CHAPTER VIII

CONCLUSION

Human Rights emanate from the dignity and worth inherent in the human person. They are recognized by the legal systems of all civilized countries. Though the need for upholding human values and protection of human rights had been appreciated by the society from very early days, the necessity for establishing machinery for their protection was felt only after the second world war. The bitter experiences of the second world war prompted the international community to uphold the moral and basic rights of the human being. It was also felt that when a State violates the human rights of its citizens, the international community couldn’t remain unconcerned and inactive. In fact the position of human rights transcending State boundaries made the international community to intervene in many a conflict having human rights overtones. Accordingly many organizations were established and many declarations and conventions were formulated by the international community to protect human rights.

The framing of the U.N. Charter, the Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966, the International Covenant on Social Economic and Cultural Rights, 1966, and other International and Regional Instruments can be said to be the most enchanting incidents in the 20th century.
Human Rights are positive rights, which every human being is entitled to enjoy and to have protected by State authorities. The principles of equality before law and prohibition of discrimination constitutes the essence of rules of law and human freedom. Attainment of equality of status of women was one of the specific objectives, which is implicit in various international instruments. All the international and regional instruments on human rights prohibit discrimination on the ground of sex and cast an obligation on the Member States to incorporate provisions for protection of women and elimination of discrimination against women in the domestic law so as to ensure equality.

The U.N. Charter recognized the importance of non-discrimination of individuals on the basis of sex for keeping peace and stability of the world order. The preamble to the charter affirms faith in fundamental human rights and the dignity, worth and equal rights of man and women. This faith is reflected in Article 1(3) of the charter of the United Nations, which runs as follows:

“To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms of all without distinction as to sex, language or religion.”
The ardent faith of the founding fathers of the United Nations had in the vitality of human rights protection made the international community to follow up its establishment with the formulation and formalization of universality of human rights.

The Universal Declaration of human rights guarantees the right of every individual not to be discriminated against on the basis of sex among other things. The declaration is accepted as part of the customary international law and has been further reiterated in the International Covenant on Civil and Political Rights, 1966 and in the International Covenant on Social, Economic and Cultural Rights, 1966. The Convention on the Elimination of All Forms of Discrimination Against Women required the Member States to abolish or modify all religious and customary practices that discriminate against women. A birds' eye view of the international documents indicates that in every sphere of activity the international community focused its attention with a view to avoid age-old sufferings of women who constitute half of humanity. These are the factors that culminated in the formulating activities of women's organizations of women world over.

The four world conferences on women, the Mexico City Conference, the Copenhagen Conference, Nairobi conference and the Beijing Conference convened by the United Nations General Assembly revealed the firm conviction of the international community to protect the rights of women. These conferences were concerned with the participation of women in equal
terms with men in all aspects of life and required the States to adopt the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 to ensure equality and to eliminate violence against women. The main objectives of the conferences were equality, development and peace. These objectives were necessarily to be achieved for the empowerment of women. Participation of women in all aspects of life especially in the administrative and developmental process is essential to the development and welfare of the nation, society, and family and for the maintenance of world peace.

The inferior status of women was found to have emanated from the division of labour between man and woman and because of unequal access of women to employment and education. The conferences urged the need to include in all the governmental policies and plan of action the promotion of women's health, protection from violence and trafficking, education, training and participation in key decision-making process to improve their status. All the conferences stressed the need to eliminate all religious and traditional practices that stand in the way of eliminating discrimination against women. In short, it can be safely said that international norms of women's rights have been formulated, nurtured and attempted to be enforced through passive persuasions by way of relating them to standards, which the international community wanted to inculcate among the people.

The Constitution of India incorporates most of the human rights including those for the protection of women enumerated in the Universal
Declaration of Human Rights. The Declaration though not legally binding has been operating as a common standard of conduct. In fact the Declaration represents the consensus of humanity on the need for promoting human rights among the people. While the Declaration and the Covenant constitute the basic norms to inspire the international community, the legislations made in pursuance of the basic norms provides operational rules for the enforcement of the rights. So far as India is concerned, the basic norms can be incorporated into the Constitution making it obligatory for the State to resort to legislation for operationalising human rights regime.

In developing human rights, the Indian Judiciary has played a very important role and evolved a new human right jurisprudence. The Supreme Court of India in a number of decisions relied on Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Discrimination Against Women 1979, the discussions and statements of international conferences etc. Article 21 of the Constitution was interpreted by the judiciary as right to life which includes right to live with human dignity, right to livelihood, right to privacy, right to legal aid, right to speedy trial, right to education, protection from sexual harassment at workplaces etc.

Article 9(5) of the International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to human rights. In fact the Supreme Court of India awarded
compensation in a number of cases involving violation of human rights. The court observed that the defense of sovereign immunity is not applicable to the guarantee of fundamental rights and if fundamental freedoms and human rights of persons are violated by the State or its servants in the purported exercise of their powers, the aggrieved person can resort to remedy under public law i.e. under the Constitution by recourse to Article 32 and get compensation. For example the Supreme Court awarded compensation for police torture in *Nilabati Behera v. State of Orissa.*\(^1\) In *Chairman, Railway Board v. Chandrima Das*\(^2\) the court awarded compensation to a woman who was raped by Railway employees. These decisions signify that the Indian Judiciary would give effect to International Covenants despite India's reservation to Article 9(5) of the Constitution. The gap in the Municipal Law was filled by the Supreme Court in *Vishaka v. State of Rajasthan*\(^3\) wherein the court relied on the statements made in international discussions (Beijing Declaration) and the Convention on the Elimination of All Forms of Discriminations Against Women, 1979 to lay down guidelines to protect women from sexual harassment at workplace. The court was of the opinion that the provisions of the covenant so far as they are not inconsistent with fundamental rights and domestic law, can be read into the provisions to enlarge the meaning and content even in the absence of parliamentary legislation under Article 253. The Supreme Court in a number of cases also relied on international documents to give effect to human rights provisions.

\(^1\) (1993) 2 S.C.C. 744.
\(^3\) A.I.R. 1997 S.C. 3011.
In spite of the sincere efforts made by the legislature, judiciary and other organisations, women who constitute half of humanity is often exploited and abused. The birth of the girl child is condemned by the society. She is denied opportunities for personal growth and development. The full development of the personality of women requires education. The convention on the Elimination of All Forms of Discrimination Against Women, 1979 required the Member States to eliminate discrimination in giving education to women. The world conferences also recognized the need to give equal access to education to women as a condition to build a healthy and democratic nation with participation of women in all aspects of life. Educational facilities are denied to women in India due to several factors. Child marriages coupled with traditional and religious attitudes are the main reason that restricted the educational chances of the girl child. In spite of the Child Marriage Restraint Act, child marriages are prevalent in India as the Child Marriage Restraint Act does not prohibit child marriage but only minor punishment. More stringent punishment and compulsory registration of marriages can restrict child marriages.

The preamble of the Universal Declaration of Human Rights, 1948, recognizes the inherent dignity of the individual and equal and inalienable rights of the members of the human family. This is reiterated in other human rights instruments also.

The dignity and status of women can be maintained only if the human rights of women are recognized and protected. The Supreme Court has held
that right to life under Article 21 includes right to live with human dignity. Rape, sexual harassment at workplaces, domestic violence, dowry related crimes, devadasi system, sati, prostitution etc. violate women’s right. Devadasi system prevalent in certain parts of the country leads woman to prostitution. Forced prostitution and child prostitution adversely affect the status of women and constitute denial of numerous human rights. Their right to liberty and security, the right to be free from arbitrary detention, the right to free choice of just and favourable conditions of work, adequate standard of living, education, right to health etc. incorporated in various human rights instruments are violated. The Immoral Traffic (Prevention) Act is not adequate to check prostitution, as it does not penalize individual prostitution but only its commercialised form. It also does not penalize those who are responsible for the trafficking of girls including those from other countries.

The police and local officials protect brothel owners and traffickers. State governments are obliged to punish those who are responsible for facilitating prostitution. But the number of prosecution is low. The root cause of trafficking in women lies in the unequal status of women in the society. It is deep rooted in the society due to economic, biological, social and cultural reasons. So a fundamental restructuring of the society and a change in the attitude of its members are essential to eradicate the problem. Prostitutes in certain parts of the country argue that right to life include rights to one’s body. It is left to the individual to do what she wants with her body. Designated themselves as sex workers they argue for discrimination of activities connected
with prostitution, as it is their right to prostitute their body. Discrimination of prostitutes leads to further exploitation of women and create a feeling that women constitute a commodity upon which men can commit violence. Apart from discriminising prostitution more stringent punishments should be given to individual prostitutes, pimps, brothel owners and to clients. Appropriate steps are to be taken by the government for rehabilitation of prostitutes and their children.

Rape affects women mentally, physically and psychologically; it affects her right to live with human dignity. It is usually committed by men to exploit her rather than sexual gratification. As per section 155(4) of the Evidence Act the past Immoral Character of the victim can be used as an inference adverse to the women. It is suggested that section 155(4) of the Evidence Act that places reliance on the past immoral character of the victim shall be abolished. The attitude of the society to condemn the innocent girl who is a victim of rape should be changed and every effort must be made by the society to bring back the women to normal life. The humiliating questions put to the victims of rape by the defense counsel, the fear of the social stigma attached and the possibility of remaining unmarried are factors that hinder reporting rape cases.

Right to lead a dignified life can be effectively examined only if there is privacy. If there is any attack or interference with the rights, it is to be protected by law. Woman has the right to safeguard her privacy, family, marriage, motherhood, child bearing etc. In order to lead a life with dignity
without fear of sexual violence and domestic violence, the international instruments require the State Parties to incorporate these norms into their domestic laws. The Supreme Court of India also recognized the right to privacy as a fundamental right.

The International Bill of Human Rights, the European Convention for the protection of Human Rights and Fundamental Freedoms, 1950, the American Convention on Human Rights, 1969, and the African Charter on Human and Peoples Rights, 1981, required the State Parties to take adequate steps for the protection of family which is the fundamental unit of the society. Though Member States are under an obligation to ensure protection of the family especially to mothers, women are subjected to exploitation and violence inside the family. Several attempts were made by the Indian Legislature to prohibit violence against women. The Dowry Prohibition Act, 1961 and its repeated amendments, introduction of Section 498 A and 304 B into the Indian Penal Code and Section 113 A and Section 113 B to the Evidence Act cannot adequately check cruelty to women in relation to dowry demands. Children and youth must be educated about the evil consequence of giving and taking of dowry. Equal inheritance rights irrespective of personal law are to be given to woman to eradicate the evil of dowry. Strict enforcement of the Dowry Prohibition Act, the initiation from the part of the girl and the parents to bring the case before the court and determination of the judge to punish those who violate the Dowry Prohibition Act etc., can eradicate the problem to a considerable extent.
In spite of section 304 B and 498 A domestic violence against women still persists because of the reluctant attitude of the police to interfere in family disputes. Police should be given adequate training to be fully aware of the law and to respond to every complaint involving domestic violence as expeditiously as possible.

Violence against women whether by her relatives or by the community or by the State is incompatible with human dignity and the injury, loss and the feeling of insecurity suffered by her cannot be compensated by damages. Poverty, powerlessness, dependence, unawareness about their rights, traditional and social attitudes of the society etc., are the main reasons for violence against women. Many of the Indian women are ignorant about their rights and the privileges that have been conferred on them. Women should be given training to fight against violence. Family relationship must be strengthened to prevent violence against women. In India there is no specific legislation that governs the problem of domestic violence. Domestic violence bill was introduced in the parliament recently. It is yet to be enacted.

The effort to check violence against woman should start from the government itself. Violence against women usually occurs in jails, prison, custody etc. Every official responsible for violence against women holding responsible positions should be strictly punished. As suggested by Human Rights Watch, a non-governmental organization, all types of sexual abuse in custody should be made a criminal offence.
If a person is found guilty of violence against women, he should not be allowed to marry again during his lifetime. Provisions also should be made in the Indian Penal Code to penalise man who abandons or neglects or fails to provide medical care and attention to pregnant women.

In many cases the married woman suffers much discrimination. She has to depend on her husband for every aspect and it is her responsibility to take care of the husband, the children and other members of the matrimonial home. Without the consent or authorisation of the husband she is not capable of undertaking an independent work, business, profession or other occupation outside the home. In the case of marriage also many women were not given autonomy and equality in making decisions. These traditional, social, religious and customary attitudes should be changed to improve the status of women.

In the case of breakdown of marriages, it is usually the woman who suffers the most. If she is unemployed the problem becomes aggravated. The only economic security, which can be claimed by woman in the case of separation, is the right to maintenance. In spite of the provisions for maintenance, due to the delay in procedure, the insufficiency of amount, and because of difficulty in executing the decree, the maintenance orders are usually flouted. If the husband is determined not to pay the amount, at present he can avoid payment. In the case of breakdown of marriages, she has no place to go and she has to undergo humiliation, pain and agony both physical and mental.
The Matrimonial Homes Act, 1967, was passed in England to give protection to women in the case of marital breakdowns. Similarly the Domestic Violence and Matrimonial Proceedings Act, 1978 and the Domestic Proceedings and Magistrate Court Act, 1978 had been passed to give protection to battered women in England. India is also in need of such legislation so that women can live in the matrimonial home in the case of breakdown of marriages.

The situation of workingwomen in the family is also not satisfactory because of the reluctant attitude of the members of the family to share the responsibility. Due to the increased burden at workplace and family, she is not able to discharge her duties satisfactorily at both the places. The reluctance on the part of the male members of the family to share the responsibility is the reason for this. Women are always assigned a subordinate role in the family. The attribution of subordinate position to women is also a human right violation.

The negative and degrading portrayal of women in the media denies her right to live with human dignity. The portrayal of women in the media as sex objects, create a negative feeling about women in the minds of youth and young people. The luxurious life shown on television is to a great extent lure girls to prostitution. The media should be positively used for creating awareness of human rights rather than projecting degrading images of women.
Article 12 of the CEDAW recognizes that right to health of women includes access to family planning. The Indian Parliament enacted several legislations such as the Child Marriage Restraint Act, The Maternity Benefit Act, The Medical Termination of Pregnancy Act, Infant Milk Substitute, Feeding Bottles and Infant Food (Regulations of Production and Distribution) Act, 1992 and various labour legislations etc., to ensure the health of women. The provisions in the Medical Termination of Pregnancy Act that termination of pregnancy can be done only with the consent of pregnant woman are beneficial to women.

The Universal Declaration of Human Rights, and the International Covenant on Social, Economic and Cultural Rights, 1966 require the State Parties to give every person, the right to choose any work and favourable conditions of work etc. The Equal Remuneration Convention requires the State Parties to incorporate the provisions therein in their domestic law. Indian legislature enacted several legislations to protect women at workplaces. The Maternity Benefit Act, the Factories Act, Equal Remuneration Act etc., were enacted with many provisions exclusively to safeguard the interest of women. But women face several difficulties at work places including sexual harassment. Though the decision of the Supreme Court in *Vishaka v. State of Rajasthan*⁴ is an encroachment to the field assigned to the legislature the guidelines are deemed to be law till the legislature makes a law on the subject. Till now no legislation has been passed by the parliament to prevent sexual

---

harassment at workplaces. Due the ineffectiveness of the provisions in the guidelines not much could be got done in this field. Human rights violations frequently occur at workplaces. In order to prevent sexual harassment of women at workplaces parliament has to enact appropriate legislation by incorporating the guidelines issued by the Supreme Court in Vishaka's case.

Creating awareness about the human rights of women under the international documents and national legislation is essential to enable women to fight against the violation of rights. In appropriate cases the government is also under an obligation to provide legal assistance to women.


A National Commission for Woman was appointed under the National Commission for Women Act, 1990 to safeguard the rights of women and to make suggestions to improve the status of women. Because of lack of power this body also could not do much.

A combined effort of the legislature, the judiciary and executive is necessary for the protection of human rights. As already stated the Indian judiciary has done a commendable job in protecting the human rights of women. But persons approached the court only after violation of human right. In order to have the human rights not violated, the government should take initiative. The National Human Right Commission and National Commission for women should be given more power to prevent human rights violations. Persons having sufficient experience in human rights movements should be included as members of human rights commission. The potential of non-governmental organizations and educational organizations to prevent violation of women's right should be fruitfully utilised.

*****