CHAPTER – I

INTRODUCTION

“Human rights are a human creation. They grow out of the feeling of injustice which human beings experience in their bodies and minds when their humanity is abused or denied. Human rights introduce the idea of justice in the natural order of the world, thereby giving human existence a higher sense and purpose.”¹

The end of the Second World War heralded the dawn of a new era in human history: an era of human rights. Human rights, defined as the rights which every human being is entitled to enjoy by virtue of her/his humanity, irrespective of parochial considerations of religion, race, caste, class, colour, creed or sex, would, it was hoped, establish peace and prosperity, eradicate human suffering and, in general, act as a vehicle for human development. More than six decades later, the world continues to witness unprecedented violations of human rights. Women, primarily on account of their sex and gender, have been, and continue to be, the most vulnerable to violations of human rights.

They are “safe” neither within the home, nor outside it; neither in times of peace, nor in situations of conflict. Whether it be war, or parochial violence or simply a matter of family honour, women bear the brunt of the violence. They continue to be denied not only an unequivocal right to life: forced to mount the funeral pyre of their dead husbands or burnt alive for dowry, or simply killed through neglect; but are also denied the right to take birth, evidenced through the continued prevalence of female foeticide. They have no freedom to choose, be it a life partner or the number of children to have and when to have them or even the freedom to choose a political representative. They continue to be subject to the worst forms of cultural violations, witness the continued prevalence of female genital mutilation, breast ironing, foot binding, honour killings, child marriage, dowry, discriminatory family codes, devadasi system etc and even denied inheritance and property rights in the name of culture and religion. Son preference and male domination restrict their access to most avenues of life and liberty. As refugees, they have no identity; as migrants, they are

conferred an infantile status. As the poorest of the poor, they are not only unable to live a life of dignity, but a large number of them are also bought and sold as commodities on the national and international market, forced into prostitution and compelled to live a life unfit for a human being. Recognition of these differential life experiences of women and their impact upon women has led to the emergence of and increasing focus upon women’s human rights.

In this context, the notion of women’s human rights has come to the centre-stage of social and political discourse at the national as well as international level. The idea of human rights itself, as a universal, inalienable and indivisible concept, actually emerged only with the adoption of the Charter of the United Nations (1945). Earlier conceptions of liberty and rights, although valued throughout the ages from the ancient Greek to the modern, were limited to select groups of people. Women, in particular, were noticeable by their absence from such conceptions of liberty and rights.

With the adoption of the Charter of the United Nations, for the first time in recorded human history, women were recognized as equal claimants of human rights, along with men. Declaring that, “with a view to creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the United Nations shall promote, inter alia, universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”, Article 55 of the United Nations Charter makes it amply clear that all human beings are entitled to certain inalienable, indivisible rights by virtue of their humanity. With this as its starting point, the United Nations has been both an active player and a catalyst in the transformation of the international understanding of women’s human rights since its inception.

Where women’s human rights and development are concerned, the approach adopted by the United Nations can be demarcated into four major phases. These phases are not clear cut but are overlapping, yet they have certain distinctive identifying features. The first phase (1945-74), saw its beginning with the formation of United Nations with an androcentric approach which was based on male
experiences and values. The **second phase** (1975-85), however, focused on redefining equality and discrimination from a feminist perspective. The **third phase** (1986-95), was a landmark in the history of human rights as it recognized women’s rights as human rights. The **fourth phase**, starting from 1996, continues the gender sensitivity of the previous decade, with a focus on gender mainstreaming of human rights. (See Table No. 1)

The **first phase** from 1945 to 1974 saw the enactment of numerous international instruments aimed at securing human rights of people in general. These instruments firmly established the principle of equality of men and women in the field of human rights. The principle of non discrimination in the area of sex and universality of human rights was clearly spelt out. The **Universal Declaration of Human Rights** (UDHR) of 1948 unequivocally declares, “Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of… peace in the world”. It repudiated distinctions on the basis of sex at a time when there was no country in the world which did not practice such discrimination in the field of basic rights. The rights asserted in the UDHR were reaffirmed by two Covenants: the **International Covenant on Civil and Political Rights** (ICCPR) and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR). Apart from this, other international instruments, such as Convention on the Political Rights of Women, Convention on the Nationality of Married Women (1957), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, also focused on women’s rights in specific spheres.

Although recognizing women’s rights in certain vital spheres of their lives, the entire approach towards women’s rights in this period was **androcentric**, **gender neutral** and based on women’s **traditional roles** in society. The result was a gender blindness, which rendered the continuing abuse of women’s human rights invisible, unseen and unacknowledged. Such an approach failed to see that woman’s experiences and needs are atypical, necessitating, both a different set of rights and a different application of the existing rights.
In the first place, women’s lives and rights are particularly shaped by culture and tradition, which rooted in unequal power relations between men and women, also form the historical justification for systemic denial of human rights to women. This approach to women’s human rights failed to recognize the significance of culture in the denial and violation of women’s human rights.

Moreover, a large chunk of human rights violations experienced by women occur, not in the public sphere, where state agents or officials are the perpetrators (and the state is held culpable for denial and violation of rights), but in the private sphere, at the hands of the family and community members. However, the human rights regime did not recognize the individual and family as violators of women’s human rights, upholding instead the right to privacy and sanctity of the family and household. One example which may be cited is that of Article 12 of UDHR, which asserts “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation”. Obviously, it is thinking of males only and there is not even the conception of the fact that the supposedly safe haven of the family is the most dangerous place for a woman. The presumption underlying this approach was that it is the Governments which are the major violators of human rights, not acknowledging the fact that violations are much more likely to be perpetrated in the sacrosanct private sphere. Further, women’s human rights violations are also determined by the intersectionality of their gender with other factors such as race, ethnicity, sexual orientation, caste, religion, age, etc. Violence against women is a major issue both in the public and the private sphere, which demonstrates how human rights law has excluded women.

The attitude characterizing much of the international approaches towards women’s human rights may be said to have been inspired by the view of equality as equal treatment. Thus, the approach of the majority of the international conventions of this phase related to women is to place women in the same position as men in the public sphere. Such an approach tacitly reinforces the gendered division of society in which women must conform to a male model and masculine values and virtues. Even the UDHR, as stated earlier, with its recognition of women’s entitlement to rights and freedom, fails to elaborate the specified rights from the viewpoint of women. It
abolishes sex based discrimination without taking into account women’s specific needs and different socio-cultural situation. It must be emphasized that although eliminating theoretically the distinctions based on gender, these conceptions were formulated with a basic understanding of males as heads of the families. Moreover, a distinctive notion of women’s rights created a “ghettoized” sphere, wherein the notion of human rights was clearly distinct from the notion of women’s rights.

The very notion of humanity as a basis for human rights also becomes problematic for women, for this assumes like experiences and like needs, thereby excluding women’s needs for specific rights based on their biological differences and specific applications for human rights based on the social construction of gender and gender roles. As Charlotte Bunch succinctly observes, “Thus the dominant definitions of human rights and the mechanism to enforce them in the world today are ones that pertain primarily to the types of violation that the men who first articulated the concept most feared.” ² Even, more significantly the interpretations and implementation of these instruments by the various organs of the United Nations has fallen far short of ensuring their full applicability to women. Thus, even though theoretically not excluded from the concept of human rights, women remained excluded from the recognized definitions and interpretations of human rights and their specific experience of human rights abuse, giving the entire human rights regime an excessive androcentric tilt.

The declaration of the International Year of the Women and the first International Conference on Women held in Mexico in 1975 saw the emergence of the second phase in the United Nations approach. A more gender sensitive approach started emerging with the Mexico Conference setting minimum targets to be achieved by 1980. These included women’s rights of access to education, training, political participation, employment, health services, nutrition, sanitation and housing among other things. This was reiterated in two subsequent World Conferences on Women held in Copenhagen (1980) and Nairobi (1985). The Copenhagen Conference

stressed upon the need to take stronger measures to ensure women’s ownership and control of property and also to improve women’s rights in various spheres. Nairobi Conference, for the first time, included violence against women in the family as an issue related to peace and it recommended specific measures in areas of health, education, food, water and agriculture.

Most noteworthy and distinctive from the perspective of the present study is the adoption of The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), which recast the concept of women’s rights in a global human rights perspective and marked a significant turning point in the history of human rights of women. CEDAW recognizes violation of women’s rights in the family as a human rights violation and the necessity for cultural change to ensure women’s human rights. It was this path-breaking document which laid the foundation for the “protection, promotion and fulfillment” of the human rights of women. Not only does it emphasize that discrimination against women violates women’s human rights, it also spells out policy measures to be taken to eliminate discrimination. State responsibility for violation of women’s rights in the private sphere has only recently been acknowledged in the human rights discourse. With the enactment of CEDAW, the notion of substantive equality, in place of formal equality, also came to the fore.

Yet women’s studies scholars assert that it, too, is based on the same limited approaches and the definition of equality continues to be a male one. One major example, which is cited, is the omission of violence against women in the Convention, which has been called Women’s Bill of Rights. Violence against women, as has been repeatedly asserted by feminist scholars, is not only a significant human rights violation, it also lies at the base of all human rights violations against women. The omission is virtually enough to result in women being deprived of all major rights. It was only in 1992 that the CEDAW Committee in its General Recommendation No. 19 recognized gender-based violence as a form of discrimination against women and underlined the significance of the private sphere as a site for the oppression of women. What is even more significant is that CEDAW has been ratified by most of the countries with so many reservations as to make it almost ineffective, de facto. The
language has also been criticized as being “gender neutral”. Nor was the implementation and monitoring mechanism given sufficient teeth to enable it to act effectively as a “watchdog” for women’s human rights. It continues to be regarded as a document dealing with women’s rights, and not human rights.

The third phase, beginning from 1986 continued the transformation of human rights begun in the previous phase. The women’s movement emphasis on the principle of “women’s rights are human rights”, took shape and form in the 1993 World Conference on Human Rights held in Vienna. For the first time an explicit acknowledgement of women’s rights as human rights was made at an international forum. The Vienna Declaration unequivocally proclaimed that human rights of women are “an inalienable, integral and indivisible part of universal human rights” and urged “the full and equal enjoyment by women of all human rights”. It also held the promotion of women’s human rights to be a matter of priority for governments and the United Nations alike. This put women’s rights at the core of the human rights agenda. The Declaration on the Elimination of Violence Against Women (1993) also recognized that in cases of conflict between women’s rights and cultural and traditional practices, women’s human rights must be given priority.

The Fourth World Conference on Women, held in Beijing in 1995 saw the end of the third phase and the emergence of the last phase in which the notion of women’s rights as human rights is being carried forward to bring about a feminist transformation and gender mainstreaming of human rights. The Beijing Platform for Action,3 more explicitly outlined the human rights of women in various areas as well as the measures needed to be taken to implement them. Since then, there has been no looking back and women’s human rights have been firmly entrenched on the international agenda. Issues like racial discrimination, disappearance, socio-economic rights, development, environment, torture and others all of which have a special bearing on women, have also come to be included in the human rights discourse. The past almost two decades have also seen the emergence and recognition of women’s reproductive rights, right to environment, right to development, right to education

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3 Adopted at the Fourth World Conference on Women, held in Beijing in 1995.
among others as well as emergence of issues most often dismissed as not really human rights questions, as human rights.

Notwithstanding these developments on the women’s human rights front, certain major problems continue to persist and have to be addressed, if the notion of women’s rights as human rights is to succeed in investing women with the basic rights of a human being. One major problem which continues to endure in this regard is the “ghettoisation” of women’s human rights, that is, they are regarded as a distinct entity to be treated at a different level, without acknowledging the fact that “all rights which do not include women, cannot be called human rights.” Most social concepts, including the notion of human rights, are now being looked at by feminist scholars from a woman’s perspective. That is, they are looking not just at women’s issues, or a “ghetto”, a separate sphere continuing to exist on the margins of society, “but rather moving women from the margins to the centre by questioning the most fundamental concepts of our social order, so that they take better account of women’s lives.”

Women’s rights, it is increasingly being asserted, are not a separate but a neglected aspect of the global agenda of human rights. It is in this context that it becomes essential to look at the whole issue of human rights from a women’s perspective, to assert the fundamental and dynamic notion of “women’s rights are human rights”. This would transform them from problems or needs that warrant some attention to rights that Governments have an obligation to protect, promote and fulfill.

Another discrepancy is visible in a weaker implementation mechanism. Feminist scholars and human rights activists have alleged that “International instruments dealing with women have weaker implementation obligations and procedures; the institutions designed to draft and monitor them are under-resourced, and their roles often circumscribed compared to other human rights bodies; the widespread practice of states in making reservations to fundamental provisions in the instrument is apparently tolerated; as is the failure of states generally to fulfill their obligations under the instruments”. It has also been emphasized that the important

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4 ibid, p.11.
human rights fora, where major decisions on this front are taken continue to be male
dominated, with only a token representation of women. Even the focus on gender
mainstreaming has not led to any relook into the gendered nature of international
institutions themselves or to any call for effective organizational change.

Moreover, the language of the human rights instruments continues to aid in the
construction and reinforcement of the subordination of women, contributing thereby
to the continued invisibility of women from the human rights regime. Human rights
law uses a “masculine vocabulary” which leads to the exclusion of women in a
suitable manner, and contributes to silencing their voices. Both, the use of ‘male
pronouns’, as well as gender neutral language, gives a gender blind outlook to the
various international human rights instruments. Furthermore, there is a visible
differentiation between the women’s rights instruments and the universal human
rights instruments, so far as women’s rights are concerned. The UN instruments
aimed directly at protection and promotion of women’s human rights are much more
forthright in recognition of women’s issues as compared to general or universal
human rights instruments. Thus, the latter tend to invisibilise women, subsuming them
within the overall category leading to denial of women’s human rights. All these
problems, notwithstanding, the very recognition of women’s rights as human rights
involves a reclamation of women’s humanity and provides a yardstick as well as a
common framework to develop visions, define strategies and evaluate progress in the
field of women’s human rights.

It is in this backdrop and context that the present study assumes relevance. It
seeks to analyze what has been the approach of the United Nations towards women’s
human rights since its inception; how this approach has changed over the years with
the change in international climate and the growing pressure from activists and
academics alike; and to assess the impact of this changing approach on women’s
human rights.
Table 1.1
Classification of United Nations Approaches Towards Women’s Rights into Phases

<table>
<thead>
<tr>
<th>Phase</th>
<th>Years</th>
<th>Approach</th>
<th>Features</th>
<th>Inadequacies/Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>1945-74</td>
<td>-Androcentric -Gender Blind</td>
<td>-Recognised universality of human rights</td>
<td>-Abuse of women’s human rights continues to be invisible, unseen and unacknowledged</td>
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<td></td>
<td></td>
<td></td>
<td>-Based on male experiences and values</td>
<td>-Violation of women human rights within family not recognized</td>
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<td></td>
<td></td>
<td></td>
<td>-Did not take into consideration women’s experiences and needs</td>
<td>-Cultural violence not considered within the framework of human rights</td>
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<td></td>
<td></td>
<td></td>
<td>-Abuse of women’s human rights recognized only in the public sphere</td>
<td>-Non-recognition of intersectionality of gender with race, ethnicity, sexual orientation, caste, religion, class, age, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-Focus on formal equality</td>
<td>-Reinforced gender division of society</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-Assumption of like experiences and like needs for men and women</td>
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<tr>
<td>II</td>
<td>1975-85</td>
<td>-Redefining Equality and Discrimination</td>
<td>-Shift towards substantive equality</td>
<td>-Approach limited</td>
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<td></td>
<td></td>
<td></td>
<td>-Recast the Concept of women’s rights</td>
<td>-Failure to recognize violence against women as a human rights violation.</td>
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<td></td>
<td></td>
<td></td>
<td>-Recognized violation of women’s rights in the private sphere</td>
<td>- Non-ratification of CEDAW by many nations</td>
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<td></td>
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<td></td>
<td>-Acknowledged state responsibility for violation of women’s rights in the private sphere</td>
<td>- Reservations made to CEDAW and other United Nations Conventions and Treaties while ratifying</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-Ghettoization of women’s human rights</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-Lack of effective implementation and monitoring of various</td>
</tr>
</tbody>
</table>
| III | 1986-95 | **-Women’s Rights are Human Rights** | -Recognized the centrality of women’s human rights in the discourse on human rights  
-Accorded priority to protection of women’s human rights  
-Recognized that VAW is itself a human rights violation and the cause of other human rights violations | -Lack of effective implementation both at international and national levels  
-States reluctant to interfere with cultural and traditional practices to implement women’s human rights  
-Continuing ghettoization of women’s human rights  
-Gap between *de jure* and *de facto* situation of women’s human rights |
| IV | 1996-onward | **-Gender Mainstreaming of Human Rights** | -Transformation of human rights from women’s perspective  
-Recognition of issues specifically impacting women, like disappearances, environment, reproductive rights, as human rights  
-Mainstreaming of women’s human rights into policies of all international agencies and organs | -Weak implementation and monitoring mechanism  
-Intensification of violence against women  
-Emergence of new forms of violence as a result of globalization  
-Cultural, religious and traditional practices which violate women’s human rights continue to be accepted with impunity both by society and state |
Review of Literature

Human Rights, as a subject of study, have attracted lots of attention in recent years and numerous books and articles focusing on the issue have been published. Women’s human rights, however, have attracted the attention of scholars only in the past two decades. In the present section, an attempt has been made to review some of the more recent and relevant writings on human rights in general and women’s human rights in particular.

Concept of Rights

Rights, as a concept, have been variously defined and analyzed and a number of social and political philosophers have attempted to provide a conceptual framework of rights.

The book ‘Rights’ by Michael Freeden analyses the political and philosophical theorizing on rights, while placing those theories within historical traditions. The author briefly examines some of the major concerns of contemporary rights theory. He further concentrates on the universe of theories and statements about rights in order to know more about the modes and patterns of human behavior concerning politics. The study also investigates the doctrine of natural rights and its critiques, explores the difference between choice and welfare rights, suggests an area of compatibility between right theory and utilitarianism, and assesses the contents of contemporary rights documents.

The concept of rights is also discussed in detail by William A. Edmundson in the book ‘An Introduction to Rights’. According to him there are two types of rights which are: right as prohibition and rights as permission. In the former role, rights prohibit others from doing things to the individual for any reason whatever: in the latter, rights permit the individual to ignore demands that would be made of her from a disinterested moral viewpoint.

The concept of rights is also discussed by Michael Freeman (2005) in the article ‘The Historical Roots of Human Rights Before the Second World War’.  

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6 Micheal Freeden (1998), Rights, New Delhi: World View Publisher.  
The study emphasizes the distinctiveness of the concept of rights and claims that it is western and modern. The author further discusses the ideologies of Judaism and Buddhism which he believes directly and indirectly led to the evolution of the concept of rights.

The debates on rights in the beginning of the twenty-first century are also analysed in a compilation edited by Reza Banakar, ‘Rights in Context: Law and Justice in the Modern Society’. It further seeks to assess how rights are used to bring about a change in legal and political relations in the current century. The various essays in the volume explore the use of rights by groups seeking justice. The writers in the compilation have also analysed actual events and issues relating to human rights. The volume further assesses the attempts to change the form and content of rights as also the attempts to develop new notions of rights.

*The Concept of Human Rights*

The concept of ‘rights’ and ‘human rights’ are often used interchangeably but there is a world of difference between the two. A number of scholars have attempted to conceptualize human rights in their studies.

P.S. Jaswal and Nishtha Jaswal, in their study ‘Human Rights and the Law’, examine the concept of human rights, its evolution from the period of Greek thinkers to the present western context as well as in the Indian context, from the ancient period to the present. The study further analyses human rights as proclaimed by the Indian Constitution as well as the interpretation of these human rights by the judiciary and how the judiciary has contributed to expanding the concept of human rights in India. At the same time, the national machinery for the protection of human rights is also critically examined.

Another significant work in this area is ‘Human Rights for the 21st Century’, a collection of essays and lectures edited by Robert Blackburn and James Busuttil. The essays in the volume focus on varied issues relating to human rights such as historical perspective on human rights, the British Bill of Rights,

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internalization of fundamental human rights within the British legal system, child rights, governmental implementation and human rights diplomacy as well as the place of human rights in the UN agenda.

The issue of human rights is also explored by Micheline R. Ishay\(^\text{12}\) (2002), in her article, ‘What are Human Rights? Six Historical Controversies’. Although the issue would seem to have been resolved way back in 1948 with the UDHR, the author seeks to address what are called several fallacies in the human rights regime through a historical focus. The article examines six core controversies over human rights. The first related to the origin of human rights, second to the European antecedents of human rights, third is the extent of modern liberalism’s indebtedness to socialist thought, fourth relates to cultural rights versus universalism, fifth focuses on historical progress in human rights and the last looks into globalisation and human rights.

Michael A. Freeman\(^\text{13}\) adopts two approaches in analyzing the history of human rights. In the first approach, he assumes that the concept is derived from broader and deeper moral ideas, such as those of justice and human dignity that are found in many cultures, including the world’s ancient religions whereas the second approach presents the concepts of rights. The author has discussed historical events and documents like The Magna Carta, American Declaration of Independence, British Bill of Rights and Declaration of the Rights of Man and Citizen relating to the issue of human rights up till the Second World War. The author concludes by stating that all the historical struggles of property owners, intellectuals, colonists, workers, women, national minorities and anti colonial campaigners contributed to the development of the contemporary conception of human rights.

The adverse effects of economic globalization and the rise of a global economy on the entire complex of rights are analysed by Adamantia Pollis, in her article, ‘Human Rights and Globalization’.\(^\text{14}\) As a matter of fact, the Post World War controversies revolving around human rights, civil and political rights vs. economic and social rights and universalism vs. cultural relativism have lost their

significance in view of the emerging controversies over positive or negative effect of globalization on human rights. She opines that globalization has had a deleterious effect on human rights whether they are civil, political, economic, social, labour or environmental rights.

The contemporary discourse on the nature of ‘human rights’, its evolution and the myths surrounding the notion is critically re-examined by Upendra Baxi in his study, ‘The Future of Human Rights’. The study seeks to look at the whole history of human rights from the perspective of the “people in struggle and communities of resistance”. He further seeks to analyze why inspite of the last century having been declared the age of human rights, vast proportions of the population continue to remain bereft of rights. The study also focuses on the feminist attempts to transform human rights, postmodernist critique of human rights as well as the impact of globalization on human rights.

Elisabeth Reichert’s (2006) study presents a brief introduction to human rights within a social work context. The work helps in understanding and analyzing the role of human rights in social work policies and practices. The study concludes that cultural relativism is one of the most difficult hurdles in promoting a universal view of human rights.

‘Introducing Human Rights: An overview including issues of Gender Justice, Environment and Consumer Law’ is in the nature of a course book brought out by the South Asia Human Rights Documentation Centre and is designed for undergraduate courses in human rights. Presenting a holistic view of the entire human right scenario, it deals both with the international as well as national framework of human rights. What is significant for the purpose of the present study is that women’s human rights are specifically dealt with under three headings: Gender Justice, Gender and Employment and Violence against women, while the rest of the book focuses on various other aspects of human rights including Consumers and

Environmental Rights, national and International System of Protection and Monitoring of human rights.

The importance of documentation of Human Rights information is the focus of the study, ‘Human Rights Information and Documentation’\(^\text{18}\), a compilation edited by Lalit Kumar Arora. The advances in our capacity to gather, manage and disseminate information, is a result of the technological revolution in communication. As a result of this, the network of documentation centres has become more sophisticated in human rights fact finding. The book also analyses the role of judges, prosecutors and lawyers in ensuring fundamental rights.

The history of the evolution of human rights from antiquity to the modern era is traced by Jack Mahoney\(^\text{19}\) in his work. Offering a staunch defence of human rights in the face of major critiques offered by theorists such as cultural relativists, the author stresses the significance of human rights. He seeks to understand the many complexities of the term. He further examines the role of human rights in a globalised world and asserts that some human rights are globally applicable.

Michael Freeman\(^\text{20}\) in his study introduces the concept of human rights, particularly for students. He uses an interdisciplinary approach to assess and relate experiences of human rights violations with various approaches to human rights. Tracing the history of human rights, the author reveals the existence of a fundamental tension between the philosophy of human rights and its comprehension in social sciences. The volume further analyses certain fundamental issues of human rights such as universality, collective rights, feminist views on rights and so on.

Lawrence M. Friedman\(^\text{21}\) uses a sociological approach to assess both the human rights movement as well as the studies analyzing it. He is of the opinion that the causes underlying the growing success of the human rights movement are largely unexplored. In the present study, the author seeks to assess the reasons for the entrenchment and growing significance of the notion of human rights. He links the


rise of human rights culture to modernity. He further provides a comprehensive analysis of various issues relating to human rights such as: women's rights, minority rights, privacy, social rights, cultural rights, the role of courts, whether human rights are universal, and much more. The author further argues that the discussion on human rights has reached the global front because of modernity and understanding that every individual is different and hence should be respected.

Jack Donnelly in his study\textsuperscript{22} stresses that human rights are universal rights which are historically specific and contingent. The study further helps in not merely understanding the interaction of theory and practice but largely contributes in improving practice. The author provides a holistic view of the human rights regime including contemporary issues which have emerged in the recent years.

*United Nations and Human Rights*

The notion of universal, inalienable human rights actually emerged with the adoption of the Charter of the United Nations. Since its conception, the United Nations has attempted to uphold and expand the notion of human rights, succeeding in some instances and slipping and floundering in others.

*The United Nations* has not only been the main actor in the field of promotion of women’s human rights, it has also sought to address the issue through its various reports and publications; through which it also attempts to disseminate information about its activities. One such publication is its report entitled ‘*The United Nations and Advancement of Women 1945-1995*’\textsuperscript{23} which, although not specifically focusing on the issue, has women’s human rights as the central thread running through the entire volume. It identifies four progressive phases in the evolution of the efforts of the United Nations for the promotion of women’s rights. These are 1945-1962, when the United Nations sought to promote legal equality; 1963-1975 when the organization shifted its focus to the economic and social realities of women’s lives; 1976-85 coinciding with the international decade for women, wherein women were recognized as contributors to the entire development process and from 1986 onwards when the international community has attempted to address


the concerns of women across a broad spectrum of issues. The second part of the volume brings together all the documents of United Nations in this context.

Rahul Rai’s study, ‘Human Rights: UN Initiatives’ 24 is a very comprehensive analysis of the issue of human rights from ancient times to the present. Beginning with the origin of human rights, he goes on to analyze the various United Nations initiatives for the promotion of human rights including, UDHR, ICCPR, ICESCR, Vienna Convention on Human Rights, etc. The study also analyses the efforts of specialized agencies of United Nations such as United Nations High Commissioner for Human Rights and Human Rights Commission for the protection and promotion of human rights and others. He further focuses on specific human rights issues like enforced disappearance, torture, women’s and children’s rights and cultural diversity.

The issue of human rights is also analyzed in a compilation edited by Adamantia Pollis and Peter Schwab 25. The essays in this volume reveal a dual approach, one of studies on human rights in the national scenarios of various nations, while the other focuses on overall conception of human rights. Thus, some of the essays deals with specific issues such as those of minorities, gender and environment, while other evaluate the mainstream human rights issues as well as the role of the international Human Rights Law in both elaborating human rights and in protecting them.

Analysing the role of UNESCAP in securing rights for women, Dianne Otto in her article, ‘Gender Comment: Why does the U.N. Committee on Economic, Social and Cultural Rights Need a General Comment on Women?’ 26 focuses on economic, social and cultural rights and women’s equal access to these. While assessing how women’s human rights issues are addressed within the broader UN system, she opines that women’s human rights cannot be achieved without addressing the specific structural barriers encountered by women. She concludes that instruments

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like adoption of General Comments by UNESCAP can help in modification of gender stereotypes.

The role of the United Nations in the protection and promotion of human rights is also assessed by Janusz Symonides in his study ‘Human Rights: International Protection, Monitoring, Enforcement’. In this study, the author elucidates ways of teaching human rights at higher education level. He presents, first, a holistic view of United Nations Human Rights machinery and its working. The study further describes and evaluates regional systems of human rights protection such as European system, Inter American System, African Charter and Arab State System. Lastly, it critically analyses the issues pertaining to protection of human rights, dealing with violations of human rights, adoption of principle of criminal responsibility and role of Non Governmental Organizations.

Assessing the inter-linkages of human rights with Millennium Development Goals, Philip Alston, in his study, compares the two to ships passing in the night, going on parallel routes, with the same destination, yet not meeting. He asserts that the two have similar ends and purposes, but these linkages are not recognized by either the human rights community or the development activists. He stresses upon the need for both to more actively engage with each other.

Devaki Jain, in her study has divided the work of the United Nations into two broad categories, firstly, economic and social development and secondly, peace and security. The study highlights the contribution of women and social movements in shaping the development issues in UN. She further reveals that women’s ideas have impacted UN in four ways, i.e. identifying agendas for action, redefine interest in matter of gender issues, collaboration of political and institutional centers to achieve change and institutions to carry these issues forward. The study also analyses the change in the status of women in various states after the Four World Conferences on women.

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27 Janusz Symonides (2005), Human Rights: International Protection, Monitoring, Enforcement, New Delhi: Rawat Publications,
Helen Quane, in her article, highlights the international rights law relating to indigenous people through the lens of the UN Human Rights Treaty Monitoring System and the UN Charter-Based System. The article further examines the UN Declaration on the Rights of Indigenous People taking into account the evolution of rights of indigenous people. The article concludes that the indigenous people should be seen both as a people and a minority, and notes the risks to people and states inherent in a lack of recognition for the interdependence and indivisibility of human rights.

One of the main organs of the United Nations for carrying on its human rights work is the Human Rights Council, which was created in 2006. Rosa Freedman in her study assesses the work of United Nation Human Right Council since its inception to the present and how far it has managed to fulfil its mandate. The work further examines the function of council through International law and theories of international relations. The author in her study also compares the work of the Council to the treaties based human rights bodies.

CEDAW is one of the major instruments for securing women’s human rights. A compilation, edited by Anne Hellum and Henriette Sindin Aasen, tries to address issues affecting women’s lives and contribution of CEDAW to the development of national and international law. The study includes case studies from South Asia, Southern Africa, Australia, Canada and Northern Europe and examines how CEDAW is more beneficial compared to other UN anti-discrimination instruments.

**Feminism and Women’s Rights**

Women’s human rights have been the central theme around which major feminist theories have evolved. The various feminist theoretical positions on women’s human rights have been elaborately dealt with by Diana H Coole, who, in her study,
focuses on the treatment of women within political thought. She analyses how women and women’s issues have been taken up by different thinkers, starting with Aristotle who denied citizenship rights to women by asserting that women lacked rationality. Likewise, she highlights the patriarchal tendencies of writers such as Hegel and Rousseau, asserting that political thought has made a major contribution to the entrenchment of patriarchy. Hence, the author has tried to explain that generally women are excluded from political life and their contribution in history is totally invisible.

Another compilation, ‘Women’s Rights, Human Rights: International Feminist Perspectives’ by Julie Peters and Andrea Wolper presents a holistic analysis of the international human rights scenario from a feminist as well as applied perspective. The study focuses on the background of women’s human rights, regional reports on human rights, human rights law, cultural differences, violence against women, health, development, migration, etc. all issues impacting the human rights of women. Mention may be made of two articles one by Charlotte Bunch (Transforming Human Rights from a Feminist Perspective) and another by Hilary Charlesworth (Human Rights as Men’s Rights). Bunch emphasizes the need for transforming human rights from a feminist perspective as crucial for addressing global challenges to human rights, while Hilary Charlesworth analyses how the entire approach towards women’s right has an andocentric tilt.

The feminist perspective of human rights is also presented by Veena Poonacha in her study. She begins with an overview of the historical outgrowth of the rights discourse i.e. human rights as enshrined in various international documents and within the framework of Indian Constitution. She further deals with the women’s movement both in India and the West and the various feminist theoretical positions. The study helps to understand how feminist theory conceptualizes the origin of gender differences and the construction of males and females into masculinity and femininity which set their political agenda and responses to the human rights issue. She argues that the inbuilt dichotomy between private and public domain has always prevented women from exercising their rights.

35 Veena Poonacha (1995), Gender Within the Human Rights Discourse, Mumbai: Research Centre for Women’s Studies, SNDT University.
Exploring the ways in which human rights would be understood if women’s experiences were taken into consideration, Gayle Binion argues that the principles of human rights emerging in that case would be different. If women’s life experiences are taken into account, then issues relating to marriage, reproduction, labour, property, sexual repression and others, which are routinely regarded as private and therefore immune to outside interference, would emerge as significant human rights issues.

Adam Jones believes that the word, ‘Gender’ has usually been deployed in the human rights discourse to designate rights violations that target women and girls. The article, ‘Of Rights and Women: Towards a Minoritarian Framing of Male Experiences’, argues that the variables of minority, ethnicity, social class, and age can be separated from the gender for analytical purposes. The gender variable can then be seen as equally, if not more, significant to an understanding of human rights abuses in the United States and elsewhere. It focuses on four key institutions: incarceration, death penalty, police violence, and registration for military conscription. The article concludes by deploying the concept of men and minorities, suggesting that the phrase may be every bit as apt as ‘women and minorities’, and that younger men may deserve acknowledgment and attention as a minority group in their own right.

Farha Leilani emphasizes the significance of the right to housing for women. Arguing that the right to housing must incorporate a substantive understanding of women’s equality rights, the researcher assesses the extent to which a right to housing under International law conforms to the requirements of substantive equality. The author concludes that incorporating equality and non-discrimination into the right to housing would provide a human right which is more responsive to women’s experience.

Rachel Johnstone in her study, ‘Feminist Influences on the United Nations Human Rights Treaty Bodies’, observes that feminists have been highlighting the

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pervasive gender biases within international law. She seeks to analyse whether these critiques by feminist scholars have made any impact on the functioning of the human rights treaty bodies. She argues that there is definitely an impact although much work still remains to be done.

**Jill Steans**\(^*\) study has a twofold objective. The first is to identify whether women’s human rights are universal and second is to “defend women’s human rights as a useful political tool that can be used to challenge injustice and discrimination against women”. Accepting the notion of “difference and the challenges to the notion of universality of women’s human rights”, she nevertheless acknowledges the “universal” in women’s experiences and the flexibility of the concepts.

The aim of **Moya Llyod’s**\(^*\) paper is to develop a critical theory of human rights, while focusing on both the paradoxes as well as the potential of human rights discourse for women. She seeks to examine the impact of human rights for women and on women in various contexts. She concludes, “human rights discourse and activism are at their most radical when they lead to recategorization of the human”. But “human” cannot be conceived as a singular, universal entity and human rights are not universal in that they embody a common moral standard applicable to all, but are so because of the promise that one day a universal standard may be attained.

**Margaret Walters**\(^*\) traces the history of feminism by taking into account the movement for women’s suffrage rights in England. She looks into the key issues of feminism and assesses its current relevance. She argues that feminism is something ‘living and evolving’ which means not only finding new issues but generating new language and in future bringing new issues to the forefront. She also analyses the current situation of women across the world.

**Shazia Qureshi**\(^*\) in her study delves into the universalist claims of human rights law from a feminist perspective. She asserts that it has failed to take account of


women’s voices. At the same time, she explores the arguments presented by cultural relativists and looks at the ways in which these are detrimental to women’s human rights.

The collection of essays in the study edited by Mulki Al-Sharmani\textsuperscript{44} tries to investigate the relationship between legal reform and feminist activism as the only way to establish gender justice in the society. Feminist movement for legal reform has continuously acted as a great support in seeking women’s rights and empowering women. The different articles in the study bring together cases from Asia, Latin America and Middle East about the successes and failures in implementing new family laws and domestic violence codes.

\textit{Women’s Right to Health}

Apart from these general studies on human rights and women’s human rights, a number of scholars have concentrated their studies on various issues relating to human rights. One of the most crucial rights for women is that of health, for denial of access to health care has a severe negative impact on all aspects of women’s lives. This is particularly true in the context of sexual and reproductive health.

Rebecca Davidson\textsuperscript{45} in her study, stresses upon the importance of sexual and reproductive rights. She seeks to analyse how civil society actors are claiming reproductive rights in Tanzania, and in this claim, which rights are included and which are excluded. Identifying two types of approaches a ‘social service approach’ and a ‘human rights advocacy approach’ she asserts that the former seeks to integrate rights consciousness within the community while the latter is challenging systems and structures of health. She observes that guaranteeing sexual and reproductive health rights are one of the priorities as identified by the task force to attain gender equality and women’s empowerment.

Recognising the significance of right to health for women, the World Health Organisation brought out a full fledged report on ‘Women and Health’\textsuperscript{46}. This

\begin{itemize}
\item Rebecca Davidson (2008), \textit{Framing and Claiming Reproductive Rights}, Netherland: Erasmus University.
\item WHO (2009), \textit{Women and Health: Today’s Evidence, Tomorrow’s Agenda}, Geneva: WHO Press.
\end{itemize}
report, reviews health issues concerning girls and women throughout their lifespan. It
notes the importance of women’s multiple contributions to society in both their
productive and reproductive roles, and also as consumers and providers of health care.
In recognition of this, the report calls for primary health care reforms to be
implemented in ways that ensure that health systems better meet the needs of girls and
women. Adopting a life cycle approach, the report looks into various issues pertaining
to women’s health throughout their lifespan. It concludes that advances in health care
notwithstanding, women’s health needs are not met in crucial times of their lives,
particularly during adolescence and old age. Women’s health problems cannot be
solved just by providing more medicines or by introducing new schemes. In case of
India, women’s health can only be improved if, India addresses the social inequality
and discrimination against women. Education and employment can also play an
important role in improving women’s health in India.

Linda Lewis Alexander et al’s\textsuperscript{47} study on New Dimensions in Women’s
Health is divided into four parts, with each examining a different aspect and
dimension of women’s health. The first part sets out the foundations of women’s
health in which a historical analysis of women’s health is presented along with an
analysis of the health issues during the life span. The second part focuses on the
sexual and reproductive dimensions of women’s health; third on physical and lifespan
dimensions of women’s health and the fourth on interpersonal and social dimensions
of women’s health. The study further examines how epidemiological, historical,
psychological, cultural, ethnic, legal, political, and economic issues influence
women’s health.

Another WHO Report\textsuperscript{48} describes the new PHC approach and the forum
reforms and presents gender concepts and discusses the health implications of gender
inequalities. The study presents an overview of progress in addressing gender
inequalities in health and makes the case for integrating gender perspectives in PHC
reforms. The study further examines universal coverage and service delivery reforms,
public policy and leadership reforms and with some case examples. The report
concludes by stating that health sector of most WHO member states have made very

\textsuperscript{47} Linda Lewis Alexander; Judith H. La Rosa; Helaine Bader; Susan Garfield and William James
limited progress in mainstreaming gender perspectives policies, programming and service delivery.

The impact of surrogacy on women’s right to health is analysed by Anu et al in their study on Surrogacy and Women’s Right to Health in India. The writers observe the immense possibilities of surrogacy as a method of assisted reproduction, but conclude that it is leading to exploitation of poor women. The study discusses issues of paternity and concludes that there is a need for governmental intervention to avoid violation of women’s rights.

**Violence Against Women**

One of the major challenges for actualization of women’s human rights is the violence in both public and private sphere to which they are subjected. Violence may be physical, economic, emotional or even sexual. A large number of scholars, in their studies have attempted to assess the impact of violence against women on women’s human rights.

Urvashi Gulati observes that violence against women in India needs to be understood through the cultural context of gender. Due to male dominance in the society, there is son preference which has increased crimes against the girl child, for instance, infanticide and female foeticide. The author suggests some measure to curb the menace of violence against women from the society. Firstly, press and voluntary organizations may play a very significant role in securing enforcement of law and this should be promoted. Secondly, promoting education to raise the economic status of women and thirdly sensitizing and creating awareness among women about their rights.

Saroj Iyer in her study focuses primarily on violence against women as a denial of women’s human rights, in both the private as well as the public sphere. Thus, women continue to be tortured, mutilated, burnt alive, raped, trafficked etc, merely because they are women. The author’s findings are supplemented by revealing

and poignant case studies exposing the failure of governments and society to protect women’s human rights.

Violence against women as a denial of women’s human rights is also the thread running through Fatima Ehteshan Siddiqi and Sarla Ranganathan’s ‘Handbook on Women and Human Rights: A Guide for Social Activists’, which was published in two volumes. Volume One stresses on issues related to women’s empowerment and employment for attaining integrated development. It focuses on various kinds of offences and discrimination against women such as rape, indecent representation, domestic violence, dowry, sati, female foeticide and immoral trafficking etc. It also highlights the changing role of women in contemporary period, United Nations initiatives for advancement of women and different rights of women in various religions at the national and international levels. Volume Two deals with the overall issues of crime and punishment in respect of women’s rights. In this part, the study analyses the theme of gender injustice and questions of dowry deaths, divorce, rape, women in prison and their treatment in custody. The attempt is to provide a holistic analysis of the various issues of violations of women’s human rights.

Sally Engle Merry, in her study entitled, ‘Rights Talk and the Experience of Law: Implementing Women’s Human Rights to Protection from Violence’, seeks to understand how the victims of violence against women become conscious of their rights. This, she asserts, requires interaction with the legal system and encounters with various implementing agencies and agents such as lawyers, police officers, judges, etc. In fact, she asserts, that encouraging victims to assert rights is a critical problem for the battered women’s movement.

The issue of violence against girl children is also taken up by S. N. Tripathy and Premananda Pradhan in their study. The authors assert that women and girls face violence and discrimination only because of their gender. The study also reveals the widespread nature of child prostitution in India. The reasons for child prostitution

54 S. N. Tripathy and Premananda Pradhan (2005), Girl Child in India, New Delhi: Discovery Publishing House.
are economic deprivation, inequitable socio-economic structure, harmful traditional and religious practices and the aspects of globalization which undermine fulfillment of the basic rights of children. Thus, the authors conclude that human rights of the girl children are violated in every sphere of life. They suggest that to protect the girl child, attitude of the people needs to be changed.

In a similar vein, Tripathy and Debadutta\(^{55}\) in their study highlight the Conventions and initiatives taken by the UN and Indian Constitution for the human rights of the girl child. The authors argue that in reality girl children are considered a burden and still face all the discrimination and atrocities. Further, they reveal that child sexual exploitation is a rapidly growing business in India which causes leads to increasing cases of HIV/AIDS. The important finding of the study is that the girl child in India is often the victim of extreme discrimination and neglect which starts from the womb itself. According to the authors as long as the traditional beliefs continue the socio-economic position of girl child cannot be changed.

Women’s rights in the context of domestic violence are the focus of the article by Kumaralingam Amirthalingam\(^{56}\) (2005). Examining domestic violence laws of some Asian countries and the actual situation in respect of domestic violence, the researcher stresses upon the need to use gender analysis to create innovative solutions to the problems.

Tracing the linkages between domestic violence and women’s right to housing, Pagalione Giulia in her study ‘In Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing’\(^{57}\), opines that domestic violence and the right to housing are intrinsically connected to each other. The author suggests that the universally accepted human right to housing specifically includes the right to live free from domestic violence; this right is blatantly violated when domestic violence occurs. The prevention and eradication of domestic violence should consequently start with the protection of women’s right to adequate housing. However, an analysis of the currently existing international instruments addressing violence against women, read

\(^{55}\) Debadutta Chaudhury & S. N Tripathy (eds.) (2005), *Girl Child and Human Right*, New Delhi: Anmol Publisher.


together with their main interpretations reveal their limitation in securing protection from domestic violence. Identifying challenges on the issue, Giulia suggest some workable solutions to the problem.

Violation of women’s human rights through conflict-related sexual violence is the theme of a study by Lesley Pruitt.\(^5^8\) The study focuses on the issue of ending impunity for perpetrators of such violence, noting that recognition of the necessity of ending impunity has not led to any breakthrough in achievement. Providing an overview of conflict related sexual violence, the author highlights the importance of building peace and ending the gender based violence during conflicts. The study throws light on the history of mechanism for addressing gender and sexual based violence during conflicts by international community. The study also delves into the mechanisms adopted by the international community for this purpose and concludes that creation of a special mechanism such as a UN sponsored Women Police Service would go a long way in eradicating the problem.

Domestic violence, as a cause of women’s human rights violation is also the focus of the study by the same name by T. Purushotham Naidu.\(^5^9\) The author argues that the home which is said to be safest place for women has become a place of terror and violence. Most of the women suffer both physically and psychologically and are unable to make any decisions or protect their children from the perpetrator. The study declares that domestic violence is a human rights issue and assesses its impact on the rights of women.

**Women’s Rights to Land**

It is now increasingly recognized that one of the major concomitants for the empowerment of women is control over land and other productive resources. Recognising that land is a “crucial economic asset for women in poor rural communities”, the study by UN Women\(^6^0\) looks into the causes behind women’s

\(^6^0\) UN Women and Landesa (2012), Challenges and Barriers to Women’s Entitlement to Land in India. Retrieved from http://www.unwomensouthasia.org/assets/Landesa_UN.pdf accessed on August 22, 2014
inability to access land rights. Based upon a survey of 504 women in Andhra Pradesh, the study seeks to document the various aspects of women rights to land.

In a similar vein, the UN Women publication *Realizing Women’s Rights to Land and Other Productive Resources*, is an extremely significant and timely study. The Report, based on the results of an expert group meeting held in Geneva in 2012, seeks to highlight many critical issues relating to enjoyment of land rights by women. The concept of ‘women’s rights to land’ is used in a holistic manner, grounded in a human rights framework. It is understood in terms of the “ability of women to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources.” The publication recognizes the linkages between women’s rights to land and ability to use and control other productive resources. It concludes with doable strategies to promote women’s rights to land and other resources.

*Education and Women’s Human Rights*

Way back in 1792, Mary Wollstonecraft highlighted the importance of education for attainment of women’s equality and rights. The early feminist movement in the west also sought to achieve women’s liberation through education and advocated for the equal right to education. Yet across the world a large majority of women continue to be denied education, which adversely impacts their awareness of and access to all other human rights. A number of studies have sought to highlight both the significance of education and the ways in which women are deprived of this right even in the twenty-first century.

*Margherita Randel* seeks to analyze the question whether the human rights framework actually benefits the common person; if yes, then in what ways? She further addresses the issue of the benefits derived by women from this framework and finally what role does education play in promotion of human rights. The focus here is specifically on women and right to education, for the former is the most disadvantaged group, while the latter is essential for understanding the implementation of human rights.

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M. Fatima Beevi in her article ‘Women and Human Rights’, reveals that human rights issue is a global phenomenon which has gained importance due to the abuse of our basic human rights. According to her, education is an important tool for empowering women, as one becomes aware about rights and then can fight the violation.

Education for the promotion of human rights is the major focus of the study by C. Naseema. In this study, ‘Human Rights Education: Conceptual and Pedagogical Aspects’ she attempts to elucidate the methods, which can be used by teachers for teaching human rights and the implementation of these methods at elementary, secondary and higher education levels. At the same time, she elaborates upon the concept of human rights, its evolution as well as the national and international context of human rights.

The fundamental human right to education also forms the basis of the study by Tristan McCowan on ‘Education as a Human Right: Principles for a Universal Entitlement to Learning’. She seeks to assess the nature of this right and understand its exact meaning, whether it is merely the right to attend school or does it have deeper meanings such as developing particular skills. She further seeks to inquire into the reasons for its importance. The author tries to highlight certain limitations in the approaches of international law and initiatives taken for educating all. The study also discusses about basic education, higher and lifelong education with special focus on human rights education. She provides a staunch defense of the universal right to education.

Environmental Rights and Women

Clean and green environment is the basic human right of every human being. Women have a special stake in this, particularly in view of their ascribed gender roles. Overpopulation, excessive use of natural resources and changing climate have led to environmental degradation, which has had the further effect of denigrating environmental rights of the people.

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So significant is the issue for human rights, that it is regarded as a universal and not a national problem. **Tony Evans**\(^{66}\) focuses on global politics of human rights in his study. The author delves into debates about human rights, power and interests. He believes that it is no longer possible to understand issues of development, security, environmental degradation and human rights as exclusively national problems. The study analyses how the national interest of various nations is associated with globalisation and the discourse of universal human rights players in legitimizing those interests. He concludes that strengthening human rights necessitates democratization of global society.

Focusing on the human right to a safe environment, the study by **Richard P. Hiskes**\(^{67}\) makes a case for intergenerational justice. He seeks to establish environmental rights as “emergent human rights” which he asserts could have several benefits for human rights including establishing the concept of intergenerational justice. Moreover, environmental rights resolve the crucial debate on consensus versus pluralism as they are crucial for all nations.

Environmental rights are also the central theme of the compilation edited by **Dinah Shelton**\(^{68}\) entitled ‘**Human Rights and the Environment**’. The articles in the two volumes range over the last many years and attempt to address various issues relating to the environment including the responsibility of the state to guarantee these rights, how to monitor compliance, and how to regulate non-state actors. The editor observes that awareness of the link between the environment law and human rights is growing but still it is not always addressed in combination with each other. The first part of Volume I seeks to comprehend various theoretical approaches to the right to environment, while the second part deals with various related such as right to water, climate change, dumping of hazardous and toxic wastes and so on. Part III in Volume II assesses the impact of environmental degradation on vulnerable people such as indigenous populations, displaced persons and children. The last part presents an analysis of the international instruments for protection of environmental rights. Significantly, notwithstanding the universal recognition of women’s higher stakes in

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preventing environmental degradation, none of the articles in the volume focus on this.

**Challenges to Women’s Human Rights**

Even while the concept of women’s human rights has gained ascendancy, it faces a challenge from a large number of evolving issues such as trafficking, globalization, poverty, increasing conflicts and so on. At the same time the inherent patriarchal tendencies of states, governments and societies constitute major challenges to the actualization of women’s human rights. These challenges have formed the basis of a large number of studies on women’s human rights.

One of the most prominent and significant works on women’s human rights is the compilation edited by Rebecca J. Cook. It explores the multifarious challenges to women’s human rights and evaluates the international, regional and national approaches towards protection of women’s human rights. The various papers in the volume also address the issue of guaranteeing certain specific human rights of women and multiple agendas of human rights. The main focus of the volume is on an analysis of various aspects of CEDAW.

Shahnaz Khan in her article focuses on a Canadian Shia Muslim woman’s fight for the custody of her child born from a Muta marriage, a temporary marriage characterized in the article as a contract wherein a man offers financial compensation to a woman in exchange for a sexual relationship. The author describes what she believes to be factors of racism and sexism that entered into the judgment by the Canadian Court. In the course of this analysis, she also considers the issue of women’s position in multicultural communities as well as the influences of Orientalist and Islamist discourses on Muslim women.

Emphasizing the need to rethink human rights from women’s perspective, Susan Moller Okin in her paper entitled, ‘Recognising Women’s Rights as Human Rights’, admits that a lot has changed in the sphere of women’s human rights since

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the UN Charter repudiated distinctions on the basis of sex. Nevertheless, she asserts that women continue to be discriminated against and their human rights violated with impunity. She concludes with an optimistic hope that women will achieve full equality in the field of human rights with a change in religions and cultures around the world.

The personal experiences of people with regard to human rights is taken as a possible basis for estimating the relative importance of different human rights by John D. Montgomery in his article, ‘Is There Hierarchy of Human Rights?’72 Significantly, he believes that the denial of rights and abuses are rare in the western world, which is a startling conclusion in view of the allegations of human rights abuses against U.S.A. in various parts of the world. However, he does admit that minorities and marginalized including blacks, women and children continue to be disadvantaged. He lays the blame for abuses at the door of society and not governments.

‘Women Rights and Law: A Training Manual’73 by Thomas B. Jeyaseelan, is basically in the form of a manual for training in women’s human rights. It highlights the low status of women through statistical data and attempts to delve into the reasons behind this. The manual concludes that gender bias as well as men’s unwillingness to share power with women are at the roots of women’s subordination. The efforts made at the international level for protection and promotion of women’s human rights are also elaborately set out and analyzed.

Presenting a holistic picture of the human rights scenario, Sabira Khan74 in her study analyzes the precept and practice of human rights in India. The study traces the various violations of human rights and looks into the causes of these. It further analyses the various mechanisms set up for the protection of human rights.

Nikki van der Gaag’s75 ‘The No-Nonsense Guide to Women’s Rights’ analyses the challenges to women rights from issues such as globalization, water,
poverty, AIDS etc. The present study also analyses various issues pertaining to women’s rights including health, education, violence against women among others. It concludes that women have been and continue to be deprived of their basic rights even today.

One of the major challenges which women’s human rights continue to face is the violence to which defenders of women’s human rights are subjected. In this context Kaavya Ashoka presented ‘Global Report on the Situation of Women Human Rights Defenders’\textsuperscript{76}. She presents an analysis of the work of the Women Human Rights Defenders (WHRDs) and addresses gaps in documentation of gender-based violence against WHRDs. The Report further focuses on five key areas: fundamentalism, militarization and situations of conflict, globalization, crises of governance, and heteronormativity. The report explores strategies for protecting WHRDs, who are at risk and providing urgent protection and security to them.

Benjamin Stachursky\textsuperscript{77} in his study analyses the impact of transnationalism on domestic activism. Conducting comparative studies on women’s human rights activism in Egypt and Iran, the author, assesses the emergence and development of NGO activism in these two countries.

Inferences from Review of Literature

On the whole, the review of literature reveals that human rights have today emerged as a vital component of social and political systems. Even as moral norms, their significance cannot be underestimated for they set standards on the basis of which nations and communities are judged. Moreover, human rights are not a static but a dynamic and evolving concept and the United Nations human rights protection system has grown in ways that could hardly have been predicted at the time of UDHR. From small beginnings it has developed into a multi-tiered and sophisticated system with multitude of human rights instruments and respective monitoring mechanism. Growth of human rights system has contributed to the improvement of human rights situation in many countries and in many thematic areas. Moreover, there


is increasing assertion of new and more pertinent human rights, such as environmental rights.

One of the most significant issues in this debate on human rights is the place of women’s human rights. Feminist scholars are increasingly asserting that the notion of universal human rights cannot be actualized in the absence of recognition of women’s human rights. Various studies, reviewed above have highlighted the links between feminism and women’s human rights. At the same time, scholars have focused upon numerous issues relating to women’s human rights, such as right to education, health, housing, land, environment, etc. There has also been an increasing focus on violence against women as instrumental in violation of women’s human rights. Nevertheless women’s human rights continue to be violated in various ways and scholars assert the continued persistence of numerous challenges to women’s rights, which serve as effective walls in preventing the availing of women’s human rights.

**Gap in Research**

The review of literature undertaken above reveals that a large number of studies have emerged on the issue of human rights. However, the general studies on human rights are mostly gender neutral and concede to the recognition of women’s rights as human rights by allocating a chapter or so to gender issues. Studies on women’s human rights have emerged only recently and have addressed numerous issues. However, certain gaps remain. For one thing, there is no comprehensive full fledged study on the issue of women’s human rights and the United Nations. Studies dealing with women’s human rights have taken up one or the other issues, but have failed to look at women’s human rights as a holistic concept. Most of the studies relating to United Nations and women’s human rights are limited to a feminist analysis of one or the other treaty or convention enunciated by the United Nations. Even these are very few. None of them address the issue in its totality.

Secondly and more significantly from the point of view of the present study, there has been no holistic study of the role and changing approach of the United Nations in promoting women’s human rights through an assessment of the universal human rights instruments and how far these have actually contributed to the expansion and actualization of the concept. There are no studies which provide an
overall assessment of the role of the United Nations in promoting women’s human rights, not as a ghettoized concept but as part of the universal human rights instruments. It is these gaps that the present study seeks to address.

**Theoretical Perspective**

Women’s human rights have today become a widely accepted global norm, encoded in various documents adopted by the international community. Nevertheless, they continue to be sidelined, sidestepped and simply overlooked leading to a fragility in their very existence, a fragility which may be shattered by the mere whiff of culture, conflict or denial. This has resulted in a vociferous feminist critique of the rights discourse which has centered around a few major assumptions. First is the criticism of the notion of universal rights. Rights, it is asserted, are based upon a distinctively male experience, thereby excluding women from their ambit. Women, it is asserted, may, of course suffer human rights abuses in the same way as men. For instance political repression. However much of the abuse suffered by women is gendered. Even similar abuse may impact women in a different manner. As Oonagh Reitman observes, “Feminists argue that universality has not been realized in practice, that only men's rights are protected and that women have not yet been included in the "human" of human rights. The argument is well represented in unifying campaign slogans such as "Women's Rights as Human Rights" and variations on the same theme. If human rights really are to be universal, claim feminists, women's rights must also be guaranteed and the failure of the international community to do so, attacks the universal foundation of such rights.”

A characteristic feature of feminist inquiry has been the insistence that women’s experiences be the starting point for analysis. Secondly, issues of central concern to women have found little place on the mainstream agenda.

The roots of this failure may be traced to the lack of awareness about the relevance of gender in human rights abuses, which, as Andrew Byrnes observes can lead to “androcentric definitions of substantive norms.” Feminists are also critical of

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the failure to comprehend the relevance of the public private distinction in understanding denial and derogation of women’s human rights abuses. Traditional human rights analysis focuses on the public violations of human rights and ignores and invisibilises those in the private sphere. As most of the violations of women’s rights occur in the latter, women’s human rights tend to be neglected. This public/private divide tends to privilege male experiences at the cost of women. Thus, the issue of women’s human rights is inexorably linked with the theories of gender as well as the public/private distinction. The impact of the latter is further strengthened by the prevalence of patriarchy. Accordingly, it is these concepts which provide the framework for the analysis of the approach of the United Nations towards women’s human rights. A brief explanation of each of these would be in order here.

Gender may be defined as the “socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.” It is a socially constructed analytical category based upon the biological difference between men and women. Simone de Beauvoir’s opening remark in her book, The Second Sex, “One is not born but becomes a woman” aptly explains the concept. It leads to ascription of different roles for men and women, difference in behavior which is termed as masculine and feminine as well as attribution of different activities to both. Social construction of gender leads to ascription of negative qualities to women such as irrationality, physical and mental weakness, inability to perform certain tasks and fitness for other tasks such as child-rearing and household work, while men are ascribed positive characteristics of courage, strength, and rationality. This leads to the assumption of male superiority and female subordination resulting in a denial and denigration of rights for women. Andrew Byrnes observes, “A failure to realise that women may have suffered violations whose form has been influenced by the fact that they are women and to inquire specifically about such violations may mean that certain types of human rights violations which have a gender-specific cause or form are not detected”.

82 Andrew Byrnes, op. cit.
means that gender-specific variants of violations may be missed or not adequately responded to.”

Another significant criticism offered by feminists of the rights discourse revolves around the public/private distinction. Society has been carved into two distinct domains by traditional social and political theorists, a public domain associated with authority and decision-making and a private domain associated with the family and household. Each of the domains supposedly operates in a different manner. Activity in the public domain is constrained by various factors, which include the precepts and practices of citizenship, of public authority as well as accountability. In the private realm, the male head of the household is the dominant authority, surrounded by inferiors and exerting full control over them. Martha Nussbaum opines that, “Modern liberal theory has typically associated the public/private divide with a further distinction: the distinction between a sphere regulated by law and a sphere in which law should not interfere. The public realm is a realm in which law and coercion operate: if A violates the rights of B, the law will intervene to protect B from A. That is part of what it is to live in a realm characterized by accountability and a division of power. In the “private” realm, by contrast, the law may not intervene to constrain the activity of its monarchical head.” The impact of the public-private distinction on the rights of women is lucidly stated by Andrew Byrnes, “The theoretical framework of traditional human rights analysis has been a major contributor to the neglect of violations of particular concern to women; it also poses a number of serious obstacles which need to be overcome if women's legitimate claims in relation to the right to life and the right to bodily integrity are to be addressed within that framework. These problems arise from a focus on direct State violations of individual rights, an acceptance of a division between public and private spheres of social life, and a reluctance to address the existence of economic and social conditions which affect the ability to exercise the basic civil and political rights guaranteed. The primary orientation of civil and political rights analysis has been direct violations of the rights of individuals by the State. These violations have generally taken one of two forms: the adoption of legislation or practices which discriminate against particular groups or unjustifiably limit the exercise of rights, or the actions of State officials directed

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83 ibid.
against individuals which violate their rights - classic cases being torture, wrongful imprisonment and summary or arbitrary executions. Women do, of course, suffer serious violations of their rights directly at the hands of the State and, as indicated above, sex and gender may play a role in the instigation of such violations and the particular form they take. However, women also suffer major violations of their physical integrity at the hands of private individuals. The extent of State involvement and complicity in these violations is its responsibility for the maintenance of a legal and social system in which these violations occur and may legitimate such violations or allow them to pass unpunished. However, the liability of the State for such "complicity" under international human rights law is far from self-evident."85 Thus men are privileged by the notion of the public/private divide and women are made even more vulnerable as the private realm is often beyond the reach of the state regulation and law. Dismantling the distinction between the public and private domains, a crucial concern of feminist theory, is a necessary concomitant for including women’s rights within the ambit of human rights.

Patriarchy, traditionally implying ‘male domination’, refers to “a system of social structures and practices in which men dominate, oppress and exploit women”86 Hartmann defines patriarchy as “a set of social relations between men, which have a material base, and which, though hierarchical, establish or create interdependence or solidarity among men that enable them to dominate women”. 87 The primary characteristic of patriarchy is hierarchical and unequal power relations which result in male domination and female subordination, whether within the household or outside. Thus, patriarchy is implicit in male control over women’s lives, over her production, reproduction as well as her body and life itself. Patriarchy is manifested in numerous denials of women’s human rights, beginning with denial of right to take birth, and continuing throughout the lifecycle to denial of education, health, nutrition as well as control over her own body and reproduction. Violence against women, an extreme manifestation of patriarchy, is the worst form of denial of women’s human rights. The insidious characteristics of patriarchy have extended to control over the mindset as

85 Andrew Byrnes, op. cit.
well, leading to systemic control over women’s lives and behaviour and negatively violating their rights.

Thus, the theoretical underpinnings of the present study, revolves around these three concepts, which were used to analyze the various Instruments adopted by the United Nations for universal as well as particular human rights.

**Objectives**

The overall objective of the study is to analyse the changes in the approach of the United Nations towards the issue of women’s human rights from its conception to the present. The specific objectives are:

- To trace the historical background of the concept of human rights in general and women’s human rights in particular.

- To analyse the changing approach of the United Nations and its agencies towards women’s human rights during its different phases.

- To examine the Indian Constitutional and legal position on women’s human rights in the light of the approach of the United Nations.

- To assess the status of women’s human rights in India and women’s awareness about their rights.

- To study how the Indian Judiciary has attempted to redefine women’s human rights by integrating the United Nations approach to interpret the Indian Constitution and existing legislation.

**Research Questions**

The broad research issues which the present study intends to explore are:

- Has there been a change in the approach of the United Nations towards the issue of women’s human rights from the pre-1975 phase, to the international women’s decade and in the post 1985 period.

- Have these changes translated into substantive positive changes for women in the field of human rights.
• What is the status of women’s human rights in India—Constitutionally, legally and in reality?

• What has been the stand taken by the Indian Judiciary towards women’s human rights?

Research Methodology

The focus of the present study is on the changing approaches of the United Nations towards women’s human rights. To understand the different approaches of United Nations towards women’s human rights, it became pertinent to study, evaluate and analyze various Human Rights Instruments adopted by the United Nations since its inception till date. The history of the United Nations was demarcated into four phases, depending upon the approach towards women’s human rights as already discussed in the preceding pages in Table I, on pages 10-12. For the purpose of the present study, various human rights instruments were clubbed together and categorised under three different heads as Core Human Rights Instruments; Universal Human Rights Instruments and Women’s Human Rights Instruments. The Core Human Rights Instruments include the Universal Declaration of Human Rights, International Convention on Civil and Political Rights and International Convention on Economic, Social and Cultural Rights. Universal Human Rights Instruments comprise all UN Instruments enunciating rights of specific groups of people or certain specific rights. These, for the purpose of analysis, were further clubbed together as rights of children, minorities, disabled, rights for social welfare, for administration of justice and so on. The third category of Women’s Human Rights Instruments consists of rights specifically declared for women such as Convention on the Political Rights for Women, CEDAW and so on.

Research on women’s human rights issues needs added sensitivity and women’s perspective. The need arises basically because, in the past it has been experienced that Women’s Human Rights issues were subsumed under the general human rights discourses. Accordingly, it was felt necessary to adopt triangulation method of research, which includes both qualitative and quantitative methods. The qualitative includes indepth study and analysis of the various human rights instruments, and it has been substantiated by quantitative method under which a
sample of 100 respondents have been collected to evaluate the awareness level and perceptions about women’s human rights in India.

Both primary and secondary sources of data collection have been used in the present study. The secondary data includes the United Nations Instruments aimed at protecting and promoting human rights. In addition to this, other published literature such as official records, proceedings of the meetings, documentation of reports and cases, etc. of the General Assembly as well as other United Nations Organs relating directly or indirectly to the various aspects of women’s human rights were analyzed to arrive at valid conclusions.

It has also been felt that mere recognition of women’s human rights at the global level has not been translated into reality, particularly at the national level. Hence, an attempt has been made to analyze the situation of women’s human rights in the Indian context with special reference to the Constitution of India and Indian law, the judicial approach to women’s rights as well as the de facto situation of women’s rights. In order to understand the de facto situation and to understand the opportunities and obstacles to women’s human rights implementation, it was felt necessary to go in for empirical research. Therefore an effort has been made to substantiate the data through field study. Accordingly, a sample of 100 respondents has been selected from two Districts of Punjab, namely Ludhiana and Faridkot, keeping in view the social-cultural indicators. As per Punjab Human Development Report, 2004, Punjab ranks sixth in the Human Development Index (HDI), but is sixteenth as far as Gender Development Index (GDI) is concerned. Punjab has the highest differential between HDI and GDI indicating very high gender discrimination prevalent in the State. Ludhiana represents one of the most developed districts, whereas Faridkot is among the least developed districts of Punjab. A Sample of 50 respondents has been collected from each of the two districts through the method of judgemental or purposive sampling and care has been taken to cover different sections of the society. It would be appropriate to point out that the respondents were selected through this method of sampling as it was felt that only those respondents who had a bare minimum level of awareness about human rights should be included.

88 “The primary consideration in purposive sampling is your judgement as to who can provide the best information to achieve the objectives of your study.” Ranjit Kumar, (2011), Research Methodology: A Step-by Step Guide for Beginners, New Delhi: Sage, 3rd edition, p.207.
The data so collected was coded, tabulated and analyzed through Statistical Package for Social Sciences and presented herewith.

Chapter Scheme

The first chapter of the study is introductory in nature. Besides introducing the problem, it presents the research setting and review of relevant literature. It also discusses the research methodology in detail. The second chapter traces the historical and philosophical evolution of the concept of human rights in general and women’s human rights in particular. The third and fourth chapter analyzes the approach of the United Nations during the different phases. The third chapter deals with the developments in the field of women’s human rights from 1945 to 1974 and 1975 to 1985. The fourth chapter likewise analyses the developments from 1986 to 1995 and again from 1996 to the present. The analysis of the Indian Constitutional and legal position on women’s human rights is presented in the fifth chapter. It further analyses how the Indian judiciary has attempted to reinterpret Indian Constitution and laws in the light of the changed/transformed United Nations approach towards women’s human rights as well as an overview of women’s rights in India. The sixth chapter presents the analysis of the primary data collected from the interior of Punjab. The chapter analyzes the socio-economic profile of the respondents and their awareness regarding women’s rights. The last chapter presents the conclusions arrived at from the study and provides some doable strategies to make women’s human rights a reality in fact and not merely on paper.