CHAPTER – VII

CONCLUSION

Human rights, the very notion gives rise to idealistic conceptions of a state where all human beings live a life free from constraints of inequality, prejudice, discrimination and subordination; where equality, liberty and justice are the norms; where every person, man, woman and child, regardless of race, class, colour, gender, nation or any other parochial consideration is able to live a life with dignity and freedom. Prior to the establishment of the United Nations, this idea was a mere pipe-dream; post 1945, it gradually started taking shape as a reality, first with the enactment of the United Nations Charter and subsequently with the adoption of the International Bill of Rights and numerous other instruments guaranteeing human rights in specific contexts and to specific groups of people. Where were women located in this? Did these rights extend to women? What approach did the United Nations adopt towards women’s rights at the time of its foundation? Did this approach change over the years? It was in this context and backdrop that the present study was taken up.

The study primarily sought to analyse the changing approach of the United Nations towards the issue of women’s human rights. As no concept emerges in a vacuum, an attempt was made to trace the historical origins of the concept of human rights in general and women’s human rights in particular as well as to assess the status of women’s rights in India through an evaluation of the Constitutional and legal positions, judicial pronouncements on the issues relating to women’s human rights as well as the de facto status of women’s rights in India.

The methodology applied for the present study was primarily based on critical analysis and interpretation of the various international instruments enunciated by the United Nations. For this purpose, the history of the United Nations was divided into four phases on the basis of various approaches to women’s human rights. The first phase extended from the foundation of the United Nations to 1974, the second from 1975 to 1985, third from 1986 to 1995 and the fourth from 1996 until the present. The
awareness of women about their rights was assessed through a field study in which a sample of 106 respondents, chosen through judgmental sampling, was taken. An open ended interview schedule was administered in which information was elicited regarding the availing as well as awareness of rights.

In the current conflict torn world, the idea of human rights is like an island in a tumultuous ocean, giving refuge to persons from the tsunami of ills afflicting society. Human Rights are the legitimate claims of every individual upon her or his society, community and nation for certain benefits. These are the rights possessed by individuals by virtue of having been born as human beings. Rights, as distinct from human rights, are legally guaranteed claims and hence a more limited concept. Human rights are characterised by notions of universality, inalienability and indivisibility. Moreover, they are not static, but dynamic and ever evolving. New rights are constantly being enunciated or read into the old ones. Human rights provide the standards for assessing the State and make it accountable to the citizens as well as the international community for its actions. This has brought the concept of human rights to the centre-stage of social and political discourse.

However, the concept has not emerged in vacuity. Although the notion of human rights emerged after the foundation of the United Nations, it has a long history of evolution behind it in which the concept of rights emerged from mere pronouncements of rulers depending upon their whims and fancies to legally justifiable principles enunciated in the Constitution and the legal framework of the States. Limited to the rights of the ruling elite in earlier periods of human history, the concept of rights expanded to include all human beings by virtue of having been born as a human being. The developments coincided with the evolution of the notion of rights in social and political philosophy and so the concepts of natural rights, legal rights, economic rights, social and cultural rights gradually emerged on the world scene.

However, women were conspicuous by their absence in either the historical or the philosophical evolution of rights. It was only in the late eighteenth century that the idea of rights for women started taking root with the publication of Olympe de
Gouges’, Declaration of Rights of Woman and Citiziness, followed by Mary Wollstonecraft’s, A Vindication of the Rights of Women. The feminist movement gained ground in the nineteenth century. The Seneca Falls Convention of 1948 was the first and most prominent milestone in the journey for women’s rights. The struggle for the franchise for women marked the route to enunciation of women’s rights, howsoever limited they were. Women’s human rights were clearly set out with the foundation of the United Nations with a Charter which clearly articulated the principle of non-discrimination on the basis of sex.

The foundation of the edifice of human rights was laid with the establishment of the United Nations and the enunciation of a Charter which outlawed all forms of discrimination. The framework was established with the adoption of the Universal Declaration of Human Rights, which was followed by the two Covenants- the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These core human rights instruments were supplemented by numerous other universal human rights instruments attempting to promote and protect human rights in specific areas or for specific groups of peoples.

The issue of child labour was taken up by the ILO and the Minimum Age Convention was adopted. The United Nations in this early phase also focused on issues of discrimination in education, eradication of hunger and malnutrition, forced and underage marriages, all of which were taken up in conventions enacted on the themes. The impact of the Second World War led to the enunciation of various Geneva Conventions seeking to protect the rights of civilians in times of war as well as punishment for various war crimes. At the same time, the international community also became conscious of a major crime perpetrated particularly upon women and children, that of trafficking and a Convention on the Suppression of Trafficking in Persons and the Exploitation of Prostitution of Others was enunciated. Workers rights were given special attention through enunciation of various Conventions attempting to protect their rights such as Equal Remuneration Convention, Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery, Abolition of Forced Labour Convention, Discrimination Convention, as well as the Employment Policy Convention. Refugees, Stateless and
Displaced Persons were given attention in the form of Conventions relating to their status. The rights of mentally challenged persons were sought to be protected through the Declaration on the Rights of the Mentally Retarded Persons. One of the most significant Conventions enunciated during this phase was that on the Elimination of all forms of Racial Discrimination. While all these were relevant for women, the United Nations also took up certain specific rights of women, such as women’s political rights, nationality as well as rights during armed conflict.

Thus, this phase saw the United Nations being extremely proactive in the field of human rights. Ironically, most of these instruments failed to take note of women’s issues and concerns. The language of most of the declarations and conventions continued to be androcentric, which served to reinforce gender based hierarchies. They were based upon male experiences and issues, leaving out women’s experiences of rights violations. Apart from the instruments directly relating to women’s rights, all the other instruments tended to overlook women’s issues and concerns. For example, the Minimum Age Convention failed to recognize the work performed by girls in the household, the Convention on Discrimination in Education did not recognise the significance of socio-cultural factors in denial of girls’ right to education. Some of the most significant issues from a woman’s perspective, such as eradication of hunger and malnutrition, were included in non-binding declarations and resolutions. Judith P.Zinsser very succinctly sums up the UN approach in the following manner, “From its founding until 1975 and the declaration of the International Women’s Year (IWY), the United Nations did little to advance the cause of women’s rights. There was, to be sure, the familiar and potentially revolutionary clause in the preamble to the UN Charter, “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” Also, the Economic and Social Council acceded to pressure from elite women’s international organizations and, in 1946, authorized the creation of a full-fledged Commission on the Status of Women. But despite these ideological and structural acknowledgments of women’s separate needs, the condition of women worldwide was never a priority for action in any part of the United Nations system. Initiatives sponsored by the International Labor Organization, the United Nations
Children’s Fund, and the World Health Organization did affect women, but not in response to agendas that highlighted women’s advancement. Most often women were included because of their association with a broader concern such as the effects of a worker’s lead poisoning on her unborn children, the importance of breast feeding, or a prostitute’s role in the spread of venereal disease.”\(^1\) Moreover, the rights enunciated in this phase were primarily in the public sphere and violations of women’s rights in the private sphere were completely ignored and a sacrosanct image of the family was presented. Again, a large number of issues, which were of primary relevance for women’s rights to become a reality were overlooked. A prime example of this is women’s control over their bodies and their reproductive rights, which found no mention in any of the human rights instruments enunciated in this phase. There was no recognition of the impact of violence against women, of poverty or of socio-cultural norms on women’s human rights. The documents adopted during this phase, while prohibiting discrimination fail to define it. Most significantly, women were not adequately represented in the bodies framing these instruments, thus their voices went unheard.

The second phase from 1975 to 1985 saw a shift in approach with the recognition that development was impossible in the absence of women’s inclusion in the process of development. 1975 was declared as the International Year for Women and 1976 to 1985 was declared as International Decade for Women. The period saw three international conferences on women being held and the most significantly, the enunciation of CEDAW, the Bill for Women’s Rights. Other universal human rights instruments included Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was later replaced by a Convention on the same theme. Minority rights were sought to be promoted through the adoption of Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief. The rights of physically challenged persons were given attention in the form of Declaration on the Rights of Physically Challenged Persons. The Geneva

Conventions, adopted in the previous phase, were supplemented by two additional protocols and a Declaration on the Rights of People to Peace recognized the necessity of peace for development.

The phase marks a major breakthrough so far as the United Nations taking up issues of women’s rights are concerned. The three world conferences on women and the adoption of CEDAW are of momentous significance in the promotion and protection of women’s rights with national courts applying CEDAW for deciding cases where national laws were found wanting. However, problems remained. For one thing, even these continued to be based upon male centric experiences. The language continued to be patriarchal and women continued to be defined in patriarchal terms. Thus the approach continued to be the same and male experiences and issues continued to be the norm. One of the major violations of women’s rights, viz. violence against women, only found mention in the Nairobi Conference held in 1985. Even CEDAW failed to recognize this. CEDAW, mooted as a vehicle for transformation of gender relations and bringing about substantive equality, continued to be shackled by numerous limitations in substantive content as well as implementation. Reservations provided the veil behind which states unwilling to grant women’s rights could conveniently hide. The teeth of CEDAW were blunted by the lesser authority given to CEDAW Committee as compared to other Committees. Moreover, they served to create a separate sphere of women’s rights as distinct from human rights, thereby impacting the universalising of women’s rights. Meanwhile, women continued to be ignored in the instruments for universal human rights, which continued with gender blind language and male experiences as the norm. The Convention against Torture, for instance, defines torture only in the context of the public sphere, failing to recognise the impact of torture experienced by women in the private sphere on women’s lives and rights.

The next ten years of the life of the United Nations brought in significant changes so far as women’s rights are concerned. The Vienna Conference on Human Rights with its declaration of ‘women’s rights are human rights’; the Declaration on the Elimination of all Forms of Violence Against Women; the appointment of a Special Rapporteur on Violence Against Women; and above all the Beijing
Conference were of momentous significance in the promotion of women’s rights. The Vienna Conference marked the beginning of inclusion of women’s human rights in the general human rights agenda. However, the BPFA too continued to be limited in its understanding and approach towards women and women’s human rights. Women continued to be visualized in their roles as wives and mothers and not as entities in their own rights.

The most pathbreaking instrument furthering universal human rights adopted in this phase was the Convention on the Rights of the Child, which explicitly extended various human rights to children, offering special protection to girl children. Yet, it too remained a gender neutral Convention, failing to recognize the impact of various socio-cultural practices on the rights of the girl child. The rights extended to children by this Convention were further supplemented by the World Declaration on the Survival, Protection and Development of Children adopted at the World Summit for Children.

The United Nations, in this phase, also recognized the significance of the right to development and enunciated a Declaration on this theme. This was supplemented by two world conferences, one on Environment and Development and second on Population and Development. The former was of particular significance for women as women’s environmental rights were for the first time taken up for consideration by the international community in Agenda 21. The latter marked a historic milestone in promotion of women’s rights by enunciating women’s reproductive rights and recognizing the significance of women’s empowerment for sustainable development. These were followed by the Copenhagen World Summit for Social Development. Thus, women’s role in ensuring sustainable development was increasingly recognised by the international community.

Issues relating to victims of crime and abuse of power as well as the issue of enforced disappearance also drew the attention of the international community and declarations were enunciated on the two themes. The rights of migrant workers, older persons, minorities as well as disabled persons were also recognised and various instruments for protection and promotion of their rights were enunciated.
Significantly, none of these instruments enunciated any new rights, but merely reiterated the already declared human rights for these groups of persons. Moreover, all these universal human rights instruments failed to recognize women specific issues. Issues of special relevance to women such as feminization of poverty, impact of increasing conflict, impact of globalization, women’s vulnerability to natural disasters, and so on were left out of the debate. Furthermore, the public private dichotomy continued and women’s issues continued to be sidelined.

The last and current phase of the United Nations saw a marked change in approach towards women’s rights. It is significant to note that this phase saw the United Nations becoming increasingly conscious of violations of women’s human rights in various spheres and attempting to go deep into the causal connections between the socio-cultural ethos and violations of women’s human rights. A major role was played by the various Special Rapporteurs who outlined the violations in their reports and also highlighted the causes and probable solutions. Apart from this, this phase witnessed the United Nations enunciating a large number of Conventions, Declarations and Resolutions all having significant impact on women’s lives. What’s more, these were enunciated with a gender sensitive approach. The Optional Protocol to CEDAW recognized the problems faced by women in complaining about human rights violations and permitted individuals and NGO’s to submit complaints on their behalf. The various Beijing Review Conferences, from time to time, reviewed the implementation of the BPFA and suggested ways forward. A Special Rapporteur on Trafficking in Persons was appointed and UN Women, the UN Entity for Gender Equality was set up. The United Nations also recognized the special problems of women prisoners and enunciated specific rules for their treatment. Furthermore, a number of resolutions adopted by the United Nations sought to prevent the violations of women’s rights through violence against women and trafficking. UN-SWAP, UN System Wide Action Plan on Gender Equality and Empowerment of Women was adopted, which assigned performance standards for the gender-related work of all UN entities.

The twenty year review of the Vienna Conference once again laid stress on the necessity of ensuring women’s human rights. Continuing with its policy of protection
of child rights, the ILO adopted a Convention on the Worst Forms of Child Labour and the UN enunciated two Optional Protocols on the Rights of the Child seeking to protect rights of victims of sexual abuse as well as children in armed conflict. The right to housing was recognized as a universal human right in the Habitat II Conference and the World Food Summit recognised the right to food. One of the most significant achievements in the field of human rights came in the form of the Millennium Declaration which set forth the eight Millennium Development goals. The right to cultural diversity was recognised by the Universal Declaration on Cultural Diversity. Development continued to be a predominant theme in this phase with the issue of sustainable development assuming primacy in the World Summit on Sustainable Development and well as the UN Conference on Sustainable Development. Extreme poverty was also focused upon through a resolution of the General Assembly. The rights of domestic workers for the first time were recognized in a Convention adopted by the ILO. By now there was an increasing recognition that the State alone could not be responsible for promotion and protection of human rights. Accordingly a Declaration on Human Rights Defenders was adopted. Two declarations adopted in the previous phase, viz. that on enforced disappearance and on rights of persons with disabilities were replaced by legally binding conventions. The Optional Protocol to the Convention on Torture went a step further and sought to set up a system of visits by international and national bodies. The rights of Indigenous Peoples were set forth in a Declaration on the Rights of Indigenous Peoples. Particularly significant from the perspective of women’s rights was the Security Council Resolution on Women, Peace and Security which was followed by other resolutions on the same theme.

On the whole, this phase witnessed the United Nations taking up newer and more significant issues of human rights. Even more significant is the incorporation of gender sensitive language which has had the resultant effect of an inclusive policy towards women’s human rights, bringing them from the margins to the centre of human rights discourse. Gender mainstreaming effectualised the inclusive approach and led to the incorporation and recognition of women’s rights within the universal human rights instruments.
Nevertheless, the change in approach is slow. Women’s issues are still left out of the debate. Issues of sexual autonomy, rights within marriage, issues of poverty, environment, development, reproductive rights and others continue to be left out or addressed in non-binding instruments. Women still tend to get subsumed within the general categories and the public private dichotomy continues to deprive women of their rights in the private sphere. Continuation of the policy of reservations to UN instruments continues to adversely effect women’s rights. Moreover, the bodies entrusted with protection and promotion of women’s rights continue to be the weaker cousins of the general human rights bodies.

Thus, women’s human rights have remained on the margins of the international debate on human rights. Creation of a specialized arena for women’s rights had had the resultant impact of universal human rights being restricted to the mainstream (read malestream) human rights. This has also had the impact of the mainstream human rights bodies leaving women’s issues to the women’s rights bodies. Women’s rights, thus, tend to be regarded as a specialized arena not part of the universal human rights and thereby regarded as ‘lesser rights.’ Furthermore, most of the instruments dealing with women’s rights are merely declarations or resolutions which do not have a binding effect, while mainstream human rights instruments tend to ignore or invisibilise women’s experiences of violations. Moreover, violations of women’s human rights is not regarded as an integral threat to peace, nor are these considered to be the concomitant of relations between nations or matters determining foreign policy. Women’s oppression, thus is not regarded as a political issue which had the resultant impact of marginalizing women’s human rights in the agenda of universal human rights.

The significance of adoption of these documents is nevertheless momentous. For one thing, it enables women’s human rights activists to internationalise their campaigns for achieving reform in national laws and structures, keeping in mind the strength of international law as moral norms, which sets certain standards for states to achieve or at least seem to achieve. This effect can be achieved even by non-binding instruments. Thus their normative impact cannot be overlooked. They also outline
concrete steps to take to actualize human rights. They can also instigate debates which can lead to alterations in domestic laws.

Women’s rights in India, too, gradually evolved over centuries of subjugation and subordination. Some miniscule rights were granted to women in India during the Rigvedic period. These, however, were nullified at the time of the Smriti period, when child marriage and other social ills, negatively impacting women became predominant. The epic period revealed the dualistic status of women, with women, on the one hand, being subjected to numerous atrocities and, on the other, being vocal enough to claim certain rights. The medieval period witnessed a further downfall in the status of women and by the time of the advent of the British, women in India were subjected to various discriminations, seriously limiting their rights. Independence and the newly framed Constitution of India, with its profound declaration of the ideas of equality, liberty, justice and fraternity brought home the idea of women’s human rights in India.

The rights enunciated by the International Bill of Rights found a place of pride in the Indian Constitution in Chapters III and IV. These were sought to be further actualized through various laws adopted from time to time in response to the exigencies of various situations as well as pressure from the women’s movement. The higher judiciary played its part in protection and promotion of women’s rights through its pronouncements on various issues, even applying international provisions where national laws were found wanting. However, it did ‘slip and flounder’ in certain instances, particularly where religion and culture were involved. Notwithstanding all these efforts, women in India continue to be bereft of their rights, subjected to increasing violence and denial of rights in the name of culture. One of the major causes, as revealed in the present study, is lack of awareness of rights even among women. The primary reason behind this is socialization and gender construction, which leads women to the internalization of constructs of female inferiority and male dominance.

Nevertheless, the women respondents did show an increasing awareness of certain issues including property rights for women. A sample of 106 respondents was
selected for the study on assessing women’s awareness of human rights from the State of Punjab. An attempt was made to have a representative sample on the basis of age, caste, religion and education. The study revealed that a majority of the respondents were aware of their rights, yet social constructs prevented them from asserting these. At the same time, a substantial proportion of the respondents were simply not aware of their rights and accepted wife beating and denial of other rights as part of their lives. Thus, women continue to bear the burden of shackles of culture and gender, which negatively impacts the availability of and access to human rights.

On the whole, the approach of the United Nations towards women’s human rights has undergone a marked change in almost seven decades of its existence. Beginning from a patriarchal approach, where discrimination on the basis of sex was held to be void, yet women’s issues continued to be perceived from a patriarchal lens, the United Nations has moved on to adoption of an inclusive approach towards women’s human rights. Nevertheless, the international community has a long way to go before women’s human rights become an established fact in national and international law. In this context, a few doable suggestions are presented hereunder.

In the first place, there is a need to comprehend the role of gender construction in violation of women’s human rights. Gender sensitive language can play a major role in eliminating gender based hierarchies and include women in the human rights agenda. Secondly, universal human rights can become a reality only when women’s experiences are taken into account in setting the human rights agenda. Any declaration on rights must take into account the fact that women not only face differential violations of their rights, but that the impact of the violations may differ between men and women. Thus women may face the same human rights violations but be differentially impacted by these, for example political persecution is experienced by both males and females, but women’s experiences of violations on this basis may be different.

Furthermore, in defining human rights, it is essential to understand that women also experience violations in the private sphere and not merely in the public
sphere. In fact the violations in the private sphere may actually be more severe and impact women’s rights in a more critical manner.

It is also essential to have a relook at the already declared rights from a gender sensitive lens and provide a reinterpretation of rights in order to make them more inclusive. There is a need to look into both the language as well as the substantive contents of these rights in order to make them gender responsive. At the same time, there is a need to look at new and emerging issues to ensure that women’s rights are not partial, but holistic. Providing rights in some areas and leaving out others would imply a partial view of rights which would have the resultant impact of depriving women of their rights in toto.

Furthermore, there is a need for changing the patriarchal mindset at all levels and for all classes of peoples, through gender sensitization. Only then will there be respect for and recognition of women’s human rights as an integral component of universal human rights.

The concept of reservations to UN conventions must be ended particularly where women’s rights are concerned, for these results in substantive denial of women’s human rights. As a matter of fact the many reservations to some Conventions, particularly CEDAW actually make them ineffective in promoting women’s human rights leaving them as normative instruments and not legally binding conventions. The bodies entrusted with ensuring women’s human rights must be given powers at par with the bodies entrusted with protection of universal human rights.

It is essential to increase awareness regarding these rights among men and women both. Thus, there is a need to conduct training and awareness programmes on women’s human rights. These programmes or modules on women’s human rights must be made a part of every training- be it for administrative officers, judicial officers, police officers or grassroots level functionaries. The judiciary and Parliaments at the national levels too need to be sensitized towards women’s human rights in order to make for effective implementation.
Constitutions must be amended and laws changed in keeping with the provisions of international conventions. Women’s rights must be made a determinant of foreign policy. Uptil now violations of women’s rights do not lead nation to determine polices towards other nations. If women’s rights become essential concomitants of foreign policy, states would be more wary of violating women’s rights.

In the end, it must be recognised that failure to guarantee, protect and promote women’s human rights would make the entire concept of human rights null and void. It would be apt to conclude with a slightly modified version of John F.Kennedy’s quote, viz. ‘The rights of every human being are diminished when the rights of one human being are threatened.’