Sixty seven years ago, India, “awoke to freedom” on a bedrock of blood and violence which characterized the partition of India. Women were the worst affected, for their bodies had become the battlefield for this violence, and they were regarded as the trope for the honour of their men. As Amrita Pritam so poignantly wailed, “Ajj Aakhan Waaris Shah nuhn, kiton kabraan vichhon bol, Te ajj kitab-e-ishq da koi agla varqa phol; Ik roi si dhee Punjab di, tu likh likh mare vaen, ajj lakhan dhiyan rondian, tenu waaris shah nu kehn, kiton kabran vichon bol, ajj kitab-e-ishq da koi agla varka phol.”

However, the fledgling Indian State, through its Constitution, visualized a nation built on the trine pillars of equality, liberty and justice, not only for men, but for “We, the People of India”. The Constitution which we “gave to ourselves” on 26th November, 1949 was built on the premise of a Sovereign, Democratic, Republic, guaranteeing Justice- social, economic and political; Liberty of thought, expression, belief, faith and worship; and Equality of status and opportunity. Nevertheless, a few pertinent questions arise here. What were the rights guaranteed to women in this Constitution? Even more significant, which rights were not guaranteed to women, rights which were recognized internationally as being necessary for the development of the individual? Furthermore, what is the de facto status of women’s rights and how has the judiciary interpreted these rights? Equally significant is the issue of ratification of international human rights instruments. Which of these instruments mentioned in the previous chapters have been ratified by India and with what reservations? How do these reservations impact the human rights of women in India? These are the questions which would be addressed in this chapter. It would be relevant to enter a caveat here. The very nature of the Indian state would not permit an exhaustive survey of the state of women’s rights in India. Moreover, the focus of the present study is on United Nations and women’s human rights, hence an exhaustive survey is not being undertaken. The present chapter is merely a bird’s eye view of the state of women’s human rights in India.
Women’s Rights in the Constitution of India

The august document, which Granville Austin had aptly titled “Cornerstone of a Nation” guaranteed specific fundamental rights to all citizens of India, including women. In fact, the Chapter on fundamental rights has been regarded as the “heart and soul of the Constitution of India.”

A brief overview of the rights guaranteed in this chapter reveals that de jure at least the Constitution of India grants equal civil and political rights to women. The first and foremost right guaranteed to the citizens of India vide Articles 14 to 18 of the Constitution of India is the Right to Equality.

Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It specifically provides that: “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them; 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”. Particularly significant is the provision for positive discrimination which enables the State to make special provisions for women and children and other socially and educationally backward classes of citizens.

Here, it must be mentioned that more than the text, it was the spirit of the Constitution which not only actively prohibited discrimination against women, but also empowered the Governments- both central and state to work for active removal of discrimination against women.

This has been regarded by the Courts as one of the most significant provisions of the Constitution and it has been held that, “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

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and growth, culturally, socially and economically. All forms of discrimination on
grounds of gender is violative of fundamental freedoms and human rights.\footnote{3}

Article 16 deals with the equality of opportunity in matters of public
employment and Article 16 (1) lays down that “there shall be equality of opportunity
for all citizens in matters relating to employment or appointment to any office under
the State.”\footnote{4} Article 16 (2) lays down: “No citizen shall, on grounds only of religion,
race, caste, sex, place of birth, residence or any of them, be ineligible for or
discriminated against in respect of any employment or office under the State.” In this
context, the Supreme Court of India has permitted differential treatment on the basis
of reasonable classification\footnote{5} and considered sex as reasonable classification.\footnote{6}

While explaining the object of Article 15(3) the Supreme Court in
\textit{Government of Andhra Pradesh v. P. V. Vijay Kumar},\footnote{7} held that Article 15(3) is a
recognition of the fact that women of this country for centuries have been socially and
economically handicapped and have been unable to participate in social and economic
activities of the nation on an equal footing with men. R.N. Sahai and Sujata V.
Manohar, J.J., observed, “It is in order to eliminate this socio-economic backwardness
of women and to empower them in a manner that would bring about effective equality
between men and women that Article 15(3) is placed in Article 15. Its object is to
strengthen and improve the status of the women. An important limb of this concept of
gender equality is creating job opportunities for women. To say that under Article 15
(3), job opportunities for women cannot be created would be to out (sic) at the very
root of the underlying inspiration behind this Article. Making special provisions for
women in respect of employment or posts under the State is an integral part of Article
15(3). This power conferred under Article 15(3), is not whittled down in any manner
by Article 16.”

The Constitution of India, vide Articles 19 to 22 guarantees right to freedom,
which is again guaranteed irrespective of any parochial considerations. Six freedoms
are guaranteed under Article 19 which include: freedom of speech and expression; to

\begin{footnotes}
\item[3] C. Masilamani Mudaliar & Ors vs The Idol of Sri…SC 1996 AIR 1697, JT 1996 (3) 98, judgment by
\end{footnotes}
assemble peacefully and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practise any profession, or to carry on any occupation, trade or business. The freedom, guaranteed under this Article, however, is not unlimited, in the sense that there are various restrictions imposed upon these in the name of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and so on, prompting some scholars to assert that this chapter should be titled “fundamental rights and restrictions thereon”.  

Article 20 upholds the rights of persons convicted for offences. Most significant from the perspective of the present study is Article 21 which provides for protection of life and personal liberty. It unequivocally declares that “No person shall be deprived of his life and personal liberty except according to procedure established by law”. The language, as seen above, may have been gender blind, but it is in the context of interpretation of this Article that the Supreme Court has used its powers of interpretation to give it a meaning which perhaps was not foreseen even by the framers of the Constitution.

The original interpretation of Article 21 had kept its scope quite narrow as K. G. Balakrishnan observes, “The interpretation of this article in the early years of the Supreme Court was that ‘personal liberty’ could be curtailed as long as there was a legal prescription for the same. In A.K. Gopalan’s case, the Supreme Court had ruled that ‘preventive detention’ by state agencies was permissible as long as it was provided for under a governmental measure (e.g. legislation or an ordinance) and the Court could not inquire into the fairness of such a measure.” However, in the period following this case, the apex court greatly expanded the scope of this Article and numerous rights were read into the right to life by the Supreme Court of India. In Maneka Gandhi v Union of India, the Supreme Court held that the procedure established by law must not be arbitrary, unfair or unreasonable. Other rights read into this Article include the right to live in fair and reasonable conditions, right to rehabilitation, right to livelihood by legal means, right to decent environment and

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8 V. N. Shukla, op. cit., pp. 57-93.
10 AIR 1978 SC 597
right to shelter. Likewise, various rights of children such as entitlement to special protection, protection from health hazards due to drugs, housing for beggars, right of children to development and so on have also been read into it. Improvement in public health, means of communication, conditions of prisoners have also been read into the ambit of this Article. Right to medical aid was upheld in *Pt. Parmanand Katara v. Union of India*.12

Most significantly, the Courts have also read the right to safe water and sanitation within the scope of this Article. The Kerala High Court in *Attakoya Thangal v. Union of India*13 recognizing the fundamental importance of the right to water observed that, “The right to life is much more than a right to animal existence and its attributes are manifold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements which sustain life itself.”14 The Supreme Court in *Francis Coralie v Administrator, Union Territory of Delhi*15 held that right to life includes right to live with dignity.

In *Bandhua Mukti Morcha v. Union of India*,16 Bhagwati, J., while referring to Francis Coralie, described life right to life as “the fundamental right of everyone in this country… to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of enjoyment of these basic essentials.”

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13 (1990) 1 KLT 580.
15 AIR 1981 SC 746.
16 AIR 1986 SC 802; Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746.
Again, in *Maneka Gandhi v. Union of India*, Bhagwati, J. observed, “the expression ‘personal liberty’ in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19”.

The Court has also read the right to education in this right, leading to the enactment of a Constitutional Amendment inserting Article 21-A into the Constitution guaranteeing right to free and compulsory education for every child under the age of 14 years. In Hussainara Khatoon case, the Court held the right to a speedy trial to be also implicit in this right.

Indian society is a highly stratified society in terms of caste, class and religion. Centuries old practices continue with impunity violating the fundamental human rights of the people. Two such practices were begar and bonded labour. The Constitution of India, through Articles 23 and 24, sought to prohibit such exploitative practices and guarantee a negative right to the citizens of India, viz. right against exploitation. Thus, Article 23 of the Constitution prohibits traffic in human beings, begar and similar forms of forced labour. Traffic in human beings has been explained by the Calcutta High Court as selling, letting or otherwise disposing of men and women like goods. In keeping with this provision, the Immoral Traffic (Prevention) Act 1956, punishes acts which result in traffic in human beings. Slavery is not directly mentioned but it is included in the expression “Traffic in human beings”. Under the existing law whoever imports, exports, removes, buys, sells or disposes of any person as a slave is to be punished with imprisonment.

Another traditional system, outlawed by the Constitution of India is begar, which means involuntary work without payment. The Constitution of India, through this provision, prohibits the compelling of a person to work without payment, except

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20 (1980) 1 SCC 81.
in the case of public services. 23 Under this Provision the Bonded Labour System Abolition Act was enacted in 1976 declaring such labour illegal. 24

Apart from trafficking and begar, another system widely prevalent in India was the bonded labour system under which a person who has taken a loan sometime in the past would work for the money lender free of charge until the loan is paid off. Sometimes, the loan was taken by the grandfather and generations continued to work without pay as it was still not paid off. A highly exploitative system, cases of bonded labour have come to light even in the 21st century. Estimates reveal that close to 11 million people in India continue to be enslaved as bonded labourers. 25

Article 24 clearly prohibits child labour by asserting, “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” In keeping with this Article, the Child Labour (Prohibition and Regulation) Act was passed in 1986, which sought to specify the conditions under which children can work and bans their working in hazardous occupations. The Act was amended in 2012 prohibiting employment of all children under the age of 14 years and of children between 14-18 years in hazardous occupations. In PUDR v Union of India, the Supreme Court held construction work to be hazardous employment. 26 In Lakshmi Kant Pandey v Union of India, the Court held that children are a national asset and the future of the nation depends upon them. 27 The issue has particular relevance for a country like India where girl children are regarded as unwanted, their education takes a back seat.

Articles 25-28 are particularly relevant for minority communities as they guarantee freedom of religion and its various concomitants. Article 25 ensures freedom of conscience and the right to profess, practice and propagate religion. Article 26 allows every religious denomination the right to establish and maintain institutions for religious and charitable purposes as well as to manage its own affairs in the matters of religion. They may also acquire movable and immovable property. Article 27 guarantees that no person may be compelled to pay any taxes the proceeds

23 V. N. Shukla, op. cit., p. 117.
26 AIR 1982 SC 1473.
27 AIR 1984 SC 469, 1984 SCR (2) 795.
of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion. Article 28 prohibits the imparting of religious instruction in any educational institution maintained wholly out of State funds, nor can any person be compelled to take part in such instructions in institutions receiving State aid.

Articles 29 and 30 are again focused upon protecting minority rights by guaranteeing various cultural and educational rights. It is, however, Article 32, viz. Right to Constitutional Remedies which has been regarded as “the heart and soul of the Constitution.” Specifically, it states that: “(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.” The scope of Article 32 of the Constitution has been greatly widened by the Courts by taking a broad view of locus standi which has enabled public interest litigation. On the basis of PIL, the Courts have issued directions in cases relating to protection of pavement and slum dwellers of Bombay, improvement of conditions in jails, payment of Minimum Wages, protection against atrocities on women, Bihar blinding case, flesh trade in protective home of Agra, abolition of bonded labourers, protection of environment and ecology and so on.28

Universal adult suffrage is guaranteed under Articles 325 and 326 and the Constitution lays down that no person shall be ineligible for inclusion in or to be included in a general electoral role or a special electoral role “on grounds only of religion, race, caste, sex or any of them”.29

Thus, the rights guaranteed in this chapter are not merely non-discriminatory, but justifiable. However, this chapter as stated earlier, focuses merely on civil and political rights. Women, who have been shackled for centuries, needed specific assertion of social and economic rights in order to avail the rights granted herein. These social and economic rights are declared in Part IV of the Constitution, i.e. Directive Principles of State Policy. However, there is a major lacunae. The Directive

Principles are specifically made unjustifiable, that is, unlike fundamental rights one cannot go to the Court for enforcement of Directive Principles. However, they serve a very distinct purpose of providing a direction and Courts have applied these while deciding cases of fundamental rights.

The Directive Principles of State Policy contained in Part IV of the Constitution are specifically made not enforceable in any Court, according to Article 37 which, at the same time, states that “the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”.\(^{30}\)

Explaining the importance of the Directive Principles in the Fundamental Rights case, Mathew, J., observed that there are certain “rights which are inherent in human beings because they are human beings - whether you call them natural rights or by some other appellation is immaterial. As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto themselves the Constitution and these basic rights are an essential feature of the Constitution; the Constitution was also enacted by the people to secure justice, political, social and economic. Therefore, the moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in Part IV are not specifically enforceable as against the State by a citizen in a court of law in case the State fails to implement its duty but, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce those directives...”\(^{31}\)

Bhagwati, J., in the landmark judgment of Minerva Mills Ltd. v. Union of India opined that “the Directive Principles enjoy a very high place in the constitutional scheme and it is only in the framework of the socio-economic structure envisaged in Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who

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\(^{30}\) V. N. Shukla, op. cit., p. 177.

are living below the poverty level.”

Thus the significance of the Directive Principles cannot be undermined, particularly where women’s rights are concerned.

Article 39(a) lays down that “the citizens, men and women equally, have the right to an adequate means of livelihood”. The significance of this right was asserted by the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*, where it was observed, “no person can live without the means of livelihood. If the right to livelihood is not treated as part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it will make life impossible to live.”

Articles 39 (b) and (c) seek to ensure social justice by providing that “the ownership and control of the material resources of the community are so distributed as best to subserve the common good; and that “the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”

Article 39(d) tries to ensure that “there is equal pay for equal work for both men and women” but the Courts have held that a reasonable classification made under Article 14 and 16 cannot be rejected under Article 39(d). Workers of different establishments and management cannot claim parity. Similarly, depending upon qualifications, different pay scales could be given.

Article 39(e) provides for special protection for women workers by laying down 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”. Article 39 (f) provides, “that childhood

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32 Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789 at 1847.
33 V. N. Shukla, op. cit., p. 180.
36 ibid.
38 V. N. Shukla, op. cit., p. 181.
and youth are protected against exploitation and against moral and material abandonment.” Article 39 A ensures free legal aid, particularly for persons suffering from economic or other disabilities.

Article 40 requires the State to take steps to organize village panchayats and to endow them with such powers as shall enable them to function effectively.

Article 41 provides for right to work besides public assistance in certain situations by laying down that, “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. 39

Article 42 provides for just and humane conditions of work and maternity relief. 40 In Municipal Corporation of Delhi v. Female Workers (Muster Role) and others, 41 the Supreme Court held that denial of maternity benefits to female workers, who are engaged by Corporation on Muster Roll who work even in advanced stage of Pregnancy and also soon after delivery, unmindful of detriment to their health or to the health of new born, would amount to violation of Articles 14, 15(3), 38,39,42,43 of the Constitution of India as well as Universal Declaration of Human Rights 1948 and Article 11 of CEDAW.

Particularly relevant for women, who are primarily employed in the agricultural and informal sector is Article 43 which directs the State to ensure to all workers, agricultural, industrial or otherwise, a living wage, decent conditions of work and full enjoyment of leisure, social and cultural opportunities. It further directs the State to promote cottage industries.

Separate personal laws for different religious communities are the bane of women’s rights in India. These are primarily based upon denial of women’s rights. Uniform civil code has been the demand of the women’s movement right from independence. In fact, this was one of the most debated aspects of the Constitution during the drafting of the Constitution.

39 ibid, p.182.
40 ibid, p. 183.
Article 44 envisages a uniform civil code for the citizens and expects that “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” However, the ideal, even today seems out of reach as political parties in seats of power have their own agendas, in which women’s rights take a back seat.

Right to free and compulsory education is contained in Article 45, while Article 46 seeks to promote the educational and economic interests of weaker sections of the people in particular, Scheduled Castes and Tribes as well as protect them from social injustice and exploitation. Article 47 directs the State to raise the level of nutrition and standard of living of the people as well as improve public health and endeavours to prohibit consumption of intoxicating drinks and drugs.

A provision to protect the dignity of women was also introduced by the Constitution (Forty Second Amendment) Act, 1976 in the Fundamental Duties in Part IV A of the Constitution. Article 51 A(e) lays down that it shall be a fundamental duty of every citizen of India is “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.”

The social and economic rights contained in this Chapter of the Constitution are particularly relevant for women. However, the problem emerges when one realizes that this Chapter is specifically made subservient to the Chapter on Fundamental Rights and also unenforceable by the Courts. Nevertheless, the Courts, in interpreting the provisions of the Constitution have upheld the primacy particularly of Articles 39 (b) and (c) over the fundamental rights contained in Articles 14 and 19. Moreover, as stated earlier, many of these rights have been read into the very wide interpretation given to Article 21 of the Constitution.

Thus the Constitution of India guarantees numerous rights to women without distinction on the basis of sex. These rights have been given a wide interpretation by the judiciary over the years resulting in the reading of large number of provisions guaranteed by the International Conventions into the provisions of the Constitution of

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42 V. N. Shukla, op. cit., p.184.
43 ibid, p.189.
India, thereby ensuring even those rights not specifically declared by the Constitution of India.

It would also be pertinent to point out that the provisions of various international conventions are mirrored in the Constitution of India. Thus, the provisions of UDHR, ICCPR and ICESCR are reflected in various provisions of Parts III and IV of the Constitution of India. In fact, many of the provisions of CEDAW too are found to have already been incorporated in the Constitution of India as revealed by the following table.

Table No. 5.1

Equivalent Provisions Regarding Women’s Human Rights in Constitution of India and International Instruments

<table>
<thead>
<tr>
<th>Rights</th>
<th>Provision under Indian Constitution</th>
<th>International Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equality before Law</td>
<td>Article 14</td>
<td>Article 7 UDHR, Article 26 and 14 (1) of ICCPR, Article 15 of CEDAW.</td>
</tr>
<tr>
<td>Prohibit discrimination on grounds of religion, race, caste, sex or place of birth</td>
<td>Article 15</td>
<td>Article 7 UDHR (1948), Article 26 of ICCPR (1966), Article 2 of CEDAW (1979).</td>
</tr>
<tr>
<td>Equality of opportunity in public employment</td>
<td>Article 16</td>
<td>Article 21(1) of UDHR (1948), Article 25(c) of ICCPR (1966), Article 11(1) of CEDAW (1979).</td>
</tr>
<tr>
<td>Freedom of speech and expression</td>
<td>Article 19</td>
<td>Article 11(1)(c) of CEDAW (1979)</td>
</tr>
<tr>
<td>Right to life and personal liberty</td>
<td>Article 21</td>
<td>Article 3 of UDHR, Article 16(1) and (1) of ICCPR and Article 3 of CEDAW.</td>
</tr>
<tr>
<td>Prohibition of trafficking and bonded labour</td>
<td>Article 23</td>
<td>Article 4 of UDHR, Article 8(3) of ICCPR and Article 6 of CEDAW.</td>
</tr>
<tr>
<td>Prohibition of child labour</td>
<td>Article 24</td>
<td>Article 1 of CRC</td>
</tr>
<tr>
<td>Right to freedom of Religion</td>
<td>Article 25</td>
<td>Article 18(1) of ICCPR.</td>
</tr>
<tr>
<td>Equal pay for equal work for both men and women</td>
<td>Article 39 (d)</td>
<td>Article 23(2) of the UDHR, Article 7(a) (i) of ICESCR and Article 11(1) (d) of CEDAW, 1979.</td>
</tr>
<tr>
<td>Right to Work</td>
<td>Article 41</td>
<td>Article 23(1) of UDHR, Article 6(1) of ICESCR and Article 11(1) (d) of CEDAW.</td>
</tr>
<tr>
<td>Right to humane conditions of work and maternity relief</td>
<td>Article 42</td>
<td>Article 11 of CEDAW.</td>
</tr>
</tbody>
</table>
Apart from these provisions of the Constitution, India is a signatory to many major international Conventions protecting and promoting the rights of a cross-section of people. These include the international Bill of rights, CEDAW as well as CRC. However, India has ratified CEDAW but with significant reservations and declarations, which can effectively nullify the availability of rights for women. Moreover, India is still to sign and ratify a large number of Conventions. Most significant among these, as may be seen from the Table below are Optional Protocols to CRC and CEDAW.

**Table No. 5.2**

**International Conventions and Status of India’s Signing and Ratification**

<table>
<thead>
<tr>
<th>Convention &amp; Conferences</th>
<th>Signed by India (Year)</th>
<th>Ratified by India (Year)</th>
<th>Reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universal Declaration of Human Rights (UDHR), 1948.</td>
<td>10th December, 1948.</td>
<td>10th December, 1948</td>
<td>Nil</td>
</tr>
<tr>
<td>The Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>Convention relating to the Status of Refugees, 1951.</td>
<td>Not Ratified</td>
<td>Not Signed</td>
<td>Nil</td>
</tr>
<tr>
<td>Equal Remuneration Convention, 1951 (No. 100)</td>
<td>Not Ratified</td>
<td>25th September, 1958</td>
<td>Nil</td>
</tr>
<tr>
<td>Convention relating to the Status of Stateless Persons, 1954</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>Convention on the</td>
<td>7th</td>
<td>23rd June,</td>
<td>Nil</td>
</tr>
<tr>
<td>Convention &amp; Conferences</td>
<td>Signed by India (Year)</td>
<td>Ratified by India (Year)</td>
<td>Reservations</td>
</tr>
<tr>
<td>---------------------------</td>
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<tr>
<td>Abolition of Slavery, 1956</td>
<td>September, 1956</td>
<td>1960</td>
<td></td>
</tr>
<tr>
<td>Convention on the Abolition of Forced Labour, 1957. (No. 105)</td>
<td>18th May 2000</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</td>
<td>3rd June, 1960</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Convention on the Reduction of Statelessness, 1961</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962.</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination, 1965.</td>
<td>2nd March, 1967.</td>
<td>3rd December, 1968.</td>
<td>The Government of India declares that for reference of any dispute to the International Court of Justice for decision in terms of Article 22 of the International Convention on the Elimination of all Forms of Racial Discrimination, the consent of all parties to the dispute is necessary in each individual case.</td>
</tr>
<tr>
<td>First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), 1966</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>The Minimum Age Convention, 1973.</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>Convention &amp; Conferences</td>
<td>Signed by India (Year)</td>
<td>Ratified by India (Year)</td>
<td>Reservations</td>
</tr>
<tr>
<td>---------------------------</td>
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</tr>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination against Women, 1979.</td>
<td>30th July, 1980</td>
<td>9th July, 1993</td>
<td>Declarations and reservations made upon signature and confirmed upon ratification: Declarations: &quot;i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent. &quot;ii) With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.&quot; Reservation: &quot;With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article.&quot;</td>
</tr>
<tr>
<td>Convention &amp; Conferences</td>
<td>Signed by India (Year)</td>
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<td>Reservations</td>
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<tr>
<td>Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), 1989</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
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<tr>
<td>The Indigenous and Tribal Peoples Convention, 1989.</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
</tr>
<tr>
<td>International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW), 1990.</td>
<td>Not Signed</td>
<td>Not Ratified</td>
<td>Nil</td>
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<tr>
<td>International Convention for the</td>
<td>6th February,</td>
<td>Not Ratified</td>
<td>Nil</td>
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</table>
However women’s rights are not solely limited to the Constitution of India, and a large number of laws contain specific provisions for women.

**Women’s Rights and Law in India**

A highly patriarchal society, India is nevertheless unique in that it has the largest number of laws focusing upon women. This may have been the result of a strong and vibrant women’s movement, as well as the entry of more women into the legal profession, as well as the influence of feminism which has led to attempts to rewrite laws relating to rape, dowry, inheritance and so on. A brief overview of some of the major laws would be pertinent here.

One of the earliest efforts to incorporate women’s rights into the Indian Law can be said to have emerged in the form of the ‘Hindu Code’. Consisting of four Acts dealing with Marriage, Succession, Adoption and Maintenance and Minority and Guardianship, enacted over a period of two years (1955-56), the code asserts various rights for women, albeit the Hindu women.

*The Hindu Succession Act, 1956*

The Hindu Succession Act, 1956, conferred rights of succession to the daughter and mother simultaneously and equally with the son over both the coparcenary property as well as separate property of the deceased. However rights
guaranteed over ancestral property were not equal. Only a male could be a co-parcener. The 2005 Amendment\textsuperscript{44} to this Act, entitled a woman to

(a) “by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son.”\textsuperscript{45}

Further she has entitlement to an equal share as the son.

\textit{The Hindu Marriage Act, 1955}

The Hindu Marriage Act, 1955 sought to bring gender equality in the sphere of marriage and divorce by upholding monogamy, fixing a minimum age at marriage, setting conditions for divorce equally for men and women.

\textit{Hindu Adoption and Maintenance Act, 1956}

The Hindu Adoption and Maintenance Act, 1956 confers a right to an unmarried Hindu woman, to a divorcee or widow to take a son or daughter in adoption for herself,\textsuperscript{46} in addition to a couple wishing to make an adoption. A Hindu wife is also entitled to be maintained by her husband during her life time.\textsuperscript{47} She is also entitled to separate residence and maintenance under certain conditions such as when husband is guilty of desertion, cruelty, bigamy or suffering from a virulent form of leprosy, or living or habitually residing with concubine, ceases to be a Hindu by converting to other religion and when there is a cause justifying her living separately.\textsuperscript{48} However, in case of unchastity and conversion of religion, the wife is not entitled to separate residence and maintenance.\textsuperscript{49}


\textsuperscript{46} Dr. Shamsuddin Shams (1991), \textit{Women, Law and Social Change}, New Delhi: Ashish Publishing House, p. 34.

\textsuperscript{47} Section 18(1) of the Hindu Adoption and Maintenance Act, 1956.

\textsuperscript{48} Section 18 (2).

\textsuperscript{49} Section 18 (3).
Maintenance under the Act is defined to include food, clothing, residence, education, medical attendance and treatment. The wife is entitled to maintenance for life. She may live separately from her husband without forfeiting her right to maintenance on certain grounds. Children both legitimate and illegitimate are entitled to be maintained by parents. This right is enforceable against those who inherit the estate of the deceased.\textsuperscript{50} Father-in-law is bound to maintain a widowed daughter-in-law if she has no source of income.

\textit{The Hindu Minority and Guardianship Act, 1956}

The Hindu law of guardianship of minor children was codified and reformed by the Hindu Minority and Guardianship Act, 1956. This law maintains the superior right of the father as being the first natural guardian of the child and also the guardian of his wife. Mother becomes the guardian of the child only in the absence of the father.\textsuperscript{51}

\textit{Dowry Prohibition Act, 1961}

To curb the menace of dowry, the Indian Parliament enacted the Dowry Prohibition Act in 1961, which prohibits giving and taking of dowry. It also defined dowry as expenditure incurred in consideration of marriage. Since then the practice has increased manifold. Dowry deaths became commonplace. The fault lay in both loopholes in the law as well as lack of implementation.

The loopholes in this law were explicitly set out by the Joint Committee of the Parliament, appointed to examine the working of the Dowry Prohibition Act, which noted that, “the Act contains an Explanation under Section 2 which takes away the teeth of the law and nullifies the objective for which it was enacted as in the form of cash, ornaments, clothes and other articles are not to be deemed as dowry unless they are made “as consideration for the marriage” of the said parties. It is well nigh impossible to prove that the presents so made were ‘as considered for the marriage’ for the obvious reason that the giver, i.e. the parents or the guardian of the bride, would not, in the interest of the girl, say so.” Secondly, the Act lacked enforcement.


In this connection, the Committee stated that, “the court which is competent to try offences under the Act by virtue of Section 7(a), cannot take cognizance of any offence except on a complaint made within one year from the date of the offence. It is true that any person who is aware of the commission of the offence, and not necessarily on the aggrieved party, can make a complaint under this provision, but rarely do the invitees at the wedding, who alone would have the knowledge of the commission of the offence, come forward to lodge a complaint. It is equally futile to expect even the aggrieved party to set the law in the motion since the bride’s parents, who are usually the victims, would be reluctant and unwilling to make a complaint because of the fear that their daughter could be victimized for that.”

Increasing dowry deaths led to a widespread agitation by the women’s movement, which resulted in the Act being amended twice in 1984 and 1986. The 1984 Amendment held “presents” of a “customary nature” with no excessive value having regard for the financial status of the persons giving them, to not be deemed as dowry. The Amendment defined dowry as “any property or valuable security given or agreed to be given either directly or indirectly at or before or after the marriage—but it must be given “in connection with marriage”.

The 1986 Amendment held the husband and in-laws liable in case of death of a women by burns or other bodily injury within seven years of marriage and it is shown that proceeding such death she was subjected to cruelty or harassment by her husband or relatives, they may be imprisoned for not less than seven years which may also extend to life imprisonment.

The Indecent Representation of Women (Prohibition) Act, 1986

In the current information age, where a wide selection of media forms is available and the media reaches out to the previously uncharted territories, one of the major violations of women’s human rights occurs through indecent representation. Be it the internet, social networking sites, print or audio-visual media or even mass media, women are the most vulnerable. In this context, the Indecent Representation of Women (Prohibition) Act was enacted in 1986.

Section 2(c) of the Act, defines indecent representation to mean “the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating women; or is likely to deprave, corrupt or injure the public morality or morals”.54

The Act prohibits and punishes,55 indecent representation of women through advertisement56 or publications, writing, printing, figure or in any other manner.57 Even companies are punishable under the Act if the offence is committed by the company or any person in charge of the company.58

The Immoral Traffic (Prevention) Act.1986 (Amended)


Under this Act, trafficking is discussed only in relation to prostitution which has been defined as sexual exploitation or abuse and not in relation to any other offence. The word ‘sexual exploitation’ or ‘abuse’ has been used in place of prostitution. It holds prostitution and owning a brothel to be illegal and defines the punishments for the same. Specific mention is made of children being forced or induced into prostitution.

The Act was amended in 1986 and its title change to The Immoral Traffic (Prevention) Act. Though the amended Act also does not prohibit prostitution it increased the punishment in order to act as a deterrent and provided for the appointment of special officer and advisory bodies under Section 13, and empowered Union Government to constitute special courts to deal with the problem separately.59

55 Under Section 6 on first conviction with imprisonment of either description for a term which may extend up to two years, and with fine which may extend up to Rs. Two Thousand and in event of second subsequent conviction with imprisonment for a term not less than 6 month, but which may extend to 5 years and also with a fine not less than Rs. Ten Thousand but which may extended to Rs. One lakh.
56 Section 3, of the Indecent Representation of Women (Prohibition) Act, 1986.
57 Section 4, ibid.
58 Section 7, ibid.
A Bill was introduced to amend this Act in 2006 which sought to protect the rights of women sex workers.

In *Gaurav Jain v. Union of India and others,* K. Ramaswamy and D.P. Wadhwa, JJ, in a PIL regarding rehabilitation of children of prostitutes held that it is the State that has an obligation for the eradication of and rescue and rehabilitation of the prostitutes and their entry into social mainstream by counseling, cajoling and coercion necessary for effectively enforcing their fundamental rights and human rights under The Immoral Traffic (Prevention) Act, 1956 and under the Juvenile Justice Act, 1986, their children also have right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any stigma attached to it.

The *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Act, 2003 (PCPNDT))*

Abortion is legal in India under certain circumstances. The Medical Termination of Pregnancy Act of 1972 provides that pregnancy may be terminated by a Registered Medical Practitioner under special circumstances such as where life of mother is endangered or there is a risk of grave injury to her physical or mental health or where there is a risk that the child would suffer from physical or mental abnormalities or pregnancy is caused by a rape or by a failure of contraceptive as it could cause grave mental injury to her. The Act goes a long way in ensuring women’s control over their reproductive rights. However, it has been misused for purposes of sex selective abortions, which led to the enactment of the Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act which was enacted in 1994. This Act prohibits the communication by any person conducting such pre-natal diagnostic tests by word, sign or any other manner to the pregnant women concerned or her relatives, the sex of fetus. The Act prohibits and punishes the advertisements relating to the pre-natal determination of sex and medical genetics, gynecologists, registered medical practitioner or any other person in a laboratory or genetic centre or

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60 AIR 1998 SC 2838.
any medical geneticist, etc. conducting the prenatal diagnostic technique on any pregnant women for the determination of sex are also liable for punishment.  

The advancement of medical technology combined with extreme son preference, forced another amendment to this Act, which came to be called the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act. 2003.

*The Protection of Women from Domestic Violence Act, 2005*

Violence, as seen in the previous chapters, is a major violation of women’s human rights, domestic violence being the major culprit in this regard. A woman is safe neither within the home nor outside. In this context, the Protection of Women from Domestic Violence Act, was enacted in 2005 by the Indian Parliament.

This Act defines domestic violence as any act, omission or commission or conduct of any persons who is, or has been, in a domestic relationship with the aggrieved persons, shall constitute domestic violence if he causes any harm or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security or has the effect of threatening the aggrieved person or any person related to her by any conduct.

In other words, domestic violence is physical, sexual, psychological or financial violence within family or in an intimate relationship. Domestic violence also

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62 Section 23(3) of the Act, The Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act, 1994, retrieved from http://www.ncpcr.gov.in/view_file.php?fid=434 accessed on 9th August 2014, states that with imprisonment which may extend to three year and with fine which may be extended up to Fifty Thousand and on any subsequent conviction imprisonment which may extend to five years and with a fine which may extended to One Lakh Rupees.

63 As the Punjabi saying goes, “Kurian tan aatte de dive han, andar rakhiyen tan chuhey kha jandey han, bahar kadiyen tan kaan khaa jandey han”. (girls are like lamps of flour, kept inside, they are eaten by rats, outside, crow will eat them)

includes emotional abuse which further covers humiliation, ridicule, verbal abuse, isolation or restriction of movement.  

Under this Act, the magistrate can pass orders to stop the offender from aiding or committing violence within and outside the home, communicating with the woman, taking away her assets, intimidating her family and those who give the aggrieved person assistance from domestic violence. Furthermore, the woman cannot be evicted from the shared household. The woman has the right over her stridhan or any valuable security as well as the right to claim monetary expenses and damage. The Court can grant her temporary custody of children. Women also have the right to free legal services under the Legal Services Authorities Act, 1987.

 Laws Relating to the Rights of Women Workers

Another Act, not specifically directed at women, but indirectly effecting their rights was the Minimum Wages Act, 1948. The major objective of the Act was to protect the interests of the workers, particularly in the unorganized sector by fixing Minimum Wages in certain specified employments from time to time. The Act was enacted to prevent the exploitation of workers by their employers and for this, the Act fixes the statutory obligation on the employer to pay the minimum wages to the employee by incorporating the Principle of fair pay.

In Workmen of Reptakas Brett and Company Ltd. v. Management, the Supreme Court held that workers wage is no longer a contract between an employer and an employee. It has the force of collective bargain under the labour laws. Keeping in view the socio-economic aspects of the wage structure, one more component to minimum wages shall be added namely, “children’s education, medical reimbursement, minimum recreation including festivals and ceremonies and provisions for old age, marriage etc. should constitute 25% of minimum wage”.

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The Factory Act also grants women certain specific rights. These include: separate toilets and washrooms with doors;\(^{69}\) Women cannot be employed for passing Cotton in which a cotton opener is at work;\(^{70}\) they cannot be made to lift, carry or move more than the prescribed weight;\(^{71}\) Women workers are entitled to separate adequately screened facilities and suitable washing facilities which must be conveniently accessible and must be kept clean;\(^{72}\) Women workers are entitled to crèche for their children under the age of six years;\(^{73}\) Women cannot be made to work more than 48 hours in a week;\(^{74}\) women cannot be made to work for more than five hours at a stretch;\(^{75}\) Women can be made to work only between 6 a.m. to 7 p.m. but the state government may vary this limit but in no case such provisions should provide for the employment of women between 10 p.m. to 5 a.m.;\(^{76}\) Also their shift cannot be changed except after a weekly or any other holiday.\(^{77}\)

Women working in fish curing or fish canning factories could be required to work for more time if necessary to prevent the damage to or deterioration in any raw material in accordance with the rules of the state governments.\(^{78}\)

Similarly The Plantation Labor Act, 1951 provides for maternity benefits, that no women worker can be employed in any plantation except between 6 a.m. and 7 p.m., prohibit women from working at night between 7 p.m. and 6 a.m. Further, a rest interval of half an hour should be given after the work of 5 hrs. The women workers are also entitled to crèche facilities where number of workers is 30 or more, and sufficient number of latrines and urinals for women and proper medical facilities must be provided for them.

Likewise the Indian Mines Act, 1952 contains protectionist measures for women. Beside other provisions, under this Act, women are prohibited from underground work in all mines, and women can be employed in any part of a mine

\(^{70}\) Section 27, ibid.
\(^{71}\) Section 34, ibid.
\(^{72}\) Section 42, ibid.
\(^{73}\) Section 48, ibid.
\(^{74}\) Section 51, ibid.
\(^{75}\) Section 55, ibid.
\(^{76}\) Section 66(1)(b), ibid.
\(^{77}\) Section 66(1)(c), ibid.
\(^{78}\) Section 66(2), ibid.
above the ground, and be made to work only between 6 a.m. to 7 p.m., but the State Government may vary the limit but in no case such provisions should provide for the employment of women between 10 a.m. to 5 p.m. and there must be a interval of not less than 11 hrs between the termination of employment on any one day and commencement of the next period of employment, and she cannot made to be lift, carry or move weight more than that prescribed. They are entitled to crèche facilities at the place of employment, women workers are entitled to sufficient number of latrines and urinals in clean and sanitary conditions and separate washing and bathing facilities, and they are entitled to medical and other welfare facilities.

Bonded labour is a gross violation of human rights. The Bonded Labour System (Abolition) Act of 1976 enacted in keeping with Article 23 of the Constitution abolished the bonded labour system with effect from 25th Oct 1975, thereby freeing unilaterally all the bonded labourers and simultaneously liquidating their debits as well as making bondage a cognizable offence punishable by law.79

The Bonded Labor System (Abolition) Act, 1976 made bonded labor, an illegal activity with reference to both adults and children below the age of 18. This Act made all agreement, pacts, tradition and customs related to slavery and bonded laborer, to be null and void, which frees all bonded labourers from their debt. According to this Act, the victims of bonded labor are not liable to repay their debts and any legal proceedings against bonded laborers are dismissed. As per the law, the bonded labour cannot be evicted from his home and in cases of accepting payments from the bonded labour, the creditors are punishable with three year imprisonment and fine upto Rs. Two Thousand.80

In P.U.D.R. v. Union of India,81 the Supreme Court held that labour may be forced not only due to physical force but also due to hunger or poverty which compels him to accept employment for remuneration lesser than the statutory mining wages.

Prior to 1976, there was no legal provision to implement the principle of equal pay for equal work for women and discrimination against women in payments of

81 AIR 1982 SC 1473.
wages was quite common. V.V. Giri had also concluded that, “Women workers have traditionally been in receipt of a lower wage than men in almost all industries”.  

The Equal Remuneration Act, 1976 imposes a duty on the employer to pay equal remuneration to men and women workers employed by him in an establishment for performing same work or work of similar nature. An employer also cannot make discrimination on the ground of sex at the time of recruitment for same work or work of similar nature or in any condition of services subsequent to recruitment such as promotion, training or transfer except in those cases where employment of women in such works is prohibited by the law for the time being in force.  

Further, to provide a fillip to employment opportunities for women, appropriate government is required to constitute one or more advisory committees to advise, (a) the extent to which women could be employed in a specialized establishment or employment, (b) number of women employed in the specified establishment or employment, nature of work, hours of work, suitability of women for employment and the need for providing increasing employment opportunities for women including part time employment. As women can understand the problem of women better so it is required under the Act that women are to constitute half the members of the Advisory Committee. 

After considering the advice of the Committee and representation made by employer, the appropriate government is required to issue necessary directions with regard to employment of women workers. Though under the Act various provisions have been provided to promote the employment opportunities for women and accordingly committees were also established but still successive governments did not take any concrete steps to implement the recommendations of the committee.

In India, working women had been given maternity benefits even before independence under the Mines Maternity Benefit Act, 1941 and later on under the two central Acts, i.e., Employees’ State Insurance Act, 1948 and the Plantation Labour

84 Section 5, ibid.
85 Section 6(1), ibid.
86 Section 6(3), ibid.
87 Section 6(2), ibid.
88 Section 6(5), ibid.
Act, 1951. But there was no uniform standard for maternity protection for all other working women in the country.\textsuperscript{89}

Article 42 of the Constitution provided for maternity relief for women by stressing that “The State shall make provisions for securing just and humane conditions of work and for maternity relief”.\textsuperscript{90}

In 1961, to comprehensively cover the special requirement under maternity conditions, the Maternity Benefits Act was enacted. The object of the Act was to “regulate the employment of women\textsuperscript{91} in certain establishments\textsuperscript{92} for certain period before and after child-birth and to provide for maternity benefit and certain other benefits”.\textsuperscript{93}

Section 2 (1) (a), applies to any woman employed, “to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances”, and part (b) also applies, “to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months”.\textsuperscript{94} Section 5 in the Maternity Benefits Act 1961 grants the right to payment of maternity benefits that, “every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day”.\textsuperscript{95} Further, a State Government with the prior approval of Central Government may apply this Act to any establishment by notification in Official

\textsuperscript{89} V. V. Giri, \textit{op. cit.}, p.82.
\textsuperscript{90} V. N. Shukla, \textit{op. cit.}, p.306.
\textsuperscript{91} Under Section 3(o) of the Maternity Benefit Act, women means a women employed, whether directly or through any agency for wages in any establishment. Retrieved from http://www.ilo.org/dyn/travail/docs/678/Maternity%20Benefits%20Act%201961.pdf accessed on 5\textsuperscript{th} August 2014.
\textsuperscript{92} Under Section 3(e) an establishment means a factory, mine, a plantation and an establishment wherein persons are employed for exhibition of equestrian, acrobatic and other performances; and a shop or an establishment to which provisions of this Act have been declared under Section 2(1) to be applicable.
\textsuperscript{93} The Maternity Benefits Act, 1961, Preamble of the Act.
\textsuperscript{95} ibid.
Gazette after giving prior notice of two months. But if a woman works in any establishment after she has been permitted by the employer to absent herself under Section 6 of this Act, she will forfeit her claim to maternity benefit.

Rape Law

Section 375 of Indian Penal Code (as amended in 1983), provides that, it would amount to rape, if a man has sexual inter-course with a woman-

(a) Against her will

(b) Without her consent,

(c) With her consent, when her consent, has been obtained by putting her or any person in whom she is interested , in fear of death or hurt,

(d) With her consent, when the man knows that he is not her husband, and that her consent is given because she believes herself to be lawfully married,

(e) With her consent, when at the times of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or wholesome substance, she is unable to understand the nature and consequences of that to which she gives consent,

(f) With or without consent, when she is under sixteen years of age."

Severe punishment is provided under the amended law for gang rape, rape of a pregnant woman, the perpetrator knows that the women is pregnant, and when the victim is below the age of twelve years and Court must mention special and adequate reasons for imposing lesser punishment.

The Delhi gang rape case led to further changes in the Criminal Law. The Criminal (Amendment) Act, 2013, under Section, 376A provides that a person committing the offence of sexual assault, which further causes death, shall be

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96 Provision Section 2(1), ibid.
99 Imprisonment of either description upto two years or fine or both under Section 376A incorporated by the Criminal Law (Amendment) Act, 1983.
punished with rigorous imprisonment not less than 20 years, which may further extend to life imprisonment. Persons accused of gang rape, regardless of their gender shall be punished with rigorous imprisonment not less than twenty years and compensation paid to meet the medical expenses and rehabilitation of the victim.

Sexual Harassment

Gang rape of Bhanwari Devi, a saathin in Rajasthan, and the acquittal of her rapists by the Court led to the filing of a case by Vishakha, an NGO in the Supreme Court. In the absence of any national law on the issue of sexual harassment at work place, the Supreme Court, applying CEDAW, set out certain guidelines on sexual harassment at work place. These were codified into a law in 2013 as The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Supreme Court in this case referring to CEDAW and other international human rights instruments and Article 19(1) (g) held that “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance...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 Convention and norms are significant for the purpose of interpretation of the guarantee of the gender equality, right to work with human dignity in Article 14, 15 19(1)(g) and 21 of the constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with 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 guarantee”.

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One of the most effective and revolutionary legal interventions for women’s rights came in the form of the 73rd and 74th Amendments to the Constitution of India. The first focuses on Panchayati Raj System and the second on Urban Local Bodies,

100 (1997) 6 SCC 241.
elaborately laying down their structure, functions and powers under the Indian Political System. The Two Amended Acts incorporated, for the first time reservation of 33 per cent of seats for women in grassroots level governance, thus bringing about a silent revolution through which more than a million, illiterate, rural, unskilled women were taken out of the four walls of the home and thrust into political decision making.

Thus, both the Indian Constitution as well as laws in India have promulgated numerous rights for women in India. These have been further elaborated by the judiciary which has been mooted as the watchdog of rights in India. Nevertheless, the judiciary itself comes from within this patriarchal society. To what extent has it upheld women’s rights and where has it failed in its role as protector?

**Higher Judiciary and Women’s Rights in India**

The judiciary in India has adopted an activist stance, right from the time of independence, particularly where people’s rights are concerned. Has it continued with this activism where women’s rights are concerned? That is the focus of this section.

At the outset, it is essential to clarify that an exhaustive account of judicial interpretation of laws to enumerate women’s rights in India is not within the scope of this study, keeping in view the number of cases coming up before it. Accordingly, a brief overview of the major decisions of the higher judiciary having a significant impact upon women’s rights is being presented herein, specifically those decisions where the judiciary has gone beyond the Indian Constitution and attempted to elaborate certain rights on the basis of international conventions.

The judiciary in India has attempted to strike a harmony between principles of international law and national law, and even gone beyond national law, where necessary in attempting to uphold the rights of the citizens, particularly women. Thus, the Courts have interpreted national laws in the light of international conventions in the absence of national provisions on matters concerning human rights. One of the most prominent examples of this is the judgement in the Vishakha Case.
In Vishakha v. State of Rajathan, the Supreme Court held that any International Convention not in conflict with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content and to promote the object of the Constitutional guarantee. This is implicit from Article 51(c) and Article 253, which empowers Parliament to enact laws for implementing international conventions. While delivering the judgment of the three judge bench, J.S. Verma, CJI, observed that, “The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law”.

However, this was not the first case of its kind. Earlier too, in a judgment in 1996, in Valasamma Paul v. Cochin University, the Court applied international instruments for the human rights of women like Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) for ensuring gender equality and to protect the human rights of women. Significantly, K. Ramaswamy and B.L. Hansaria, JJ., while delivering the judgment observed, “Human Rights are derived from the dignity and worth inherent in the human person. Human Rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement.”

This was reiterated in the case of Apparel Export Promotion Council v. A.K. Chopra. Dr. A.S. Anand, C.J., and V.N. Khare of the Supreme Court referred to the

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104 ibid, at 549.
decision in Vishakha case for its “innovative judicial law making process” and Dr. Anand, CJI, observed, “In cases involving violation of human rights, the courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between international norms and the domestic law occupying the field”.  

The Court held that, “…The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration which directs all states parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honor and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognizes her right to fair condition of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These international instruments cast an obligation on the Indian State to gender sensitize its laws and the Courts are under an obligation to see that the message of the international instrument is not allowed to be drowned. This Court has in numerous cases emphasized that while discussing constitutional requirements, courts and counsel must never forget the core principle embodied in the International Conventions and Instruments and as far as possible give effect to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.”  

This principle of harmonious construction of national law with international Conventions was reiterated in the Githa Hariharan case.

In Chairman, Railway Board and others, the Supreme Court observed that the international covenants and declarations adopted by the United Nations have to be respected by all signatory states and the meaning given to the words in such declarations (such as Universal Declaration of Human Rights and the Convention on

106 ibid.  
108 (1999) 2SCC 230  
Elimination of All Forms of Discrimination Against Women, CEDAW) and Covenants have to be interpreted in such a way so as to help in effective implementation of those rights in state law. Thus, the Courts in India have not hesitated to apply international law in matters where national law was found wanting.

Apart from this, the higher judiciary has upheld the rights of women in a large number of cases which have come up before it. The Courts have held the human rights of women to be inalienable, integral and indivisible part of universal human rights and gender discrimination to be violative of fundamental freedoms and human rights. In *Valasamma Paul v. Cochin University*, the Court held that “The human rights of women including girl child are, therefore, inalienable, integral and an 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 - cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights”. In *Velamuri Venkata Sirprasad v. Kothuri Venkateshwarlu*, the Supreme Court held that equality of status was integral to the concept of basic structure of the Constitution and was an important dimension of gender justice.

The Supreme Court has also upheld the right to development for women and interpreted Articles 15 and 21 in this light keeping in view international Conventions in this regard. In *C. Masilamani Mudaliar & Ors v. Idol of Sri Swaminathswami Thirukial*, Supreme Court, while delivering the judgment, observed, “The Parliament made the Protection of Human Rights Act, 1993. Section 2(b) defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in India”. Thereby the principles embodied in CEDAW and the concomitant right to development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms”.

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111 ibid, at 549.
112 (2000) 2 SCC 139.
113 (1996) 8 SCC 525, 535.
As a matter of fact, the Court did not even consider Article 5 (a) of CEDAW (to which India had expressed reservations) to be standing in the way of women’s right to development. It held the State liable for removing all gender based discrimination and insisted that the State should “take all appropriate measures including legislation to modify or abolish gender based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.” It also emphasized that the State should create “conditions and facilities conducive for women to realize the right to economic development including social and cultural rights.”

The right of a mother to be a natural guardian of the child was assured in *Githa Hariharan v. Reserve Bank of India*. The Supreme Court, in this case, upheld the validity of Section 6(a) of Hindu Minority and Guardianship Act 1956, and held that mother could act as natural guardian of a minor even when the father was alive. The Court held that the word ‘after’ in this Section did not necessary mean “after the lifetime” but it meant “in the absence of”. It means if the father does not take care of minor’s property or person due to any reason, the mother of the minor being a recognized natural guardian could act validly on behalf of minor as guardian.

It again reiterated that the principle of gender equality as one of the basic principles of the Constitution. Specifically, the Court observed that “Moreover, gender equality is one of the basic principles of our Constitution and the father by reason of a dominant personality cannot be ascribed to have preferential right over the mother in matter of guardianship since both fall within the same category”.

The rights of women working in bars and the State’s responsibility for ensuring their safety were upheld in the Anuj Garg case. It also upheld personal freedom as a right which cannot be compromised. In *Anuj Garg v. Hotel Assn. of India*, the Supreme Court held that “Instead of prohibiting women employment in the bars altogether the state should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is state’s duty to ensure

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116 ibid.
circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as the one embodied under section 30) from societal conditions would be oppressive on the women and against the privacy rights.” It further held that “No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until unless there is a compelling State purpose.”

The Supreme Court has also recognized the contribution of women’s work in the household. In Arun Kumar Agarwal v. National Insurance Co. Ltd\textsuperscript{119}, a significant question which arose for consideration was the criteria for determination of the compensation payable to the dependents of a woman who dies in a road accident and who does not have regular source of income. The Court, while raising the amount of compensation has observed that: “In India the Courts have recognized that the contribution made by the wife to house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others... However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of the housewife/mothers. In that context, the term ‘services’ is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependents cannot be diminished on the ground that some close relation like grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”\textsuperscript{120}

The rights of women workers have been upheld by the Supreme Court in a number of cases. In Dattatraya Moreshwar Pangarkar v. State of Bombay,\textsuperscript{121} the Supreme Court held that legal provisions to give special maternity relief to woman

\textsuperscript{118} ibid.
\textsuperscript{120}(2010) 9 SCC 218.
\textsuperscript{121} AIR 1952 SC 181.
workers under Article 42 of the Constitution do not infringe Article 51(1). In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,\(^{122}\) the Supreme Court held that the benefits under the Maternity Benefits Act, 1961 extend to employees of the Municipal Corporation who are casual workers or workers employed on daily wages basis. This applies to the claim of non-regularized female workers for maternity relief.

In *Yusuf Aziz v. State of Bombay*,\(^ {123}\) the validity of Section 497(adultery) of IPC was challenged under Articles 14 and 15 (1) of the Constitution. Section 497 of IPC only punishes a man for adultery and exempts the woman from punishment though she may be equally guilty as an abettor and this section was held by the Supreme Court to be valid since the classification was not based on the ground of sex alone.

In *C.B. Muthamma, IFS v. Union of India*,\(^ {124}\) the validity of the Indian Foreign Services (Conduct and Discipline) Rules, 1961 was challenged which required women diplomats to obtain a written permission from the government before marriage could be solemnized. Although the petition was dismissed as the government amended the particular rules, the case brought to light the discrimination faced by women even in high government posts. Justice Krishna Iyer observed: “…we do not mean to universalise or dogmatise that men and women are equal in all occupation 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 rules of equality must govern.”

The most prominent case where women’s rights in the workplace were upheld was the *Vishaka case* in which the Supreme Court issued guidelines on sexual harassment at the workplace. In the instant case, the Supreme Court held sexual harassment to be a violation of ‘Gender Equality’ and the right to life and liberty and as a violation of Articles 14, 15 and 21 of the Constitution. It is a violation of the right to work under Article 19 (1) (g), which further depends on a safe working environment. Right to life was held to mean right to life with dignity.

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\(^{122}\) (2000) 3 SCC 224.
\(^ {123}\) AIR 1954 SC 321.
\(^ {124}\) (1979) 4 SCC 260.
In *Medha Kotwal v. Union of India*\(^{125}\), a three Judge Bench of the Supreme Court heard a PIL raising the grievance that the guidelines in Vishaka case are not followed in substance and spirit. The Court took note of the fact that there is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes.

In *Ranghuban Saudagor Singh v. State*,\(^{126}\) the Court held that what is forbidden under the Constitution is discrimination on the ground of sex alone, but when the peculiarities of sex added to a variety of other factors and consideration form reasonable nexus with the object of classification than the Constitutional bar under Articles 15 and 16 (2) cannot be attracted.

In *Air India v. Nargesh Mirza*\(^{127}\), the validity of the Indian Airlines and Indian’s service rules providing that an Air Hostess had to retire from service at the age of 35 or on marriage, whichever was earlier, or if she got married within four years of confirmation or on first pregnancy was struck down and held to be arbitrary.

The Court has also upheld the right to women to privacy. In *State of Maharashtra v. Madhur Narain*,\(^{128}\) the Supreme Court referring to Article 21, held that even a women of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. In *Neera v. LIC*, AIR 1992 SC 392 the Supreme Court has held that, the right to privacy of women would preclude such questions to be put to female candidates as modesty and self respect may preclude an answer. In *T. Sareetha v. T. Venkata Subbaiah*,\(^{129}\) the Andhra Pradesh High Court extended the application of the principle of reasonableness to matrimonial matters and invalidated Section 9 of Hindu Marriage Act, 1955, found violating the right to privacy and human dignity guaranteed under Article 21 of our Constitution.

One provision, violative of rights of Christian women, was that of the Indian Divorce Act which held that a Christian wife had to prove adultery alongwith cruelty

\(^{125}\) AIR 2013 SCC 297.

\(^{126}\) AIR 1972 P&H 117.


\(^{128}\) AIR 1991 SC 207.

\(^{129}\) AIR 1983 AP 356.
or desertion while seeking divorce. In *Pragati Varghese v. Cyril George Varghese*\(^{130}\), the full Bench of the Bombay High Court struck down Section 10 of the Indian Divorce Act, under which a Christian wife had to prove adultery along with cruelty or desertion while seeking divorce on the ground that it violates the fundamental right of a Christian woman to live with human dignity under Article 21 of the Constitution.

In *Noor Saba Khatoon v. Mohd Quasini*,\(^{131}\) the Court observed that, we have opted for a secular republic, secularism under the law means that the state does not owe loyalty to any particular religion and there is no state religion. The Calcutta High Court has extended the iddat period till such time the woman re-marries, to allow Muslim woman a maintenance allowance beyond the customary iddat period of about three and a half months under the Muslim woman (Protection on Divorce) Act 1986.

In *Lalitha Sundari v. R. Kethar Nathan*,\(^{132}\) two vacancies in the Education Committee of a family trust were to be filled from the female descendants of the trustees. The scheme court, which was the appointing authority, appointed two male members and observed that female descendants include male descendants and females who appeared in the interview lack practical experience. Setting aside the appointments of two males, the Madras High Court held that the two petitioners were qualified and eligible to be appointed to Education Committee. It was also observed that that female descendants does not include males.

The Supreme Court judiciary has also upheld reservations for women in *Rajesh Kumar Gupta v. State of Uttar Pradesh*.\(^{133}\) The Hon’ble Supreme Court held that reservation of 50% posts in favour of female candidates is not arbitrary.

In *Union of India v. K.P. Prabakaran*,\(^{134}\) Supreme Court held that reservation of certain posts exclusively for women is valid under Article 15(3), as such this article covers every sphere of state action.

In *Randhir Singh v. Union of India*,\(^{135}\) the Hon’ble Supreme Court has expressed the opinion that the principle of equal work is not declared in the

\(^{130}\) AIR 1999 Bom 345.

\(^{131}\) AIR 1997 SC 3282.

\(^{132}\) AIR 2002 Mad 17.

\(^{133}\) AIR 2005 SC 2540.

\(^{134}\) 1997 (11) SCC 638.

\(^{135}\) AIR 1982 SC 879.
Constitution to be a fundamental right but it is certainly a Constitutional goal.

In Daily Rates Casual Labour v. Union of India,\textsuperscript{136} it was held that the doctrine of equal pay for equal work is equally applicable to both men and women. Even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

In Harvinder Kaur v. Harmandar Singh,\textsuperscript{137} it was held that it is often heard that the rights guaranteed under the Constitution should not be accessed at home as it allegedly amounts to introducing a bull into a China shop. This statement reflects the urge of patriarchy to continue to treat women in the traditional conservative way according to the societal desire.

While deciding cases of rape, the judiciary has enumerated various rights of women. In State of Punjab v. Gurmeet Singh,\textsuperscript{138} the Hon’ble Supreme Court while convicting three rapists of a minor girl has directed that all such trials must be held in camera.

In Shri Bodhi Satwa Gautam v. Miss Subra Chakraborty,\textsuperscript{139} Supreme Court held that rape is a crime against basic human rights and is also violative of the victim’s most cherished fundamental right, namely, the right to life contained in Article 21.

In Madhu Kishwar v. State of Bihar,\textsuperscript{140} it was held by the Supreme Court that the Convention held on the Elimination of All Forms of Discrimination against Women is an integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the State parties to breathe life into the dry bones of the Constitutions, Internationals Convention and the Protection of Human Rights Act, to prevent gender based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3, 14 and 15 of CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act.

\textsuperscript{136} 1987 AIR 2342.
\textsuperscript{137} AIR 1984 Delhi 66.
\textsuperscript{138} 1996 (2) SCC 384.
\textsuperscript{139} 1996(1) SCC 490.
\textsuperscript{140} AIR 1996 SC 2178.
The other side of the picture also holds true. The higher judiciary, particularly the Supreme Court of India, while attempting to uphold women’s rights has, in a number of instances, fallen prey to its inherent patriarchal biases. Even while upholding women’s rights in the public sphere, the higher judiciary has shown itself to be extremely reluctant in intervening in the private sphere, as evidenced by the Delhi High Court’s comment that, “the introduction of the “cold principles of Constitutional Law” into the home was like “introducing a bull in a china shop” and “will have the effect of weakening the marriage bond”.”

Keeping in mind the large extent of litigation in India, only a few representative cases which have come up before the higher judiciary are presented here.

One of the most significant illustrations of gender bias may be seen in the judgement in Bhanwari Devi case where the judge of the respective High Court stated that “rape is usually committed by teenagers, and since the accused are middle-aged and therefore respectable, they could not have committed the crime. An upper-caste man could not have defiled himself by raping a lower-caste woman.”

A father molesting his own infant daughter was also “seemingly incredulous” for the Supreme Court, notwithstanding the fact that NCRB statistics reveal that a large number of reported cases where a father has molested his own daughter. The Court held, “Some eerie accusations have been made by a wife against her husband. Incestuous sexual abuse, incredulous ex facie, is being attributed to the husband.” The accusations were held to be false. A Human Rights Watch Report reveals that “The Supreme Court further ignored the probative value of the mother’s testimony about the fact that the father was an alcoholic and prone to inflicting severe physical violence on her, finding instead that the testimony was proof of the mother’s “vengeful” attitude.”

The higher judiciary has exhibited its patriarchal leanings particularly in the context of marital relationships and adopted what Kalpana Kannabiran calls the

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strategy of “jurisprudential dissociation.”145 The Supreme Court has interpreted the term ‘relationship in the nature of marriage’ quite narrowly and denied maintenance to a woman in a live-in relationship. In the case of D.Velusamy v. D.Patchaiammal, the Court held that “If a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage,”146 thereby denying her maintenance under the Protection of Women Against Domestic Violence Act 2005. The problem here is not merely with the denial of maintenance but with the use of a word like ‘keep’ for the woman, which is quite derogatory.

In Sowmithri Vishnu v. Union of India,147 where the validity of Section 497, relating to adultery, was challenged, the efforts of the Supreme Court were directed towards “upholding the sanctity of the matrimonial house”, and a woman continued to be regarded as the “wife of another” without any agency of her own, merely a victim, not the perpetrator.

In Arnesh Kumar v. State of Bihar, the Supreme Court directed its ire towards Section 498 A of the Indian Penal Code. The Court held that, “Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.”148 The Court directed the police officers to make no arrest without due investigation and satisfaction that it was required. Earlier too in the case of Sushil Kumar Sharma v. Union of India149 the Supreme Court had condemned Section 498 A as ‘legal terrorism’ holding that it is used by wives to threaten their husbands.

The Court has also held the wife filing repeated complaints against her husband to be mental cruelty in Naveen Kohli v. Neelu Kohli.150 The leading of an ‘immoral’ life by the wife has also been held to be mental cruelty. The court upheld

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145 ibid.
147 1985 SUPP SCC137.
149 2005 (6) SCC 266.
150 2006(4) SCC 558.
the divorce on the grounds that her illicit affair constituted mental cruelty in *Vimla Ladhani v. Ram Chandra Prakash Ladhani*.\(^{151}\)

In *Satya v. Siri Ram\(^{152}\)* the husband and his family members were desperate for a child, but their hopes were dashed by the wife who terminated her pregnancy unilaterally thrice, the Court held that this constitutes mental cruelty. Again in *Surinder Mohan Chopra v. Nirmala Chopra*\(^{153}\) the Court held that unsubstantiated allegations of an illicit affair leveled by a wife against her husband constituted mental cruelty. The Courts have also not given a woman the right to refuse to have sexual intercourse with her husband. In *Anil Bhardwaj v. Nimlesh Bharadwaj*\(^{154}\), the Court held that a wife who refuses to have sexual intercourse with her husband without giving any reason was cruelty against her husband. In *Kalapana v. Surendranath*\(^{155}\) a wife’s refusal to prepare tea for her husband’s friends was also held to be cruelty against the husband.

In *S. R. Batra and Another v. Smt Taruna Batra*\(^{156}\) the Supreme Court held that the definition of ‘shared household’ in Section 2 (S) of the Protection of Women from Domestic Violence Act, 2005 was not worded very well. The Court held that “the wife is only entitled to claim a right to residence in a shared household, and a ‘shared household’ would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a ‘shared household’.”

In *Air India v. Nergesh Meerza & Others*,\(^{157}\) the Court upheld the bar on marriage of an Air Hostess till four years after appointment, but voided the termination of appointment on pregnancy. However, its comment that, “The rule could be suitably amended so as to terminate the services of an AH on third pregnancy provided two children are alive which would be both salutary and

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\(^{151}\) AIR 1996 MP 86.
\(^{152}\) AIR 1983 P & H 252.
\(^{153}\) AIR 2007 (DOC) 183 (P&H).
\(^{154}\) AIR 1987 Del 111.
\(^{155}\) AIR 1985 All 253.
\(^{156}\) AIR 2007 SC 1118.
\(^{157}\) AIR 1981 SC 1829.
reasonable for two reasons. In the first place, the provision preventing third pregnancy with two existing children would be in the larger interest of the health of the AH concerned as also for the good upbringing of the children. Secondly it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels” smacks of a patriarchal bias. Why should only Air Hostesses bear the burden of family planning? What happens to their reproductive rights?

In Appasaheb v. State of Maharashtra\textsuperscript{158} the Supreme Court observed that money demanded on account of financial stringency or to meet urgent domestic expenses is not dowry.

A similar patriarchal approach has coloured the judicial decisions in relation to women’s entry into temples too. For example, a PIL filed in Kerala High Court in the case of S. Mahendran v. Secretary, Travancore Devaswom Board,\textsuperscript{159} against allowing women to trek Sabri Hills and offer prayers at the Sabrimala Shrine as it was contrary to the custom and usage followed in the temple. Here exclusion of menstruating women between the age of 10 to 50 years from the Sabrimala Temple was in question, and the argument put forward was that this was a matter of religion and right of religious denominations to exclude such women are protected under Article 26(b) of the Constitution which guarantees the right of religious denomination to manages its own affairs in such matters. The Court said that Article 25(2)(b) of the Constitution which gave power to the State to throw open all temples to all sections of Hindus did not apply to the exclusion of women and observed, “The restriction imposed on women aged above 10 and below 50 from trekking the holy hills of Sabarimala and offering worship at Sabarimala Shrine is in accordance with the usage prevalent from time immemorial…Such restriction imposed by the Devaswom Board is not violative of Articles 15, 25 and 26 of the Constitution of India…Such restriction is also not violative of the provisions of Hindu Place of Public Worship (Authorisation of Entry) Act, 1965 since there is no restriction between one section and another section or between one class and another class among the Hindus in the matter of entry to a temple whereas the prohibition is only in respect of women of a particular age group and not women as a class.”

\textsuperscript{158} 2007 (1) SCALE 50.
\textsuperscript{159} AIR 1993 Kerala 42.
This ruling was highly criticized by women activists saying that “such outdated gender based discrimination”\textsuperscript{160} should be discontinued and they protested, “The Clause in Article 25, which gives power to the state to throw open temples to all sections of Hindus was included with a view to facilitating the temple entry of the dalits for which a movement had started before independence. It was obviously not intended to prohibit denial of access to women on the ground of menstrual hygiene. The rules of religion were made in times when segregation of menstruating women was considered normal and necessary. Women were obviously not stigmatized as untouchables”.\textsuperscript{161}

Janaki Nair aptly observes, “Yet within the constitution itself, what has been given with one hand has been taken away with the other. Thus article 25 (1) which protects the right to freedom of religion says: Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the rights freely to profess, practice and propagate religion. On the face of it, Article 25 does not appear to contradict the Article on fundamental rights, since freedom of religion is subject to the fundamental rights listed in part III of the constitution. Yet, in the name of freedom of religion, which leaves personal laws strictly alone, women are discriminated against in the most fundamental ways: large sections of women are denied equal rights to property, to rights within the family, to maintenance, to divorce, guardianship and adoption. Whatever the intentions of the framers and interpreters of personal law may be, the effect of such laws is the subordination of women in all spheres that they cover.”\textsuperscript{162}

Thus, the higher judiciary in India has given contradictory signals where women’s rights are concerned. Even while upholding women’s rights in the public sphere and being ready to intervene therein, even using international conventions to provide relief where national laws were found wanting, witness the Vishakha judgement, the higher judiciary has been caught in the web of patriarchal mores while intervening in the private sphere.

\textsuperscript{161}ibid, p. 136.
\textsuperscript{162} Janaki Nair (1996), \textit{Women and Law in Colonial India}, New Delhi: Kali for Women, pp. 4-5.
Women’s Rights in India: The de facto Position

Women’s rights, thus are an integral component of both Parts III and IV of the Constitution of India. These are well supplemented by the numerous laws which propound various rights, on the one hand, and on the other, make their violation punishable by stringent punishment. The higher judiciary has played its role by reading rights into these laws, which are not guaranteed by either the law or the Constitution, but have been recognized in various international conventions. However, the issue emerges, where does the ordinary woman in India stand in respect of availability of these rights? What is the reality on the ground? Are these rights mere paper tigers? An attempt is made in this section to trace the status of women’s rights through various indicators of women’s status in Indian society.

The first and most basic right is the right to life itself. However, statistics reveal that the Indian woman is denied the very right to take birth as evidenced in the declining sex ratio. Table 5.1 below reveals that the overall sex ratio in India has declined from 972 to 940 over the period of a century.

Table 5.3

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Sex Ratio (females per 1000 males)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>972</td>
</tr>
<tr>
<td>1911</td>
<td>964</td>
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<tr>
<td>1921</td>
<td>955</td>
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<td>927</td>
</tr>
<tr>
<td>2001</td>
<td>933</td>
</tr>
<tr>
<td>2011</td>
<td>940</td>
</tr>
</tbody>
</table>

Table 5.4

Child Sex Ratio in India, (1961-2011)

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Sex Ratio (0-6 years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>976</td>
</tr>
<tr>
<td>1971</td>
<td>964</td>
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<tr>
<td>1981</td>
<td>962</td>
</tr>
<tr>
<td>1991</td>
<td>945</td>
</tr>
<tr>
<td>2001</td>
<td>927</td>
</tr>
<tr>
<td>2011</td>
<td>914</td>
</tr>
</tbody>
</table>

Source: Census of India 2011, op. cit.

Even more devastating is the decline in the child sex ratio, which has fallen from 976 in 1961 to a mere 914 in 2011. Reasons are many, but each of them boils down to a simple one, the devaluation of a girl child in a highly patriarchal society, which earlier led parents to kill their children and now leads them to go in for either female foeticide or in the age of advancing technology, pre-conception sex selection. Again, the question emerges, why this severe devaluation of the girl child, which turns the givers of life into takers of life? The answer may be found in a patriarchal socio-cultural ethos, wherein the girl child is a burden on the parents, not supposed to look after them in the old age, not supposed to inherit property or perform the last rites of the parents. Thus, the right to life gets denied even before birth.

If, by some chance the girl child is born, she is denied adequate nutrition, for the premise of this patriarchal society is that boys and men must be fed first, and if there is anything leftover, it is for the girls and women. Studies reveal that girls are breastfed for shorter periods as compared to boys and denied adequate nutrition on various pretexts such as “jaldi badi ho jayige” (She will attain puberty at a young age), “garam tehseer ki cheezen ladki ke liye achi nahin hoti” (Hot foods are not good for girls) and so on. The result may be seen in higher degree of malnutrition and iron deficiency anaemia among women and girls in India, as also a higher rate of female infant mortality. The table below reveals that as many as 55.3 per cent of the women in India suffer from anaemia.
Table 5.5
Percentage of Women age 15-49 with Anaemia by State, India, 2005-06

<table>
<thead>
<tr>
<th></th>
<th>Mild Anaemia</th>
<th>Moderate Anaemia</th>
<th>Severe Anaemia</th>
<th>Any Anaemia</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>38.6</td>
<td>15.0</td>
<td>1.8</td>
<td>55.3</td>
</tr>
</tbody>
</table>


Table 5.6
Infant Mortality Rates, India

<table>
<thead>
<tr>
<th>Year</th>
<th>Males</th>
<th>Females</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>56</td>
<td>61</td>
<td>58</td>
</tr>
<tr>
<td>2006</td>
<td>56</td>
<td>59</td>
<td>57</td>
</tr>
<tr>
<td>2007</td>
<td>55</td>
<td>56</td>
<td>55</td>
</tr>
<tr>
<td>2008</td>
<td>52</td>
<td>55</td>
<td>53</td>
</tr>
<tr>
<td>2009</td>
<td>49</td>
<td>52</td>
<td>50</td>
</tr>
<tr>
<td>2010</td>
<td>46</td>
<td>49</td>
<td>47</td>
</tr>
</tbody>
</table>


The table above reveals that the female infant mortality rate is much higher as compared to the male infant mortality rate. Thus not only does the denial of right to life continue, but gets combined with denial of the right to food and nutrition. Death of young girls in India exceeds that of young boys by over 300,000 each year and every 6th infant death is especially due to gender discrimination.163

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Notwithstanding the emphasis on reproductive rights, a large number of women in India continue to lose their lives in the process of childbirth. Even in the years 2007-09, 212 women per 1,00,000 live births lost their lives during childbirth. Amongst the Indian states the highest rate was in Assam. Again the reasons may be seen in a continuation of gender stereotypes, wherein the woman is not taken to a hospital for delivery, nor is there any treatment, nor a trained delivery person available to assist her. Lack of healthcare facilities and poverty has been resulting in India accounting for 27 per cent of all maternal deaths worldwide. Reports show that “India’s maternal mortality ratio (MMR) is highest in South Asia. An estimated 1, 36,000 women die in India every year due to pregnancy related setbacks. However the measures taken by the government have not proved effective despite the fact that high fatalities occur among women every year due to poor reproductive health practices. One of the reasons why women succumb to reproduction related complications is the absence of timely transportation to the nearest hospital. Experts estimate that 70 percent of the maternal-related deaths are preventable.”\textsuperscript{164} The same report continues that, “Good sanitation and nutrition and avoiding overwork and stress will improve the health of Indian women. The need is to shift focus from the medical to the social, beginning with healthy antenatal care. But cultural, social and economic barriers delay or prevent women from seeking reproductive health care at any state-antenatal, delivery or post nature. India still ranks first among the 12 countries that account for 2/3 of under-five and maternal deaths in the world. One of the major problems is the shortage of trained healthcare personnel. In India there is an estimated shortfall of 74,000 ASHA (Accredited Social Health Activists) workers and 21,066 ANMs. The health of a woman is closely linked to her educational and socio-economic status. Despite maternal mortality rates showing a decline in India, thousands of women continue to die every year due to lack of access to basic healthcare facilities; and where they are available they are of poor quality aggravating the situation.”\textsuperscript{165}

\textsuperscript{164} ibid. \textsuperscript{165} ibid.
### Table 5.7
Maternal Mortality Rate in India

<table>
<thead>
<tr>
<th>India &amp; Major States</th>
<th>MMR 2004-06</th>
<th>MMR 2007-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIA TOTAL</td>
<td>254</td>
<td>212</td>
</tr>
<tr>
<td>Assam</td>
<td>480</td>
<td>390</td>
</tr>
<tr>
<td>Bihar/Jharkhand</td>
<td>312</td>
<td>261</td>
</tr>
<tr>
<td>Madhya Pradesh/Chhattisgarh</td>
<td>335</td>
<td>269</td>
</tr>
<tr>
<td>Orissa</td>
<td>303</td>
<td>258</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>388</td>
<td>318</td>
</tr>
<tr>
<td>Uttar Pradesh/Uttarakhand</td>
<td>440</td>
<td>359</td>
</tr>
<tr>
<td>EAG AND ASSAM SUBTOTAL</td>
<td>375</td>
<td>308</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>154</td>
<td>134</td>
</tr>
<tr>
<td>Karnataka</td>
<td>213</td>
<td>178</td>
</tr>
<tr>
<td>Kerala</td>
<td>95</td>
<td>81</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>111</td>
<td>97</td>
</tr>
<tr>
<td>SOUTH SUBTOTAL</td>
<td>149</td>
<td>127</td>
</tr>
<tr>
<td>Gujarat</td>
<td>160</td>
<td>148</td>
</tr>
<tr>
<td>Haryana</td>
<td>186</td>
<td>153</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>130</td>
<td>104</td>
</tr>
<tr>
<td>Punjab</td>
<td>192</td>
<td>172</td>
</tr>
<tr>
<td>West Bengal</td>
<td>141</td>
<td>145</td>
</tr>
<tr>
<td>Other</td>
<td>206</td>
<td>160</td>
</tr>
<tr>
<td>OTHER SUBTOTAL</td>
<td>174</td>
<td>149</td>
</tr>
</tbody>
</table>

This denial is further compounded by denial of the right to education. Female Literacy rates in India have increased phenomenally over the years from a mere 8.86 per cent in 1951 to 65.5 per cent in 2011. However, the female dropout rate continues to be high as educating girl child is still considered to be like ‘watering a plant in the neighbour’s garden’. The girl child drops out of school for various reasons such as distance of the school, lack of toilets in the school, need to look after siblings, supplement the family income and so on. If she does manage to complete a few years of schooling, access to higher education gets denied because of various reasons, including increasing violence against women.

Table 5.8
Literacy Rate in India, 1951-2011

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Persons</th>
<th>Males</th>
<th>females</th>
<th>Gender gap in Literacy rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951</td>
<td>18.33</td>
<td>27.16</td>
<td>8.86</td>
<td>18.30</td>
</tr>
<tr>
<td>1961</td>
<td>28.30</td>
<td>40.40</td>
<td>15.35</td>
<td>25.05</td>
</tr>
<tr>
<td>1971</td>
<td>34.45</td>
<td>45.96</td>
<td>21.97</td>
<td>23.98</td>
</tr>
<tr>
<td>1981</td>
<td>43.57</td>
<td>56.38</td>
<td>29.76</td>
<td>26.62</td>
</tr>
<tr>
<td>1991</td>
<td>52.21</td>
<td>64.13</td>
<td>39.29</td>
<td>24.84</td>
</tr>
<tr>
<td>2001</td>
<td>65.38</td>
<td>75.85</td>
<td>54.16</td>
<td>21.69</td>
</tr>
<tr>
<td>2011</td>
<td>74.0</td>
<td>82.1</td>
<td>65.5</td>
<td>16.6</td>
</tr>
</tbody>
</table>

Source: Census of India 2011, op. cit.

This denial of rights continues in the period of women’s work. As the table below reveals, according to NFHS III only 36.3 per cent of women claimed to be employed while the rest were not employed in the 12 months preceding the survey.
Table 5.9  
Percent Distribution of Women, age 15-49 by Employment Status, according to State, India, 2005-06

<table>
<thead>
<tr>
<th>State</th>
<th>Employed in the 12 months preceding the survey</th>
<th>Not Employed in the 12 months preceding the survey</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Currently Employed</td>
<td>Not Currently Employed</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>36.3</td>
<td>6.5</td>
<td>57.2</td>
</tr>
</tbody>
</table>


Table 5.10  
Work Participation Rate by Sex in India, 1971-2001

<table>
<thead>
<tr>
<th>Year</th>
<th>Total/Rural/Urban</th>
<th>Persons</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>Total</td>
<td>33.08</td>
<td>52.61</td>
<td>12.11</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>34.03</td>
<td>53.62</td>
<td>13.42</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>29.34</td>
<td>48.82</td>
<td>6.68</td>
</tr>
<tr>
<td>1981</td>
<td>Total</td>
<td>36.70</td>
<td>52.62</td>
<td>19.67</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>38.79</td>
<td>53.77</td>
<td>23.06</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>29.99</td>
<td>49.06</td>
<td>8.31</td>
</tr>
<tr>
<td>1991</td>
<td>Total</td>
<td>37.50</td>
<td>51.61</td>
<td>22.27</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>40.09</td>
<td>52.58</td>
<td>26.79</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>30.16</td>
<td>48.92</td>
<td>9.19</td>
</tr>
<tr>
<td>2001*</td>
<td>Total</td>
<td>39.22</td>
<td>51.75</td>
<td>25.79</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>41.96</td>
<td>52.22</td>
<td>31.12</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>32.23</td>
<td>50.56</td>
<td>11.91</td>
</tr>
</tbody>
</table>

Source:  Office of the Registrar General, India, retrieved from [http://labourbureau.nic.in/WL%20K5-6Table%201.5.htm](http://labourbureau.nic.in/WL%20K5-6Table%201.5.htm) accessed on 23rd August, 2014.

Note: 1. Excludes Assam and Jammu & Kashmir for all censuses from 1971 to 2001 for comparison purpose. Assam includes Mizoram in 1971.
2. Figures in Columns 3 to 5 relates to Total Workers.
*Excludes Mao Maram, Paomata and Purul sub-divisions of Senapati district of Manipur.
The table above reveals that merely about 26 per cent of the women in India are regarded as workers as against 51.75 per cent of the men. One of the major reasons for this is the continued perpetuation of gender roles and the invisibility of women’s work. Women’s work within the household is not recognized as work. Moreover, the work performed by the woman on the family farm or family enterprise has no monetary remuneration and hence is not regarded as work.

Furthermore, the situation of women’s rights in India seems even more deplorable, when one looks at their participation in decision-making, whether at the family level or at the national level. At the family level, NFHS 3 data reveals that most of the major decisions of women are taken by other persons in the family, be it husband or in-laws or other relatives.

Table 5.11

Percent Distribution of Currently Married Women by Person who usually Makes Decisions About Four Kinds of Issues, India, 2005-06

<table>
<thead>
<tr>
<th>Decision</th>
<th>Urban</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Own healthcare</td>
<td></td>
<td>Mainly Respondent</td>
<td>Respondent and</td>
<td>Mainly</td>
<td>Someone-else</td>
<td>Others</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>husband and</td>
<td>husband</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>husband Jointly</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major household purchase</td>
<td></td>
<td>29.7</td>
<td>39.1</td>
<td>26.5</td>
<td>3.5</td>
<td>1.1</td>
</tr>
<tr>
<td>Purchases of daily household</td>
<td></td>
<td>10.4</td>
<td>51.5</td>
<td>26.8</td>
<td>8.7</td>
<td>2.5</td>
</tr>
<tr>
<td>Needs</td>
<td></td>
<td>39.9</td>
<td>28.9</td>
<td>19.8</td>
<td>8.8</td>
<td>2.5</td>
</tr>
<tr>
<td>Visit to her family or</td>
<td></td>
<td>12.2</td>
<td>57.3</td>
<td>22.0</td>
<td>6.6</td>
<td>1.8</td>
</tr>
<tr>
<td>relatives</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Table 5.9 above reveals that merely 29.7 per cent women in urban areas make any decision relating to their own health care. For rural women, the percentage is even lower at 26 per cent. Only in the matter of daily household purchases, do
approximately 40 per cent of women in urban areas make their own decisions. In rural areas merely one third of the women are able to make this decision. Only 10.4 per cent of women in urban areas are able to make any decision relating to major household purchases.

Table 5.12
Representation of Women in Rajya Sabha

<table>
<thead>
<tr>
<th>Year</th>
<th>No.</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>15</td>
<td>6.9</td>
</tr>
<tr>
<td>1954</td>
<td>16</td>
<td>7.3</td>
</tr>
<tr>
<td>1956</td>
<td>20</td>
<td>8.6</td>
</tr>
<tr>
<td>1958</td>
<td>22</td>
<td>9.5</td>
</tr>
<tr>
<td>1960</td>
<td>24</td>
<td>10.2</td>
</tr>
<tr>
<td>1962</td>
<td>17</td>
<td>7.6</td>
</tr>
<tr>
<td>1964</td>
<td>21</td>
<td>8.8</td>
</tr>
<tr>
<td>1966</td>
<td>23</td>
<td>9.6</td>
</tr>
<tr>
<td>1968</td>
<td>22</td>
<td>9.2</td>
</tr>
<tr>
<td>1970</td>
<td>14</td>
<td>5.8</td>
</tr>
<tr>
<td>1972</td>
<td>18</td>
<td>7.4</td>
</tr>
<tr>
<td>1974</td>
<td>17</td>
<td>7.0</td>
</tr>
<tr>
<td>1976</td>
<td>24</td>
<td>9.8</td>
</tr>
<tr>
<td>1978</td>
<td>25</td>
<td>10.2</td>
</tr>
<tr>
<td>1980</td>
<td>29</td>
<td>11.9</td>
</tr>
<tr>
<td>1982</td>
<td>24</td>
<td>9.8</td>
</tr>
<tr>
<td>1984</td>
<td>24</td>
<td>9.8</td>
</tr>
<tr>
<td>1986</td>
<td>28</td>
<td>11.5</td>
</tr>
<tr>
<td>1988</td>
<td>25</td>
<td>10.2</td>
</tr>
<tr>
<td>1990</td>
<td>24</td>
<td>9.8</td>
</tr>
<tr>
<td>1992</td>
<td>17</td>
<td>6.9</td>
</tr>
<tr>
<td>1994</td>
<td>20</td>
<td>8.2</td>
</tr>
<tr>
<td>1996</td>
<td>19</td>
<td>7.8</td>
</tr>
<tr>
<td>1997</td>
<td>19</td>
<td>7.8</td>
</tr>
<tr>
<td>1999</td>
<td>20</td>
<td>8.2</td>
</tr>
<tr>
<td>2000</td>
<td>22</td>
<td>9.0</td>
</tr>
<tr>
<td>2002</td>
<td>25</td>
<td>10.2</td>
</tr>
<tr>
<td>2004</td>
<td>28</td>
<td>11.4</td>
</tr>
<tr>
<td>2006</td>
<td>25</td>
<td>10.2</td>
</tr>
<tr>
<td>2008</td>
<td>24</td>
<td>9.8</td>
</tr>
<tr>
<td>2010</td>
<td>27</td>
<td>11.0</td>
</tr>
<tr>
<td>2012</td>
<td>24</td>
<td>9.8</td>
</tr>
</tbody>
</table>

Table 5.13
Representation of Women in Lok Sabha

<table>
<thead>
<tr>
<th>Election Year</th>
<th>Women Contestants</th>
<th>Women elected over total seats (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1957</td>
<td>45</td>
<td>22</td>
</tr>
<tr>
<td>1962</td>
<td>66</td>
<td>31</td>
</tr>
<tr>
<td>1967</td>
<td>68</td>
<td>29</td>
</tr>
<tr>
<td>1971</td>
<td>61</td>
<td>29</td>
</tr>
<tr>
<td>1977</td>
<td>70</td>
<td>19</td>
</tr>
<tr>
<td>1980</td>
<td>143</td>
<td>28</td>
</tr>
<tr>
<td>1984</td>
<td>162</td>
<td>42</td>
</tr>
<tr>
<td>1985*</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>1989</td>
<td>198</td>
<td>29</td>
</tr>
<tr>
<td>1991</td>
<td>326</td>
<td>37</td>
</tr>
<tr>
<td>1992*#</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>1996</td>
<td>599</td>
<td>40</td>
</tr>
<tr>
<td>1998</td>
<td>274</td>
<td>43</td>
</tr>
<tr>
<td>1999</td>
<td>284</td>
<td>49</td>
</tr>
<tr>
<td>2004</td>
<td>355</td>
<td>45</td>
</tr>
<tr>
<td>2009</td>
<td>556</td>
<td>59</td>
</tr>
<tr>
<td>2014</td>
<td>668</td>
<td>61</td>
</tr>
</tbody>
</table>

Note: Data on participation of women is not available for 1951 elections
*Elections were held separately for States of Assam & Punjab
#Elections were held separately for State of Punjab
A similar, if not worse situation prevails for women’s participation in decision-making at the national level, where, as the tables above reveal, women constitute less than one-tenth of the total members of the lower house and about 15 per cent of the total members of the Upper House. A large number of obstacles continue to prevent the participation of women in decision-making at the national level, which includes a patriarchal ethos, lack of funds, women’s caring role as well as criminalization of politics.

Women’s rights also continue to be proscribed by the various kinds of violence to which they are subjected. The NFHS 3 Survey reveals that at least 35.4 per cent of the women in India have experienced some type of violence in their lifetimes, be it physical or sexual violence while NCRB statistics similarly reveals a high incidences of violence against women.

Table 5.14  

Percentage of Women Age 15-49, who have Experienced Different Forms of Violence by Residence, Age, Marital Status, and State, India, 2005-06

<table>
<thead>
<tr>
<th>State</th>
<th>Physical violence</th>
<th>Sexual Violence</th>
<th>Physical and Sexual violence</th>
<th>Physical or Sexual violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>26.9</td>
<td>1.8</td>
<td>6.7</td>
<td>35.4</td>
</tr>
</tbody>
</table>


Table 5.15  

Violence faced by Women in India, 2012

<table>
<thead>
<tr>
<th>State</th>
<th>Rape</th>
<th>Kidnapping &amp;Abduction of women</th>
<th>Dowry Death</th>
<th>Assault on Women with intent to outrage her modesty</th>
<th>Insult to the modesty of women</th>
<th>Cruelty by husband and relatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>I</td>
<td>R</td>
<td>I</td>
<td>I</td>
<td>I</td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>24923</td>
<td>2.1</td>
<td>38262</td>
<td>8233</td>
<td>45351</td>
<td>9173</td>
</tr>
<tr>
<td></td>
<td>106527</td>
<td>8.8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Note: I- Incident  
R- Rate
At the same time, women’s rights continue to be denied and trivialized by culture. As Manvinder Kaur observes, “Yet it is culture which is responsible for the denial of women’s human rights; it is through culture that women are debased and trivialised; and it is in the name of culture that they continue to be regarded as secondary, while males are accorded centrality.”\textsuperscript{166} Barbara Miller observes, “It is culture that dictates the greater worth of males as both producers and heirs in much of India, and it is culture that ignores and undervalues the vital, though often invisible roles, that women play.”\textsuperscript{167} In a similar vein, Martha Nussbaum argues, “where there is a scarcity, custom frequently decrees who gets to eat the little there is and who gets taken to the doctor. And custom is always crucial in determining who gets to perform wage labour outside the home, an important of general status in the family and community...custom decrees who gets access to the education, that would open job opportunities and make political rights meaningful. Custom decrees who can go where in what clothing and with whom. Custom decrees who gets to make what sorts of protests against ill treatment both inside and outside the family and whose voice of protest is likely to be heard.”\textsuperscript{168}

Female foeticide, infanticide and devaluation of the girl child have already been referred to. Other cultural violations of women’s human rights continue with impunity, regardless of legal and constitutional provisions banning these. Child marriages continue. The festival of Akha Teej in Rajasthan is infamous for the number of child marriages conducted during this period. Not only is child marriage itself a violation of women’s human rights, it leads to many more violations of rights, including right to education, right to development, right to health and so on. Media


reports in recent years reveal that on the auspicious day of Akshaya Tritiya among the Hindus, thousands of child marriages, even of babies in the arms of their mothers are performed in Rajasthan.\textsuperscript{169} According to UNICEF's "State of the World's Children 2009" report, 47 per cent of India's women aged 20–24 were married before the legal age of 18, with 56 per cent in rural areas. The report also showed that 40 per cent of the world's child marriages occur in India.\textsuperscript{170}

Another such cultural practice which has almost universal acceptance is that of dowry. Not only does it lead to devaluation of women, but is also the cause of the deaths of a large number of young women in India. Rape within marriage continues to be legal. Widows continue to be treated as a burden on society, rather than a resource which can be tapped for sustainable development. Witness the condition of widows in Vrindavan. The system of devadasis continues; women continue to be denied entry into temples on grounds of sex, witchhunting continues to exist, women continue to be the trope for the honour of their families, honour killings have reappeared with a vengeance, the right to choose one’s own spouse is seriously limited. The denial of women’s rights is compounded by the media, whether popular media, print or audio-visual media. Songs commodify women, advertisements treat them as products to be sold, movies show them as vulnerable victims with no agency of their own. Thus, the rights guaranteed by the Constitution, the laws and the judiciary, although laudable, are mere paper tigers having no teeth.

On the whole, one can say, that the Constitution does attempt to protect the rights of women in numerous ways. These rights are further strengthened through numerous laws and judicial pronouncements. However, women continue to labour under various cultural proscriptions which inhibit their enjoyment of fundamental human rights, leading to the conclusion of ‘bechari nari’.

\textsuperscript{169} Dhanda, Amrita and Parashar, Archana, \textit{op. cit.}, p. 387.
The application of these rights is further limited by the lack of awareness among women about their rights. The next chapter attempts an assessment about the awareness regarding human rights among women in Punjab.