. The major function of which is to see to it that to what extent the State Parties are implementing the obligations of the Convention. The Committee is composed of 23 women experts coming from different regions.<sup>5</sup> These experts are as such, elected by the State Parties to the Convention and that they are nominated by their respective Governments. The member's term is 4 years.<sup>6</sup> The glaring feature is that having been elected, the member would work in one's personal capacity and the member is in no way answerable to the respective Government who has nominated the said member. The chief function of the Committee is to monitor the implementation of the Convention by State through appreciation of the reports submitted by the State Party. After consideration of the reports by the State Parties, recommendations are prepared. These recommendations are also in form of general recommendation and these General

---

5. IWRAW Asia Pacific Training Material / 2000, Produce by NYU Law School, International Human Rights Clinic p 8.

6. Ibid

Recommendations are statements by the CEDAW Committee on the meaning of the Convention provision, on what kind of information should be included in State Parties Reports, on convention related issues such as impact of the Convention's reservation and it is also a kind of emphatic guideline as to the State Government should emphasize on each kind of guideline while making implementation of CEDAW in their respective states. The general recommendations are the means by which the CEDAW Committee addresses contemporary issues which the Convention may not be expressly speaking of. As such, there are numerous General Recommendations but, the main recommendations among them are General Recommendation 19, 21, 23 and 24. Recommendation - 19 is related to violence against women whereas, General Recommendation 21 is related to equality in marriage and family relations. General Recommendation 23 is related to rights of women on political and public life whereas, General Recommendation no.24 is about access to health care including reproductive health of women as, her basic right. These four General Recommendations are very important however, there are total 25 General Recommendations. On different themes. The importance of the committee is that the state Party is to submit its report on implementation of CEDAW which is being presented before the expert member of the committee before whom even oral representation is

also made by the State Parties and the representative of the State Parties answer the questions of the expert. The expert engages in a constructive dialogue with the State Party giving their own views on the issues presented in the report. These views are in form of suggestions to the State Parties. The drawback is there is no compulsion of filing the implementation report for the state parties. There are several state who have even not field the initial report. The CEDAW has not provided for any kind of complaint procedure to be presented before it. For the violation of CEDAW against the state party. The CEDAW Committee is therefore, made to use and that the optional protocol was drafted wherein, complaint mechanism and an inquiry procedure has been provided for. The State Parties who are parties to the CEDAW can adopt the Protocol. The protocol once adopted will enable women whose government has ratified it to file complaints before the CEDAW Committee. The CEDAW Committee is authorized to investigate on allegations of violations of state obligations under the Convention.

### **3. OPTIONAL PROTOCOL:<sup>7</sup>**

Optional protocol to CEDAW is the gateway for access to justice for women at international level. The women who have been denied justice at national levels can claim at an international level by way of this optional protocol. Ratification of the Optional Protocol would mean that the ratifying State Parties are legally bound

---

7. General Assembly Resolution 54/4, annex, 54 U. N. GAOR Supp.(No.49) at 5, U. N. Doc. A/54/49 (Vol.-I) (2000), entered into force Dec. 22, 2000.



by it. The optional protocol is to see to it that the women get their economical, social, cultural, civil, political, public lives, private lives rights against government and nongovernmental persons, groups and / or enterprises. As such, the promise given by the Convention is quite high and ideal. As against that the reality known to one and all that it is not even making attempt to fulfill the aim. The optional Protocol is aimed to see to it that both these ends meet and some substantial implementation takes place within the State. The optional protocol was adopted by the United Nations. General Assembly on 15/10/1999.<sup>8</sup> It establishes communication procedure and an inquiry procedure wherein, inquiry into grave or systematic violations on its own initiatives can be inquired into. However, it needs to be noted that the optional Protocol as such, does not create any new substantive right. Optional Protocol to CEDAW is a resolution of the United Nations.<sup>9</sup>

What is important is that by way of Article 17 of the optional protocol no reservation to the present protocol is permitted.

“The optional protocol to the CEDAW Convention is the first gender specific international procedure for reviewing claims of individuals and investigating grave or systematic violation of the Human Rights of Women. The Optional Protocol is a separate treaty that is open to only

---

8. IRAW Asia Pacific Training Material / 2000, Produce by NYU Law School, International Human Rights Clinic p 8.

9. General Assembly's Resolution 54/4, Annex, 54 UN GAOR SUPP. (49) at 5 UN Document. A-54, 49 (vol. 1) (2000), Entered in to force dec. 22, 2000.

ratification by States who are already parties to the CEDAW Convention. By ratifying the Optional Protocol, Governments commit to the further implementation of the CEDAW. Being a separate treaty the optional protocol does not create any new rights, rather, it opens up the possibility of accessing and implementing the right set forth in the CEDAW through two separate procedures."

**4. CERTAIN DATAS FOR WHICH OPTIONAL PROTOCOL TO CEDAW IS REQUIRED:**

The fact that there is vast gap between the promise of the CEDAW and the hard realities about the plight of women through out the world. Following are some such examples :

1. "The World Health Organization has asserted that violence against women causes more death and disability among women aged 15 to 44, than cancer, malaria, traffic accidents and wars. In some countries estimates of spousal abuse range as high as 90% of all married women.
2. 130 Million children aged 6 to 11 are still out of school in developing countries, nearly 2/3<sup>rd</sup> of them are girls.

3. Globally, women represent less than 10% of governmental representatives.
4. The Pakistani Sonnet refused to even consider a resolution condemning the practice of honoured killing." <sup>10</sup>
5. The literacy rate for women worldwide is 71.48 percentage, compared to 83.71 percentage for men. In the developing countries, the literacy rate for women is 39.9 percentage while, it 59.19 percentage for men. Of 960 million illiterate adults 2/3<sup>rd</sup> are women. <sup>11</sup>

Thus the optional protocol improves and adds to existing enforcement mechanism for women's human right within the UN System. It however, does not establish an avenue for public interest causes at the international level. But, it certainly helps the women victim or women groups who live in a country that has ratified CEDAW Convention against the violation of their human rights as set forth in the CEDAW Convention.

Article 17, 21 and 22 as such, deal with the role and scope of the CEDAW Committee. What is appreciable aspect of the whole thing is that, that it has been provided that the 23 experts of CEDAW Committee should be of high moral standing and competence in the field covered by the Convention and that the expert who will be elected will serve in their personal capacity and thirdly, consideration would be given to

---

10. Material of International women's rights action watch Asia-Pacific Topic-II sub point – A

11. IWRAW Asia Pacific Training Material / 2000, Produce by NYU Law School, International Human Rights Clinic

equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems as has been provided in Article 17 of the CEDAW. As provided in Article 21 of the CEDAW, the suggestions and general recommendations made by the CEDAW committee would be of great importance as, it is based on the examination of reports and information received from the state parties. These general recommendations and suggestions shall be included in the report of the committee with comments, if any by the state parties. This report will be placed before General Assembly of the United Nations.

**5. MECHANISM AND MONITORING FOR IMPLEMENTATION AT NATIONAL LEVEL :**

At the national level as such, the report making authorities are looking into the implementation of the CEDAW. However, it is worthy to record that national Commission for Women, State Commission for Women, National Human Right Commission, State Human Right Commission, different boards and even different Non Governmental Organizations and their alliances are quite active in monitoring the implementation. However, as far as mechanism is concerned, we shall discuss it one by one.

**6. THE NATIONAL COMMISSION FOR WOMEN:**

Firstly, it needs to be clarified that the Commission has no business whatsoever to as such, look into the aspect

of implementation of CEDAW. However, it takes deep interest into the implementation of the existing laws related to women. This would indirectly monitor the implementation of CEDAW because after all, the laws leaning towards welfare and interest of women are based on CEDAW. Somewhere in 1980 women activists started struggling for the Commission. It is only in 1990 that the Parliament passed an Act empowering the Government to constitute a National Commission for women and thus, in 1992 the National Commission for Women was set up. Such type of commissions were also to be started at state Level. It is a hard reality that all the states have yet not started women commission in their state. The commission to have an autonomous status, it is to work as watchdogs to monitor and ensure implementations of laws, of judgments of the Courts, planning and policies made by the Government for the purpose of welfare and safeguarding interest of women. As such, the commission can advice the Government. It can promote the interest of women as, it can also protect the interest of women by investigating all the matters related to women wherein, violation of existing provisions of the Constitution of India and existing provisions of other laws has taken place. Even in absence of complaint, it can take suo motto cognizance of the matters wherein, women have been deprived of their rights and wherein, the commission can take notice of a blanket non implementation of laws which are meant for the interest, welfare,

protection and development of women. It can also take suo motto cognizance of the violation wherein, directions given by the Courts are violated. The Commission can review and revise the existing laws. It can also advise the government to repeal certain provisions of certain laws. All such exercise is to make the existing laws more gender stringent. The National Commission for Women has advised the Government with the proposal to make necessary changes as are suggested by the Commission in nearly 41 Acts which are social legislation for women. The Commission is consisting of a Chairperson committed to the cause of women, quite able, knowledgeable and experienced members dedicated to the cause of development of women and a Member Secretary, who all are to be nominated by the Central Government. The Act however, provides for expert committee to be appointed by the Commission. The Commission enjoys powers of a civil court in trying a suit.

#### **7. NATIONAL MONITORING MACHINERY:**

Bureau of Women's Development, Ministry of Social Welfare, 1985 (Created by V<sup>th</sup> Plan), and Department of Women and Child Development (Parted from Social Welfare Ministry) are the departments which are National machinery for empowering the women and to monitor the flow of resources from various sectors into women's group. Department for Women & Child Development is a nodal agency which formulates

policies, plans and programs and gives recommendation to enact a kind of legislation which is taking care of the interest of the women. The department is also to look into education, training, welfare, support services, gender sensitization and awareness generation for the gender issues.

Central Social Welfare Board and State Social Welfare Board:<sup>12</sup> These organizations are the institutions which are taking care of social welfare of the women and are working for welfare and development of women and children in the Country.

Rashtriya Mahila Kosh (A regd. Society setup on 1993)<sup>13</sup> for finance services to poor women.

The National Institute of Public Cooperation and Child Development which assists in the area of research and training related to women and children. <sup>14</sup>

Committee on gender Main Streaming:- In the Women and Child Department a Committee under the supervision of Prime Minister's office monitors numerous beneficiary oriented schemes which helps gender focusing in other departments.

Parliamentary Committee on Empowerment of Women:- set up in March, 1997 to monitor progress on gender equity and empowerment of women.

---

12. Initial Report of Govt. of India, 1998: Review by CEDAW Committee (January, 2000) p. 12

13. Govt. of India's 2<sup>nd</sup> & 3<sup>rd</sup> Periodic report on CEDAW 1997-2005 DWCD Ministry of Human Resource Development 2005, p.79

14. Platform for Action 10 years after India Country Report, p.56

Following Committees are concerned with the welfare and development of women :

- "A. National Committee on Women's Education (1958-59)
- B. The Committee on Status of Women, 1974.
- C. The National Committee on Role and Participation of Women in Agriculture and Rural Development, (1977-78)
- D. The National Committee on Women Prisoners (1986)
- E. The National Committee on Self Employed Women and Women in Informal Sector (1988)." <sup>15</sup>

Basing upon the reports of different committee and on their recommendations and submissions, action plans and policies have been brought out by the successive government. The action plan and policies for the development of women are as under :

- "A. The National Policy on Education (1968)
- B. The National Policy for Children (1974)
- C. The National Plan for Action (for Women), 1976
- D. National Health Policy (1983)
- E. National Policy on Education and Program of Action (1986 – revised in 1992)
- F. National perspective plan for women (1988-2000)
- G. National Plan for Action for the Girl Child (1991)

---

15. Initial Report of Govt. of India, 1998: Review by CEDAW Committee (January, 2000) p. 12



- H. National Nutritional Policy (1993)
- I. National Population Policy (2000)
- J. National Policy for Empowerment of Women (2001)
- K. National Policy for Custodial Justice to Women<sup>16</sup>

Certain kinds of authorities under different statutes have also been brought into being for overall social development and welfare of women at large. Some of them are :

- " A. Mental Health Custodial Institutions,
- B. Women in Custody and Legal Aid,
- C. National Legal Services Authority,
- D. State Legal services Authority
- E. Different Tribunals
- F. Mahila Adalats,
- G. Mahila Police Stations,
- H. Attempts and special Schemes being floated by institutions like National Commission for Women wherein, Parivarik Mahila Lok Adalats have been initiated
- I. Family Courts,<sup>17</sup>

## **8. NATIONAL HUMAN RIGHTS COMMISSION :**

India is a party to the International Covenant on Civil and Political rights and the international Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16/12/1966. As such, the human right in the said

---

16. Initial Report of Govt. of India, 1998: Review by CEDAW Committee (January, 2000) p. 17

17. Ibid p.17

Covenant are protected in form of guarantees by the Constitution of India. In view of the growing concern, for human rights, social realities, emerging trends, increasing crime and violence and upon reviewing certain laws, procedures, and system of administration of justice and with a view to affirm and confirm human rights in their true spirit, by way of effective methods in dealing with the situation the Constitution of National Commission for human rights was necessitated by the Act called the Protection of Human Rights Act, 1993. The Central Government has been provided enablement to constitute the National Human Rights Commission. In the same way the State Human Rights Commissions are also to be formed. The Central Government has constituted a body known as National Human Rights Commission which is consisting of a Chairperson who has been a chief Justice of Supreme Court, one member who is or has been a judge of Supreme Court, one member who is or has been the chief Justice of Supreme Court, two members amongst the persons who are having expert knowledge or practical experience in the matters of human rights are the members. However, the Chairpersons of National Commission for Minority, National Commission for SC & ST and the chairperson for the National Commission for Women are deemed members of the Commission. The Commission shall perform the function as under :

1. Suo Motto inquiry or inquiry on complaint upon violation of human rights or abetment thereof or

negligence in the prevention of such violation by a public servant.

2. Intervene in any proceedings involving allegation of violation of human rights.
3. Visit to any jail.
4. Review the safeguards provided by the constitution of India for the protection of human rights.
5. Recommend measures for effective implementations of human rights.
6. Review the factor including the act of terrorism.
7. Study treaties and other International Instruments on Human Rights.
8. It can make recommendation for their effective implementation.
9. Undertake and promote research in the field of Human Rights.
10. Spread Human Right Literacy in various sections of the society and promote awareness of the safeguards through publication, media, seminar and other available means.
11. Encourage the efforts of Non Governmental Organization.
12. Any work for promotion of human rights.
13. The commission while inquiring into the complaint will have all powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908.
14. The Commission for purpose of conducting any investigation pertaining to the inquiry may utilize

the services of any investigating authority and such investigating authority for the purpose of investigation the agency or authority can summon and enforce the attendance of any person and examine him, require the discovery and production of any document and can requisite any public record or copy thereof from any office.

The functions, powers of the State Human Rights Commission will be for the State as are of the National Human Rights Commission for the Nation. Under the Act for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government by notification may specify for each district a Court of Sessions to be a Human Rights Court to try the said offences and for every such human right court, the State Government can specify a public prosecutor or can appoint an advocate.

On viewing the Act, it stands very clear that the human right commission and human right Code can be the agencies through which implementation of international covenants or instruments can be monitored and this can be one of the mechanisms to implement the international instruments including the CEDAW.

In this chapter, the present researcher has attempted to place on record the international monitoring and mechanism of CEDAW and the National Chapters,

Agencies or Authorities which all are helping to monitor the implementation of CEDAW. The mechanism are having varieties of colours, but, most of them, except the Non Governmental Organizations., are all authorities created by the Government itself. This is well suggestive that the attempts and efforts on the part of the government of India to administer or to implement CEDAW are going on. But, the fact cannot go unnoticed that we come across numerous cases, wherein, blanket violation of human rights, clear violation of human rights of women, cases of trafficking, Act and omission which would not permit the girl child to develop, declining sex ratio, increasing trend of offences against women are very clearly establishing that implementation cannot be termed to be satisfactory. The present researcher has given the suggestion for better monitoring in the last chapter.

## CHAPTER – XI

SUGGESTIONS TO MAKE DE JURE  
EQUALITY INTO DE FACTO AD  
CONCLUDING COMMENTS

## CHAPTER – XI

### SUGGESTIONS TO MAKE DE JURE EQUALITY INTO DE FACTO AND CONCLUDING COMMENTS

#### 11.1 INTRODUCTION:

The Constitution of India has guaranteed equal rights and opportunities to men and women in the field of political, economic, civil, cultural, and social and several others. Empowerment of women, equality before law, social empowerment of women, gender justice, economic empowerment of women are today's international concern and India too is very much keen to attain the same. Different mechanism and institutions are on their motion to translate the dreams into desirable reality. New methods of gender mainstreaming and gender budgeting are no more a novel idea. The women Component Plan, Empowerment for Women and women oriented activities in each field like political, economical, social, civil and cultural is the watchword of economy of India. Women should have an enabling environment by the help of different policies and program for over all development of women and for easy and equal access to all kind of services to develop their personality to its fullest are the views existing in the foundation today. Very notable thinking have taken place in the legal framework as, the reservation through Indian Women for the local bodies which was a dream has come true and that women is now able to contribute in decision making process of women which is certainly resulting into political empowerment of

women. Amendments in personal laws, repealing of certain laws wherein gender injustice or gender discrimination was existing, new law, like protection of women against domestic violence Act, numerous changes in laws on maintenance, divorce, guardianship, property rights of women, etc. have given different colours to the picture of India women. The Hon'ble Supreme Court and different High Courts have also given all possible colours by the interpretation of different existing provisions of the law and in some cases, by fetching something from the international Conventions and Instruments ratified by India. These all have given altogether a different picture which was never existing before. The amendment in the Pre-conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act Act, directives by the National Commission for Women, by the National Human Right Commission, amendment in the Civil Procedure Code are all the illustrations which are all surely to develop women of India. The active role played by the government, Non Governmental Organizations and the civil society has all taken the march of women development in equality ahead and ahead to meet with the new challenges that have emerged in the International sky today. Amendment in different labour laws, the role played by Police Academy, Judicial Academy, different training institutes to impart training to persons from medical field and others, training institutes for the executive heads and for the officers. These all can take credit of the improvement of situation and rise in status of women in the society. It is claimed that the area of concern for all is overall development of women and there is not a single field which is



left out for the development of Indian women. The present researcher submits that the picture is not that much rosy but, at the same time, it can safely be termed that clouds have been started to remove. The rosy picture will take as it seems a very long time but, it will never be too late for the development of Indian Women as the suffering and subjugation goes on for centuries together. We have yet to do many thing, miles to walk and centuries to wake before we go to sleep. In the opinion of the present researcher, numerous suggestions can be made for speedy, effective, meaningful and purposeful results and to realize the de facto equality for women from de jure equality. What Convention has given can only be realized if the social set up gets changed. If the traditional men oriented society, changes its colour, only then the dawn would come on the sky and it is only in that daylight, it is only in those tender moments, the dreams will start to realize. The present research would like to enlist useful suggestion for the purpose.

Each suggestion has been classified according to department and the part of the department which is expected to carry out the said suggestion. There are certain suggestions for which the department could not be classified which have been listed in the head of government only. Whereas, the suggestions for which the department could be classified have been classified accordingly by mentioning the name of the department into a bracket. Certain suggestions are expected to be put into practice by family, society, etc. which have been accordingly enlisted.

## 11.2 GOVERNMENT:

1. Implement, promote and encourage CEDAW even by enacting new laws.
2. Reservation in different governmental or semi-governmental committees should be made to ensure involvement of women in decision making, in management, in programs, planning and projects of the government.
3. The Government can lessen the son preference by appointing as brand ambassador a leading women personality or a leading film personality.
4. There is dire need of auditing and if need be amending of procedures and screening the working of institution that have ramifications on women's rights.
5. For judges, advocates, public prosecutors, police officers, Forensic Science Laboratory Officers, gender sensitization and gender awareness programs should be organized regularly. There has to be a common platform for all the functionaries of administration of justice which only central government can do.
6. Preference to crime against women cases should be given by appropriately amending the criminal manual.
7. At least 50% public prosecutors should be women may be through reservation or Concession in length of practice as criteria.
8. According to 2001 census, the work participation rate of women is 25.6% as compared to 22.3% for the year, 1991. The work participation rate of women was 15.9% in 1991

and 14.68% in 2001 (For main workers). The corresponding figures for marginal workers were 6.3% and 10.9% <sup>1</sup>

On viewing the above figures, it is clear that firstly, even the highest figure is not a sufficient or satisfactory figure. Secondly, the rise is an admitted position but, it is too slow which needs to be increased by way of special efforts by the Government by creating different schemes, policies etc.

9. Legal awareness camps for women empowerment and for speedy social awareness should be the regular feature in every government office.
10. The social consciousness, awareness and spread of legal literacy would be of great help to eradicate social evil like dowry, faith in superstitious power etc.
11. At least, yearly analysis of the framework of the state government to be critically examine by the Central Government as to qualities of the services it provides to its women in the field of demography, health, nutrition, education, economic development, political participation, civil life, law, violence and culture and many such other parameters.
12. Canvass and propagate need of understanding of men for their responsibilities towards society to ensure rights and empowerment of women.
13. Constant updating and preparation of statistical data and other information is necessary to constantly observe the impact and effect of implementation process of the convention. Quota for women in government service as

---

1. Platform for Action, 10 years after, India Country Report, DWCD, Ministry of Human Resource Development, Govt. of India, p.44.

reservation at the stage of recruitment and for subsequent promotion is very much necessary.

14. It is necessary to see to it that before filing the report to CEDAW Committee a joint consultative meeting of the Non Governmental Organizations and the government officers should be organized so as to see to it that a genuine report which ideally should be a joint report considering both the sides can be prepared which would facilitate more speedy, more effective and more genuine implementation of CEDAW.
15. In the initial report a consultative meeting was not held but, in the 2<sup>nd</sup> and 3<sup>rd</sup> report consultative meeting was held with selective member. The present researcher firmly believes that until government keeps its mind open and until the government fairly accept the criticism and comments made in good faith, if any, by any of the Non Governmental Organizations and takes it seriously and tries to implement the suggestions put forward by the Non Governmental Organizations judiciary, academicians, social activist it would not be in position to give genuine to CEDAW Committee which is utmost necessary.
16. In democratic setup like India the reporting State Parties should see to it that the report is made available to anyone whosoever is interested and should also be provided to each public libraries.
17. "Removal or modification of reservations particularly to Article 2 and 16 to indicate a State Party's determination to remove all barriers to women's full equality and its commitment to ensure that women are able to

participate fully in all aspects of public and private life without fear of discrimination and / or recrimination. States which remove reservations would be making a major contribution to achieving the objectives of both formal and de facto or substantive compliance with the Convention." <sup>2</sup>

The present researcher submits that India should review, modify or withdraw the declaration & Reservation it has declared as under the guise of tradition, religion or cultural practice, there should not be any hindrance by the State for full fledged implementation of the Convention.

18. There has to be constant reviewing process by the Government, for which, if necessary a specific authority may be constituted to review the impact of gender mainstreaming in ministries, different departments, institutions and society at large.
19. Special allocation of resources and implementation of the existing laws for women development would also help realizing the dream of Convention.
20. The religious and ethnic groups should be invited by government for consultation and their initiation should be obtained to change the personal laws.
21. The law enforcement needs to be strengthened and introduction of reforms in the laws related to women as suggested by social activist groups working for women causes should be considered by the government.
22. The government must take all necessary action to increase participation of qualified women in the

---

<sup>2</sup> <http://www.un.org/womenwatch/daw/daw/>.

administration judiciary, family court, lok adalats, conciliation tribunals, executive work and the police department as well. At present, the participation seems to be quite low. But, the government should take affirmative action to increase women's participation which government can very well do by introducing reservation policy in specific fields wherein, women's participation can make a great change like judiciary, police and executive departments. These special reservations should not be limited for recruitment but, it should be as well for the promotions.

23. The Optional Protocol to the convention has not been signed by India.
24. The Government should circulate, The general recommendations of the committee, the Beijing Declaration and the platform for action, the optional protocol for the Convention and the whole convention itself in all regional languages so as to give it proper circulation and inform all concerned about the gist of all above. Government should not forget that vigorous involvement of the voluntary sectors and initiation by Non Governmental Organization to wed the commitment of the provisions of the CEDAW will help the country as a whole to fulfill the objectives of the CEDAW. The government of India has observed the year 2001 as women's empowerment year at which point of time different schemes were put to motion like human rights for women, economic empowerment of women, social empowerment of women, women and technology,

women and education, women and nutrition, women and media and women and governance etc. but, then the consistence efforts are missing for the success of the shceme which should be consciously done by the government.

25. High maternal mortality, low female literacy, gender based violence, gaps in legal framework, existence of strong patriarchic values, weak law enforcement, lack of effective monitoring and creating mechanisms can all be attained by the government by special.
26. Gender stereotype, social attitudes and customary practices against gender equality, revision of text books, revision of training programs, etc. are needed keeping into center gender prospective which all can be done by a specific agency to be appointed by the government which will also look into all the affairs concerning over all gender sensitive policies.
27. The government has placed the country report of CEDAW on the internet. but, all the persons in civil society might not have access to internet, therefore, the country report must also be freely, easily, without charge should be made available by the Government for the benefit of common men and for wider dissemination amongst members of civil society.
28. All the related factors that can have a casual link to the denial of women's right, whether ideological, material or institutional be identified and eradicated.
29. The government of India has stated that it believes in policy of non interfering with the personal laws of minority

community except with their initiative and with their consent. Here the point is in male oriented society, there will be none who will take initiative and who will give consent and therefore, this excuse seems to be very lame and cannot be tolerated and therefore, the government must withdraw the reservations and declarations in CEDAW.

30. The government of India should fulfill its commitment made at the 4<sup>th</sup> World Conference on women at Beijing.
31. Vide orders of different courts women are ordered to be kept in prisons, corrective homes, short stay homes, protective homes, mental health hospitals, etc. it is one of the study which suggest that for passing order for the custody of women, necessary care and sensitive approach will have to be taken because in many cases, instead of protection it becomes punishment for women and such stay is many a times against the interest of women.
32. Whenever under any calamities when the economic packages are provided to any area or community, special needs for women should be looked upon and wherever possible women should be involved in consultation for such kind of policy making processes.
33. The government has not taken any steps towards changing the law of Muslims i.e. Personal Law of Muslim on the view that public opinion in Muslim Community did not favour a change. The view cannot be reconciled with the declaration of equality, social justice and spirit of CEDAW and that ignoring the interest of Muslim women is



a denial of social justice and violation to human right of women. Hence, the government must immediately act upon to see to it that eradication of polygamy in Muslim law takes shape.

34. Women's Prison code is necessary for rendering speedy redress to women in custody.
35. Special Court for women may serve the purpose of rendering effective, speedy and sensitive justice to women. This kind of separate courts for women should mainly work in criminal justice delivery system as, for civil causes the family court is already existing.
36. The women's fundamental right to dignity under Article 21 of the constitution should always be protected be she a prostitute by the executives and administrators.
37. Ensure that there is collaboration and coordination of the work of all human rights bodies and mechanism to ensure that the human rights of women are respected.
38. Dowry Officers to have exclusive charge.
39. Informer of offences against women be given special recognition for government job or special concession for government job.
40. There should be at least 10% reservation for women to be appointed as the dowry prohibition officer, inspector under minimum wages act, labour officer, authority under the bonded labour system (abolition) Act, 1976, Authority under the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Advisory Board under the Contract Labour (Regulation and Abolition) Act, 1970 and any other authority to be

appointed under any of the law wherein, welfare and interest of women is one of the subject matters.

41. Domicile of women should be decided on the same line of that of men.
42. The implementing authority and machineries under different laws relating to woman should be made accountable for non implementation of the law.
43. At this juncture, accountability of the protection officer under protection of violence against women Act 2005 needs to be appreciated but effective implementation be expedited.
44. The Bonded Labour System (abolition) Act, 1976 – Special Package Rehabilitation Schemes, Compensation from the fine recovered from the erring employer are to be offered to female bonded labour – special and exemplary compensation from the State Funded for the freed female bonded labour who was subjected to sexual exploitation or trafficking needs to be provided for.
45. Workshops on awarnsess and sensitization of the authorities dealing with these special cases will go on long way in positive interaction with the victims and their families. Proper handling can help to ease the pain, trauma and stigma that come along with these cases.
46. Policies and programs can be framed and enforced to bring about coordination and strengthen communication between the law making and enforcement authorities, the medical authorities, etc.
47. Monitoring of the both suspects and the convict is a step to future safeguard of the society at large. Punishment is

not the final answer but, such perpetrators may be sent to reformatory institutions.

48. There is inadequacy in the number of women to have been in any field. If there is a political will in that case the parliament can make special provision for women by treating them to be a special class as they are socially backward and even education wise also women as a class is still backward one. Moreover the fact that very less number of women has come into decision making and into the state employment and viewing the fact that even with lessening down of the birth rate of women at least 45% of the population is of women whereas in the public employment they are not more than 10%. This discrepancy, this difference in the percentage itself is suggestive that the state needs to think it seriously and the constitutional provision is to be interpreted in favour of women at length.
49. Illiteracy, Social Practices, Son Preferences, Prejudices, False family honour, Honour Killings, Dowry death, Cruelty, Offences against women, Cultural norms, Poor representation of women in management and decision making, Patriotic values, Regional disparity, Registration of marriage, Lack of access to Justice, Public Life, Reservation in employment, promotion, Political and Social life, Education, Sexual harassment's, Presumption, Married women home Act, Chapter of offences against women in Indian Penal Code, Special drive for Law on elimination of discrimination, Violence against women in riots, Communal situation, as refugee etc. are the goals

for which government with help of Non Governmental Organization must start working.

50. Under the Family Court Act, special provision for speedy justice, time limit for disposal of the suit, help of Non Governmental Organization, help of counselors at the Court, paralegal training to Non Governmental Organization, Counselors, staff of the Court for gender sensitization, uniform rules for the Family Courts through the nation, children issues to be dealt by psychiatrists, jurisdiction where a women resides, inter caste and community marriages be facilitated, media campaign for rights of women against dowry against child marriages etc. along with special provision for separate budget only for the causes of women are the necessary changes which we need to bring.
51. More women in information and communication technologies as key ways to transform the lives of women.

#### **11.2.1 GOVERNMENT (DEPARTMENT OF LAW):**

- 1) Revise law, administrative practices and all efforts should be made for equal rights and access of women to all resources.
- 2) Registration of marriages should be made compulsory one.
- 3) Increase the number of women judges at all the level even by reservation.
- 4) Total gender perspective in law making public policies, programs and projects of government.

- 5) Every state now, should have State Human Rights Commission and special human right department in each block is necessary as the separate human right courts are necessary.
- 6) All kind of rituals and rights and religious attitudes and beliefs attached to son preference should be immediately stopped may be, by passing necessary legislation to prohibit it.
- 7) Highest punishment should be awarded to the close relatives of a minor girl who throw minor girls into prostitution and are subjecting her to trafficking.
- 8) It has to be remembered that the word discrimination is not only restricted to action by or on behalf of state. Article 2(e) of the convention requires the State Parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Therefore, it is obvious that the State will be responsible for any private acts, if due diligence to prevent violations of rights or to investigate and punish an act of violence is not checked by the State and that if the State has not provided compensation. Necessary enactment to compensate violation of human right of women by any person, organization or enterprise is necessary. Gender sensitive training officers or private and other public enterprises is very much essential for effective implementation of the convention to

enable them for effecting. Specific preventive and punitive measures for sexual exploitation.

- 9) Law prohibiting honour killing, killing for the sake of family name, and shameful stereotypes. Women must have right to change their nationality as per her desire and it should not be compulsory in case of marriage or dissolution of marriage or because husband or father of a woman change his nationality.
- 10) The woman should be at liberty to change at will regardless of her marital status, her domicile like nationality. Domicile is a concept in common law countries referring to the country in which a person intends to reside and to whose jurisdiction she will submit. In the childhood normally the domicile is acquired through parents. But, in adulthood it should not be acquired through anyone but, it should be available at will to an individual including women.
- 11) Independence of a woman to bring litigation, to be witness, to accept any correspondence including summons of the court for any of the family member should be freely available to women.
- 12) In some of the acts in India like Gujarat Panchayat Act only males have been qualified to receive summons which is discriminatory and should be immediately repealed or such words should immediately be changed by introducing therein, any adult member of the family.

**11.2.2 GOVERNMENT (NATIONAL COMMISSION FOR WOMEN):**

- 1) A process of constant review and revision of existing laws from a genders perspective and a constant academic exercise and research as to which new laws can be brought into to have effective gender prospective.
- 2) The government is duty bound to catalyze changes in the National Law and practices by which the Convention stands implemented. There has to be public auditing, or public hearing for the purpose.
- 3) National Commission for Women and such other institutions should do a lot many academic exercises and should prepare new legislation in view of the principles of the convention.
- 4) National Commission for women must include Non Governmental Organization and the powers of National Commission for Women should be as wide as the powers of Human Rights Commission.
- 5) Each State must have Women Commission which would help the state level problems to be dealt with appropriately.
- 6) The policy of political appointees to national commission for women, will have to be reviewed rather a persons working in women field and human right field should be appointed to make the commission more effective and functional.

### 11.2.3 GOVERNMENT (DEPARTMENT OF FAMILY WELFARE):

- 1) Involvement of family in improving the status of girl child is necessary by eliminating discrimination against girls in bringing up education, skill development, training, health, nutrition, etc.
- 2) Declining sex ratio can be seen in each State in the table put up below :

#### Child Sex Ratio over the Decade 1991-2001 <sup>3</sup>

Rank 2001	States	Child Sex Ratio		Difference
		2001	1991	2001-1991
1	Punjab	793	875	-82
2	Haryana	820	879	-59
3	Gujarat	879	928	-49
4	Himachal Pradesh	897	951	-54
5	Rajasthan	909	916	-7
6	Uttar Pradesh	915	928	-13
7	Maharashtra	917	946	-29
	INDIA	927	945	-18
8	Goa	933	964	-31
9	Madhya Pradesh	933	952	-19
10	Bihar	938	959	-21
11	Tamilnadu	939	948	-9
12	Karnataka	949	960	-11
13	Orissa	950	967	-17
14	Manipur	961	974	-13
15	Arunachal Pradesh	961	982	-21
16	Kerala	963	958	5
17	West Bengal	963	967	-4
18	Andhra Pradesh	964	975	-11
19	Assam	964	975	-11
20	Mizoram	971	969	2
21	Tripura	975	967	8
22	Nagaland	975	993	-18
23	Meghalaya	975	986	-11
24	Sikkim	986	965	21

Source : Calculated from Census of India, 2001, Rustagi 2003.

- 3) Some special encouragement for favorably changing the sex ratio to be given to parents of

3. Platform for Action, 10 years after, India Country Report, DWCD, Ministry of Human Resource Development, Govt. of India, p.75.



girl child. All requirement of girl child up to too girl children of each family should be fulfilled by the Government.

- 4) Government to provide sibling care centers with all requisite facilities so as to see to it that elder daughters may be released from the burdens of sibling care of younger brothers and sisters.
- 5) One of the views deliberated upon the policies of family planning is worthy to be noted that we live in a society where status of women is low and son preference is prevalent. Therefore, coercive measures for family planning of one or two children would undermine the status of women and results in harmful practices such as female foeticides and insecticides. – For successful implementation of any program for population stabilization, a rights based approach is far more effective than a coercive approach on this incentive.
- 6) It should be always left to women as to how many children she would like to have. She may choose to have only one child or no children at all or even adopt parentless children. This freedom of choice to decide as to how many children to have, when to have children, etc. is advocated by national population Policy, 2000 which needs to be effectively propagate.

**11.2.4 GOVERNMENT (FINANCE DEPARTMENT):**

- 1) Encourage women for saving and enable women for credit mechanism, different schemes of finances, special financial institution for women only.
- 2) Gender mainstreaming and gender budgeting at the grass root level needs to be increased.
- 3) Government should constitute special fund for the offences against women cases to pay fiscal compensation to the victim woman.
- 4) The Gender Budgeting should not be under combined head of women and children. It should be made exclusively for women that would also help achieving the goals.

**11.2.5 GOVERNMENT (EDUCATION DEPARTMENT):**

- 1) Total legal literacy of nation by special funding and expanding the State Legal Services Authorities.
- 2) Today India is leading as far as computer services are concerned. Computer services are more suitable to women. Give priorities to women for learning computer.
- 3) Gender to be included in curricula of arts, drama and journalism schools.
- 4) Measures to change the social stereotypes, social norms and perception about women which

affects the well being of the girl child is to be taken care of through education.

- 5) Education on sex, reproductive rights, sexual health of men and women is necessary to avoid the danger to adolescent girl's right in our country.
- 6) Women need to encourage to articulate and facilitate raising of women's concern and priority in different meetings like that of gram sabhas, ward sabhas, etc.
- 7) Femini's jurisprudence course should be made as syllabi in the law colleges.
- 8) From the school level itself the training to prepare women to face the problems and difficulties in their matrimonial life is necessary.
- 9) Design community education, specially women, on their rights regarding sexual security redressal from numerous forms of violence like rape, female foeticides, prenatal sex selection, trafficking, dowry death, domestic violence, sexual harassment at work place and so on and on and on.
- 10) Certain wrong perceptions about manhood will have to be removed by specific efforts for the same like it is believed that a man who does not subject his wife or female family members to violence cannot be termed to be a man in true spirit, and secondly manhood will be damaged if a man will go for vaxatomy.

- 11) The social notion of responsibility of a pregnant woman to give birth to son is a wrong notion which shall have to be removed by special programmes for the purpose.
- 12) Education for human rights should be compulsory in each syllabus.
- 13) There should be full-fledged training programs for women members and women chairpersons put up in the local governance for effective women's empowerment and participation in democratic process.
- 14) The State Party should organize for special education and training program to enable its women to understand the importance of right to vote and manner and method of exercising the right to vote. The women should also be trained to hold publicly elected position and the responsibility in the status in the said position. Special legislation is necessary prohibiting discrimination against women in every sphere of life.
- 15) Right of education as has been declared by the Hon'ble Apex Court as a fundamental right under the Constitution of India has not got proper recognition by the state. Moreover, adult illiteracy among women is still prevalent and to eradicate adult illiteracy no concrete and effective efforts are put up by the government which now need to be put up.

- 16) Gender Sensitization, Human Rights and awakening for women rights and Specialy dalit, SC, ST, & rural women's program for police, security forces, judiciary, and executive and for professionals should constantly go on.
- 17) The projection of women in secondary or stereotype roles as dependant, submissive, timid, fearful and nonauthoritive should be changed effectively by making special efforts to sensitize the schools text book's publishers, writers, illustrators, teachers of the primary schools as, they would help to give or to encourage equal importance of boys and girls and giving positive and correct images of womanhood and woman.
- 18) Flexible school timing and region specific school calendar would attract more rural girls to take educational facilities – the school should be at the walking distance or at least closer to habitation. Incentives like uniform, sport instruments, music instruments, text books, exercise books, attendance scholarship, free bus passes etc. to fetch more girl students, to reduce dropouts, and to encourage re entry in the schools.
- 19) The Improvement of the quality of education, motivation to teachers and making learning a pleasant experience, are all duties of the State implement it.
- 20) To bring into effective uniformity, blanket or sector policy on labour laws with all kind of worker'[s

rights in tune with international declaration is now required.

- 21) The working of different legal aid authorities, legal aid centers and family council centers have to be women friendly for which a specific training creating a special awareness is required for which govt. of India should make positive attempts.
- 22) There is a critical need for the state to listen to women's experience to provide free services of doctors, & psychologist to women and to learn what needs to be put in place to address women's issues, with beneficiary & right based approach.
- 23) Women should be given special training i.e. job oriented training as before appearing in the test for the selection in the job.
- 24) Each educational institution must have a column to declare the name of mother.

#### **11.2.6 GOVERNMENT (EMPLOYMENT DEPARTMENT):**

- 1) Encourage the commercial activity wherein there is involvement of women.
- 2) Better opportunity for adolescent girls for special skilled and vocational training.
- 3) The government should also take active initiation by making laws, planning, programs, policies, etc. to provide women self employment opportunities, minimum wages, promotion and encouragement for home based small scaled or industries wherein

women are more suitable and for nonformal sectors.

#### **11.2.7 GOVERNMENT (POLICE DEPARTMENT):**

- 1) Each police station must have an inherent machinery or system from where rehabilitative services should be provided in case of violence against women.
- 2) Humanization of our police by special sensitisation programme is very much necessary.
- 3) The victim and the persons who have come to the assist the investigating authority must feel at ease.
- 4) Setting up of a telephone help line in each police station is necessary.
- 5) There should be at least 50% of women constables.
- 6) Mahila Police Station with equipped, trained and sensitized women official in each area is necessary.
- 7) Women's protection home, short stay homes, etc. should be run by the Government or by accredited Non Governmental Organization.
- 8) Investigating wing should be separated from the law and order responsibility (bandobosht) of the police.
- 9) Special trained officers for free legal aid, gender justice, human approach etc. should be appointed at each police station.

- 10) The investigating officer should be permitted to take the help of private doctor and there should not be insistence of government doctor only.
- 11) In so many cases the dalit women are burnt alive, subjected to physical violence, their houses crops are burnt, their children are ruined, they are compelled to parade naked, damage to their property is done if they raise their voice against any kind of injustice of the upper caste people. This will have to be curbed by passing appropriate legislation and by setting a proper example in fitting case. Furtherance of human right awareness and training to the investigating authorities investigating violations of human rights is necessary.
- 12) To bridge the gap between police and women victims, the police needs to be given special training. Moreover, our society will have to learn to respect a woman's time and her role as a mother, a wife, and a daughter inasmuch as that of a career person.

#### **11.2.8 GOVERNMENT (MEDICAL SECTOR):**

- 1) Efforts to address the gender dimensions of HIV / Aids, mental health care using a multisectoral approach and building capacity of individual institution and networks needs to be intensified.



- 2) Mental trauma of the women victim women complainant or even accused should be taken care of by the medical officer.

**11.2.9 GOVERNMENT (DEPARTMENT OF CHILD AND WOMEN DEVELOPMENT):**

- 1) Design and implement policies and programs that empower and enable women to exercise their choices to marry a person of her choice, age, religion etc.
- 2) Advancement of women should be made as integral part of political, social, civil, cultural, and economic and over all development and empowerment of women.
- 3) The reports of the State Parties to be produced before the CEDAW Committee must include within it a detailed time table showing as to when and how the customary or stereotype attitudes about the roles of women would be removed by the State Parties.
- 4) India should have separate, special and proper complaint procedure and remedies including compensation for violation of the principles of the Convention.
- 5) The establishment of the support system or support services for the victims women of different violence is necessary with special infrastructure.

- 6) Isolated communities and rural women should have accessibility of all the kinds of services provided by the government.
- 7) The National Law must provide remedies like restitution, compensation, rehabilitation and other different remedies including steps to curb ongoing violation of women's right. An agency has to be created which would identify the barriers, obstacles or hurdles for the implementation of the convention in India and it should also enlist the remedies thereof, along with enlisting the agencies, bodies or organizations which would be able to achieve these objectives.
- 8) By grant of special fund to Non Governmental Organization, the ongoing advocacy to pressurize the government is necessary to see to it that the laws and policies do not become de jure and the gaps in its implementation can also be monitored.
- 9) Government to circulate its action take report upon the concluding comment i.e. the questions by the CEDAW Committee and reply by the Government upon the Indian report.
- 10) Poverty is one of the issues in India. But, not providing sufficient and satisfactory opportunity for the women to grow their income and not providing them proper access in economic development of the country has resulted into feminization of poverty and income disparities against women which has to be changed and

the government should make sincere efforts which can change the situation by giving effect to targeted programs.

- 11) The nodal agency like national Resource Center for Women to main stream policy and programs for women, information dissemination, research, mainstreaming gender issues, attempting for gender equality and equity, bringing into de facto equality, research and documentation, etc. shall also have to be done at state level by the government.
- 12) A though provoking figure needs to be seen given under the title of what does it mean to be born a girl child in India? <sup>4</sup>

<b>Steady decline in sex ratio noted over a century in India</b>										
Year	1901	1911	1921	1931	1941	1951	1961	1971	1981	1991
SR	972	964	955	950	945	946	941	930	934	927

#### **WHAT DOES IT MEAN TO BE BORN A GIRL CHILD IN INDIA ? <sup>5</sup>**

- 1> 32.8 million 'missing girls' in 1991 census alone.
- 2> UNDP Report says India has 10 percent fewer women than would be expected in demographic terms.
- 3> Despite being biologically stronger than boys, almost 3,00,000 more girls die every year.
- 4> Every sixth female death in India is specifically due to gender discrimination.
- 5> Of the over 12 million girls born in our country every year, 25 percent do not survive to see their 15<sup>th</sup> birthday.

---

4. Alternative Non Governmental Organization Report on CEDAW, Initial Submission to the CEDAW Committee, January, 2000, India, Coordinated by NAWO p.67

5. Ibid p.67.

- 6> Child mortality in 0-4 age group is 43 percent higher for females (at 42 per 1000) than for males (29 per 1000).

Literacy rates - 1991			
Person:52:11	Male : 63.86	Female : 39.42	Only 5 percent crossed class 10 <sup>th</sup> schooling

Work Participation rates - 1991			
	Person	Male	Female
Total workers	37.64	51.52	22.69
Main workers	34.12	50.54	16.43

(Factsheet of Indian Medical Association News : Special issue on Female Foeticide : Nov.'99) <sup>6</sup>

- 7> This figure needs to be scrutinised by government and remedy of the situation is to be worked out by government.

#### 11.2.10 GOVERNMENT (HEALTH DEPARTMENT):

- 1) The government must make provisions for safe motherhood services and infant care services during and after pregnancy.

#### 11.2.11 GOVERNMENT (RURAL DEVELOPMENT DEPARTMENT):

- 1) Access to land and credits to rural women would make a magic change in the national economy and hence, it is needed.

---

6. Alternative Non Governmental Organization Report on CEDAW, Initial Submission to the CEDAW Committee, January, 2000, India, Coordinated by NAWO p.68

**11.2.12 GOVERNMENT (LABOUR LAWS DEPARTMENT):**

- 1) Schemes for elimination of child labour and bonded labour and overall reorientation of development strategies in the field of labour laws.
- 2) In any labour law wherever rest rooms are mentioned it should be a separate rest room for women and in each public place there should be separate toilets for females.
- 3) Women worker in canteen managerial committee should be appointed.
- 4) Compulsory provision of nutritional lunch at concessional rate by the employer is the need of the day.
- 5) Each factory must provide for the space for legal literacy and counseling to its employees and family members of the employee.
- 6) The Maternity Benefit Act, 1961, the ESI Act, 1948, provision of nursing breaks and exemption from heavy work should be made applicable to each and every establishment and each and every working women.

**11.3 JUDICIARY:**

1. In cases of trafficking victim should be compensated. The media should provide more time for the programs of social education, social awakening and issues related to women, may be on health, nutrition, social justice, education, family welfare, child development, etc.

2. Accused of offences against women should not be given benefits of probation of the Juvenile Justice Act.
3. Use of civil law to get reliefs and cost in violence against women cases, seems necessary.
4. To accused of offences against women anticipatory bail should not be granted.
5. In case of sexual offences video conferencing should be invariably permitted even if the victim is not a child.
6. The judiciary should take more proactive, innovative and progressive steps for the implementation of CEDAW.
7. All cases of offences against women should be conducted in camera and in presence of non-governmental organizations of support groups.
8. Family Courts have to be modified and the conciliation procedure therein has to be conducted genuinely, religiously and in proper and healthy atmosphere.
9. No press publicity of the rape case and if any, the violator must be punished under contempt proceedings.
10. Regular judicial training program must go on updating the judges of the latest directions of the Hon'ble Supreme Court – The distance learning is also a novel idea which can be implemented.
11. Make criminal justice system to be more sensitive to women issue more particularly the social stigma likely to be attached to women in case of offence against her.
12. The constitution of India and legislation must comply with the principles laid down in the Convention.
13. The courts in India will have yet to play a big role in correcting the imbalanced monopoly of power in the

hands of the male members to ensure reasonable space for women as, women shall have to mobilize themselves but, centuries of subordination and passivity cannot be evaporated within few years.

14. The constitution of India is so broad and inclusive that there is an immense possibility to ensure the enforcement of rights and delivery of justice for all and specially for women through judicial interpretation of its different provisions.
15. In cases under Immoral Traffic Prevention Act, the First Information Report and Charge Sheet are made by using certain derogatory terms to establish the act of soliciting or seducing. This is clear violation of basic human right flows from dignity enshrined in the Constitution and hence, this has to be stopped by appropriate direction of the Court or by proper legislation.
16. In some of the cases, the Magistrate Concerned deals the cases in monotonous manner and the fine of Rs.25/- is being imposed in some cases which is indicative of lack of awareness and sensitivity to a serious human wrong of exploitation of women in trafficking cases.
17. The magistrate who is dealing cases under the Immoral Trafficking Prevention Act should be provided the information about protection and custodial homes in the State to which the women can be remanded would help better administration of justice. Hence, it is needed.
18. Time bound trials in special courts for women or family court can be the very basic minimum step the judiciary can resort to.

19. Concepts like in camera hearing and close circuit camera hearings can be introduced in all the cases of human right violation of women. Video taped statements of the child can be made admissible so that the child is spared further trauma of exposure and degradation. (Implimantet direction of supreme court in Sakshi vs. Union of Inidia Cases).
20. The child need not be made to repeat all gruesome details in an open Court in front of strangers. The hearings may consist of very minimum people along with a support person for the child like the mother of the child, Non Governmental Organization representative etc.
21. Use of anatomical dolls and drawings can help the child relate the events without much difficulty or hesitation or embarrassment.

#### **11.4 PARLIAMENT:**

1. Punishment against women in the Indian Penal Code should be increased and all the offence should be made cognizable and nonbailable.
2. In all cases of offences against women, burden of proof should be on the accused and the evidence Act be appropriately amended.
3. There has to be separate, exclusive and special court to deal with the matters of domestic violence.
4. Making appropriate laws for nondiscrimination and equality for women should be the plain goal of the government. The need of it can be justified from below.<sup>7</sup>

---

7. Platform for Action, 10 years after, India Country Report, DWCD, Ministry of Human Resource Development, Govt. of India, p.53



### Women's Representation in Parliament <sup>8</sup>

Year	Seats	Lok Sabha	Percentage	Seats	Rajya Sabha	Percentage
1952	499	22	4.4	219	16	7.3
1957	500	27	5.4	237	18	7.5
1962	503	34	6.8	238	18	7.6
1967	523	31	5.9	240	20	8.3
1971	521	22	4.2	243	17	7.0
1977	544	19	3.4	244	25	10.2
1980	544	28	7.9	244	24	9.8
1984	544	44	8.1	244	28	11.4
1989	517	27	5.3	245	24	9.7
1991	544	39	7.2	245	38	15.5
1996	543	39	7.2	223	20	9.0
1998	543	43	7.9	245	15	6.1
1999	543	49	9.0	245	19	7.8
2004	539	44	8.2	245	28	11.4

Source : CSDS Data Unit

### Women's in top Decision-making committees of Political Parties <sup>9</sup>

Party	Committee	No. of Women	Total Members	% of Women
CPI (M)	Politburo	0	15	0
	Central Committee	5	70	7
CPI	Secretariat	0	9	0
	National Executive	3	31	10
	National Council	6-7	125	5
JD	Political Affairs Committee	0	15	0
	Parliamentary Board	0	15	0
	National Executive	11	75	15
UF	Steering Committee	0	15-17	0
BJP	Parliamentary Board	1	9	11
	Election Committee	2	17	12
Congress	Working Committee	2	19	11

- Legislate for women representation in political life beyond the 33% by bringing Constitutional Amendment or passing much awaiting mahila bill.

8. Ibid p.53.

9. Ibid p.54.

6. Amending and reviewing laws to increase women's capacity to ensure participation of women in decision making and in leadership.
7. No confidence motion can be passed at present against the elected representative. This is freely used against women chairperson which results into no participation of women in local governance. This practice can be curbed or controlled through amendment to be made applicable in case of women chairperson and that panchayat Act should be amended to give effect that no confidence motion within one year cannot be passed from the holding the post by the women Chairperson. This would help women in developing their personality and giving their full and free participation in the political life of the country.
8. On account of economic dependence, women are having normally very limited financial resources or no resources at all. In such circumstances if the election expenditure is restricted by the Election commission, that would enhance women participation in political life of country.
9. The State Party should also see may be by legislating for it, that the private organizations within the country also comply the principles of the convention by implementing the same within their indoor affairs.
10. The safety and security of women in professional association and the stereotype in treating women as inferior professionals will have to be curbed very strictly by making laws and implementing existing laws.

11. Even at this juncture, if we are quite sincere for effective political participation of women in India and if we are honest to attain the goal of women empowerment we can also think of dual membership. Certain percentage of certain constituency should be earmarked for dual membership and that let there be two candidates one male and one female from these seats. This may result in increase the number of seats in Parliament. But, this would certainly serve the purpose of women empowerment.
12. To avoid any kind of embarrassment to women, for the sake of financial constraints and others, certain seats can be reserved for the women candidates and that the elected candidates should then elect the women candidate. This would make easy for women to contest the election as, she will have to undergo limited exercise and still women will be benefited by having an opportunity of participation in the governance of the nation.
13. Uniform Civil Court must be immediately enacted by the Government in view of the directive principles of the State Policy in the Constitution of India.
14. Compulsory registration of birth and marriages should be started as, failure to register marriage will prejudice women and several rights of women will be jeopardized on account of it.
15. The concept of joint guardianship rights of both the parents can be thought of and that it is only in the event of the dispute the court need to determine the rights in accordance with the principles of the best interest of the

child. Secondly, right to adopt the child should be made available to all women regardless of her marital or religious status.

16. Irretrievable breakdown of marriage should be introduced as ground of divorce in remaining personal laws.
17. In the Constitution of India, the word discrimination is not defined. Moreover, there is no antidiscrimination law in India both are needed. The present researcher submits that it is now utmost necessary that the concept of marital rape which is a hard reality of many women's life is not recognized under the present legal definition of rape which needs to be accordingly, amended.
18. The concept of sexual abuse / child sexual abuse / assault which is the experience of majority women is not looked into by the present law which needs to be looked into.
19. The definition of adultery has to be reviewed to give right to wife of a man to prosecute him as at present only the husband of adulteress can prosecute the man with whom she committed adultery but, it does not allow the wife of the man to prosecute him which is necessary.
20. A comprehensive law to meet with the requisites of a woman against sexual harassment at working place and in tune with Hon'ble Apex Court's judgment in case of Vishakha with mechanisms set in for state and non-state agencies of employment be made. Specific law for child sex abuse, sexual assault, broadening of outraging the

modesty of women or unnatural offences provisions in Indian Penal Code are necessary.

21. Trafficking in women and children is a product of global patriarchy, economic liberalization and the media invasion which further objectifies women's body as a commodity, therefore, in view of the Convention necessary legislation to curb all such evils needs to be passed.
22. The enactment which eliminate criminalization in political and public life would help women to freely participate in political and public life of the country. The State need to provide an enabling environment for women to enter into the political life of country.
23. Stringent sealing on election expenditure along with measures to stop corruption, criminalization and communalization of politics seems to be quite necessary.
24. Compulsory registration of marriages will be an effective checkpoint on child and bigamous marriages and that it offers conclusive and reliable proof of marriages and ensure legitimacy and inheritance rights of children.
25. Under the Child Marriage Restraint Act, there must be a child marriage prevention officer and all the offences under the said Act should be made cognizable one.
26. The Dowry Prohibition Act should be given a serious touch. All the offences under the Dowry prohibition Act, 1961 should be made cognizable, involvement in dowry related offences should be added into government Servant's conduct Rules as one of the disqualification for the government servants.

27. There has to be ceiling of giving and accepting gifts under the Dowry Prohibition Act, and lastly there should be continuous yearly review and evaluation of the Act so as to examine the situation and the impact of the Act.
28. In the Marriage Law of Hindus, desertion for the purpose of work place or for the reason that the place of work is different than the place of domicile should be excluded to be regarded as ground for a case of desertion or restitution of conjugal rights.
29. The unilateral right of divorce granted to husband under the Muslim personal law has to be eliminated and the Act granting right to both the partners for seeking dissolution of marriage is required to be legislated. Secondly, in case of failure of husband to maintain the wife, the wife must be entitled to seek divorce on the same ground.
30. Christian Marriage Law may be appropriately reformed and amended. The grounds for divorce provided in the Special Marriage Act should also be made available to the Jews.
31. All the personal laws must accept the concept of mutual consent for grant of divorce
32. In all the personal laws the ground of compulsion by the husband to be prostitution should be the ground of seeking divorce as it is available to a Parsi wife. In all the personal laws there has to be parity of rights regarding grounds for divorce for both husband and wife.
33. Uniform right of adoption for husband and wife with the consent of other spouse should be made provided.

34. Control over the person and property of a minor should not be separated and should be vested in same person. The right of visitation and access to child of a parent who has not been given right of guardianship should be seriously considered for all the personal laws.
35. Both the spouses should have equal rights and duties with regard to the administration of the property of their minor children. In the event of divorce, annulment of marriage, judicial separation the right of men and women with regard to custody of children, guardianship and other parental rights should be without any discrimination on the ground of sex.
36. There is need of extension of all rights to Muslim women without any discrimination between the Muslim wife and the other Indian wives. Under the Muslim law the divorced wife loses her right of maintenance and she is only entitled to maintenance for three months iddat period this is quite discriminatory and needs to be removed immediately.
37. As far as the nonpayment of maintenance is concerned, it is necessary that all orders of maintenance should be in form of deduction at source as is done in income tax. In case of other cases, where deduction at source is not possible, the arrears of maintenance should be recovered as arrears of land revenue.

The present researcher submits that this should solve the problems of many wives.

38. Some of the laws on inheritance are inherently defective and discriminatory. Such laws need to be immediately amended or eliminated.
39. The procedural law for the family court will have to make informal one and should be such which is aiming to achieve socially desirable result and it should not be based on usual adversary system as it is based today.
40. For statutory rape, the age limit should be increased up to 18 years.
41. An Indian woman while marrying a foreigner should not lose her Indian nationality as a result of her marriage to a foreigner.
42. The child's nationality should not necessarily follow father. The child should get Indian nationality if father or mother is a citizen of India at the time of birth of the child.
43. Under all the religion there is need for adequate provision of spousal assets division and suitable arrangement for accommodation or residence of wife after divorce which requires legislation for the purpose.
44. The powers of the Family Courts on the aspect of civil and criminal law will have to be provided. Exclusive competence of Family Court should also extend to criminal cases arising out of the matrimonial relationship. Civil Courts power of unlimited pecuniary jurisdiction, the powers of a Magistrate of First Class, the powers for any kind of disputes has to be provided.
45. Certain amendments to give more powers to the National Commission for Women to uplift the status of the



commission to provide effective measures for women empowerment and development are needed.

46. In view of the hard reality it is a proven fact that when marriage breaks down the wife has to continue to be in the occupation of matrimonial home and if she has children and the husband creates obstacle then, wife should be given exclusive possession of the matrimonial home. This problem is indeed too acute in our nation and therefore, statute like Matrimonial Homes Act is the need of the date.

47. Uniform Civil Code is the requirement of the day.

“His Excellency President Abdul Kalam addressing students in Chandigarh spoke of the need for a common code for laws. In his views, such a code could integrate caste, communities and religion besides helping to shade the sectarian outlook. There is no room in this country for personal and sectarian laws in regulating a citizen’s social life. So it is odd and said that even after 53 years the common civil code as embodied in Article 44 has not been implemented. We must all endeavour to achieve it.”<sup>10</sup>

The present researcher submits that if Uniform Civil Code is not possible in near future there may be at least optional uniform civil code like Special Marriage Act which would make at least readiness of people to accept uniform civil code.

---

10. Times of India, p.14, dt. 01/10/2003, Ahmedabad (ed.) column 2.

48. There has to be amendment in representations of people's act to add into it one provision to the effect that who is penalized by any court for any offence against women shall not be eligible to contest the election of any kind.
49. There has to be a special chapter in the Indian Penal Code for offences against women wherein, activities affecting career of women should be specially provided or else when the law of sexual harassment is made both these aspects should be included in that Act.
50. Succession Act should require only a lawful spouse to apply for succession certificate.
51. Eve teasing act is needed.
52. In the Hindu Adoption and Maintenance Act, 1956, unchastity has been created as a ground or defense in favour of a person who is liable to give maintenance needs to be deleted now.
53. The indecent representation of Women's (prohibition) Act, 1986 requires insertion of role of Non Governmental Organization. If any complaint of violation of the Act is registered through Non Governmental Organization the same should be taken cognizance of.
54. Emergency protection laws can be framed and brought into force for immediate action and protection of the complainants and other prospective victims.
55. The punishment under Section 498(A) of the Indian Penal Code should be left to the discretion of the judge instead of 3 years by putting therein, minimum imprisonment of 5 years.

## 11.5 SOCIETY:

1. All the religious institutions should be convinced to use their authority amongst the people believe in a particular faith to prohibit prenatal sex determination and to stop the practice of female foeticide, for which male members be persuaded.
2. Dr. Nafiz Sadiq, Ex Executive United Nations Population Fund states and I quote as it is most relevant :

“We must be courageous in speaking out on the issues that concern us : We must not ban under the weight of curious arguments invoking culture or traditional values..... the function of culture and tradition is to provide a frame work for human well being.”

3. As far as women participation in political life is concerned, there seems to be stagnation as far as the percentage of women participation is concerned in the elected body. This is the lack of political ill will to involve women in nation’s political life. This mindset and this attitude will have to be changed. Even without the Mahila Reservation Bill the political parties themselves can willingly decide that they will give seats to at least 33% of the women. If necessary for this, the seats in the Parliament also can be increased.
4. In Britain one of the political parties has reserved 60% of the winnable seats in the British House of Commons for Women.

5. Child may be equally known by mother's name and / or maiden surname of mother.

#### **11.6 MEDIA:**

1. Make use of media for effective enforcement of laws relating to reproductive rights like Child Marriage Restraint Act, Preconceptional and Prenatal Diagnostic Act.
2. What is expected from the common men towards a female member in family can be shown through media by the role model like Sachin Tendulkar, Amitabh Bachchan, etc. and that will have great sensitization to the people, as, when the role models do this why an average man cannot do the same thing.

#### **11.7 UNITED NATIONS ORGANIZATION:**

1. Article 28 of the convention permits ratification subject to reservation – a formal declaration that the State does not accept as binding on it a certain part of parts of Convention. This has to be meant to be a temporary measure so that states can take steps to remove obstacles to the implementation of articles it has reserved, as Article 28(2) precludes any reservation, which is in compatible with the conventions, objects and purpose.
2. The present researcher submits that the convention must provide for time limit of reservation and declaration, or else under the guise of reservation the State party should be permitted to not implement certain parts of the Convention which would adversely affect the full

implementation of the convention. The problem of reservations is critical. Article 16 is related to rights of women in the family whereas, Article 5 is about custom and culture and both of them are reserved Articles by India. The provision for reservation seems to be essential to enable the gradual acceptance of the full equality between men and women. But, it should not be utilized to negate the very spirit of the convention. How it can be forgotten that the Convention or the optional protocol or the provisions in the CEDAW Committee nowhere provides for any mechanism to regulate the practice of reservations which seems to be most essential.

3. The help of Non Governmental Organizations should be taken for raising awareness about the principles laid down in the convention. Non Governmental Organization can play facilitating role between individuals and government. The Non Governmental Organization can also effectively address issues of women's right and empowerment. The shadow report or an alternative report prepared by Non Governmental Organization can also provide important clues to the CEDAW Committee for raising question upon the report of the State hence UNO should also give due importance to alternative report. As when the report is prepared only by government it gives only one view. Criticism, other important details are always missing and therefore, it does not give a neutral and genuine picture which is necessary.

4. Strengthen cooperation and coordination between the Commission on the status of women, the Commission on Human rights, the Commission for Social Development, The Commission on Sustainable development, the Commission on Crime Prevention and Criminal Justice, the United Nations Human Rights treaty monitoring bodies including the CEDAW Committee, the United Nations Development Fund for women, the International Research and Training Institute for the advancement of women, the United Nations Children's fund and other organizations of United Nations System acting within their mandates in the promotion of human rights of women and improve cooperation between the division for the advancement of women and the centre of human right.<sup>11</sup>
5. Professor Alison Richard was first lady Vice Chancellor of Cambridge University which is first time in the history of 800 years. <sup>12</sup> Hence UNO and more particularly CEDAW committee should make more stringent ways to compel the state parties to implement gender equality.
6. Women in parliament: percentage of seat an international scenario is in Rwanda 49% seats of Women in Parliament, Sweden 45%, Denmark 38%, India 9%. <sup>13</sup> UNO should work for equality in all state parties.
7. UNO needs to look into the facts and remedies it. The convention is criticized for lack of its teeth to ensure implementation by State Parties. All suggestions and comments by the CEDAW Committee should be

---

11. Human Rights on Women, Ashine Roye, Rajat Puiblication New Delhi, 1<sup>st</sup> Edition, 2003. pp.233-234

12. Gujarat Samachar, 1<sup>st</sup> October, 2003, p.2, Ahmedabad Edition.

13. Times of India, Ahmedabad Edition, 05/04/2004, p.10

implemented by the respective government. Government must delegate women who are conversant and familiar with issues of women. More women be activated for development of jurisprudence on human rights of women.

8. Article 2, 3 and 24 of the CEDAW requires the State Party to introduce measures directed at full compliance with the principles of convention particularly where, religious or private law or custom conflict with these principles.
9. United Nations Organization should create fund for reproductive health and gender empowerment to lower, high maternal, child mortalities, and for equal development of women in all the state parties.

#### **11.8 NON GOVERNMENT ORGANIZATION:**

1. Participation of Non Governmental Organization is really not very extensive, it has to be made very extensive more particularly, for the purpose of intermediate custody of persons, removed or rescued under immoral traffic prevention Act.
2. The participation in political life of the nation is a hopeful situation since the first political party of women has already come into being. <sup>14</sup>
3. Some times, only lip services to women's rights are paid but, the sincere efforts of making real and lasting changes in the way people think and perceive women is necessary without which no hope can be kept for the change.
4. Clinic conducting ultra sound investigation must be registered and violator of PC & Pre-conception and

---

14. Gujarat Samachar, p.3, 7<sup>th</sup> November, 2004, Ahmedabad Edition

Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act must be penalized.

5. There should be proper propaganda and advertisement of Preconceptional Prenatal Diagnose Techniques Act.
6. State Women Commission, Women's Court, State Human Right Commission, Special Commission to deal with offences against women are the need of the day Non Governmental Organization must awaken people.

### **11.9 CONCLUSIONS :**

India has not declared any Reservation in plan of action at Beijing. It played leading role in drafting SAARC convention for trafficking. No reservation on Article 2 of CEDAW has also been claimed. The international labour organization standards in the Indian Labour Laws are taken care of. Indian Judiciary is too enlightened and has pronounced numerous judgments creating a neo-jurisprudence in favour of women empowerment. At 4<sup>th</sup> World Conference on women, India had committed itself for 6% of Gross Domestic Product (GDP) to be invested in education. Numerous laws have been reviewed and amended, five years' plan emphasize on women empowerment, women's health seems to be one of the prime consideration for government, dowry laws, cruelty concept, domestic violence Act are all a few glimpses of involvement and commitment of Indian Government to bring into reality the principles laid down in CEDAW, which all should fairly be placed on record as bright side of implementation of CEDAW in India.



The meaning of the discrimination has yet to be widened. At present, every act and omission which is meant to insult womanhood is not inclusive, the offences against women are yet not viewed seriously, the reservation in certain kind of employment wherein women are suitable and in a kind of employment where though women and men both are suitable but, still advisability or even need for making specific provisions for reservation for women has not yet picked up the shape, free and compulsory education has though been made a fundamental right the awakening in the common men is not achieved, childhood care and education is though made a directive principle of state policy it has not yet gained momentum, the budget allocation specially for women has yet not increased, the small text books are reviewed to remove gender bias but, the cultural stereotypes which are harming or acting against the dignity of women is not totally eliminated, the labour laws have not been amended to give special security and protection to women and that the percentage of self employed women have yet not increased, are all the illustrations which go to suggest that Article 1 which is meaning of discrimination has to be deep rooted in our laws. The making of laws, interpreting the laws and executing the laws will have to be done in a new perspective keeping in centre the object of elimination of discrimination against women. The present researcher is of the firm opinion that until the stereotype is totally evaporated from the mind of society at large nothing can be attained to or no goal can be achieved even if the concept of discrimination is widened. Therefore, what is much needed is awakening and sensitizing

the society at large looking to the special socio cultural set up of India.

To eliminate the black side of implementation reservation in Local Bodies, treating fundamental duties as responsibility, affirmative action of the Constitution by providing gender equality and non discrimination as a fundamental right, sounds quite necessary, plan, policy, programs, fullest implementation of pre and post Beijing platform for women empowerment and development, district level committee to review, monitor and to take steps to counter violence against women, awareness generation camps in districts where offences against women are on rise are all the steps, strategies and more than mechanism which would reflect that Indian government is indeed serious and desirous to do lot many things for empowerment of women and for women's development to result it into gender equity and equality.

The present researcher submits that we should be ready to make use of the strongest tool to establish women's right, equality and gender justice. We must not underestimate the power of CEDAW and the neo-jurisprudence which has been given to the world to eliminate discrimination against women. Let us not loose sight of the fact that the CEDAW is MAGNA CARTA of all man kind and it is applicable to all the state and acceptable to all the nations and to every person for whom human right is a religion as the right flows from CEDAW does not know boundaries of nation and culture.

With these hopes and with the capacity CEDAW is having discrimination against women must now become yesterday. The gigantic impressive human rights treaties sweetly ringing within it equality among sexes should no more be a paper beauty. It should now surely and safely be stated that the days are not far when gender equity and equality will see complete daylight. The dawn has started. The tender sun rays have started coming out but then, the full fledged sun shine is necessary which women in this country have not seen for centuries together. It is to be remembered that we cannot forget as a developing nation that to achieve the goals of total CEDAW implementation we have to walk miles together before we sleep and that too unitedly : joint efforts of Government, Society, Non Governmental Organization, People, Religious Leaders, men and women of each component of society. Let the dawn lighten the world.

ACRONYM

**ACRONYM**

AIR	All India Report
Art.	Article
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
Cr. P.C.	Criminal Procedure Code
DWCD	Department of Women & Child Development
GDP	Gross Development Percentage
ILO	International Labour Organisations
IPC	Indian Penal Code
NCW	National Commission for Women
NGO	Non Government Organisation
OBC	Other Backward Caste
PC & PNDT Act	Preconception & Pre-Natal Diagnostic Techniques Act
PG	Post Graduate
SAARC	South Asian Association of Regional Co-Operation
SC	Supreme Court
SC & ST	Schedule Caste & Schedule Tribe
The MTP Act, 1971	The Medical Termination of Pregnancy Act, 1971
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNO	United Nations Organization
USSR	United States of Soviet Russia
v.	Versus

## TABLE OF CASES

## TABLE OF CASES

*Air India Cabin Crew Association v. Yeshawinee Merchant*, AIR 2004 SC 187.

*Air India v. Nargis Mirza*, AIR 1981 SC 1829.

*Allied Themes and others v. Union of India*, AIR 2003 SC 3309.

*Apparel Exports promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

*Arab Ahmediyah Abdullah v. Arba Baig Mohmuna*, AIR 1988 Guj.141.

*Arnitdas v. State of Bihar*, 2000 (5) SCC 48.

*Ashok Kumar V/s. State of Rajasthan*, (1991)1 SCC 166.

*Associate Bank's Officer's Association v. State Bank of India and Others*, AIR 1998 SC 32.

*Balwant Kaur v. Chanan Singh*, AIR 2000 SC 1908.

*Bandhua Mukti Morcha v. Union of India*, AIR 1997 SC 2218.

*Bharvad Bhoginbhai Hirjibhai v. State of Gujarat*, 1983 (3) SCC 217.

*Bodhisattwa Gautam v. Subhrachakra Borty*, AIR 1996 SC 1022.

*C. Masilamani Mudaliar v. Idol Of Sri Swaminathaswami Etc.*, AIR 1996 SC 1697.

*Chairman Railway Board v. Chandrima Das*, AIR 2000 SC 988.

*Danial Latifi v. Union of India*, AIR 2001 SC 3958.

*Dr. Upendra Bakshi v. State of Uttar Pradesh*, AIR 1986 SC 191.

*Gaurav Jain v. Union of India*, AIR 1989 SC 292.

*Gaurav Jain v. Union Of India*, AIR 1997 SC 3021.

*Gayatri Devi Pansari v. State Of Orissa*, AIR 2000 SC 1531.

*Githa Hariharan v. Reserve bank Of India*, AIR 1999 SC 1149.

*Government Of Andhra Pradesh v. P. B. Vijay Kumar*, AIR 1995 SC 1648.

*Hira Lal v. State (Government Of NCT) Delhi*, AIR 2003 SC 2865.

*Jasbir kaur v. Union Of India*, AIR 2004 SC 293.

*John Vallamattom v. Union Of India*, AIR 2003 SC 2902.

*Jorden Diengdeh v. S.S. Chopra*, AIR 1985 SC 935.

*K. A. Abdul Jaleel v. T.A. Shahida*, AIR 2003 SC 2525.

*K. Prema S. Rao And Another v. Yadla Srinivasa Rao And Others*, AIR 2003 SC 11.

*Lily Thomas v. Union Of India*, AIR 2000 SC 1650.

*M.C. Mehta v. State of Tamilnadu*, AIR 1996 SC 699.

*M/s. Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa & Anther*, AIR 1987 SC 1281.

*Madhu K. Ishwar v. State of Bihar*, (1996) 5 SCC 148.

*Mohammad Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

*Mrs. Neera Mathur v. Life Corp of India*, AIR 1992 SC 392.

*Ms. Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666.

*Municipal Corporation Of Delhi v. Female Workers*, AIR 2000 SC 1274.

*Noorsaba Khatun v. Mohammed Kasim*, 1997 (6) SCC 233.

*Oliver Brown v. Board of Education of Topeka*, U.S. Supreme Court Reports (1953) 98 Law.Ed. 847.



*Omana Oomen & Others v. F.A.C.T. Ltd.*, 1991 (2) LLJ 541.

*Palchuri Henumayamma v. Tadikamalla Kotlingam*, AIR 2001 SC 3062.

*Ram Bahadur Thakur (P) Ltd. v. Chief Inspector of Plantations*, 1982 (2) LLJ 20.

*Rameshwaridevi v. State Of Bihar*, AIR 2000 SC 735.

*Randhirsingh v. Union of India*, AIR 1982 SC 879.

*Rohtashsingh v. Ramendri*, AIR 2000 SC 952.

*Sahyog Mahila Mandal v. State of Gujarat*, GLR 2000 1764.

*Sanaboina Satyanarayana v. Government Of Andhra Pradesh and Others*, AIR 2003 SC 3074.

*Sarla Mudgal, President, Kalyani v. Union of India*, AIR 1995 SC 1531.

*Secretary Haryana State Electricity Board v. Suresh*, AIR 1999 SC 1160.

*Shakila Parveen v. Hyderali*, (1999) 9 SCC 544.

*Shakshi v. Union Of India*, AIR 2004 SC 3566.

*Shamim Ara v. State of Uttar Pradesh*, AIR 2002 SC 3551.

*State of Andhra Pradesh v. Gangula Sathya Murthi*, JT 1996 (10) SC 550..

*State of Himachal Pradesh v. Kantshekari*, AIR 2004 SC 4404.

*State Of Karnataka v. Krishnappa*, AIR 2000 SC 1470.

*State Of Karnataka v. Puttaraja*, AIR 2004 SC 433.

*State of Kerala v. N.M. Thomas*, AIR 1976 SC 490.

*State Of Madhya Pradesh v. Gopal D. Tirthani*, AIR 2003 SC 2952.

*State of Punjab v. Gurmeet Singh & others*, 1996 (2) SCC 384.

*State of Punjab v. Ramdevsingh*, AIR 2004 SC 1290.

*Tulsidas Kanolkar v. State of Goa*, AIR 2004 SC 978.

*Unni Krishnan, J.P. v. State of Andhra Pradesh*, AIR 1993 SC 2178.

*Valasamma Poul v. Cochin University*, AIR 1996 SC 1011.

*Vijay Lakshmi v. Punjab University*, AIR 2003 SC 3331.

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

*Vishaljeet v. Union of India*, AIR 1990 SC 1412.

*Women's Forum v. Union Of India*, AIR 1995 SC 14.

## BIBLIOGRAPHY

## BIBLIOGRAPHY

*Advani, Dr. Poornima / Shri Nair P.M. / Elizabeth V.S., Report of the Regional Workshop on Gender and Law Enforcement, Bangalore, 2001.*

*Agnes Flavia, Women Law in India, Oxford University Press, New Delhi, 2004.*

*Agosin Majorine, Women, Gender and Human Rights-A Global Perspective, Rawat Publications, New Delhi, 2003.*

*Agrawal, Dr. H.O., 'International Law and Human Rights', Central Law Publication, 5<sup>th</sup> (Ed.), 1999.*

*Anand, Chief Justice A.S., Justice for Women Concerns and Expressions, Universal Law Publishing Co. Pvt. Ltd. Delhi, 2003.*

*Asia Pacific Training Material, 2000 (IWRAW) produced by NYU Law School, International Human Rights Clinic.*

*Awasthi, Dr. S.K. / Kataria R.P., Law Relating to Protection of Human Rights, Orient Publishing Company, New Delhi, 2001.*

*Banerjee, Justice Bhagabati Prosad – Massey, Dr. Ashish Kumar, Durga Das Human Rights Constitutional Law, Along with International Human Rights Documents), Wadhwa & Company, New Delhi, 2003.*

*Benton William, Encyclopedia 'Britannica', 2005, C.D., Art. C.D. No.2 'Declaration of Independence'.*

*Benton William, Encyclopedia 'Britannica', Vol.14 'Magna Carta' Encyclopedia Britannica INC, 1972.*

*Benton William, Encyclopedia 'Britannica', Vol.7 'The American Declaration of Independence' – 4<sup>th</sup> July, 1776, Encyclopedia Britannica INC, 1972.*

*Bhatt Aparna, Supreme Court on Rape Trials (A manual of best practices of the supreme Court), Combat Law Publications (P) Ltd. New Delhi.*

*Bhatt, Dr. Justice J. N., GSJA – Global Anthology of Judicial Education.*

*Bhawan Vijay, ALL INDIA SEMINAR ON ACCESS TO JUSTICE, New Delhi, 2003*

*Brian Harris, The Literature of the law, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2003.*

*Combat Law, The Human Rights Magazine, Vol. II, Issue 6, February – March, 2004.*

*Dewan V.K., Law Relating to Offences Against Women, Orient Law House, New Delhi, 2000.*

*Diwan Paras, Diwan Piyushee, Women and Legal Protection, Deep & Deep Publications, New Delhi, 1994.*

*Dixit Pravin, Protection And Promotion Of Human Rights, The Yeshwant Rao Chavan Academy of Development Administration (YASHADA), Pune, 2003.*

*Draft Gender Equity Policy, Gujarat State, Women and Child Development Department, Government of Gujarat, 2004.*

*Ghosh S.K., 'The World of Prostitutes', APH Publishing Corporation, New Delhi, 1996.*

*Government of India's 2<sup>nd</sup> and 3<sup>rd</sup> Periodic Report on CEDAW – 1997-2005, Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 2005.*

*Human Rights for children and Women: How UNICEF Helps Make Them A Reality, UNICEF.*

*Indian Trust for Innovation and Social Change, 'Search for a Vision Statement on Women's Empowerment', National Commission for Women.*

*Initial Report of the Government of India, 1998, reviewed by CEDAW Committee, January 2000.*

*International Covenant on Civil and Political Rights, 1966.*

*International Covenant on Economic, Social and Cultural Rights, 1966.*

*International Institute of Human Rights Soc., Human Rights Year Book, 1999,*

*Iyer V.R. Krishna, The Dialectics & Dynamics of Human Rights in India (Yesterday, today & Tomorrow), Eastern law House Kolkata, 1999.*

*Jain Subhash C., The Constitution of India (A Commemorative Ed. on 50 years of Indian Constitution), Taxmann Allied Services (P.) Ltd., New Delhi, 2000.*

*Jaising Indira, Law Relating to Sexual Harassment At The Workplace, Universal Law Publishing Pvt. Ltd., Delhi, 2004.*

*Madhav Menon, Dr. N.R., Material of Judicial Academy, Bhopal, Training the Trainers Program on Gender Justice Issues with Special Reference to PC & PNDT Act, 1994, NJA.*

*Mahajan Gurpreet, Democracy, Difference & Social Justice, Oxford University, New Delhi, 2000.*

*Mangari Rajender, The protection of Human Rights Act and Relating Laws, Law Book Agency, Hyderabad, 1999.*

*Mishra Jitendra, Equality Versus Justice The Problem of Reservation For Backward Classes, Deep & Deep Publications, New Delhi, 1993.*

*Miyan D.S., Inputs for India's 2<sup>nd</sup> Periodic Implementation Report to CEDAW, National Commission for Women, New Delhi.*

*Mukherjee, Dr. Mukul, Human Rights and Gender Issues, Institute of Social Science, New Delhi.*

*National Judicial Academy, Resource Book, Judicial Colloquia on Gender and Law, 2001.*

*National Law School of India University, Judicial Handbook on Trafficking of Women and Children for Commercial, Sexual Exploitation, National Human Rights Commission, DWCD, UNICEF, Bangalore, April, 2004.*

*National Legal Services Authority, Nyaya Deep, New Delhi, 2005.*

*Nyaya Deep The Official Newsletter of NALSA Volume V Issue 1 October, 2004 National legal Services Authority, New Delhi, 2004.*

*Orissa State legal Services Authority, Nyaya Jyoti, 2004.*

*Pappu, Dr. Shyamraj, Law and Empowerment of Women in the Sovereign of All India Seminar on 'Access to Justice'.*

*Parekh P.H., Article on Human Rights, Year 2002, International Institution of Human Rights Society, (Regd.) Universal Law Publication, Co. Pvt. Ltd.*

*Pathak Ila, Aftermath of Domestic Violence Against Women, Ahmedabad women's Action Group (AWAG), Ahmedabad.*

*Platform for Action 10 Years After, India Country Report, DWCD.*

*Reddy G.B., Women and the Law, Gogia Law Agency, 2<sup>nd</sup> Ed, 1998.*

*Response to questions on India's 1<sup>st</sup> Report on CEDAW, Permanent Mission of India to the UN 22<sup>nd</sup> Session of CEDAW, (New York – 24<sup>th</sup> to 31<sup>st</sup> January, 2000).*

*Roy Ashine, Human Rights of Women, Rajat Publication, 1<sup>st</sup> (Ed.), New Delhi, 2003.*

*Sharma Sudesh Kumar, Distributive Justice Under Indian Constitution with Reference to Right to Equality and Property, Deep & Deep Publication, New Delhi, 1989*

*Shukla B.M., Law and Social Justice, Rawat publications, New Delhi.*

*Swamy, Dr. N. Maheshwara, Supreme Court Safeguards to Educational Institutions, S.P.Gogia (HUF) Asia Law House, Hyderabad, 2003-04.*

*The Immoral Traffic (Prevention) Act, 1956(104 of 1956), Universal law Publishing Co. Pvt. Ltd., Delhi, 2004.*

*The National Alliance of Women (NAWO), Alternative NGO Report on CEDAW, Initial Submission to the CEDAW Committee, January 2000, India.*

*The Promise of Equality, Gender Equality, Reproductive Health and the Millennium Development Goals, UNFPA 2005.*

*Thomas Terry, SEX CRIME-Sex offending and Society, Lawman (India) Pvt. Ltd., New Delhi, 2005*

*Tope T.K., Constitutional Law of India, Eastern Book Company, Lucknow, 1982.*

*Trunkel Victor, Legal Skills (Legal Research Law-Finding and problem-Solving), Universal Publishing Law Pvt. Ltd., Delhi, 1999.*

*Verma J.S., New Dimension of Justice, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2000.*

*Violence Against Women in India, A Review of Trends, Patterns and Responses, UNFPA, International Centre for Research for Women (ICRW) for UNFPA.*

*Vyas Rashmi 'Social Studies (Std.V)' – Gujarat State Board of School Text Book, 5<sup>th</sup> Ed., 2002*

*Website of Internet <http://www.un.org/womenwatch/daw/daw/>.*