CHAPTER 3

RIGHTS OF WOMEN IN NEW SOCIAL ORDER: INTERNATIONAL AND CONSTITUTIONAL PRESPECTIVE

1. Introduction

Concept of right has been developed parallel to the Natural Law Theory. Rights are essentially a product of democracy where they are not only recognized but provisions are also made to see how they will flourish. Rights are essential if human being wants to pursue as a human being. Salmond defines a legal rights as, “an interest recognized and protected by a rule of legal justice”\(^1\). When a person is having legal right another person is always under a legal duty. Rights and duties are correlative to each other. When another person is under the duty it is expected that he must discharge his duties properly and should not violate the legal right of a person. When there is a breach of duty then the legal conception which has been evolved is that it will result in imposition of liability.

Violation of legal right would be a legal wrong done to a person in whose interest it is, and respect for which is a legal duty\(^2\). Thus if there is a legal right vested in a person he can seek its protection against a person who is bound by a corresponding duty not to violate that right\(^3\). With the advancement of human rights jurisprudence in the world and in the wake of welfare State, new rights have been guaranteed to women by United Nation and several countries with a view to establish equal justice in a given legal system. Many countries have taken social and structural steps to alleviate the distress experienced by women in past.

Family violence cuts across all the countries of the world. Victims of family violence are found at different levels and hierarchies of age, gender roles and relationships as well as in different situational contexts. In every human society domestic violence against women is quite all-pervasive, be it a society in India, United Kingdom, United States, Japan or any other

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\(^2\) Ibid.
\(^3\) Mr. ‘X’ v. Hospital ‘Z’, (1998) 8 SCC 296.
country. Irrespective of the class, culture, level of economic and political development women in every country face violence on the streets or within their homes\(^4\). Every day, throughout the world, women are subjected to extreme acts of physical violence, which take place within the beguiling safety of domesticity\(^5\). Gender biased violence is nearly universal, affecting women of every class, race, ethnicity and social background in all the pursuits of life and at every phase of the life cycle\(^6\). The violence is severe, painful, humiliating, and debilitating. And it is common. It is a phenomenon that stretches across borders, nationalities, cultures, and race. A binding characteristic of communities throughout the world, almost without exception, is the battering of women by men.

Even though the United Nations from the very day of its inception from 1945 worked to ameliorate the position of women and emphasized the need of gender equality, it was only after 1989\(^7\), domestic violence was undoubtedly treated as a human rights issue and serious deterrent to the development. United Nations has taken active participation in vindication of human rights of woman in family. It has incorporated a series of conventions and treaties to achieve equal justice worldwide. As a signatory to a series of conventions and treaties, India has accepted the challenge to protect women against violence of any kind especially occurring within family.

The Constitution of India has also made elaborate provisions to ameliorate the position of women in India. Preamble, Part III and IV of to the Constitution of India contains and deals with some necessary guarantees to all without any kind of discrimination. Parliament of India has

\(^4\) According to available statistics from around the globe, one out of every three women has experienced violence in an intimate relationship at some point in her life, (World Health Organization, 1997)

\(^5\) http://www.albanylawreview.org/archives/67/2/ReconceptualizingDomesticViolenceinInternationalLaw.pdf (lastly accessed on 25/05/2012 at 10pm)


\(^7\) The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family. Subsequently the Vienna Accord of 1994 acknowledged domestic violence occurring in family as a serious human rights issue and deterrent to the development of society. Notably, it was for the first time that the subject of physical, sexual, psychological violence against women was addressed vehemently. As a result in 1999 an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 was adopted. In 1995 the Beijing Declaration and the Platform for Action also expressed ‘a serious concern’ relating to women’s rights. Thereafter a number of U.N. sponsored international conferences on women proposed programmes in the field of human rights of women.
enacted several laws with a view to provide and establish principle of equal justice in India and
to ameliorate the position of women in Indian society. Besides this in catena of cases Supreme
Court of India and various High Courts in its activist zeal have tried to protect rights of women
as a part of development of human rights jurisprudence in India.

2. International Law and Rights of Women

The United Nation’s has played very active role in the acknowledgement and development of
human rights in world. Women’s rights are a relatively recent addition to the domain of human
rights. It is because of the fact that United Nation has recognized women’s rights as human
rights.® Violence against women in family has been now recognized as a violation of human
rights of women. Due to the emergence of three generations of human rights there has been a
gradual affirmation of principles of non-discrimination and the rights of women. Despite this
advancement, the right of women has been the concerned of the world community since the end
of Second World War.

a) The United Nations Charter, 1945

Right from the very outset United Nation’s has worked for the protection and advancement of
rights of women. Even though violation of rights of women in family has been regarded as
violation of human rights of women after 1979, prior to that also United Nation’s has adopted
the policy of protecting the rights of all human beings on the basis of equal justice. The United

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8 Gender violence and human rights: An international perspective, Dr. Subhash Chandra Singh, Indian Bar Review,
9 The first generations of human rights are civil and political rights. These rights are not new rights and had
developed in course of a very long period of time since the time of Greek City State and concretized in the form of
the Magna Carta, the American Declaration of Independence and the French Declaration of Rights of Man and of
the Citizen. Human rights of second generation would include economic, social and cultural rights which are also
having its main source in American, French Revolution and Russian Revolution. The third generations of human
rights are also known as collective rights. According to the supporters of this right, effective exercise of collective
rights is a precondition to the exercise of other rights, political or economic or both. The most cherished rights
belonging to the third category of rights are, the right of self determination, the right to development and right to
peace.
to 4) 2009, page-91.
11 The Convention on Elimination of All Forms of Discrimination Against Women, 1979 for the first time
recognized violation of women’s rights in family as a human rights violation.
The Nation’s Charter, 1945\textsuperscript{12} emphasizes the importance of social justice and human rights as the foundation for a stable international order\textsuperscript{13}. The preamble of the Charter of the United Nation’s mentions the determination of the peoples of the United Nation’s, “to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and to promote social progress and better standards of life in larger freedom. It also provides to employ international machinery for the protection of the economic and social advancement of all people.

The purpose of the United Nation’s Charter, 1945 is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion\textsuperscript{14}. As an attempt to apply the principle of non-discrimination to the workings of the organizations itself, it has been laid down that, “the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs\textsuperscript{15}”. Equality of opportunity has been assured and recognized to the women in the matter of participation in the work of the United Nations. The Charter also lays emphasis upon promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion\textsuperscript{16}. It also lays emphasis upon the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion\textsuperscript{17}.

Thus the principle of equal justice in the matter of promotion and observance of human rights and fundamental freedoms has been fully recognized under the Charter of the United Nation’s. This principle of equality has been subsequently emphasized under various major international human rights instruments under the canopy of United Nations.

\textbf{b) Universal Declaration of Human Rights, 1948}

\textsuperscript{12} The Charter of the United Nation’s was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nation’s United Nations Conference on International Organization, and came into force on 24 October 1945.
\textsuperscript{14} Article 1, Para. 3.
\textsuperscript{15} Ibid. Article 8.
\textsuperscript{16} Id., Article 13.
\textsuperscript{17} Id., Article 55
United Nations General Assembly adopted the Universal Declaration of Human Rights, 1948 as a bulwark against oppression and discrimination. It also represented the first international recognition that human rights and fundamental freedoms are applicable to every person, everywhere. In this sense, the Universal Declaration was a landmark achievement in world history. Today, it continues to affect people's lives and inspire human rights activism and legislation all over the world.\textsuperscript{18}

The preamble to the Universal Declaration of Human Rights, 1948 reaffirms the “equal rights of men and women” mentioned in the Preamble to the United Nations Charter.\textsuperscript{19} The Declaration is particularly important from the point of view of women’s rights. It states, “All human beings are born free and equal in dignity and rights.” Further the principle of non-discrimination has also been emphasized which states that, “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” It also states that, “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.” This Declaration also provided for right to privacy, family, home and reputation, right to freedom of movement and residence, right to marry and found a family, right to marriage, right to property, right to freedom of thought, conscience and religion, freedom of opinion and expression, right to work, to free choice of employment, right to adequate standard of living, right to education to everyone.

\textsuperscript{18}http://www.humanrightseducation.info/hr-materials/the-universal-declaration-of-human-rights/220.html, lastly accessed on 28/03/2012 at 9 pm.

\textsuperscript{19} Supra Note 10.

\textsuperscript{20} Article 1.

\textsuperscript{21} Article 2. This provision expands the prohibition against discrimination originally stated in Article 1(3) of the United Nation’s Charter, 1945.

\textsuperscript{22} Article 7.

\textsuperscript{23} Article 12.

\textsuperscript{24} Article 13.

\textsuperscript{25} Article 16.

\textsuperscript{26} Article 17.

\textsuperscript{27} Article 18.

\textsuperscript{28} Article 19.

\textsuperscript{29} Article 23.

\textsuperscript{30} Article 25.
One of the notable achievement of this Declaration is the inclusion of the words, “All human being”, “everyone”, “no one shall”, in all the Articles of the Declaration. The purpose of such language was to clarify that the principle of non-discrimination applies to all of the human rights recognized by the Universal Declarations.

c) **Convention on the Political Rights of Women, 1953**

The Convention on the Political Rights of Women, 1953 is important as it implement the principle of equality of rights for men and women contained in the Charter of the United Nation\(^32\). It provides that women shall be entitled to vote in all elections on equal terms with men, without any discrimination\(^33\). They shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination\(^34\). They shall be entitled to hold office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination\(^35\).

d) **International Covenant on Civil and Political Rights, 1966**

The International Covenant on Civil and Political Rights of 1966 elaborates further the civil and political rights and freedoms listed in the Universal Declaration of Human Rights, 1948. It came into force 23 March 1976, in accordance with Article 49 of the Covenant\(^36\). At present the Covenant has 74 signatories and 167 parties\(^37\). The preamble of the Covenant put emphasis on recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family\(^38\).

\(^{31}\) Article 26.
\(^{32}\) The Convention was adopted by General Assembly Resolution 640 (VII) of 20 December 1952, opened for signature on 31 March 1953, and entered into force on 7 July 1954.
\(^{33}\) Article 1.
\(^{34}\) Article 2.
\(^{35}\) Article 3.
\(^{36}\) According to Article 49, “The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession”.

\(^{38}\) It also insists that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as
The Covenant has recognized the right of self-determination\textsuperscript{39}. Each party to the Covenant is responsible to respect the rights guaranteed by this Covenant and has to take necessary steps to give effect to these rights\textsuperscript{40}. Not only this where a right of a person is violated by any private person or a person acting in official capacity it is the duty of each party to provide for effective remedy for redressal of that violation of rights\textsuperscript{41}. It also ensures the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant\textsuperscript{42}. Inherent right to life\textsuperscript{43}, right against inhuman or degrading treatment\textsuperscript{44}. Right against slavery, servitude and forced labour\textsuperscript{45}, right to be treated with humanity and respect for dignity of a person\textsuperscript{46}, the right to recognition\textsuperscript{47}, right to privacy\textsuperscript{48}, right to hold an opinion and freedom of speech and expression\textsuperscript{49} are also some of the important rights guaranteed by the Convention.

With reference to family and personal life of a person family is treated\textsuperscript{50} as the natural and fundamental group unit of society and is entitled to protection by society and the State. Besides this right to marry, right to give free consent for marriage and protection of children has

\begin{itemize}
  \item Article 1 (1). By virtue of right of self determination every person can freely determine their political status and can freely pursue their economic, social and cultural development. Clause 2 lays down that, “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”.\textsuperscript{40}
  \item Article 2. According to Clause (1), “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Clause 2 provides that, “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant”.\textsuperscript{40}
  \item Article 3. \textsuperscript{41}
  \item Article 6
  \item Article 7
  \item Article 8
  \item Article 10
  \item Article 16. It provides that, “Everyone shall have the right to recognition everywhere as a person before the law”.\textsuperscript{47}
  \item Article 17. It provides that, “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Also everyone has the right to the protection of the law against such interference or attacks”.\textsuperscript{48}
  \item Article 19
  \item Article 23
\end{itemize}
also been provided by the present Convention. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.\footnote{Article 26. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.}

e) **International Covenant on Economic, Social and Cultural Rights, 1966**

The International Covenant on Economic, Social and Cultural Rights, 1966 is complementary to the International Covenant on Civil and Political Rights, 1966. This Covenant is the only universal human rights instrument which deals extensively with the whole range of economic, social and cultural rights, and it is primarily by reference to the Covenant that this category of rights is to be understood. The Covenant entered into force on 3 January 1976, in accordance with Article 27.

The preamble to the Convention recognizes inherent dignity and equal and inalienable rights of all members of the human family as a foundation of freedom, justice and peace in the world and believes that these rights derive from the inherent dignity of the human person.\footnote{It further recognizes 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. It also puts obligation on the States to promote universal respect for, and observance of, human rights and freedoms.}

Right to self-determination\footnote{Article 1(1) provides that, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”} has been recognized for economic, social and cultural development. Right against discrimination guarantees that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\footnote{Id. Article 3. It states that, “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”}

The right to equality has been specifically recognized\footnote{Id. Article 2(2)} by the Covenant.

The Covenant also recognizes right to work\footnote{Id Article 6. Right to work includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.} and right to social security.\footnote{Id. Article 9.} Widest possible protection and assistance has been accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible
for the care and education of dependent children. It has also been provided that marriage must be entered into with the free consent of the intending spouses. Special protection has been accorded to mothers during a reasonable period before and after childbirth.\textsuperscript{58} The right of everyone to the enjoyment of the highest attainable standard of physical and mental health\textsuperscript{59} and the right of everyone to education\textsuperscript{60} to the full development of the human personality has also been specifically recognized. It is to be noted that more importance is given to civil and political rights rather than economic, social and cultural rights while taking into consideration of development of human rights. It is wrong to believe that in absence of economic, social and cultural rights civil and political rights can be effectively implemented.

\textbf{f) Declaration on the Elimination of all Forms of Discrimination against Women, 1967}

After 1960 there was increased awareness about discrimination meted out to women all over the world. Hence attempt was made on the part of the United Nations to tackle this problem by preparing a declaration that would gather in one document all of the international standards regarding equal rights between men and women. The Declaration on the Elimination of Discrimination against Women, adopted in 1967 is the outcome of that attempt made by United Nations to ameliorate the position of women.

The Declaration on the Elimination of Discrimination against Women is an important human rights proclamation concerning women issued by the United Nations General Assembly, outlining that body's views on women's rights. It was adopted by the General Assembly on 7 November 1967. This Declaration was an important precursor to the legally binding Convention on the Elimination of All Forms of Discrimination against Women, 1979.

\textit{This Declaration} reaffirmed its faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women\textsuperscript{61}. Even though the term,

\textsuperscript{58} Id. Article 10.
\textsuperscript{59} Id. Article 12.
\textsuperscript{60} Id. Article 13.
\textsuperscript{61} See Preamble to the Declaration which asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including any distinction as to sex. It takes into account the resolutions, declarations, conventions and recommendations of the United Nations and the specialized agencies.
“discrimination” has not been defined the Declaration states that discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity. It also calls for the abolition of laws and customs which discriminate against women, for equality under the law to be recognized, and for States to ratify and implement existing United Nations human rights instruments against discrimination.

This Declaration also calls for public education to eliminate prejudice against women and also recognizes right of every women to enjoy full equality in civil law, particularly around marriage and divorce, and calls for child marriages to be outlawed. It affirms an equal right to education regardless of gender.

The Declaration of 1967 was only a statement of political intent rather than a binding treaty. Five years later, in 1972, the General Assembly asked the CSW to consider working on a binding treaty. This led to a 1970s working group and eventually the 1979 Convention.

**g) Convention on the Elimination of All Forms of Discrimination Against Women, 1979**

Until 1980s, the issue of violence against women was invisible from the international perspective. Even though various conventions and declarations were entered by the United Nations there was no attempt to deal with violence against women as a human rights violation. The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly of the United Nations by its resolution 43/40 on 18 December 1979. The Convention came into force on 3 September 1981. As of today this Convention has been ratified by more than 185 States. It is the first global and comprehensive legal binding
designed to eliminate all forms of discrimination and to promote equal rights for men and women. It also shows its concern towards the fact that despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women. It considers that discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity.

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62 Article 1  
63 Article 2  
64 Article 3  
65 Article 6  
66 Article 9
international treaty aimed at the elimination of all forms of sex and gender based discrimination against women.

The preamble of the Convention67 states that, despite various instruments and conventions entered by the United Nations in past, extensive discrimination against women continues to exist68. It further states 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, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity. Hence it was accepted that, the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women. It also emphasized 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.

Part One of the Convention has defined69 the term "discrimination against women" which shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Sex discrimination has been prohibited by requiring state parties “to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”70. For that the state parties have to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure,

68 The Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. The Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. The States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights. The international conventions concluded under the auspices of the United Nations and the specialized agencies promoted equality of rights of men and women. Besides this the declarations and recommendations adopted by the United Nations and the specialized agencies promoted equality of rights of men and women.
69 Article 1
70 Article 2
through law and other appropriate means, the practical realization of this principle. They have also to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women. For protecting the rights of women the state parties have also to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. It is to be noted that the obligations imposed by this convention are to be strictly adhered by the state parties. The state parties have to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation. The state parties are under the binding obligation to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise which includes the measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Protection of interest of women is necessary with view to protect their human rights and fundamental freedoms guaranteed by the national laws. For that state parties have to take appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Any temporary special measures aimed at accelerating de facto equality between men and women cannot be considered as discrimination as defined in the present Convention. In most of the countries including India the discrimination against women has been made due to the social and cultural pattern of conduct of men and women. Hence this Convention directs the state parties to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and

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71 Ibid. Clause (a)
72 Id. Clause (b)
73 Id. Clause (c)
74 Id. Clause (d)
75 Id, Clause (e)
76 Id, Clause (f)
77 Article 3
78 Article 4
women\textsuperscript{79}. It also suggest to take measures to suppress all forms of traffic in women and exploitation of prostitution of women\textsuperscript{80} and also to eliminate discrimination against women in the political and public life of the country\textsuperscript{81}.

Right to education\textsuperscript{82} which is the most important right to ameliorate the position of women as also been recognized by the present Convention. This right has been made specifically available to urban as well as rural women. It provides that the States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women. It is the duty of the state parties to ensure this equality in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training\textsuperscript{83}. The provision is also there providing that if any concession, benefit or scholarships is to be given by the state parties then there must be equality and same opportunity to the benefit from such scholarships and other study grants\textsuperscript{84}. The present Convention has declared right to work as an inalienable right of all human beings\textsuperscript{85} including right to the same employment opportunities, and also the application of the same criteria for selection in matters of employment\textsuperscript{86} which further includes the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service\textsuperscript{87}. As a result of this right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work\textsuperscript{88} has also been recognized.

The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave\textsuperscript{89}, the right to protection of health and to safety in working conditions, including the safeguarding of the

\textsuperscript{79} Article 5  
\textsuperscript{80} Article 6  
\textsuperscript{81} Article 7  
\textsuperscript{82} Article 10  
\textsuperscript{83} Ibid, Clause (a)  
\textsuperscript{84} Id, Clause (d)  
\textsuperscript{85} Article 11, Clause (a)  
\textsuperscript{86} Ibid, Clause (b)  
\textsuperscript{87} Id, Clause (c)  
\textsuperscript{88} Id, Clause (d)  
\textsuperscript{89} Id, Clause (e)
function of reproduction\textsuperscript{90}; protection against discrimination on the grounds of marriage or maternity\textsuperscript{91}; the prohibition, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status\textsuperscript{92}; the right to maternity leave with pay or with comparable social benefits without loss of former employment\textsuperscript{93}, seniority or social allowances; the right to special protection to women during pregnancy in types of work proved to be harmful to them\textsuperscript{94} are some of the new rights recognized by the present Convention.

The provision with reference to married women has been made with a view to protect them from pregnancy related problems. It is the duty of the States Parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning\textsuperscript{95}. For that the States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation\textsuperscript{96}. The States Parties are also directed to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights\textsuperscript{97}, which includes the right to family benefits\textsuperscript{98}; the right to bank loans, mortgages and other forms of financial credit\textsuperscript{99} and the right to participate in recreational activities, sports and all aspects of cultural life\textsuperscript{100}.

The plight of women living in rural areas has been taken into consideration by the Convention by making some vital provisions for their benefits. The state parties are directed to take appropriate measures to ensure the application of the provisions of this Convention to women in rural areas\textsuperscript{101}. For that right of women participate in the elaboration and

\textsuperscript{90} Id, Clause (f)
\textsuperscript{91} Article 11 (2)
\textsuperscript{92} Ibid, Clause (a)
\textsuperscript{93} Id, Clause (b)
\textsuperscript{94} Id, Clause (d)
\textsuperscript{95} Article 12 (1)
\textsuperscript{96} Ibid, Clause (2)
\textsuperscript{97} Article 13
\textsuperscript{98} Ibid, Clause (a)
\textsuperscript{99} Id, Clause (b)
\textsuperscript{100} Id, Clause (c)
\textsuperscript{101} Article 14 (1)
implementation of development planning at all levels; the right to have access to adequate health care facilities, including information, counseling and services in family planning; the right to benefit directly from social security programmes; the right to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency; the right to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment; the right to participate in all community activities; right to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; and right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications have been specifically recognized under the Convention.

The principle of right to equality has also been specifically recognized by the Convention stating that, the States Parties shall accord to women equality with men before the law. A legal capacity identical to that of men and the same opportunities to exercise that capacity has also been accorded to the women. The most important right which has been guaranteed to women by the present convention is a right in case of matters relating to marriage and family relations. Article 16 has directed all the States Parties 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. This right means and includes; the same right to enter into marriage; the same right freely to choose a spouse and to enter into marriage only with their free and full consent; the same rights and responsibilities
during marriage and at its dissolution\textsuperscript{115}; the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount\textsuperscript{116}; the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights\textsuperscript{117}; the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount\textsuperscript{118}; the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation\textsuperscript{119}; and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration\textsuperscript{120}.

h) Declaration on the Elimination of Violence Against Women, 1993

The Declaration on the Elimination of Violence against Women was adopted without a vote by the United Nations General Assembly in its resolution 48/104 of 20 December 1993\textsuperscript{121}. The resolution is often seen as complementary to, and a strengthening of, the work of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 and Vienna Declaration and Programme of Action. This Declaration recognized the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings\textsuperscript{122}. It recognized that effective implementation of the

\textsuperscript{115} Id, Clause (c)
\textsuperscript{116} Id, Clause (d)
\textsuperscript{117} Id, Clause (e)
\textsuperscript{118} Id, Clause (f)
\textsuperscript{119} Id, Clause (g)
\textsuperscript{120} Id, Clause (h)
\textsuperscript{122} Preamble to the Declaration. It took note of those rights and principles which are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process. It also affirmed that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women.

The Declaration also took note of the fact that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. The Declaration has defined the term violence against women. It states that, “for the purposes of this Declaration, the term "violence against women" means 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 acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. Further it has been stated that violence against women shall be understood to encompass, but not limited to,

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

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123 Ibid.
124 Id.
125 Article 1
126 Article 2
127 Ibid, Clause (a)
128 Id, Clause (b)
(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs\(^\text{129}\).

The present Declaration has also recognized some basic, inherent and inalienable rights of women\(^\text{130}\). It states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

(a) The right to life;
(b) The right to equality;
(c) The right to liberty and security of person;
(d) The right to equal protection under the law;
(e) The right to be free from all forms of discrimination;
(f) The right to the highest standard attainable of physical and mental health;
(g) The right to just and favourable conditions of work;
(h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

The Declaration of 1993 came into existence to strengthen the Convention on the Elimination of All Forms of Discrimination against Women, 1979 and emphasized the need for effective implementation of it. It reminded the State parties to strive for the effective implementation of 1979 Convention. The Declaration provides that States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination\(^\text{131}\). States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
(b) Refrain from engaging in violence against women;

\(^{129}\) Id, Clause (c)
\(^{130}\) Article 3
\(^{131}\) Article 4
(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

The Declaration also support any attempt made by the states combating violence against women and which are more conducive than the present declaration. It states that nothing in the present Declaration shall affect any provision that is more conducive to the elimination of
violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.\textsuperscript{132}

\hspace{1cm}i) \textbf{The United Nations Committee on the Elimination of Discrimination against Women, 1982}

The Convention on Elimination of All Forms of Discrimination against Women, 1979 was the first bill of rights recognized by the United Nations, exclusively to protect fundamental freedoms of women in the world. This Convention also made elaborate provisions for effective implementation of the Convention in future. It provides that for the purpose of considering the progress made in the implementation of the Convention on Elimination of All Forms of Discrimination against Women, 1979, there shall be established a Committee on the Elimination of Discrimination against Women consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.\textsuperscript{133}

Article 21\textsuperscript{134} of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 empowers the Committee on the Elimination of Discrimination against Women (CEDAW) to make suggestions and general recommendations based on the examination of reports and information received from States parties.\textsuperscript{135} Recommendations given by committee are very important for eradication of violence against women and state parties have to adhere to it. These, as well as comments from States parties, are included in the session reports.

\textsuperscript{132} Article 6
\textsuperscript{133} Article 17 of the Convention on Elimination of all forms of Discrimination against Women, 1979.
\textsuperscript{134} Clause 1 states that, “The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties”. Clause 2 states that, “The Secretary General shall transmit the reports of the Committee to the Commission on the Status of Women for its information”.
\textsuperscript{135} \url{http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html}, lastly visited on 20 June 2012 by 12 pm.
of the Committee\textsuperscript{136}. Suggestions are usually directed at United Nations entities, while general recommendations are addressed to States parties and usually elaborate the Committee's view of the obligations assumed under the Convention.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW), an expert body was established in 1982. It is composed of 23 experts on women's issues from around the world. The Committee's mandate is very specific. It watches over the progress for women made in those countries that are the States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women. A country becomes a State party by ratifying or acceding to the Convention and thereby accepting a legal obligation to counteract discrimination against women. The Committee monitors the implementation of national measures to fulfill this obligation\textsuperscript{137}.

At each of its sessions, the Committee reviews national reports submitted by the States parties within one year of ratification or accession, and thereafter every four years. These reports, which cover national action taken to improve the situation of women, are presented to the Committee by Government representatives. In discussions with these officials, the CEDAW experts comment on the report and obtain additional information\textsuperscript{138}. This procedure of actual dialogue, developed by the Committee, has proven valuable because it allows for an exchange of views and a clearer analysis of anti-discrimination policies in the various countries.

**General Recommendation No. 12 (Eighth Session, 1989)**

The General Recommendation given by the Committee on the Elimination of Discrimination against Women, in 1989 is relating to violence against women. It states that, considering Articles 2, 5, 11, 12 and 16 of the Convention on Elimination of all forms of Discrimination against Women, 1979 the States parties are required to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life, It took into account Economic and Social Council resolution 1988/27. The Committee recommends to the States parties that they should include in their periodic reports to the Committee information about:

\begin{itemize}
  \item \textsuperscript{136} Ibid.
  \item \textsuperscript{137} http://www.un.org/womenwatch/daw/cedaw/committee.htm lastly accessed on 20 June 2012 by 12 pm.
  \item \textsuperscript{138} Ibid.
\end{itemize}
1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace etc.);

2. Other measures adopted to eradicate this violence;

3. The existence of support services for women who are the victims of aggression or abuses;

4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

j) Vienna Declaration and Programme of Action, 1993

The Vienna Declaration and Programme of Action were adopted by the World Conference on 25th June 1993. It was endorsed by General Assembly Resolution 48/121, adopted without a vote on 20th December 1993. The core statement of the Vienna Declaration and Programme of Action produced at the Conference was, “Women’s rights are human rights”. This statement made an important impact in the development of women’s right in the world.

The Vienna Declaration and Programme of Action emphasized the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. With reference to the violence and discrimination against women note was taken stating that the World Conference on Human Rights is deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world. It recognized that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting thereof throughout the world.

Part 1, stated that World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance

139 Supra Note, 121, Page-138
140 Preamble
141 The Vienna Declaration and Programme of Action, 1993, Para-1
with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question. In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations. Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments. It also stated that all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

The present World Conference on Human Rights has also made elaborate provisions relating to women’s right prohibiting domestic violence against women. The Declaration establishes that, “The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

It also states that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The Vienna Declaration and Programme of Action conclude by proclaiming women's rights and gender-based exploitation as legitimate issues for the international community. The human rights of women should form an integral part of the United Nations human rights

\[142\text{ Ibid, Para 5}\]
\[143\text{ Id, Para 18}\]
activities, including the promotion of all human rights instruments relating to women. Therefore the World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

By recognizing rights of women as human rights, the present World Conference on Human Rights urges the full and equal enjoyment by women of all human rights. It also stated that, “The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity and these issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms.”

The Vienna Declaration and Programme of Action also calls upon the General Assembly to adopt the draft Declaration on the Elimination of Violence Against Women and urges States to combat violence against women in accordance with its provisions. It also urges the eradication of all forms of discrimination against women, both hidden and overt. Thus for the first time violence against women in public and in private was declared as a violation of women’s human rights requiring urgent and immediate action. Hence the United Nations was requested to encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. It also recognized the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. For that the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels. The World Conference on Human Rights also welcomed the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with the priority themes of the World Conference on Women of equality, development and peace.

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144 Id, Part II, Para 19.
145 Id, Part II-B, Para. 36
146 Id, Part II-B, Para. 37
147 Id, Part II-B, Para. 37
148 Id, Part II-B, Para 39
149 Id.
150 Id, Part II-B, Para 41
151 Id, Part II-B, Para 44.
k) Beijing Declaration and Platform for Action Fourth World Conference on Women, 1995

The Commission on the Status of Women has been responsible for organizing and following up the world conferences on women in Mexico (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995)\(^{152}\). The Beijing Declaration and Platform for Action, approved in September 1995 at the Fourth World Conference on Women, is a global commitment to achieving equality, development and peace for women worldwide\(^{153}\).

The Declaration determined to advance the goals of equality, development and peace for all women everywhere in the interest of all humanity\(^{154}\). It recognized the fact that the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the wellbeing of all people. Hence the present Declaration ensure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms. The Declaration also reaffirms its commitment in the empowerment and advancement of women, including the right to freedom of thought, conscience, religion and belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually or in community with others and thereby guaranteeing them the possibility of realizing their full potential in society and shaping their lives in accordance with their own aspirations.

It is pertinent to note that women’s rights are recognized as human rights by the Declaration. It has accepted that women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace. Hence the present Declaration determined to ensure the full enjoyment by women and the girl child of all human rights and fundamental freedoms and take effective action against violations of these rights and freedoms and to take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the

\(^{152}\) http://www.un.org/womenwatch/daw/beijing/, lastly visited on 20th June 2012 at 3 pm.


\(^{154}\) See Preamble to the Beijing Declaration and Platform for Action.
advancement and empowerment of women. It has also determined to promote and protect all human rights of women and girls.

Chapter 1 of the Platform for Action deals with mission statement. It states that the Platform for Action is an agenda for women's empowerment. It aims at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making. This means that the principle of shared power and responsibility should be established between women and men at home, in the workplace and in the wider national and international communities. According to the Platform for Action right to equality has been regarded as a human right and women are equally entitled to have this right as a part of social justice. Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace. A transformed partnership based on equality between women and men is a condition for people-centred sustainable development. A sustained and long-term commitment is essential, so that women and men can work together for themselves, for their children and for society to meet the challenges of the twenty-first century.

The Platform for Action reaffirms the fundamental principle set forth in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. As an agenda for action, the Platform seeks to promote and protect the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle. The Platform for Action emphasizes that, women share common concerns that can be addressed only by working together and in partnership with men towards the common goal of gender equality around the world. It respects and values the full diversity of women's situations and conditions and recognizes that some women face particular barriers to their empowerment.

155 Platform for Action, Chapter 1, Mission Statement, Para. 1
156 Ibid.
157 Id, Para 2
158 Id, Para 3
Chapter II of the Platform for Action deals with Global Framework. It upholds the Convention on the Elimination of All Forms of Discrimination against Women and builds upon the Nairobi Forward-looking Strategies for the Advancement of Women, as well as relevant resolutions adopted by the Economic and Social Council and the General Assembly\textsuperscript{159}. The objective of the Platform for Action, which is in full conformity with the purposes and principles of the Charter of the United Nations and international law, is the empowerment of all women. The full realization of all human rights and fundamental freedoms of all women is essential for the empowerment of women\textsuperscript{160}. It emphasized that the full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community\textsuperscript{161}.

Chapter III of the Platform for Action deals with Critical Areas of Concern. It states that the advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among all peoples\textsuperscript{162}. It also states that most of the goals set out in the Nairobi Forward-looking Strategies for the Advancement of Women have not been achieved\textsuperscript{163}. A review of the progress since the Nairobi Conference highlights special concern areas of particular urgency stands out as a priority for action. Hence the Platform for Action called upon Governments, the international community and civil society, including non-governmental organizations and the private sector, to take strategic action in the following critical areas of concern:

(a) The persistent and increasing burden of poverty on women.

(b) Inequalities and inadequacies in and unequal access to education and training.

\textsuperscript{159} Platform for Action, Part II, Global Framework, Para. 7
\textsuperscript{160} Ibid, Para 9
\textsuperscript{161} Id, Para 10
\textsuperscript{162} Platform for Action, Part III, Critical Areas of Concern, Para 41
\textsuperscript{163} Ibid, Para 42
(c) Inequalities and inadequacies in and unequal access to health care and related services.

(d) Violence against women.

(e) The effects of armed or other kinds of conflict on women, including those living under foreign occupation.

(f) Inequality in economic structures and policies, in all forms of productive activities and in access to resources.

(g) Inequality between men and women in the sharing of power and decision-making at all levels.

(h) Insufficient mechanisms at all levels to promote the advancement of women.

(i) Lack of respect for and inadequate promotion and protection of the human rights of women.

(j) Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media.

(k) Gender inequalities in the management of natural resources and in the safeguarding of the environment

(l) Persistent discrimination against and violation of the rights of the girl child.

Over the past decade, the Commission has systematically reviewed progress in the implementation of the twelve critical areas of concern identified in the Beijing Platform for Action at its annual sessions, and has adopted action-oriented recommendations, in the form of agreed conclusions, to facilitate increased implementation at all levels.

The twenty-third special session of the General Assembly on "Women 2000: gender equality, development and peace for the twenty-first century" took place at the United Nations
Headquarters in New York from 5 June to 9 June 2000 and adopted a Political Declaration and outcome document entitled "further actions and initiatives to implement the Beijing Declaration and Platform for Action". Five-year Review of the implementation of the Beijing Declaration and Platform for Action held in the General Assembly, 5 - 9 June 2000 is also known as Beijing + 5\textsuperscript{164}.

1) **Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999**

The General Assembly adopted the Optional Protocol to the Convention on the elimination of all forms of discrimination against women on 6 October 1999 in its resolution 54/4 (A/RES/54/4), without reference to a Main Committee. The Optional Protocol was open for signature on 10 December, 1999, Human Rights Day. On 22 December 2000, following receipt of the tenth instrument of ratification, the Optional Protocol entered into force\textsuperscript{165}.

By ratifying the Optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women -- the body that monitors States parties' compliance with the Convention -- to receive and consider complaints from individuals or groups within its jurisdiction.

The Protocol contains two procedures: (1) A communications procedure allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the Committee. The Protocol establishes that in order for individual communications to be admitted for consideration by the Committee, a number of criteria must be met, including those domestic remedies must have been exhausted. (2) The Protocol also creates an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women’s rights. In either case, States must be party to the Convention and the Protocol. The Protocol includes an "opt-out clause", allowing States upon ratification or accession to declare that they do not accept the inquiry procedure\textsuperscript{166}.

\textsuperscript{164} http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm, Lastly accessed on 20 May 2012 at 12 pm.

\textsuperscript{165} http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm, Lastly accessed on 23\textsuperscript{rd} May 2012 at 10 pm.

\textsuperscript{166} Ibid.
The Optional protocol has strengthened the apparatus with which the violence against women can be opposed. The Optional Protocol offers women a direct means of seeking redress at the international level for violations of their rights under the Convention on the elimination of all forms of discrimination against women. It is a mechanism that allows victims of violations or those acting on their behalf (including non-governmental organizations) to make complaint directly to the CEDAW Committee when all domestic avenues or redress have been exhausted or are ineffective. In turn the CEDAW Committee can issue recommendations, or “views”, sharing them with all parties involved, including the State in question. The State party should give due consideration to the views of the Committee together with its recommendations. Besides this the CEDAW Committee can now investigate situations in which a particular State has consistently violated CEDAW protected rights and has frequently failed to curtail violence against women in its territory.

The Optional protection has also afforded protection to those who has communicated with the Committee as a victim of a violation of any of the rights set forth in the Convention. It provides that, “A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.”

Since the establishment of United Nations attempts have been made to provide equal justice to all irrespective of caste, religion, sex and on other grounds. The object behind securing these rights to all was to establish a system in which human rights of every person would be respected. Though at the very outset there was no direct recognition to the rights of women within the family they were indirectly secured by protecting basic rights of women in the nature of right to life, right to personal liberty, right to equality, right to live with human dignity, right against exploitation and so on. Gradually and more particularly after 1980 violation of women’s right in family have been recognized as a violation of human rights of women. In the wake of this so many State parties have enacted suitable legislations in their State for giving effect to the

168 Optional Protocol to the Convention on the elimination of all forms of discrimination against women,1999, Article 2.
169 Ibid, Article 7
170 Id, Article 8
171 Id, Article 11
provisions of the various Conventions and Covenants ratified by United Nations. Even Constitutions of the State parties have also responded positively to women’s right in the light of new International developments. In India the Constitution in its Part III and VI have made elaborate provisions for amelioration of women which are in tune with the International documents. Indian judiciary has also given positive interpretation to the rights of women and even in absence of law, some new rights have been created in the light of International humanitarian law.

3. The Constitution of India and Rights of Women

The Constitution of India172 is the basic or fundamental law of the land. All other laws which are in existence in India are based on the Constitution173. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women.

It is to be noted that with a view to give effect to the various constitutional provisions India as a State has also ratified various International Conventions and Human Rights Instruments committing to secure equal rights of women. Key among them are the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, the Vienna Declaration and Programme of Action 1993 and the Beijing Declaration and Platform for Action, 1995. It has been held by the Supreme Court174 that, international Covenants and instruments are part and parcel of our domestic laws in so far as they are not inconsistent with the express provisions of our domestic laws. Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women’s advancement in different spheres.

a) Preamble to the Constitution of India

172 Came into existence on 26th January 1950
173 Article 13 (2) provides that, “The State shall not make any law takes away or abridges the rights conferred by Part III of the Constitution and any law made in contravention, be void.
The term Preamble means introduction to the statute. With reference to the Constitution it is the introductory part of it. It generally sets the ideals and goals which the makers of the Constitution intended to achieve through that Constitution. It is a statement of the purposes for which the Constitution was enacted. The Preamble of the Constitution of India is a key to open the mind of the makers and show the general purposes for which they made the several provisions in the Constitution. The purpose of the preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it, what is the nature of the policy which is sought to be established by the Constitution and what are its goals and objectives.

The Preamble begins with the words, “We, the people of India….” means and includes men and women of all castes, religions etc. It wishes to render equality of status and opportunity to every man and woman. It also provides for justice in terms of social, economic and political. Liberty of thought, expression, belief, faith and worship is also emphasized. The Preamble again assures dignity of individuals which includes the dignity of women.

In the light of the Preamble, in India several enactments have been brought into operation with a view to protect and safeguard and protect rights and dignity of women. The modern Hindu codified laws aimed at giving equal status and rights to the women are classic example of it. Preamble can be invoked to determine the ambit of both fundamental rights and directive principles.

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175 In P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537, the Supreme Court observed that, “It is well accepted by thinkers, philosophers and academicians that if justice, liberty, equality and fraternity, including social, economic and political justice, the golden goals set out by the preamble is to be achieved, the Indian polity has to be educated with excellence.

176 Re Berubari Union and Exchange of Enclave, AIR 1960 SC 545.


178 The term, “Social justice”, means abolition of all sorts of inequities which may result from the inequalities of wealth, opportunity, status, race, religion, sex, descent, residence and the like.

179 The term, “Economic justice”, means justice from the standpoint of economic force. It aims at establishing economic democracy and a welfare state. E.g., equal pay for equal work.

180 The term “Political justice”, means the absence of any unreasonable or arbitrary distinction in political matters.

b) Fundamental Rights

Part III of the Constitution under Articles 12 to 35 deals with fundamental rights. Despite the fact that all the fundamental rights provided in Part III are available to all the citizens’ irrespective of sex, some fundamental rights contain specific and positive provisions to protect rights of women. When the Constitution was drafted, the drafters were aware of the problems of women as a weaker section of the society. With a view to ameliorate the position of women in Indian society Article 14, 15, 15 (3), 19, 21 and 23 have provided some basic rights to women which are enforceable or Justiciable\textsuperscript{182} in the court of law.

Following are some of the provisions which aim at protecting the status, rights and dignity of women.

**(i) Equality before law for women (Article 14)**

One of the important fundamental rights recognized by Part III of the Constitution of India is that of social justice. One facet of it is gender justice, which is a composite concept\textsuperscript{183}. The concept of equality enshrined in the Constitution prohibits discrimination on the basis of sex. It is a human right of women\textsuperscript{184}.

According to Article 14, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

**Comments**

Equality before law is a negative concept which ensures that there is no special privilege in favour of any one that all are equally subject to the ordinary law of the land, and no person, whatever be his rank or condition, is above the law. Equal protection of law is a positive concept which ensures that, all persons have the right to equal treatment in similar circumstances, both in the privilege conferred and in all the liabilities imposed by laws. It emphasizes that equals can be treated equally, but unequal’s cannot be treated equally. Because of this a law in question based

\textsuperscript{182} Articles 32 and 226 of the Constitution provides for remedies for enforcement of rights conferred by Part III. An aggrieved person can directly approach to Supreme Court under Article 32 or to High Court under 226 for the enforcement of the fundamental rights.


\textsuperscript{184} Ibid
on reasonable classification is not regarded as discrimination. Article 14 permits reasonable classification by the legislature for the purpose of achieving specific ends. Classification to be reasonable should fulfill the following two tests:

1. The classification must be based on an intelligible differentia which distinguish persons or things that are grouped together from others left out of the group; and

2. The differentia must have some rational relation to the object sought to be achieved by the Act.\(^{185}\)

Article 14 is important in the light of subordinate position meted out to women in Indian society. As observed by Justice K. Rama Swamy in *Madhu Kishwar v. State of Bihar*\(^{186}\), women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination. In *Mohd. Ahmed Khan v. Shah Bano Begum and others*,\(^{187}\) while granting equal right of maintenance to a divorced Muslim woman notwithstanding the personal law the Court held that, Clause (b) of the Explanation to S. 125(1) of the Code of Criminal Procedure, 1973, which defines 'wife' as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Therefore, a divorced Muslim woman, so long as she has not remarried, is a 'wife' for the purpose of section 125. The statutory right available to her under that section is unaffected by the provisions of the personal law applicable to her. The Explanation to the Second Proviso to S. 125(3) confers upon the wife the right to refuse to live with her husband if he contracts another marriage, leave alone 3 or 4 other marriages. It shows, unmistakably, that section 125 overrides the personal law, if there is any conflict between the two.

The Supreme Court further held that, the statements in the text books viz. Mulla's Mahomedan Law (18 the edition); Tyabji's Muslim law (4th edition) are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife, who is unable to maintain herself. Section 125 deals with cases in which, a person who is possessed of sufficient means neglects or refuses to maintain, amongst others, his wife who is unable to maintain herself. Since the Muslim Personal Law,


\(^{186}\) (1996) 5 SCC 148.

\(^{187}\) AIR 1985 SC 945
which limits the husband's liability to provide for the maintenance of the divorced wife to the period of iddat, does not contemplate or countenance the situation envisaged by section 125, it cannot be said that the Muslim husband, according to his personal law, is not under an obligation to provide maintenance, beyond the period of iddat, to his divorced wife who is unable to maintain herself. The true position is that, if, the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat. If she is unable to maintain herself, she is entitled to take recourse to section 125. Therefore it cannot be said that there is conflict between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself.

The Supreme Court also observed that, it is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. 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.\(^{188}\)

The Judgment of Shah Bano was whittled down by the Parliament with an enactment of Muslim Women (Protection of Rights on Divorce) Act, 1986 wherein Muslim women was deprived from claiming maintenance under section 125 of the Code of Criminal procedure, 1973. In *Danial Latifi v. Union of India*, while upholding the validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, Court held that -

1) A muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her 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.

\(^{188}\) Ibid. Para-32.
\(^{189}\) AIR 2001 SC 3958
3) A divorced Muslim woman who has not remarried and who is not able to maintain 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 *Sarla Mudgal v. Union of India*¹⁹⁰, the Court held that, the expression "void" under Section 494 of the Indian Penal Code, 1860 has been used in the wider sense. A marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494 of the Indian Penal Code, 1860. A Hindu marriage solemnised under the Hindu marriage Act can only be dissolved on any of the grounds specified under the said Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage of Hindu husband after his conversion to Islam would therefore be in violation of the Act and as such void in terms of Section 494, I.P.C. Any Act which is in violation of mandatory provisions of law is per se void. And the apostate husband would be guilty of offence under S.494, as all the four ingredients of S.494 are satisfied in the Case.

In Sarla Mudgal’s case the Supreme Court requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India". The Supreme Court relied upon the judgment of Shah Bano¹⁹¹ to the extent of considering the point of uniform civil code in India.

Again in *Lily Thomas v. Union of India*¹⁹², the Supreme Court held that, the second marriage of a Hindu husband after conversion to Islam without having his first marriage would be void in terms of the provisions of Section 494, IPC and the apostate-husband would be guilty

¹⁹⁰ AIR 1995 SC 1531
¹⁹¹ Supra Note 12.
¹⁹² AIR 2000 SC 1650.
of the offence under Section 494. The Court observed that making a convert Hindu who has
taken second wife after conversion liable for prosecution under S. 494 of Penal Code is not
against Islam, the religion adopted by such person upon conversion. Saying that it would be
against Islam demonstrates the ignorance about the tenets of Islam and its teachings. The concept
of Muslim Law is based upon the edifice of Shariat. Muslim Law as traditionally interpreted and
applied in India permits more than one marriage during the subsistence of one and another
though capacity to do justice between co-wives in law is condition precedent. Even under the
Muslim Law plurality of marriage is not unconditionally conferred upon the husband. It would,
therefore, be doing injustice to Islamic Law to urge that the convert is entitled to practice bigamy
notwithstanding the continuance of his marriage under the law to which he belonged before
conversion. The violators of law who have contracted the second marriage cannot be permitted
to urge that such marriage should not be made subject-matter of prosecution under the general
Penal Law prevalent in the country.

It is to be noted that section 6 of the Hindu Minority and Guardianship Act (32 of 1956)
provides that the natural guardians of a Hindu minor, in respect of the minor's person as well as
in respect of the minor's property (excluding his or her undivided interest in joint family
property), are, (a) in the case of a boy or an unmarried girl - the father, and after him, the mother
provided that the custody of a minor who has not completed the age of five years shall ordinarily
be with the mother; (b) in the case of an illegitimate boy or an illegitimate unmarried girl - the
mother, and after her, the father; (c) in the case of a married girl - the husband. Thus, it is seen
that the definition of ‘natural guardian’ makes discrimination against mother. In Githa
Hariharan v. Reserve Bank of India193, the Court held that, in all situations where the father is
not in actual charge of the affairs of the minor either because of his indifference or because of an
agreement between him and the mother of the minor (oral or written) and the minor is in the
exclusive care and custody of the mother or the father for any other reason is unable to take care
of the minor because of his physical and/or mental incapacity, the mother, can act as natural
guardian of the minor and all her actions would be valid even during the life-time of the father,
who would be deemed to be 'absent' for the purposes of S. 6(a) of Hindu Minority and

193 1999 AIR SCW 811
Guardianship Act (32 of 1956) and S. 19(b) of Guardians and Wards Act (8 of 1890). Thus mother can act as natural guardian of minor even when father is alive.

(ii) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15)

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

Comments

Article 15 has given particular application to the general rule mentioned in Article 14 of the Constitution. Clause (3) of Article 15 is an exception to the rule against discrimination mentioned in Clause (1). In *Dattatraya v. State of Bombay*[^194^], the Court observed that, Article 15(3) is obviously a proviso to Art.15(1) and proper effect must be given to the proviso. The proper way to construe Art.15(3) is that whereas under Art.15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of Art.15(3) discrimination in favour of women is permissible, and when the State does discriminate in favour of women, it does not offend against Art.15(1). Therefore, as a result of the joint operation of Art.15 (1) and Art.15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women.

In *M. I. Shahdad v. Mohd. Abdullah Mir*[^195^], the Court observed that Article 15 permits the State to make special provision with respect to women. This special provision may be for

[^194^]: AIR 1953 Bom. 311.
[^195^]: AIR 1967 J.& K. 120.
their betterment or may be made for some other purpose. The language of this sub-Article is so worded as to cover any provision specially made for women. In *Anjali Roy v. State of W. B*[^196^]. Article 15 (3) really contemplates provision in favour of women, although grammatically and etymologically 'for' may mean 'concerning' and although, theoretically, it is possible to think of reasonable discrimination against women and children such as that they shall not be admitted to certain sections of a public museum or an art gallery where exhibits of a certain kind are to be seen. But the ordinary meaning of 'provision for' is certainly 'provision in favour of'. Clause (3) is obviously an exception to clause (1) and (2) of Art. 15 and since its effect is to authorise what the Article otherwise, forbids, its meaning seems to be that notwithstanding that clause (1) and (2) forbid discrimination against any citizen on the ground of sex, the State may discriminate against males by making a special provision in favour of females.

In *Government of A.P. v. P. Vijaykumar*[^197^], the Supreme Court observed while explaining the object for inserting Article 15 (3) that, the insertion of Clause (3) of Article 15 in relation to women is recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that clause (3) is placed in Article 15. Its object is to strengthen and improve the status of women.

The Constitutional validity of section 497 of the Indian penal Code, 1860 was challenged as violative to Article 14 in *Yusuf Abdul Aziz v. State of Bombay*[^198^], wherein the Court held that, sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in that case of women and children by clause (3) of Art. 15. Articles 14 and 15 thus read together validate the last sentence of S. 497, I.P.C. which prohibits the woman from being punished as an abettor of the offence of adultery. Thus the Court held that section 497 is not violative of Article 14 and 15 of the Constitution.

[^196^]: AIR 1952 Cal. 825.
[^197^]: AIR 1995 SC 1648
[^198^]: AIR 1954 SC 321
Before that in *Mt. Choki v. The State*¹⁹⁹, the Court held that, it is open to the State to make laws containing special provisions for women and children, but no discrimination can be made against them on account of their sex, etc. The provision of S. 497, Criminal P. C. which gives a special treatment to the cases of the children and women, is, therefore, not inconsistent with the provisions of Art. 15 of the Constitution of India.

In *Mrs. Pragati Varghese v. Cyril George Varghese*²⁰⁰, the Court held that, Article 15 of the Constitution mandates prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Section 10 of the Act required husband only to prove adultery simpliciter whereas it required wife to prove adultery with one or other aggravating circumstances. The different treatment which is accorded to Christian woman under Section 10 of the Divorce Act 1869, is based merely on grounds of sex. Similarly, if one compares the provisions of the other enactments on the subject of divorce, it would be clear that Christian wives are discriminated and have been treated differently as compared to wives who are governed by the other enactments. The discrimination is, therefore, based merely on grounds of religion. The discrimination, in the circumstances, is violative both, of Article 14 and of Article 15 of the Constitution.

(iii) Equality of opportunity in matters of public employment (Article 16)

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

**Comments**

Article 16 of the Constitution has accorded equality of opportunity to women’s in the matter relating to public employment. Where any employment or appointment to any office under the State is to be created no discrimination is permitted on the ground of sex. In *C. B. Muthamma v.*

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¹⁹⁹ AIR 1957 Raj. 10
²⁰⁰ AIR 1997 Bom. 349.
Union of India[^201], while declaring a service rule unconstitutional whereby marriage a disability for appointment to foreign service the Court held that, the provisions in Service Rules requiring a female employee to obtain the permission of the Government in writing before her marriage is solemnized and denying right to be appointed on ground that the candidate is a married woman are discriminatory against women. The equality of opportunity in matters relating to employment does not, however, mean that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern.

In Air India, Petitioner v. Nargesh Meerza[^202], where declaring pregnancy as a disqualification to continue in public employment as ultra virus to Article 14 and 16 (1) of the Constitution the Court held that, the provision "or on first pregnancy whichever occurs earlier" in Air India Employees Service Regulation 46(i) (c) is unconstitutional, void and is violative of Article 14 and will therefore stand deleted. The Regulation does not prohibit marriage after four years and if an Air Hostess after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. Having taking the Air Hostess in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor Air Hostess not to have any children and thus interfere with and divert the ordinary course of human nature. 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. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14. By making pregnancy a bar to continuance in service of an Air Hostess the Corporation seems to have made an individualized approach to a woman's physical capacity to continue her employment even after pregnancy which undoubtedly

[^201]: AIR 1979 SC 1868
is a most unreasonable approach. The present case has greatly elevated the position of working women in India.

(iv) Right to freedom (Article 19)

Right to freedom is most which is the most basic fundamental rights is the kernel of democratic legal system. Article 19 guarantees to every citizen of India the following six basic, fundamental freedoms.

(a) Freedom of speech and expression;

(b) Freedom to assemble peaceably and without arms;

(c) Freedom to form associations or unions;

(d) Freedom to move freely throughout the territory of India;

(e) Freedom to reside and settle in any part of the territory of India;

(f) Freedom to practice any profession, or to carry on any occupation, trade or business.

Comments

Right to freedom is most precious, natural and basic fundamental rights secured for women under Part III of the Constitution. It is the duty of the State to protect and recognize these rights against the violative state action. However theses fundamental rights are not absolute. State is authorized to impose by law reasonable restrictions as may be necessary in the larger interest of the society. In Payal Sharma v. Supdt., Nari Niketan Kalindri Vihar, Agra\textsuperscript{203}, where the Court held that, a Petitioner, a lady about 21 years of age, being a major, has right to go anywhere and to live with anyone. Man and woman even without getting married can live together if they wish. This may be regarded immoral by Society but not illegal. There is a difference between law and morality.

\textsuperscript{203} AIR 2001 All. 254
In *Vishaka v. State of Rajasthan and others*\(^ {204}\), while protecting a freedom from sexual harassment and right to work with dignity, which is a universally recognized basic human rights the Supreme Court held that, sexual harassment of working women in work places would be violations of the victims, fundamental right under Article 19 (1) (g). Again in *Apparel Export Promotion Council v. A.K. Chopra*\(^ {205}\), the Court held 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.

In *Sodan Singh v. New Delhi Municipal Committee*\(^ {206}\), the Supreme Court observed that, the guarantee under Art. 19(1) (g) extends to practice any profession, or to carry on any occupation, trade or business. 'Profession means an occupation carried on by, a person by virtue of his personal and specialised qualifications, training or skill. The word 'occupation' has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. 'Trade' in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. it may include any business carried on with a view to profit whether manual or mercantile. 'Business' is a very wide term and would include anything which occupies the time, attention and labour of a person for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods, and would include anything which is an occupation as distinguished from pleasure.

(v) Protection of life and personal liberty (Article 21)

The right to life and personal liberty in India which has been guaranteed by a constitutional provision under Article 21 has been received a widest possible interpretation. So many rights have found shelter, growth and nourishment in the light of catena of judicial decisions pronounced by the Supreme Court and various High Courts. It has now been accepted that right to life does not mean mere animal existence, but it means right to live with human dignity. It ensures all freedom and advantages that would go to make life agreeable.

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\(^{204}\) AIR 1997 SC 3011  
\(^{205}\) AIR 1999 SC 625  
\(^{206}\) AIR 1989 SC 1988
Article 21 provides that “No person shall be deprived of his life and personal liberty except according to the procedure established by law”.

Comments

Menaka Gandhi’s case is a landmark case of the post-emergency period. This case shows how liberal tendencies have influenced by the Supreme Court in the matter of interpreting fundamental rights, particularly Article 21. Since then the Supreme Court has shown great sensitivity to the promotion of life and personal liberty wherein the rights of women have also been protected and recognized as a part of human rights.

In *Pratibha Rani v. Suraj Kumar and another*\(^\text{207}\), protecting women’s right to her stridhana the Supreme Court held that, it cannot be said that upon a woman entering the matrimonial home the ownership of stridhan property becomes joint with her husband or his relations. Even if the stridhan property of a married woman, is placed in the custody of her husband or in-laws they would be deemed to be trustees and bound to return the same if and when demanded by her. The mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he / she will be liable for all the consequences of such breach. In the case of stridden property, the title of which always remains with the wife though possession of the same may sometimes be with the husband or other members of his family, if the husband or any other member of his family commits such an offence, they will be liable to punishment for the offence of criminal breach of trust under Ss. 405 and 406, Indian Penal Code, 1860.

Again in *Shobha Rani, v. Madhukar Reddy*\(^\text{208}\), declaring demand of dowry as an instance of cruelty the Supreme Court observed that, there has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, there is a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in

\(^{207}\) AIR 1985 SC 628
\(^{208}\) AIR 1988 SC 121
another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. Judges may not go in parallel with them. There may be a generation gap between the Judges and the parties. It would be better if the Judges keep aside their customs and manners. It would be also better if Judges less depend upon precedents.

As every person has right to personal liberty the Supreme Court has also tried to protect the rights of women in India from the harassment of male counterpart. In *Goutam Kundy v. State of W.B*\textsuperscript{209}, the Court rejected an application of husband seeking blood test of child in order to decide paternity of the child. The Court held that, purpose of his applications is nothing more than to avoid payment of maintenance. Section 112 of the Indian Evidence Act, 1872 requires the party disputing the paternity to prove non-access in order to dispel the presumption. “Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation. It is a rebuttable presumption of law under S. 112 that a child born during the lawful wedlock is legitimate, and that access occurred between the parents. This presumption can only be displaced by a strong preponderance of evidence, and not by mere balance of probabilities.

The Supreme Court further held that following is the position as to permissibility of blood test to prove paternity. (1) That Courts in India cannot order blood test as a matter of course. (2) Wherever applications are made for such prayer in order to have roving inquiry, the prayer for blood test cannot be entertained. (3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under S. 112 of the Evidence Act. (4) The Court must carefully examine as to what would be the consequence of ordering the blood test’ whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman. (5) No one can be compelled to give sample of blood for analysis.

The judicial attitude towards protection of domestic servants has been reflected in *Delhi Domestic Working Women’s Forum v. Union of India*\textsuperscript{210}, wherein public interest litigation was filed under Article 32 at the instance of the petitioner Delhi Domestic Working Women’s Forum

\textsuperscript{209} AIR 1993 SC 2295  
\textsuperscript{210} (1995) 1 SCC 14
to expose the pathetic plight of four domestic servants who were subjected to indecent sexual assault by seven army personnel. The incidence had occurred in train while these women’s travelling by the Muri Express from Ranchi to Delhi. The Supreme Court with a view to assist rape victims had laid down the following broad guidelines:

(a) The complaint of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice.

(b) Legal assistance will have to be provided at the Police Station since victim of sexual assault might very well be in a distress state upon arrival at a police station.

(c) The police should be under a duty to inform a victim of a right to representation before any questions were asked to her and the police report should state that the victim was so informed.

(d) The list of advocates willing to act in these cases should be kept at the Police Station for victims who did not have a particular lawyer in mind or where lawyer is unavailable.

(e) The advocate shall be appointed by the Court, on application by the police at the earliest convenient moment.

(f) In all rape trials anonymity of the victim must be maintained as far as necessary.

(g) In appropriate cases, compensation is to be paid to the rape victim.

(h) Compensation to victims shall be awarded by the Court on the conviction of the offender and by the criminal injuries compensation board whether or not a conviction has taken place.

In Bodhisattwa Gautam, v. Subhra Chakraborty211, the Court held 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 in Article 21.

The Supreme Court further held that, if the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court

211 AIR 1996 SC 922
the right to award interim compensation which should also be provided in the Scheme. 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. The Court ordered the accused to pay to victim a sum of Rupees 1,000/- every month as interim compensation during the pendency of criminal case.

Protecting right to privacy of a women in *State of Punjab, Appellant v. Gurmit Singh and others*\(^{212}\), the Court held that, the expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub-section (2) of Section 327 Cr. P. C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera." The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. P. C. and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutor because she would not be so hesitant or bashful to depose frankly as she may be in an open Court, under the gaze of public. The improved quality of her evidence would assists the Courts in arriving at the truth and sifting truth from falsehood. When trials are held in camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings in the case, except with the previous permission of the Court as envisaged by Section 327 (3) Cr. P.C. This would save any further embarassment being caused to the victim of sex crime. Wherever possible it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the Courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The Courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the

\(^{212}\) AIR 1996 SC 1993
victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout.

Recognizing human rights of women in the light of International Covenants and Instruments in *Madhu Kishwar v. State of Bihar* \(^{213}\), the Court held that, human Rights are derived from the dignity and worth inherent in the human person. Human Rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for woman, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth culturally socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights.

Considering the plight of Christian women in relation to the statutory provisions made under section 10 of the Divorce Act, 1869, in *Pragati Varghese v. Cyril George Varghese* \(^{214}\), the Court held that, Article 15 of the Constitution mandates prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. The different treatment which is accorded to Christian woman under Section 10 of the Divorce Act 1869, is based merely on grounds of sex. Similarly, if one compares the provisions of the other enactments on the subject of divorce, it would be clear that Christian wives are discriminated and have been treated differently as compared to wives who are governed by the other enactments. The discrimination is, therefore, based merely on grounds of religion. The discrimination, in the circumstances, is violative both, of Article 14 and of Article 15 of the Constitution. Similarly, if one has regard to the decisions referred above in regard to Article 21, dealing with protection of life and personal liberty, it would be clear that the position of Christian women has been rendered mast demeaning as compared to Christian husbands, as also wives governed by other enactments. The provisions contained in Section 10 in the circumstances, are violative of Article 21 also. Section 10 of the Act required husband only to prove adultery simpliciter whereas it required wife to prove adultery with one or other aggravating circumstances.

\(^{213}\) AIR 1996 SC 1864
\(^{214}\) AIR 1997 Bom. 349
In absence of any legislation to that effect the Supreme Court has recognized right against sexual harassment at work place as a fundamental right under Article 21 of the Constitution. In *Vishaka v. State of Rajasthan and others*\(^{215}\), while protecting a freedom from sexual harassment and right to work with dignity, which is a universally recognized basic human rights the Supreme Court held that, it is now an accepted rule of judicial construction that regard must be had to International Conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Arts. 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantees. This is implicit from Art. 51 (c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Art. 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

The decision of Vishaka’s case was again relied and affirmed by the Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra*\(^{216}\), wherein the Court held that, in cases involving 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 filed. 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

\(^{215}\) AIR 1997 SC 3011  
\(^{216}\) AIR 1999 SC 625
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.

Recently the Supreme Court has recognized woman’s right to make reproductive choices as a part of right to privacy. In Suchita Srivastava v. Chandigarh Administration\(^{217}\), the Court held that, the woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling State interest' in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the Medical Termination of Pregnancy Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.

**Prohibition of traffic in human beings and forced labour (Article 23)**

The right guaranteed under Article 23 is not available against the State, but also against the private individual. This right speaks about establishment of equality and social justice by eradicating all forms of discrimination. Article 23 provides as under:

1. Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

2. Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

\(^{217}\) AIR 2010 SC 235
Article 23 speaks about prohibition of traffic in human beings, beggars and other similar forms of forced labour and any contravention of the provision shall be an offence punishable in accordance with law. To enforce this constitutional prohibition Parliament has enacted Immoral Traffic (Prevention) Act, 1956. This law prohibits traffic in human beings.

In *Vishal Jeet v. Union of India*<sup>218</sup>, the Supreme Court issued directions to State Governments and Union Territories for eradicating the evil of child prostitution and for evolving programmes for care, protection and ultimate rehabilitation of the young fallen victims. In *Gaurav Jain, Petitioner v. Union of India*<sup>219</sup>, the Court held that, the children of prostitutes should not be permitted to live in inferno and the undesirable surroundings of prostitute homes. This is particularly so for young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. While the plea for separate hostels for prostitutes' children cannot be accepted it is necessary that accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified. Legislation has been brought to control prostitution. Prostitution has, however, been on the increase and what was once restricted to certain areas of human habitation has now spread into several localities. The problem has, therefore, become one of serious nature and required considerable and effective attention. The Supreme Court issued Direction to constitute a committee to examine the problem and report to the Court.

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<sup>218</sup> AIR 1990 SC 1412
<sup>219</sup> AIR 1990 SC 292
c) **Directive Principles of State Policy**

Part IV of the Constitution under Article 36 to 51 deals with the directive principles of State policy. As today we are living in a social welfare State, as distinguished from a mere police state, these directive principles aim the idea of social welfare and common good for all the people. Directive principles of state policy lay down certain economic and social policies which are to be pursued by the State at the time of discharging the powers.

Following are some of the directive principles which are aimed at upliftment of the Women in India.

**(i) Certain principles of policy to be followed by the State (Article 39)**

The State shall, in particular, direct its policy towards securing—

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(d) That there is equal pay for equal work for both men and women;

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**(ii) Equal justice and free legal aid (Article 39-A)**

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or
in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities

(iii) Provision for just and humane conditions of work and maternity relief (Article 42)

The State shall make provision for securing just and humane conditions of work and for maternity relief.

(iv) Uniform civil code for the citizens (Article 44)

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

(v) Promotion of educational and economic interest of Scheduled castes, Scheduled Tribes and other weaker sections (Article 46)

The State shall promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation

(vi) Duty of the State to raise the level of nutrition and the standard of living and to improve public health (Article 47)

Article 47 provides the duty of the State to raise the level of nutrition and the standard of living of its people.

Comments

Directive principles of state policy are not enforceable in the Court of law. The Constitution maker wanted directive principles to be enforceable by political process, but due to inactiveness of the government, the Supreme Court of India started reading directive principles in the fundamental rights as a part of the fundamental rights. In catena of cases, Supreme Court of India has given many directive principles of state policy, the status of fundamental rights. While doing this the Court has given good deal to the rights of women.
In *Randhir Singh v. Union of India*\(^{220}\) the Court held that, construing Articles 14 and 16 in the light of the preamble and Art. 39 (d), it is clear that the principle "Equal pay for Equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. In *Grih Kalyan Kendra Worker's Union v. Union of India*\(^{221}\), the Supreme Court has enforced the provisions of Article 39 (d) by giving the directive principles the status of fundamental rights. Equal pay for equal work has been held to be a fundamental right under Article 21 of the Constitution.

With a view to eradicate the discrimination meted out to women by personal laws in *Mohd. Ahmed Khan v. Shah Bano Begum and others*\(^{222}\), emphasizing the need of uniform civil code the Court observed that, it is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. 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.

Again in *Sarla Mudgal, President, Kalyani v. Union of India*\(^{223}\), the Court observed that, requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India".

### d) Fundamental Duties (Article 51 A)

Part IV of the Constitution contains the fundamental duties of the Citizens of India. These duties were added by the Constitution 42\(^{nd}\) Amendment Act, 1976, as per the recommendation of Swaran Singh Committee. Following are the duties towards women:

\(^{220}\) AIR 1982 SC 879  
\(^{221}\) AIR 1991 SC 1173  
\(^{222}\) AIR 1985 SC 945  
\(^{223}\) AIR 1995 SC 1531
(a) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

(b) To develop the scientific temper, humanism and the spirit of inquiry and reform.

**Comments**

It is said that, fundamental duties serve educational purpose. It is also having legal value in the sense that, any law which implements fundamental duties cannot be held to be invalid on the ground that it conflicts with fundamental rights.

**e) Other Constitutional Provisions**

Following are some of the other important provisions made for safeguarding the interests of women:

(i) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))

(ii) Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))

(iii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))

(iv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))
The provisions made under the Constitution of India are very important to ameliorate the position of women in Indian society. These provisions have been made in different part of the Constitution more particularly in Preamble, Part III, Part IV, etc., in the light of International Covenants and Declarations passed by the United Nations from time to time. The parliament of India has also made various legislations with a view to bring women into the main stream of the society. These legislations emphasize the idea of social justice enshrined in the Constitution. Women are treated as a vulnerable part of the society by these legislations and attempt has been made to provide security to them at different level of human life.

In the light of Convention on the Elimination of All Forms of Discrimination against Women, The Vienna Declaration and Programme of Action, 1993 and The Beijing Declaration and Platform for Action, 1995, the Parliament of India has enacted the protection of Women from Domestic Violence Act, 2005 by securing the rights of women in family. This law has provided a civil remedy for the enforcement of women’s rights.

\footnote{See Infra chapter 4}