Chapter Seven

CONCLUSION AND SUGGESTIONS

“I ask no favour for my sex; All I ask our brethren
Is that they take their feet off our necks”- Sarah Grimke (1837)

The last century experienced great amount of destruction and civil strifes. Advancement of science has not only made human life more comfortable but also created mechanisms for its destruction and exploitation as were never done in earlier centuries. The destruction and large scale genocides forced the wise to create institutions for the betterment and safety of humans. Fortunately, it is also recognised that the prerequisite criteria of any civil society to exist and develop is the empowerment of its formerly exploited and weaker section. Women were not only deprived at social, political and economic front but they were also prone to more exploitation during wars and civil strifes because they are viewed more as an “authentic identity” of any community. At international level the Allied nations got together to create a new world system in which more co-operation among different nation was sought. United Nations was created in 1945 and with the help of its various organs like UNESCO UNIFEM ECOSOC; new institutions and Commissions were created for the protection of women all over the world. Various International Conferences and Conventions were held and Declarations and Treaties signed among the nations for empowering the weaker sections.

It is seen in the present study that internationally, the women empowerment drew considerable amount of help from two sources. Firstly, by the struggle against colonialism and in national liberations wars, men and women joined hands on terms of equality. Secondly, as a result of Second World War, the movement for improved status of women gained momentum.

Initially, the UN attempted to improve the legal systems in various countries which worked as a barrier towards the growth of women. Women were found to be at receiving end when it came in civil and social matters. They were
denied equal opportunity and were not sharing equal status with men in politico-
legal sphere in various countries. Though Indian Constitution does not recognize
any discrimination in respect of gender yet civil and marriage laws were not in
favour of women. Even the inheritance laws were framed against the women as
they were barred from inheriting ancestral property. In education, they were
denied the same opportunities as men and boys. Entering the workforce rapidly,
they found impediments in both employment and pay structures. With the
formation of the Commission on Human Rights and the Commission on the Status
of Women(hereinafter cited as CSW) in 1946, and the adoption of the Universal
Declaration of Human Rights in 1948, UN began its work on behalf of women
with a drive to establish the legal basis for the promotion of their equal rights. The
Commission on Status of Women recognized that the process of codifying the
legal rights of women had to begin with factual information about the extent to
which discrimination against women existed in law and practice. The United
Nations undertook a massive research to assess the status of women worldwide.
Subsequently, United Nations fact finding efforts produced a detailed country-
wise report of the political and legal status of women, enumerating the gains and
obstacles and these became the basis for global standards that were incorporated
International law through a series of treaties and conventions. In drafting these
human rights instruments close working relationships began to develop between
the CSW and other United Nations bodies such as The International Labour
Organization (ILO) and the United Nations Educational, Scientific and Cultural
Organization (UNESCO). At the national level, the Governments were asked to
deal with women’s political and legal rights, access to education and training,
employment and violence.

India also responded to these recommendations and introduced reforms
and amendments in Marriage and Civil laws. These legislations aimed at
protecting women against social discrimination, violence and atrocities and also
to prevent social evils like child marriage, dowry, rape, practice of Sati, etc.
Hindu Marriage Act, 1955 was amended putting an end to the practice of
polygamy and thus giving legitimacy to the relation of the first wife and thereby,
protecting her allied rights. Under the Hindu Marriage Act, girl is given the right
to repudiate a child marriage before attaining maturity whether the marriage has
been consummated or not. Property and inheritance laws were also amended and
now much wider rights are given to women and widows. Still, a lot was to be
done in response to criminal offences against women. In cases of Sexual
harassment, rape and other forms of physical assault, women were looked upon as
culprits and their character became one of the strongest defences for the culprit to
escape rigours of law.

At International level, the issues related to women received more attention
Woman* was adopted and it acted as a catalyst and encompassed codification of
rights along with economic and social realities of women. It was recognized that
if women were to achieve real empowerment then their participation in social and
political institutions at all levels needed to be addressed. Political will has to be
developed among males and to prepare them to give sufficient space to their
counterpart who were many a times seen as a threat by men. United Nations
increasingly structured its development assistance programmes and compounded
it with women’s participation to meet this challenge. With the proclamation of
1975 as the International Women’s Year, the campaign for women’s rights
gathered momentum. A major conference was held in Mexico in 1975 on the
status of women. It was based on the three principals of ‘equality, development
and peace.’

Declaration of 1975 as the International Women’s Year also coincided
with the United Nations Decade for Women. Great impetus was laid on women
related studies and issue. The results convinced the international organization that
development of women is closely related to the health of civil society in
developing countries. Soon the status of women in any given State was also
accepted as to judge the civil institutions in that area. Thus, the United Nations
succeeded to project the fact that women’s equality and rights are not mere
isolated issues but were important factors in the well being of societies
everywhere. The underestimation of woman’s capacities was identified as both a
cause and an effect of underdevelopment, closely linked to global problems such as poverty, overpopulation, illiteracy, malnutrition and poor health conditions. Following the suit, the Convention on Elimination of all forms of Discrimination against Women, 1979 or known as “Bill Of Rights” also generated a series of action programmes that recognized the need to promote equality among men and women.

India being signatory to these conventions was obliged to follow the suit and new chapter in women empowerment ushered in India.1 The same principle is also highlighted in Vishaka case. The Apex Court observed that

“International conventions and norms, consistent with the spirit of the fundamental rights, can be read into those rights for interpreting them in the larger context to promote the objects of the Constitution. In the absence of domestic law on the particular aspect, these conventions and norms as ratified by India can be relied on by the Supreme Court to formulate guidelines for enforcement of fundamental rights.”

On the question of property rights of women under Hindu Succession Act, 1956 the Apex Court observed that by virtue of the Protection of Human Rights Act, 1993 the principles embodied in CEDAW and the concomitant right to development became integral parts of the Indian Constitution. The State is enjoined by virtue of Article 2(f) and other articles of CEDAW to take all appropriate measures including legislation to modify or abolish all gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women therefore interpreted the equality provisions under the Constitution in accordance with CEDAW and other

1 Article 253 of the Indian Constitution empowers the Parliament with the power of making laws for the whole or part of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

international instruments, overriding the reservation made by the Indian government on account of customary and personal laws.³

International bodies like IMF and various other UN agencies also fused women empowerment with various international grants which forced beneficiary nations to act speedily towards women empowerment. Institutions like National Commission for Women and National Human Rights Commission were created. New courses in women studies were introduced at college and university levels. Special schemes pertaining to scholarships were introduced to promote education among girls. Government initiated certain safeguards to protect the girl child and to reduce the maternal fatality rate.

Indian Government introduced number of development programmes for empowering rural women and ensuring their economic independence. The Integrated Rural Development Programme (IRDP) and the Jawahar Rojgar Yojana (JRY) were introduced and a stipulated quota was ensured for women beneficiaries. Taking leaf from the numerous rights being recognized by CEDWA, the Government also introduced micro-credit programmes for self-employment which are funded heavily by International Agencies. Schemes such as the Development of Women and Children for Rural Areas (DWCRA) and the Development of Women and Children in Urban Areas (DWCUA) are meant to create employment. To asses and safeguard the women rights in light of international guidelines, the Indian Government made commitment to review ‘protective’ legislations that govern women’s employment. Legislations such as the Minimum Wages Act,1956 guaranteed minimum wages to the workers, Equal Remuneration Act, 1976 incorporated the principle of ‘equal pay for equal work’ and the Maternity Benefit Act,1961 were introduced in order to provide social security and to give effect to ILO convention on maternity benefit.

Absence of women in political sphere and other forms of decision making process has hampered their prospects and progress. CEDAW declaration directs the States to promote equality among their citizens in political spheres like voting

³ Masilamani Mudaliar (1996) 8 SCC 525.
rights and election process. Indian Constitution bestows equality in political rights to all irrespective of gender, caste and creed yet; the number of women representative in politics is dismissal. In Lok Sabha and Rajya Sabha elections women numbers are less than 6%. Taking guidance from international convention India set on framing laws to ensure women participation at political level. 73rd and 74th Amendments to the Constitution ensures reservation of women in Panchayats and municipal bodies (local governments). Panchayati Raj Acts have been passed by several State governments giving effect to the constitutional provisions. UPA government is also lobbying hard to introduce Women Bill in Parliament in the monsoon session of 2010 providing 33% representation to women in Parliament.

Despite all these developments, the truth remains that widespread violations of women’s rights continue to persist. The forces of globalization and extremism and the willingness of other segments of society continue to pose a threat to women’s human rights. Structural inequalities and power imbalances facilitate such violations. Desire for easy money, at times greed, facilitating a life full of comforts and luxury, has in the recent few years made women more susceptible to exploitation and violence. Laws have taken silent and slow steps in preventing gender biases and removing lacunas in procedural laws and laws relating to evidence. The law cannot change a society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. The courts can certainly go beyond mere legality and insulating women against injustice suffered due to biological and sociological factors. It is hoped that the forward looking ideas reflected in some decisions of the Supreme Court, and particularly in constitutional law cases, will percolate to the lower levels of the judiciary and the bar and that will ultimately expedite the social transformation that the feminist ideology envisions.

Indian Constitution in Articles 14, 15 and 16 guarantee rights to equality to its citizens. Articles 15(3) allows for special measures in relation to women and children. Article 16 provides that all citizens shall be given equal opportunity in matters relating to employment or appointment to any office under the State. and
Part IV of the Constitution under the Directive Principles guide the state policies for good governance. It lays stress on the need to have equality between men and women in employment opportunities, wages and control over material resources. The Chapter IVA on Fundamental Duties states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Article 325 guarantees that all shall have the right to vote irrespective of sex. The 73rd Constitutional Amendment also provides for the reservation of one-third seats in all tiers of local government for women.

However, the Constitution does not define ‘discrimination’ and nor there is a special anti-discrimination law. The test for identifying discrimination has developed through the framework of equality, as evolved through case law. Equality has been interpreted to mean similarity of treatment and not identical treatment - the right to equal treatment among those similarly situated, in terms of privileges conferred or liabilities imposed. It does not mean universal application of law to different classes of persons. Differential treatment does not ‘per se’ constitute discrimination, but would mean different treatment without reasonable basis for the differentiation. Constitutional interpretations reflect conflicting approaches to equality. The approach to caste-based discrimination has often been substantive in nature, as reflected in the observation of the Apex Court that it is “necessary to take into account de facto inequalities which exists in the society to bring about real equality”.4

There is no clarity however on what should be the approach to gender equality should be, with the result that Constitutional guarantees are often used to reinforce protective measures in favour of women, rather than correcting norms and assumptions that underpin women’s inequality. This tends to treat ‘gender’ differences as being natural and incapable of change and therefore deserving of protection through special treatment. The three dominant trends are as follows:

**Limited and unsatisfactory relief**, on account of ‘sex’ alone being the basis of discrimination. This approach helps correct only surface discrimination allowing no space for a deeper and more complex inquiry into why ‘sex’ difference for

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women becomes the basis for restriction or denial of equal rights and opportunities. It does not take into account socio-economic factors that produce a further set of differences between men and women, thereby compounding the disadvantage and inequality caused. Hence, the need to produce a husband’s no-objection certificate for employment, or the requirement for female employees in foreign service to take permission from the Government before marrying have been struck down as discriminatory. However, this approach has also upheld the restriction of access of menstruating women between 10 years to 50 years of age in a temple on the ground that it only affects women of a particular age group and not as a class, and consequently is not discriminatory on grounds of sex alone.

Protectionism: The protectionist approach, regardless of any positive relief rendered, has been damaging because it reinforces the gender stereotypes instead of problematizing them, and treats women as a ‘vulnerable’ category often denying them any choice or agency in opting for or rejecting the protection imposed upon them. Hence, it has been possible to succeed in quashing the requirement that nurses must obtain their husbands’ permission for applying - but on the basis that a woman may have been forced to work because of the situation created by her husband rather than on the principle that it undermined equal employment opportunities for women. This reinforces the assumption that women take up employment to supplement the household income when the husband fails his duty as a primary breadwinner. Similarly, where a man entered into a false marriage with a woman and forced her to undergo abortion on each pregnancy, it was held that this violated the woman’s right to life and liberty “to live the roles assigned to them by Nature so that society may flourish” - the natural roles ascribed to women were that of mother, daughter, sister and wife. Protectionist approaches operate within a patriarchal framework and as a result deny relief to women. Hence, the right of daughters to reside in the natal dwelling house under Section 23 of the Hindu Succession Act, 1956 was extended only to unmarried, deserted, or widowed daughters. This had been interpreted to exclude daughters who desert or separate from their husbands on the ground that it will defeat the
object of the provision and “encourage married daughter to desert her husband and live separately.”

**Fundamental rights** are only enforceable in the public and not in private sphere against the State and its agencies. An application of the right to life and equality in the home were rejected on the ground that the “introduction of Constitutional law in the home is like introducing a bull in a china shop. In the privacy of the home and married life, neither Article 21 nor Article 14 of the Constitutional has a place. In a sensitive sphere which is at once most intimate and delicate the introduction of the cold principles of constitutional law will have the effect of weakening the marriage bond”. Although piecemeal discriminatory legal provisions of family law have sometimes been declared unconstitutional or interpreted progressively, by and large the courts have been disinclined to test the Constitutional validity of family law provisions. A public interest petition for scrapping gender discriminatory family laws was dismissed on the ground that these were issues of State policy and the remedy lies with the Legislature and not with the Courts.

It is suggested that the substantive approach to equality be followed. In this gender difference is recognized as the basis for ‘reasonable classification’ to determine the extent of disadvantage caused to women or the class of women in question, by taking into account the existing social norms and the historical disadvantage operating against the women. This is the basis for determining the extent of discrimination and for devising corrective measures to enable women to overcome that disadvantage. This analysis lends itself to affirmative action under Article 15(3), without either ignoring or reinforcing gender stereotypes.

Women are subjected to some of the gravest physical assaults due to the composition of their physique. Crimes against women have existed invariably with time and place. Types and trends of crimes, however, kept changing with change in mindset and technique. Unfortunately, women were not only accorded a lower status in the society but they also came to be used as objects of enjoyment and pleasure. Its culmination has been their regular exploitation and victimization.

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5 Section 23 of Hindu Succession Act, 1956 has been omitted by Amendment Act, 2005.
On the continuation of this practice, exploiters became culturally violent, and opted violence as a way of life. Besides, there also developed situational and institutional violence against women along with the new demands of the time where they have to step out of the confines of their homes to earn a living. Thus, violence against women ranges from rape to eve teasing and rampant sexual harassment at workplace. Protection from harassment, oppression and discrimination has remained a distant goal to be achieved.\(^6\)

Violence against women is an extremely complex phenomenon, deeply rooted in gender based power relations, sexuality, self identity and social institutions. Any strategy to eliminate gender violence must therefore confront the underlying cultural beliefs and social structure that perpetuates it.

Increase violence against the women not only hurts her body but also shatters her psychologically and more than often left permanent marks on her psyche. In addition to the trauma of rape itself, the victims have to suffer further agony during the legal proceedings. It is often seen that most of the victims develop post-traumatic stress disorders and Indian legal system is not equipped and properly gender sensitive towards these issue. In legal system, rape is a crime but at the same time, the accused is innocent till proven guilty. But the victim, on the other hand, faced the brunt of social stigma the moment the incident is reported. The issues of victim’s character, behaviour and self invitation of such an aggression further aggravates the trauma.

As mentioned earlier women are subjected to all kinds of violence ranging from physical, sexual, psychological and economic. All these abuses are interrelated and affect the women of every age. With the passage of time, the *modus operandi* of these crimes has changed. Some forms of crimes like prostitution and women trafficking have crossed national boundaries. And women became the ultimate victim when they are used as a tool of sexual gratification and their bodies became commodities of commercialized world. It is seen that

many a time, such aggression takes the shape of obsolete practices further weakening the chances of women in the name of culture and values.

It is the duty of the government and through its three organs to harmonize the situation and play a positive role, but sadly it is happening at a snail’s pace. The Law has modified the definition of ‘sexual assault’ in case of child and made it gender neutral, yet the in respect of adult it is still marred by many handicaps. As Kirti Singh concludes, “Rape, as defined in the IPC was an archaic, patriarchal definition, and it was necessary to look at sexual assault from the point of women who experienced it and to craft that experience into laws.” Even according to the international legal framework in respect to the definition of rape in International Criminal Tribunal Yugoslavia, it is drafted that sexual assault amounts to penetration by the penis into vagina, mouth and anal cavity and this included inserting part of the body or objects into such orifices. The Indian Penal System has not yet come out with such a wider definition of sexual assault and hence has to take into account the women perspective leaving behind Victorian mind frame. A paradoxical situation prevails in criminal law where all assaults are rendered grievous if a weapon is used, as the risk of bodily injury is aggravated. Only in rape cases it is the reverse. A range of sexual violence meted out to little girls by inserting objects like bottles, sticks and iron rods into their tender and as yet not fully-formed vaginas, causing multiple injuries and risk to life, got swept away under the nomenclature of ‘violating modesty’, punishable with a maximum of two years of punishment. The legal explanation was given that the male sexual organ was not involved, however gruesome the sexual assaults may have been, and hence the offence could not be brought within the four corners of the offence of rape. Similarly, in case of molestation as defined in IPC, it is categorically stated that such offences should occur with the intention of “outraging the modesty” which leave a lot of scope for the culprit to escape. The recommendation of AIDWA to include any direct or indirect touching the body of the person with different degree should be seriously looked into and incorporated in Section 509. Indian women are beset with many challenges which place them

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7 Kirti Singh in an interview to Frontline Vol.27, No.13, July 2010.
at lower level. Women of minority sections are further placed at disadvantageous position as they experience both caste and gender discrimination. The communal riots of Gujarat and Kandmal (Orissa) has further stressed the vulnerability of women where they were raped and killed. However, Indian Penal System doesn’t show its concern to deal such cases. And the researcher strongly feels that such cases along with the sexual assault on the minority section should be brought within the ambit of ‘aggravated sexual assault.’

The Hon’ble Supreme Court has laid down the guidelines in case of sexual harassment at workplaces in Vishaka but its implementation is lacking and many institution runs without it. Even the campus where the researcher is working has no Women Cell or Female Security Officer inspite of so many females staff working/teaching/studying there. The situation is same in many educational institutions. Thus, some stringent provisions should be framed to curb the habit of leniency. It is further submitted that sexual assault by the person in place of influence or higher in rank should also be included in the ambit of ‘aggravated sexual assault’ because that crime itself is an outcome of political, economic and social dominance. And this dominance prevails everywhere. It is not constrained to urban institutions but also extended to the labour employed in the villages and working as tenants. Causing of grievous hurt or repeated commission of the offence on the victim’s body must also be included into ‘aggravated sexual assault’ and invites stringent punishment o the culprit.

The researcher acknowledge that the criminal law with regard to rape, custodial rape, dowry etc. has changed in response to the demands by the women’s movement but it still incorporates patriarchal values. But at the same time, it is submitted that criminal law provisions needs to be gender sensitive and in the process of its sensitization, the law makers and administrators must be sensitive to the prevailing social and cultural contexts in which they are applying law. In the ultimate analysis there can be no two opinions about the need for stringent laws, sensitive judiciary, effective law and enforcement machinery and women’s groups to deal with such atrocious crimes. But what is needed more than anything else is a total revolution in the thinking of our society. There should be a
change in the mind set of men towards women. And it demands serious thinking at judicial, social and political level.

Civil laws of any country are strong parameters of the level of equality and empowerment a woman has been accorded in any given society or State. India is a multi-religious and cultural country where large corpus of civil and personal laws exists. The studies of these different personal laws regulating the rules of marriages, property and adoption remains a comprehensive subject itself. It further raises the age old debate whether there should be Uniform Civil Code for India or not. The researcher, however, reserves her view about the issue of Uniform Civil Code because it is outside the purview of present discussion. But some light has been thrown on the practicability and legal approach towards the Hindu laws to assess the status of women in the majority community. Marriage remains, since antiquity, one of the most important social institutions. It builds family which remains the nuclei of any social system. Hindu marriage laws have no doubt undergone various changes since its inception and the greatest changes were introduced with the introduction of Hindu Marriage Act, 1955. It transformed the status of marriage from a sacrament to a contract. The Act no doubt gave Hindu wife, a right to dissolve the marriage and demand maintenance from her husband in case of separation. Still it fails to evolve a gender sensitive approach. Hindu marriages are performed with the ceremony of Saptapadi. Thus in a away, The Hindu Marriage Act retains the concept of Smritis for its solemnization with an understanding that this is a contract which can be broken. kanyadan being an integral part of marriage ceremony has reduce the status of a girl to some kind of a commodity which can be gifted by her father to the groom. Thus, in a way it signifies the transfer of father’s right on her daughter to her husband, the supreme marital objective being to provide a successor to the property and to avoid extinction of the family line. Kanyadan and panigrahan—two important ceremonies of marriage in the first four approved forms of marriages are described as the acceptance by the bridegroom of a girl as his wife,
the girl being given away by her guardian. Even at the time of the enactment of the Hindu Marriage Act, Kanyadan as a ceremony depicting the lower or in fact inconsequential value of the girl was strongly disapproved of, yet was ignored by the majority. Hindu Marriage Act forbade the polygamy. However, it is not clear and there are instances when the men often manage to give slip to the legal system after performing more than one marriage. The reasons can be ascribed to the wrong interpretation of Hindu Law which retains the ritual of Saptapadi as an important constituent while solemnizing a Hindu marriage. Moreover, onus of proving the performance of second marriage lies heavily upon the second woman who in absence of substantial proof fails to get justice thereby aggravating her situation. It is seen that men might not be performing Saptapadi while luring another woman in marriage. If these ceremonies could not be proved by the first wife in respect of her husband’s second marriage, the husband could wriggle out of conviction even though he had cohabited with the second wife, the community had accepted the man and the second wife as husband and wife or even if he had fathered children through the second wife. In such a situation the definition of ‘solemnizing the marriage’ under Hindu Marriage Law should be expanded to include all kind of rituals. Only then the woman can be saved from becoming victimised in case of second marriage. In many instances women experiencing the trauma of their husband’s solemnization of second marriage face social and family pressures. Unable to beget their children, forces them to share their husbands with another woman. And it is the woman only who is the ultimate sufferer of this social evil. In such a situation absence of any complaint against the husband saves him from legal consequences which defeat the very purpose of anti-polygamy laws. In other words, the remedy the legislature provides to the first wife is that she can snap her relation with such a husband; can deny him her company (if he still wants her) but cannot have him punished or get him back to

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her, which is exactly what a majority of women trapped in these situations still want and hope and pray for. Interestingly even the status of second woman goes into dilemma. She does not acquire the status of a legally wedded wife. Such a position is also not accepted for the second woman who has been married fraudulently. If, however, the second marriage breaks up, then she is at the loosing end. The law can only pass a decree that she is not entitled to maintenance, she has to endure humiliation and social stigma as being only a mistress. It is therefore, suggested, that the progressive sounding provision of monogamy had also not saved Hindu women from victimization. It is found that the government should speedily work on the recommendation of women committee\(^\text{10}\) and replace the word “solemnization” in Hindu Marriage Act with “goes through a form of marriage” to broaden the purview of Hindu Marriage laws. It is further recommended that an omission to perform some of the essential ceremonies like Saptapadi shall not be construed to mean that the offence of bigamy was not committed. Secondly, Section 6 of the Act, may be restored and a provision may be incorporated whereby, a relation or friend of the wife or of the second woman or of the husband should be allowed to ask for an injunction restraining the parties against proposed bigamous marriage. Thirdly, a law providing compulsory registration of marriage would be of critical importance to various women related issues such as: prevention of child marriages and ensuring minimum age of marriage; prevention of marriages without the consent of the parties; checking bigamy/polygamy; enabling married women to claim their rights to live in their matrimonial home, maintenance claim; inheritance rights and other benefits which they may be entitled to after the death of their husbands. It is, therefore, in the general interest of the society if marriages are made compulsory registrable. The Supreme Court observed that though registration by itself cannot be a proof of a valid marriage per se, and would not be a determinative factor regarding the validity of marriage, yet it has a great evidentiary value in the

matters of custody of children, their rights and the age of parties to the marriage.\footnote{Seema v. Ashwani (2006) 2 SCC 578.} And finally, the admission by a person accused of bigamy or by the second woman that he or she has entered into second marriage, should be accepted by the court as a proof for the purpose of Section 494 of the Indian Penal Code. Moreover, the Section 496 of IPC should be applied to the Hindu Marriage Act, 1955.

It is an unfortunate fact that child marriages are still going on in large part of country. It not only hampers the psychological development of the children but also takes untold toll on female child’s physique and result in maternal (pregnancy) deaths. Hindu Marriage Act, 1955 prescribes 21 years as the age of bridegroom and 18 years of the bride, yet the marriage solemnized in contradiction to it is not declared void. Allahabad High Court gave a similar opinion in 1936 and 1939.\footnote{Munshi Ram v. Emperor AIR 1936 All. 11; Ram Baran v. Sital Pathak AIR 1939 All. 340.} Noting that the Parliament did not intend to treat child marriage as either void or voidable the Andhra Pradesh High Court in 1977\footnote{P. Venkataraman v. State AIR 1977 A.P.} pronounced them as perfectly valid and the Supreme Court put their stamp on its validity in Lila Gupta v. Luxmi Narain in 1978.\footnote{AIR 1978 SC 1351.} Even the quantum of punishment delivered to the parties involved in the marriage if the children also show the lopsided approach of the legislative as well as judiciary in the incidents of children marriage. In Public Prosecutor v. Thammanna Rattayya\footnote{AIR 1937 Mad. 490.}, Madras High Court refused to convict the mother of a child bride for marriage nor could prevent its solemnization. Similarly, relatives and invitees attending a child marriage but without any hand in performing or conducting it are not guilty of
abetting the crime of getting a marriage solemnized in violation of the Child Marriage Restraint Act.\textsuperscript{16}

Despite the evils of child marriage glaring in the face of the community at large, the menace continues unabated. Under the garb of customary practices, or for the sheer convenience of shrugging of the parental responsibility of minor girls, young girls continued to be married off by their parents at an early age. It is a harsh reality that the Prohibition of Child Marriage Act 2006, has miserably failed to check child marriages. Once solemnized, the marriages remain perfectly valid. Thus, it is not uncommon for the parents to marry off their wards when they are minors. Yet, at the same time if a minor girl goes on her own gets married to a boy of her choice against her parents wishes, they file kidnapping charges against the boy turned groom. The Delhi High Court recently held\textsuperscript{17} that the marriage solemnized in contravention of age requirement prescribed under Section 5 of the Hindu Marriage Act, is neither void nor voidable under Sections 11 and 12 and were only punishable under Section 18, of the same enactment as also under the provisions of the Child Marriage Restraint Act, 1929. They also cautioned that this judgment does not mean nor indicate that the age of marriage has been reduced from the one prescribed under the Hindu Marriage Act. Two petitions were disposed off by this judgment, both involving elopement of girls in the age group of 16-17 years with their boyfriends. One of them came back to her parents after living with him for several months at various places, while the second continued to live with her husband.

The provisions of Prohibition of Child Marriage Act 2006 can be effective only when child marriages are declared void by the legislature and the consent of both the parties only should be mandatory for the validation of the marriage.

Another irony in our society while performing Hindu marriage is the age of parties to the marriage. Though Hindu Marriage Act, 1955 prescribes minimum statutory ages of the bride and groom yet it is difficult to comprehend why

\textsuperscript{16} Ayya Pillai v. Manikk Pillai, (1965) 1 Mad. L.J. 172; Emperor v. Fulbhai Bhulbai AIR 1940 Bom. 363.

\textsuperscript{17} Manish Singh v. State Government of NCT, AIR 2006 Del. 37(DB).
juniority of the wife is an accepted social factor and older wives are not taken in respectable view. It is seen that an alliance of a man with an older woman is generally looked upon with a suspicion and is taken as an unusual experience. In *Som Dutt v. Raj Kumari*\(^{18}\), the court gave relief to the husband who complained that he was told lie about the age of his wife who was in reality seven years older to him. And the court in its judgment came out with assumption

“As common experience shows that it is indeed unusual for a young man to knowingly and willingly marry someone elder than him in age. Where fraud on this account as alleged, the burden must shift on the wife to bring on record evidence or circumstances to dispel the suspicion of any such concealment or misrepresentation."

However, the court would have avoided this relief to a wife who might have found that her husband is seven year older to her and had lied about his age before marriage. The above conceived notion reflects the old patriarchal laws and fails to achieve gender equality in real sense. And nothing can be so glaring as in respect of laws of adoption. Adoption was a known phenomenon in ancient India as Hindus attach significant value to a son who is assigned the role of liberator for his parents by performing all the religious rituals.\(^{19}\) However, in the last century UN adopted various frameworks to guide the procedure of adoption nationally and internationally in conventions like, 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 (1986) and The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. (1993). In India, the only law permitting adoption is the Hindu Adoption and Maintenance Act, 1956, which is applicable to Hindus only. The law relating to adoption among Hindus underwent certain fundamental changes in 1956, beyond mere codification, extending permissibility in favour of Hindu females to adopt in certain specific situations. The Act improved the position of women in this regard. For instance, an unmarried girl, divorcee, widow can adopt in her own right; and a girl can be adopted too unlike earlier where only boys

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\(^{18}\) AIR 1986 P&H 191.

\(^{19}\) *Manusmriti*, V. 138.
could be adopted. A married male Hindu had to take the consent of his wife before adopting a child. Yet, the real equality is still a distant dream. Section 8 of the Hindu Adoption and Maintenance Act, 1956 refers to a female’s capacity to take in adoption. It runs as under:

Any female Hindu-

(d) Who is of sound mind
(e) Who is not a minor, and
(f) Who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has capacity to take a son or daughter in adoption.

Thus, it is clear that a married female is put at disadvantageous position as she cannot adopt even with the husband’s consent, unless her husband suffers from the disabilities, has ceased to be a Hindu, renounced the world, or is of unsound mind. A husband, on the other hand, may adopt with the consent of the wife.  

Likewise, with regard to capacity to give the child in adoption under sub-section (2) of Section 9, the father continues to have the prior right. If he is alive, he alone can give away the child, though with mother’s consent. The mother may give the child in adoption only if the father is dead, or has renounced the world, or has ceased to be a Hindu or is of unsound mind. Thus, the decision making with respect to adoption and the lead role at the time of actual giving and taking the child has to be that of the husband with the consent of the wife.

This view finds its acceptance in recently held case Malati Roy Chowdhry v. Sudhindranath Majumdar. Where the Calcutta High Court dismissed the appeal holding the adoption of the plaintiff was not given validity as in court’s opinion

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20 Section 7, Hindu Adoption and Maintenance Act, 1956.

21 Ibid., Section 9.

22 AIR 2007 Cal. 4 (DB).
the adoption ceremony has to be factually performed by husband of a married Hindu woman and a mother had no right to take a child in adoption though in this case the ceremony was performed in the presence of father. The question arose in connection with the succession rights of a Hindu female who claimed the total property of her alleged adopted father as his sole heiress on his death. The Court dismissed her application for not being an adopted daughter, even in the face of arguments that there was overwhelming evidence to indicate adoption.\(^{23}\)

Earlier, a Hindu woman was at disadvantageous position in relation to men as the owner of property. But this impediment has been removed by virtue of The Hindu Succession (Amendment) Act, 2005. The amended Act has strengthened the position of woman by including her within a coparcener. Section 6 of the Hindu Succession Act, 1956 has been amended by giving equal rights to daughters in the Hindu Mitakshara coparcener property. Section 23 of the Act which disentitles the female heir to ask for partition in respect of dwelling house has been repealed.

It is a common experience that mere framing of the laws not serve the purpose. Their liberal interpretation and implementation in true spirit can make the society really based on principles of equality and justice. The judges are human and they are not beyond their times and space. However, much goes to the credit of Indian judiciary which responded positively to progressive approach and evolved a liberal attitude. The journey of our active judiciary ranges from Pratap Mishra’s case\(^ {24}\) in which victim was denied justice only because she was habitual to sexual intercourse or another case\(^ {25}\) where the victim were denied justice because she did not raise alarm in police station. The Supreme Court

\(^{23}\) When she was barely two years old, her natural parents gave her in adoption to alleged adoptive parents in the presence of priest and other persons. According to testimony of priest, the ceremony of adoption took place by handing over the child to adoptive mother by putting her in her lap. This whole exercise took place in presence of husband and with his approval. Even when the alleged adoptive mother died, it was the appellant who had lit her funeral pyre.


progressively interfered in ‘Vishaka’ petition and laid down the guidelines on Sexual Harassment at Workplace in absence of proper legislation in this respect. The Hon’ble Supreme court in State of Punjab v. Gurmit Singh\(^{26}\) observed that, “The courts must, while evaluating evidence, remained alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honor such as is involved in the commission of rape on her. The testimony of the victim in such cases is vital unless there are compelling reasons which necessitates looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. The evidence of a victim of sexual assault stands almost on par with the evidence of an injured witness and to an extent is even more reliable.”\(^{27}\) speaks of the evolution of judicial approach towards the gender issues in India, though with a caution that lots of hurdles are still to overcome at lower levels where more seminars and orientation of judges towards gender issue are perquisite to carry out the laws in real spirit.

The researcher in the present work has also highlighted that constructive role of National Commission for Human Rights (NHRC) and National Commission for Women (NCW) that they have played in meting out gender justice and evolving the gender discourse in Indian settings. It is also a well established fact that gender empowerment can only be affected at social and political level. The laws can only be put into play after the offence has been committed. Therefore, the role of NHRC and NCW becomes more important because these organizations can recommend and guide legislature in framing of policies in respect of all communities and sections and not mere individuals. NCW has suggested new frameworks in which the offences like ‘Sexual Assault’ and ‘Acid Attacks’ are to be dealt with. Both NCW and NHRC have


progressively intervened in cases to get justice for the victims.\textsuperscript{28} However, these organizations are still handicapped by political interference and bureaucratic bottlenecks. As the appointments and fundings are controlled by the government and therefore, the big fishes are able to manipulate the matters in their favour and evade the logical consequences. The reports in such cases only eat the dust in the shelves as suggested by Syeda Hameed\textsuperscript{29}. Thus, it is the present day need to empower these institutions and create an independent corpus to enable them to work without bureaucratic interference and perform their duties in more effectively and result oriented way.

Towards the end, the study has concentrated upon gender related laws in India and their actual and effective implementation in India. The judiciary has responded to the call of the times and Indian government also drafted various laws to safeguard the minorities and weaker sections in light of international conventions yet, the real objective is still a distant dream. In absence of deep and serious understanding of the problem, the successive laws for the protection of women have failed to safeguard females. In one way or another, a female, continues to be the object of deprivation. She is sacrificed in the garb of customs, old and traditional practices, rituals or merely for the sake of family honour. The acid test of a virtuous woman in India is that of being obedient and docile who is ready to sacrifice herself for her family. She is the victim of every day sexual assault. She is humiliated during wars and communal riots because she is perceived the carrier of religious identity. Even in present times, a female foetus is killed in the womb of her mother and if borne alive, is not welcomed. Despite getting property rights, the complete equality remains a distant dream seeing the hostile attitude of society towards females. The various Commissions formed for women welfare have not been able to protect their honour when even the accused happened to be from higher wrung of society. Women are denied relief in cases of

\textsuperscript{28} See for example: Bhateri gang rape case; Jain Sadhvi’s case and Imrana’s case.

\textsuperscript{29} Syeda S. Hameed is a former member of National Commission for Women. In ‘They Hang Twelve Women in my Portrait Gallery’ she makes mention of the real-life stories of those women whom she encountered as a member of the Commission and each of them cried out for justice, yet justice remained elusive for them.
‘acid attacks’ and other forms of sexual attacks merely because of their bodily composition.

Awakening of the collective consciousness is the need of the day. Change of heart and attitude is what is needed. If man were to regain his harmony with others and replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent, the possibility of this pernicious social evil dying a natural death may not remain a dream only. The legislature, realising the gravity of the situation has amended the laws and provided for stringent punishments in such cases and even permitted the raising of presumptions against an accused in cases of unnatural deaths of the bridges within the first seven years of their marriage. The Dowry Prohibition Act was enacted in 1961 and has been amended from time to time, but this piece of social legislation, keeping in view the growing menace of the social evil, also does not appear to have served much propose as dowry seekers are hardly brought to book the convictions recorded are rather few. Laws are not enough to combat the evil. A wider social movement of educating women of their rights to conquer the menace is what is needed more particularly in rural areas where women are still largely uneducated and less aware of their rights and fall an easy prey to their exploitation. The role of courts under the circumstances assumes greater importance and it is expected that the courts would deals with such cases in a more realistic manner. A socially sensitive judge is better statutory armour in cases of crimes against women than long clauses of penal provisions, containing complex exceptions and provisos.

It is however needs to make clear that fight for justice by females or cry for gender equity should not be treated as if it is a fight against men. It is a fight against traditions that have chained them — a fight against attitude that is ingrained in the society — it is a fight against proverbial Lakshman Rekha which is different for men and different for women. Therefore, men must rise to the occasion. They must recognize and accept the fact that women are equal partners in life. They are individuals who have their own identity. Over the centuries of human civilization, clear-cut gender roles have emerged based on the stereotype
conceptions of feminine and masculine characteristics. Society needs to change its attitude.

It is strongly submitted that sincere efforts are needed if we are determined to achieve civil society in which all enjoy equal rights and freedom. It must be understood that women are not a commodity an equal partner with their male counterparts in this creation and meaningful relation and development can only come forth form equality. For this objective work has to be done at all levels of legislature, executive and judiciary. We have to change the way we up bring our children and especially male ones must be taught to have respect for the other sex. This change cannot be brought overnight. Each individual at every level has to actively participate in bringing this revolution, and then only a woman would be provided with a meaningful society to live in. The society must always bear in mind what otherwise somewhat controversial law giver advised many hundred years ago:

"Where women are honored, there the Gods are pleased. But where they are not honored, no sacred rite yields rewards."

*Manu Smriti* 3.56.