CHAPTER IV

STATUS OF WOMEN IN INDIA

The struggle for gender equality was still in its early stages when U.N. was established in 1945. The Charter of the United Nations contains several provisions for the advancement of women as they refer to the equal rights of men and women.

The Universal Declaration of Human Rights, 1948 proclaims that it applies to all human beings unconditionally without distinction of any kind such as race, colour, sex, language or other status.  

1 The International Covenant on Social, Economic and Cultural Rights, 1966, the International Covenant on Civil and Political Rights, 1966, and the various other international and regional conventions on human rights recognise the need for the protection and promotion of human rights of women to be taken by the government. The recognition and protection of human rights of women became an international concern when the U.N. General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women. This Convention specifically articulated its aim to modify the social and cultural pattern of the conduct of men and women with a view to achieve the elimination of the prejudices and customs and all other practices based on the idea of inferiority or superiority of either of the sexes or stereotyped roles of man and woman.  

1 Universal Declaration of Human Rights, 1948, Article2.
The United Nations convened four world conferences to develop strategies and plan of action for the advancement of women. The efforts ranged from the need to development, recognize their contribution to the entire developmental process, empowerment of women and promotion of their rights to full participation at all levels of human activity.

The first conference was held in Mexico City and the main objectives were full gender equality, the integration and participation of women in development and the contribution given by women to world peace. The conference at Copenhagen, 1980 recognised that women would be given equal access to education, health and employment opportunities in order to achieve equality, development and peace. The Nairobi Conference for equality, development and peace, declared that all human rights issues should be women's issues. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 states thus:

"The human rights of women and girl child are inalienable, integral and indivisible part of the universal human rights".

The full and equal participation of women in political, civil, economic, social and cultural rights at the national, regional and international level and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. The Beijing Conference realised the need to re-evaluate the entire structure of the society and the relation between man and woman within the society. So a fundamental restructuring of the entire
society and its institutions are essential to empower women and make women equal partners with men in all aspects of life.

Gender based violence and all forms of sexual harassment and exploitation including those resulting from cultural prejudices and international trafficking are incompatible with the dignity and worth of the human person and must be eliminated.

In 1993 the U.N. General Assembly adopted the Declaration of Violence against Women and the governments, were asked to take steps to prevent violence against women. In 1994 the International Conference on Population and Development, the 1995 world summit for social development, the 1995 United Nations Fourth Conference on women (Women's Conference or Beijing Conference) etc. witnessed the firm conviction of the international community to recognise, promote and protect human rights of women. The International Conference on Population and Development 1994 recognised the need to promote gender equality, empowerment of women, the elimination of all forms of discrimination against women and the women's ability to control their fertility. The Beijing Conference also affirms that recognition of human rights of women is essential for the maintenance of equality, development and peace. Recognition of all these factors is necessary to improve the status of women. In spite of all these international instruments dealing with the protection and promotion of human rights, there are rampant violations of human rights of women. Unequal status of women is against the principle of human dignity.
enshrined in the U.N. Charter and other International Instruments. From birth, the girl child is looked down upon by the family as well as by the society with contempt and all the basic necessities and facilities are denied to her and she is trained in such a way as to learn adjustment to suppress her emotions and opinions. Media and religious teachings reinforce these notions and which in fact prepare women to be the victims of sexual assaults, coercion and violence both within the family and outside the family.  

In the Indian Society, women are placed in a subordinate position though the preamble of the Constitution, the fundamental rights and directive principles guarantee equal rights of women with that of man. Only if the principles of equality are imbibed in the minds of the people, and only if the traditional, social and cultural attitude of the society, is changed, the status of women in India can be improved.

The traditional attitude of the society that assigns certain stereotyped roles to women, such as domestic work, child rearing, taking care of aged parents etc., are factors responsible for the inferior position of women. Her status in the family is always associated with a male member of the family. It is the general impression that all the productive works are done by men, and women are only consumers. The society and family always fail to recognise the multiple roles played by women in the family and outside the family. She is often denied the opportunities for personal growth and development. She is

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debarred from decision-making process and other developmental process. Economic dependence is a factor responsible for the lower status of women. Before pursuing a remunerated employment woman has to get the permission of the husband. Tradition and custom are often used as explanations justifying factors that affect the lower status of the women.

The attitude of the family to give preference to boys for their education, food etc. adversely affects the status of women. It is the reason preventing many women to come forward and to take part in the decision-making and developmental process of the country. Due to this traditional attitude of the society, the full potential and capabilities of many women cannot be realised. Only very few women have the courage to come forward by breaking these traditional ties and attitude of the society.

In the case of workingwomen, family appreciates the income of the women but is not ready to recognize her rights. Even in the educated circle, the attitude of the society has not changed. The workingwomen have to face the double responsibility i.e. the responsibility at workplace and the responsibility at home and she is not able to discharge her responsibilities effectively at home and work place. This is because of the reluctant attitude of the members of the family to share the responsibility. Apart from this women face special problems like rape, female infanticide, female genital mutilation, immoral trafficking in women, forced abortion, rape, sati, prostitution etc.
In ancient India, woman was given a status at par with men. During the vedic period woman enjoyed a position of honour, respect and equality. She enjoyed happiness, freedom and prosperity. She was entitled to participate in all fields like men and took active part in every spheres of human life. She was entitled to participate in all the religious ceremonies along with her husband, and certain religious ceremonies performed by the husband in the absence of his wife were not to be valid. Women were also entitled to study vedas and to undergo the ceremony of 'upanayana'. Dowry system was unknown during that period and giving gifts to son- in- laws due to love and affection was prevalent in certain aristocratic families alone. Marriage during that period was regarded as an indissoluble union and monogamy was regarded as the rule and polygamy occurred very rarely. The right of unmarried daughter to get share in the property of the father was recognised. Widow had the right to get maintenance from the joint family property. But married daughters have had no share in the property of the father. The position of women in ancient India was thus powerful and all encompassing.

During the post 'vedic' period, the respectable position enjoyed by the women in the family began to decline and the position of women in the matrimonial home was not satisfactory. During the 'smrithi' period, the status of women was adversely affected by the influence of the later 'vedic' literature like 'smrithi', 'sutra', 'purana' and other religious injunctions. During the

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‘smrithi’ period Manu the founder of Hindu Law declared that woman was subordinate to man and she was under the control of her father during the childhood that of her husband during her youth and that of her son during her old age. The wife was regarded as subordinate to her husband and obliged to worship him even if he is of bad character. So the glorious position enjoyed by women gradually started deteriorating because of the sudden change of social attitudes and frequent foreign invasions. ‘Upanayana’ which was allowed to women was reduced and finally abolished. Educational rights were denied to women and child marriages and ‘purdah’ system started prevailing in the society. Early marriages created great problems to female children because educational facilities were denied to them and they turned into childbearing machines even at an early stage. It also affected their health, and under the ‘purdhah’ system the freedom of movement of women was curtailed. Marriage was considered as the indissoluble union at that time. Property right of women was not recognised but she was entitled to maintenance. Evil customs like ‘sati’, ‘devadasi’ system, dowry, female infanticide etc; were evolved in society during the ‘smrithi’ period and women were victimised in all spheres of their life.

During the invasion of the Mughals, the status of women further deteriorated. Girls were married during very young ages, thus resulting in the deprivation of basic education to them and early pregnancies resulted in

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7 *id.* at p.21.
various health problems. The Mughal period restricted their freedom of movement. Polygamy prevalent during that period further deteriorated the position of women. The position of the widows was miserable due to the practice of 'Sati'. The widow's re-marriage was not a rule during that period. The Muslim period was proved miserable to women. Education was beyond the reach of the women in general. In the course of time dowry system was considered as an essential ingredient in Hindu Marriage. The system of dowry casts an adverse effect on the birth of a female child. To escape the future problems, the child is killed either in the mother's womb or just after the birth.  

During the 18th century the position of women in the family was further deteriorated. Child marriage, female foeticide, female infanticide, forced customary practices such as 'sati', 'devadasi' system, polygamy, domestic violence, dowry system etc. started prevailing at that time and in such a society, the position of women was pathetic. The prevalence of the system of 'sati' further deteriorated the position of widows and several attempts were made by Raja Ram Mohan Roy and Mahadev Govind Ranade to abolish 'sati' and child marriage. Widows had a miserable life in the family. During the British reign, the condition of women was started improving. The Hindu Widow's Remarriage Act, 1856 legalised remarriage of Hindu widows. This was passed as a result of reformist movement among the educated Hindus. The Child Marriage Restraint Act was passed in 1929. Later in 1937, the Hindu Women's

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8 Id. at pp. 29-31.
Right to property Act was enacted. According to this Act on the death of a Hindu male, not only his son would succeed but also his widow. Widow of the predeceased son and the widow of the son of the predeceased son were also entitled to succeed. The Dissolution of Muslim Marriage Act, 1939 gave to a Muslim wife the right to judicial separation from her husband that was denied to her earlier.

During the struggle for independence Mahatma Gandhi advocated the participation of women in the field of politics, education and economics. The percentage of education of women was very low and it was through a mass awakening at the freedom struggle it started increasing.\textsuperscript{11} Lack of education was the main reason for the lack of participation of women in many activities. During the freedom struggle Mahatma Gandhi propagated the idea that national awakening could be possible only by the empowerment of woman and he gave inspiration to women to participate in the freedom struggle. As a result large number of women participated in the freedom struggle. The Karachi session of Congress in 1931 declared:

"All citizens are equal before the law irrespective of religion caste, creed or sex. No disability is attached to any citizen by reason of his or her religion, caste, creed or

sex in regard to public employment, office or honour or in
the exercise of trade or calling.  \textsuperscript{12}

All India Women Conference was convened in 1945 and various
disabilities of the women were discussed at that conference and decided to
prepare a charter of Indian Women's Rights. The Industrial Dispute Act, 1947,
The Minimum Wages Act, 1948, The Child Marriage Restraint Act, 1929, as
amended in 1949 and various other social legislations were brought to effect
social changes, and to improve the status of women. So woman in pre-
independent India occupied an inferior status and were consequently victims of
all types of oppression and exploitation both within the family and outside.

During the 20\textsuperscript{th} century the activities of women organisations led to
Women's Legal Rights Act, 1952, The Suppression of Immoral Traffic in
Minority and Guardianship Act, 1956, The Intestate Succession Act, 1956 etc.

The post independent India also have many pieces of legislation giving
equal rights and privileges to women with that of men, to eliminate
discrimination against women, to abolish inequality between sexes and to
remove external barriers coming in the way of self realization and
development. But the complex system of social institutions and religious and
customary practices come in the way of implementation of protective
legislation for women. In spite of all these legislations and movements for the

\textsuperscript{12} \textit{id.} at p.33.
protection of the rights of women, women in India still continue to live under the stress and strain of male domination that manifests itself in the form of various cruelties to them.

The framers of the Constitution of India realised the unequal position of women and decided to make special provision for the protection of women and children. Chapter III and IV prohibit discrimination on the grounds of sex.

In Islamic Law, the Quran accepts the equal status of men and women but polygamy and unilateral divorce by the husband placed the Muslim wife in a subordinate position to that of man. Giving of 'Mahr' at the time of marriage is regarded as a provision to safeguard the interest of women, but women were reluctant to claim this. Woman rarely invokes widow marriage, though permitted. The practices like seclusion, 'pardha' and child marriage have rendered women vulnerable and dependent on their male relatives. Poverty and lack of education have further contributed to the subordination of women. Though right of inheritance is granted to women because of ignorance or otherwise, women are not able to assert it.

In Christianity, monogamy has raised the status of women. The Christian woman is entitled to participate in all the religious ceremonies. Educational facilities are not denied to a Christian woman.

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14 Flavia Agnes, Law and Gender Inequality, the Politics of Women's Rights in India, Oxford University Press, New Delhi (1999), p.36.
Despite the sincere efforts made by the governments and the women's organisations we find that the status of women in India has not yet improved because of several practices and notions that hinder progress and social change. Among these practices are the age-old institution of prostitution, 'devadasi' system, dowry system, rape, sexual harassment at workplace and domestic violence etc.

Prostitution

In India many women were engaged in or happened to be in this profession due to many reasons. Poverty, false offer for job in big cities, false marriage proposals etc., tempted the girls and the parents to leave the home and quite often they are cheated by the promises and happened to be in the profession of prostitution. In many cases women were abducted and coerced into circumstances where they were unaware of the nature of work. Growth of sex tourism also accelerated forced trafficking in women. Human Rights Watch, a non-governmental organisation working for the protection and promotion of human rights of women, reported that so many Nepali girls are recruited to India with offer for a job or marriage proposals for the purpose of immoral trafficking.\(^{15}\)

Most of the cases go unreported due to many reasons. They are not able to pay back the amount given to their home at the time when they were recruited. Besides this, because of the fear of being punished or of the stigma

attached to them, they are forced to continue in the profession of prostitution. The failure of law to protect victims and punish pimps, procurers, brothel keepers and clients had resulted in the increase of children in commercial activity. The police and local officials protect the brothel owners and traffickers. When the Nepali women or girls complain to the police about the rape or abduction, they are detained in protective custody where the abuse continues.

Whatever may be the circumstances or the ways, in which women entered into the profession, they are denied the basic human rights. Two sets of human rights issue arise in relation to women and prostitution. One is the right of the women to engage themselves in prostitution and the other is the right to live with human dignity.

Forced prostitution and child prostitution adversely affect the status of women and constitute denial of numerous human rights. Their right to liberty and security, right to be free from cruel and inhuman treatment, to be free from arbitrary detention, right to free choice of just and favourable conditions of work, adequate standard of living, education etc., incorporated in various human rights instruments are violated.

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The Allahabad High Court pointed out that there were several factors, which compel a woman to turn into prostitution:

(1) For the purpose of earning her livelihood.
(2) Difficulty in finding employment.
(3) Ill-treatment and neglect during the childhood.\(^1\)

Eradication of prostitution is a condition to improve the status of women. The Universal Declaration of Human Rights, 1948 states that human rights are derived from the dignity and worth inherent in the human person. The dignity and status of women can be maintained only if the human rights of women are recognised and protected. All forms of discrimination on the ground of sex are violative of fundamental freedoms and human rights. The prostitutes need protection, care and rehabilitation.

To abolish the trafficking in women, there are various human rights movements. Governments are obliged to take steps to eradicate forced trafficking in person, exploitation of prostitution, forced labour and coerced marriage. In the Convention on the Suppression of Traffic in Persons and the Exploitation of the Prostitution, the State Parties agreed to punish any person who to gratify the passions of another procures or entices or leads away for the purpose of prostitution.\(^2\)

\(^{1}\) \textit{Shama Bai v. State of U.P. A.I.R. 1959 All. 57.}

The obligation of the State Parties to take all appropriate measures to suppress the trafficking in women was later reiterated in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW links trafficking to the exploitation by prostitution but fails to address trafficking or other exploitation. Article 6 of the Convention requires the State Parties to take appropriate measures including legislation, to suppress all forms of traffic in women and the exploitation of prostitution of women. This delegation goes beyond the trafficking Convention by requiring State Parties to address the root causes of trafficking and exploitation of prostitution, not simply to punish trafficking in women after the fact.

The Convention sets up a committee for compliance monitoring procedure. In general recommendation 19 on violence against women, the CEDAW has noted that poverty, unemployment, war, armed conflict and occupation of territories have led to increased opportunities for trafficking in women. CEDAW has recognised that there are new forms of trafficking, such as the recruitment of domestic labour from developing countries to work in developed countries, and organised marriages between women from developing countries to foreign nationals. Finally CEDAW reaffirmed that these practices are incompatible with the equal enjoyment rights of women and with the respect for their rights and dignity. According to the optional protocol to CEDAW individuals can bring complaints about human rights violations before the Committee on the Elimination of Discrimination Against Women.
In the Convention on the Right of the Child, there are number of provisions relevant to the issue of trafficking in girls. State Parties have an obligation to take measures to combat the illicit transfer and non-return of children abroad. State Parties are also required to take all appropriate measures to protect children from all forms of physical and mental violence, injury or abuse, while in the care of parents, legal guardians or any other person who has care of the child. It also contains provision to protect children from economic exploitation and sexual abuse. States are required to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of any form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment. India ratified the Convention on the Right of the Child.

Many non-governmental organisations also take active role in preventing prostitution and trafficking in women. The root cause of trafficking in women lies in the unequal status of women in the society, which makes women vulnerable to such practices. It is deep rooted in the society due to the economic, biological, social and cultural reasons. So a fundamental restructuring of the society and a change in the attitudes of its members are essential to eradicate this problem apart from legislation and international instruments and its enforcement.

\[21\] id. at Article 19.
\[22\] id. at Article 34.
Article 23(1) of the Indian Constitution prohibits traffic in human beings and beggar and other similar forms of forced labour and declares that any contravention of Article 23(1) shall be an offence punishable by law. Article 39 states that the State should in particular directs its policy towards securing that tender age of the children are not abused.

The Suppression of Immoral Traffic in Women and Girls Act, 1956 was passed to prevent commercialisation of sex. The Act does not penalise the individual instances of prostitution. The women are not often sent to prisons but they are sent to protective homes. The punishment prescribed under the Act was not adequate to check the evil. The Act was amended in 1986 and re-enacted as Immoral Traffic (Prevention) Act, 1956. The amended Act also penalise prostitution in the commercialised form, but not individual prostitution. The children of the prostitutes are faced with several problems such as denial of admission to educational institutions, shelter, social stigma etc.

Now a days the prostitutes especially in Kolkotta designated themselves as sex workers demanded for the legalisation of the profession of prostitution and for the constitution of self regulatory boards to regulate the profession. They also demanded that their human rights should be respected. They demanded better working conditions, human treatment, equal opportunities etc. Their argument was that it is their body and they have the right to utilise their body and if their right to utilise their body is violated it is the denial of the right
to livelihood as enshrined in Article 21 of the constitution. It is suggested that legalisation of prostitution leads to further exploitation thereby creating a feeling among men that woman is a commodity upon which violence can be committed. The Supreme Court also considered the issue of child prostitution and has issued directions to State governments and Union Territories to take necessary measures to eradicate child prostitution. More rehabilitative homes need to be managed by well-qualified social workers, psychiatrists and doctors.\(^{23}\)

In *Upendra Baxi v. State of Uttar Pradesh*\(^{24}\) the Supreme Court of India highlighted the need to enforce rights of the inmates of the protective homes, particularly in relation to their health. Many of them suffer from mental retardation and serious contagious diseases. The authorities were ordered by the Supreme Court to do their duty in accordance with the law without conflicting with the interest of human rights and the dignity of the inmates.

Devadasi System

In the course of the complex cultural context, there emerged in India a class of people constituting dancing and singing girls and women who came to be later labeled as Devadasis. Under the peculiar socio-religious customs that emerged around the temple, girls from some families used to be dedicated to deities. They were performing multipurpose work in the temple including satisfying sexual instincts of worshippers and managing persons of the

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\(^{24}\) (1983) 2 S.C.C. 308.
Probably their comparatively poor economic condition coupled with
the detachment from families made them victims of prostitution.

Whatever may be the reason or way in which they entered into the
profession, once entered it appears that they were not able to escape from the
profession and thereafter it becomes the only avenue for their survival. This
custom can be changed only by a change in the attitude of the society. This
requires co-operation by Devadasis, their well-wishers, the government, police
and voluntary organisations.

Economic rehabilitation is one of the factors that can prevent the
practice of dedication of young girls to prostitution. The main reason for girls
entering into this profession is lack of education and economic empowerment.
In States were Devadasi system is prevalent, several attempts were being made
to rehabilitate the Devadasis and to abolish Devadasi system. Bombay
Devadasi Protection Act 1934, The Bombay Protection (Extension) Act, 1957,
The Madras Devadasi (Prevention of Dedication) Act 1947 etc., are some of
the legislation to prevent the system of Devadasi. Andhra Pradesh passed the
Andhra Pradesh Devadasi (Prohibition of Dedication) Act 1988. All these Acts
declare dedication of Devadasi unlawful. Now a woman dedicated as Devadasi
is free to enter marriage with any person of opposite sex and such marriage will
be valid and the offspring of such marriage will be legitimate.

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26 Status of women in India. A synopsis of the report of the National Committee, Allied Publishers,
27 Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988, Section 4.
Sati

Burning alive the wife on the funeral pyre of the husband or any women along with the body of her relative which to be known as sati is prevalent even now in some parts of India. It is observed in the name of religious reasons like attainment of salvation.\textsuperscript{28} Though this type of human sacrifice was banned long before, some religious fanatics wanted to revive it. The forcible burning of Roop Kanwar on the funeral pyre of her husband is an example of it.\textsuperscript{29}

Violence Against Women

Violence is an attitude that causes mental or physical injury and debars and dehumanises a person.\textsuperscript{30} Although it is true that physical acts of violence can be easily detected, psychological and mental abuse in some cases cause more harm to the mind and body of the women.\textsuperscript{31} Violence against women whether in the family or in the community or by the State is incompatible with human dignity and worth and it reduces the status of women to a subordinate position. Violence against women affects her physically, mentally and psychologically. The injury, loss and feeling of the insecurity suffered by her affect her right to live with human dignity and her right to privacy, and it cannot be compensated by damages.

\textsuperscript{29} Manohar Raj Saxena “Woman and the Law” A.I.R. 1997 Jour. 147.
Violence within the family termed as domestic violence, which is identified as a problem that disturbs almost all the societies in the world. Its impact depends upon its severity. It may range from death to minor scars. In recent years, international community as a whole is concerned with the problem of domestic violence. Violence against women affects her health, self-esteem and her ability to participate in the developmental process. It keeps women away from functioning independently in the world. Domestic violence includes battering, sexual abuse of female children in the household, dowry related crimes, marital rape, female genital mutilation and other practices harmful to women. Violence in the family affects the independence of women and sense of self-worth. Many of the cases go unreported considering the fact that it is a private matter.

Wife battering is willfully striking wife by her husband with or without injury is another form of violence. Family conflicts, stress, cultural norms and sexual inequality contribute to wife battering. The Indian Penal Code also contains provision to punish causing hurt to others.

In India there is no specific legislation that governs the problem of domestic violence. The reluctance on the part of the government to frame a law...
on domestic violence is due to the myth that no legislation should interfere in
domestic affairs of man and wife.\textsuperscript{38} Though there is no specific law, there are
provisions in the I.P.C and Cr.P.C. prohibiting domestic violence. The
Domestic violence bill introduced in the Parliament is yet to be enacted as law.

Violence within the community includes rape, sexual harassment, sexual
abuse and intimidation at workplace, educational institutions, trafficking in
women, forced prostitution etc. The main cause of violence against women is
powerlessness and oppression, unawareness about their rights and the
traditional and social attitudes of the society that assigns a lower status to
women.

Violence against women has become a matter of concern for the
international community. The Convention on the Suppression of Traffic in
Women 1949, Declaration of the General Assembly on Violence Against
Women, the Vienna Declaration 1993, the Convention on the Elimination of
All Forms of Discrimination Against Women 1979 etc., condemn violence
against women. The 1994 International Conference on Population and
Development and the 1994 Programme of Action also recognise the need to
eliminate violence against women.

In 1994 the United Nations Commission on Human Rights appointed a
special rapporteur on violence against women. According to the recently
established norms of the International Community a State that does not act

\textsuperscript{38} B.D. Agarwal, "Legislating domestic violence" 10 law teller. 253 (2002).
against crimes of violence against women is as guilty as perpetrators. States are
under a positive duty to prevent, investigate and punish crimes associated with
violence against women.\textsuperscript{19}

The Declaration on the Elimination of Violence Against Women passed
by the United Nations General Assembly in December 1993 recognises in its
preamble thus:

"Violence against women is a manifestation of the
historically unequal power relations between man and women
which have led to the domination over and discrimination
against women by men".

The Declaration casts an obligation on States to fight against specific
forms of violence against women and called on governments to exercise due
diligence to prevent, investigate and punish acts of violence against women.

The status of Indian women is far better than that of the women in other
countries. The Constitution of India and many social legislation passed after
the Constitution, have framed provisions designed to promote and protect the
rights of women. Yet the social condition, traditional and cultural attitudes,
economic imbalances and the religious imbalances places women in an inferior
position when compared to men. Many of the Indian women are ignorant of
their rights and privileges that have been conferred on them. Women are often

\textsuperscript{19}Preliminary report submitted by the Special Rapporteur on Violence against Women, United
denied the basic human right to decide freely the number of and spacing of children. In many cases married woman suffer many discrimination. She has to depend on her husband for every aspects and it is her responsibility to take care of the husband, the children and the other members of the matrimonial house. 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. Her independent earnings are also liable to be controlled by the husband. In the cases of marriage also many woman were not given autonomy and equality in making decisions.

In order to eliminate violence against women, the fourth International World Conference suggested several measures that can be taken by the governments, international community and non-governmental organizations etc. The main suggestion was to give training to the women to fight against violence inside the family, community and State. The family relationship also must be strengthened to eliminate discrimination and violence against women.

In addition to this, the Conference also requires the State to take all measures, legislative, administrative and educational to protect the girl child from all forms of exploitation. The conference also requires the governments to enact legislation to eliminate violence against women including female infanticide, prenatal sex selection, genital mutilation, sexual abuse, sexual exploitation, child prostitution and child pornography.
During recent years, violence inside the family is the concern of the whole world. 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 the Magistrate Court Act 1978 were passed to give protection to battered wives. In India the Indian Penal Code, Criminal Procedure Code and the Evidence Act were recently amended to provide protection to women against cruelties.

Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 is the first regional human rights treaty exclusively meant to prohibit violence within the home. The Convention requires the State Parties to condemn, prevent and punish violence against women. The Convention also requires governments to undertake progressively specific positive measures to address the root cause of gender based violence such as mass education programmes to counter gender stereotypes as well as to create protective and social services to victims of violence.

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*Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994, Article 7.*

*Id. at Article 8.*
Violence Against Women includes:

Dowry Death

The institution of dowry in India dates back to ancient times as presents or cash given to the girl at the time of marriage out of love and affection. Later on man started to demand the money and in the case of non-payment of money the girl and the family are tortured to extract the money and it assumed the name of dowry. It became a deep-rooted social problem causing the unfortunate death of young brides. Cases came to the notice of the police that brides, for not bringing out the promised or expected dowry have been beaten up, starved for days together, tortured physically and mentally, strangulated or burnt alive or abetted to suicide. It is usually committed in the house and the inmates of the house try to create an impression that it was an accident or suicide. The dowry system has ruined a number of families. It resulted in sex delinquency among the girls whose parents are unable to get their daughters married at the proper age. The problem is so serious that the families condemn the birth of the girl child. The Dowry Prohibition Act, 1961 was passed to check the evil practice of giving and taking of dowry. It was amended in 1983 and 1986. In spite of that, the practice of giving and taking of dowry and dowry deaths are rampant in the Indian society. It is because of the lack of proper and effective enforcement machinery. The conviction for dowry deaths are few

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owing to the manner in which the investigation is conducted and the delay in
investigation etc.\textsuperscript{45}

Where the death of the woman is caused by any burns or bodily injury
or occurs otherwise than under normal circumstances within 7 years of her
marriage and soon before her death she was subjected to cruelty and
harassment by the husband or his relatives in connection with or for demand of
dowry, such death shall be dowry death and such husband or relative shall be
deemed to have caused her death.\textsuperscript{46} This provision has intended to eradicate the
social evil of dowry death and the relative or the husband who subjects the
women to cruelty on demand of dowry soon before her death are presumed to
have caused the death\textsuperscript{47} and the burden is shifted to the accused. It is the duty
of the accused to prove that he has not committed the offence.

Marital rape is another form of violence against woman. Section 375
read with Section 376 IPC that a man cannot be guilty of rape on his own wife
unless she is below 15 years. Even if the wife is below 15 years of age she is
reluctant to make complaints because of fear of loss of security and financial
loss.\textsuperscript{48} Now-a-days young girls from Muslim community are given in marriages
to aged foreigners and after the birth of a child or even before that they
abandon the girls and leave the country.

\textsuperscript{45} Roma Mukherjee, \textit{Woman, Law and Free Legal aid in India}, Deep and Deep Publication Pvt. Ltd,
\textsuperscript{46} Indian Penal Code, Section 304 B.
\textsuperscript{47} Indian Evidence Act, 1872, Section 113B.
\textsuperscript{48} Suhash Chandra Singh “Marital Violence a Pervasive Theme of Women’s Oppression”, 1999 (2)
Cri IJR7.
Causing of bodily injury to women also categorised as violence against women. Section 498A was introduced into the Indian Penal Code, which prohibited matrimonial cruelty. Cruelty was defined as any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health whether mental or physical of the women. It includes harassment of women in connection with demands for property. To give better protection to women Section 113A was introduced to the Indian Evidence Act so that the court can draw an inference of abetment to commit suicide under Section 306 if the woman has been subjected to cruelty soon before her death. The Criminal Law Amendment Act 1983 amended Section 174 Cr.PC making post mortem compulsory in the case of women died within 7 years of marriage.

Female infanticide is another form of domestic violence prevalent in almost all parts of India. Misappropriation of the spouse's property with an intention to put her under economic subjugation is also another form of domestic violence.

Sexual Harassment

Sexual harassment whether occurs within the family, or in the street, or at the work place, or in educational institutions is an attack on women's personality, integrity, mind and violating women's right to live with human dignity. It also affects her right to education, right to work and right to

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movement. Sexual harassment affects her physically and psychologically and many health problems arise as a result of sexual harassment. Due to the reluctance on the part of the women to complain about sexual harassment, incidents of sexual harassment often go unreported and on the increase.

In order to protect woman from sexual harassment at work places and to ensure the principles of gender equality enshrined in the constitution, the Supreme Court of India relied on International documents especially the Convention Against All Forms of Discrimination Against Women, 1979 issued guidelines, as there is no law governing sexual harassment of women at workplace.

Equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment.\(^5\) In the exercise of its power under Article 32 the court laid down guidelines and norms for the observance of all working places and institutions until legislation is enacted for the purpose. The guidelines were directed to be treated as law declared by the court under Article 141 of the Constitution.\(^5\)

Various International Conventions like the Convention on the Elimination of All Forms of Discrimination Against Women and the Beijing Declaration prevents all forms of discrimination on the ground of sex and cast an obligation on the State Parties to protect the honour and dignity of women. The covenant on Social, Economic and Cultural Rights also recognises several

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rights of women such as right to fair condition of work and reflects that women shall not be subjected to sexual harassment at work place which may violate the working environments. These international instruments require the Indian State also to recognise the rights of women and protect the rights of women. Courts in India started to give due recognition to international covenants when there is no inconsistency with domestic law. The Parliament has to enact appropriate legislations by incorporating the guidelines issued by the Supreme Court for effective implementation. Creating awareness and educational programmes and gender sensitive training to Judges and Magistrates and law enforcement agencies can solve the problem of sexual harassment of women at work places to some extent.52

Rape

Rape is an act of aggression aimed at degrading and humiliating women, which affects her mentally and physically.53 Rape causes great suffering and injury to the body and health of the individual and constitutes violence. It is an offence, which is violative of the fundamental right of a person guaranteed under Article 21 of the Constitution.

In Bodhi Satwa Gautham v. Subhra Chakraborty, the Supreme Court observed:

Rape is thus not only a crime against the person of a woman (victim); it is a crime against the entire

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society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer willpower that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished of the fundamental rights, namely the right to life contained in Article 21.

After the decision of the Supreme Court in Mathura's case resulting in the acquittal of the accused, and the repeated instances of rape in police custody, women's group organized themselves with the demand for a concrete legislation on violence against women. The result was the enactment of Criminal Law Amendment Act, 1983 wherein in addition to Section 376(1) of the Indian penal code which prescribes a minimum term of 7 years imprisonment it prescribed a mandatory ten years imprisonment for police officers who rape a woman in their custody. The sentence may be extended to life imprisonment and may also include fine. The Criminal Law (Amendment) Act 1983 shifts the burden of proof regarding the consent to the accused.

Rape and sexual abuse adversely affect the health of the women. They often become pregnant and vulnerable to sexually transmitted diseases. In such


situations in countries where abortion is legally permitted, they have to take recourse to unsafe abortions, causing great risks to the health of women.

The humiliating questions put to the victims of rape by the defence counsels; the fear of the social stigma attached and the fear of the possibility of being remained unmarried are factors that hinder the reporting of rape cases. The Supreme Court of India was of opinion that there is need to compensate the rape victim and suggested for setting up of Criminal Injuries Compensation Board under Article 38(1) of the Constitution of India. It was also held that trial of rape case in camera should be the rule and an open trial is an exception.\(^5\)

Educational Status of Women

Education is the prime requisite for the development of the personality of women. Economic and social development and economic empowerment are denied to many women due to several factors. They include early marriages, early pregnancies, inadequate and gender based teachings and educational materials, sexual harassment at educational institutions and lack of adequate and accessible school facilities. The illiteracy rate of women in rural areas is very high when compared to the urban areas. From time immemorial the girl child is considered as the property of another and educational facilities are denied to her on the fear that the expenses incurred for her education cannot be reimbursed. As a result there is a wide gap between the educational enrolment

of boys and girls. Social, economic, regional, religious and cultural factors combine in denying women full participation in educational opportunities.


The preamble of the Declaration on Education recalls “education is a fundamental right for all people, women and men of all ages.” It also states that every child, youth and adult shall benefit from educational opportunities designed to meet their basic needs. The Declaration on Education and the Women’s Commission specifically recognise the need for women’s education and the CEDAW provides that all ratifying States are to take all appropriate measures to ensure the full development and advancement of women and all

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6 UDHR Article 26.
8 International Convention on Elimination of All Forms of Racial Discrimination, 1966, Article 5 e(v).
11 id at Article 1.
appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.  

The World Declaration on Education For All, 1990 resolves for providing educational opportunity to all to enable them to develop their own full capacities, participate in the developmental process, to improve quality of their lives, to make informed discussions and to continue learning.

The four World Conferences on Women recognised the need to have equal access to women to education and training programmes. The 1985 Conference addressed education as the basic tool that should be given to women in order to fulfill their role as full members of the society. The 1995 Conference also recognised that education is a human right and an essential tool for achieving the goals of equality, development and peace. It highlighted the lack of access by the girl child to education and vocational training.

The right to education finds a place in Part IV of the Constitution of India and the Supreme Court laid down that every citizen of India has a guaranteed right to free education up to 14 years of age and this right thereafter is subject to economic capacity and development of the State.

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62 id. at Article 10.
64 Third World Conference on Women, 1985 held at Nairobi.
Education to women helps her to understand her rights, duties and responsibilities and enable her to participate in the developmental process of the country. Inspite of several attempts to remove the illiteracy among Indian women, vast majority have remained outside the reach of education and are illiterate. The recognition of the human right of education of women is a necessary condition to improve the status of women.

The international conference on population and development also acknowledged that education is one of the most important means of empowering women with knowledge, skills, and self-confidence necessary to participate fully in the developmental process.

Health

The Health of women is at great risk due to many factors. Early pregnancies, unwanted pregnancies, female genital mutilation, sexual violence, prostitution, pre-mature sex relations, the denial of the choice of taking decisions in reproductive matters such as the right to take decisions on the number and spacing of children etc., are the main factors adversely affecting the health of women. In spite of that, women's health and lives are equally endangered by abuse at the hands of husbands, employers, parents or brothel owners. Violence against women in all its forms adversely affects the health of women. Most often health care facilities are denied to women due to many reasons.
The issue of women's right to health and control their reproductive rights were recognised in Cairo's International Convention on Population and Development 1994. The Platform for Action states that "good health is essential for leading a productive and fulfilling life and the right of all women to control all aspects of their health; in particular their own fertility is basic to their empowerment." Female genital mutilation and other harmful traditional practices are a reflection of gender discrimination and violence practiced against women, constitute a violation of basic human right, affect women physically, mentally and psychologically. The World Health Organisation estimates that between 85 to 115 million women and girls have suffered female genital mutilation throughout the world and it has a negative impact on the health of women. According to Convention on the Elimination of All Forms of Discrimination Against Women, 1979 right to health of women includes access to family planning.67

The Cairo Conference on reproductive health and human rights advanced the message that "women's health is a human right". The 1994 International Conference on Population and Development Programme of Action includes the recognition of women's empowerment, women's reproductive health, sexual health, maternal mortality and the health impact of unsafe abortion.

In spite of all these international movements for the protection of women’s right to health, denial of health care facilities and violations against women, which affects her mental and physical health, continues to be in existence and States are obliged to take measures to improve the health of women so that their status can be improved.

Political Status of Women

Though the Constitution of India guarantees equality in social and political spheres, women remained under-represented in decision-making process. If women are allowed to participate in the making of the government and in the decision making process, it is the recognition of the necessity to improve the status and empowerment of women. The improvement of the social, economic and cultural rights of women and participation in decision-making process is essential to attain equality, development and peace. It is necessary for the achievement of transparent and accountable government.

In spite of various instruments and movements for making women’s participation in the decision making process and formation of the government, very few women hold responsible positions in the government and this is because of the disabilities on women and because of the traditional stereotyped roles attributed to women by the society and other discriminatory attitudes towards her. Her right to participate in the decision-making process and
formation of the government cannot be denied only on the ground that she is a woman.

The Universal Declaration of Human Rights, 1948 declares that everyone has the right to take part in the government of the country. The Beijing Declaration expressly provided the need to have a government with adequate representation of women, with active participation in decision-making. The media and the under representation of women in art, culture, sports and religion have prevented women from having a significant impact in many institutions. The attribution of a negative role to women by the media, religion, law, culture and art etc., denies her right to live with human dignity and such under estimation of women should be avoided.

The unequal power distribution between men and women within the family to a greater extent limit women's participation in the decision making process because of lack of time due to the increased responsibilities inside the house. In order to develop the potentialities of women, time is required and equal sharing of family responsibility by men and women provide better opportunity for shaping public policy, practice and expenditure, so that their interest may be recognised and addressed. Equal sharing of responsibility by men and women not only provides time for women to participate in the decision making process but also a means to improve the health of women.

The 73rd and 74th amendment to the Constitution of India (1993) proposing to make provision for 33.3% reservation for women in local governance, at all the three levels of rural and urban bodies was a landmark in women's empowerment. If women are allowed to participate in the decision making process, the status of women can be improved.

Another problem faced by woman that affects her status is fraudulent non-resident Indian marriages. The parents are attracted by the matrimonial advertisements that NRI seeks alliances without any demand and the poor, helpless and uneducated girls of middle class families become victims of NRI marriages. After marriage and stay with girl for one or two months, the husband abandons the wife, and she looses everything, her status, dignity and peace. In order to save the victims of NRI marriages, the Supreme Court has issued certain directions.

1. A marriage between a NRI and an Indian woman; which has taken place in India if annulled by a foreign court, will not be recognized as divorce in India.

2. Provisions may be made for adequate alimony to the wife in the property of the husband both in India and abroad.

3. The decree granted by Indian courts may be executable in foreign courts both on principle of reciprocity and by entering into reciprocal agreements, like Section 44A of the Code of Civil Procedure code which
makes a foreign decree executable as it would have been a decree passed by the Indian Court.\textsuperscript{69}

Another situation affecting the status of women in India is the problem of aged women. In traditional society where joint family system exists, the members of the family looked after the aged parents. But due to the disintegration of the families and formation of the nuclear families, especially families where women are working, it is difficult for them to look after the aged parents. This is because of the attitudes of the male members of the family. If the wife is working, she has to take the responsibility at the work place and at home. In such circumstances the woman is compelled to do all these and find it extremely difficult to succeed in their career as well as their domestic roles. Because of these factors the aged women in the family have a feeling that they are not respected or that they are not adequately cared for. In some extreme cases she has to depend on destitute homes. When they are in the destitute homes, the family members seldom visit them. The traditional attitude of the society that it is the duty of the women in home to take all these responsibilities needs a change to improve the status of women. The law should therefore provide appropriate remedy to make the life of the women easy, particularly when they were employed. A culture should be developed in our society whereby the burden is shared by the husband and wife.\textsuperscript{70} Besides that, government shall also take steps to rehabilitate aged and destitute women.

\begin{footnotes}
\item[70] Justice Rajendra Babu, “Gender Justice, Indian Perspective”, A.I.R. 2002 Jour.145.
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Discrimination in the Payment of Equal Wages to Women

Women continue to be discriminated in the field of employment and in the payment of remuneration. Women are often given comparatively low wages than men due to many factors such as biological nature of women, cultural and traditional attitude of the societies etc. At every level of employment ranging from casual labourer to highly paid professionals gender discrimination always disadvantages women when compared to men with regard to opportunities, options or remuneration.

The adoption of two conventions recognises the international community's respect for women's right. These two conventions are the Maternity Protection Convention and the Right to Work Convention. The convention gave protection to women during pregnancies and in cases incompatible with the dignity of women.

The Equal Remuneration Convention, 1951 provides for equal pay for men and women, for the work of equal value without discrimination on the ground of sex. Article 23(2) of the Universal Declaration of Human Rights refers to equal pay for equal work. The aim of these Conventions is to promote equality and opportunity and treatment in employment or occupation.

The Convention on Elimination of All Forms of Discrimination Against Women deals with equality in employment and Labour Rights. States are obliged to take measures to eliminate discrimination against women in
employment in order to ensure to all, equal right to work, the right to equal employment opportunities, the right to free choice of profession and employment, the right to equal remuneration, right to social security, right to protection and safety. In spite of the International Convention dealing with equal remuneration of women and constitutional provisions and the Equal Remuneration Act, discrimination continues to be practised. According to Article 39(d), the State shall in particular, directs its policy towards securing that there is equal pay for equal work both for men and women.

Pursuant to this mandate Parliament passed the Equal Remuneration Act 1976, which was amended in 1987 and the Act prohibits discrimination of women on the ground of sex in the matter of recruitment, training, promotion and transfer. According to the amendment also, stricter punishment is provided for the violation. According to Section 4 of the Act a duty is cast upon the employer to pay equal remuneration to men and women workers for the work of similar nature. There are some provisions which though discriminating is justified as affecting protective discrimination.

According to Section 497 Indian Penal Code a man is punishable for adultery while a wife who may be equally guilty is not punishable. This provision appears to be discriminatory. The women can advance an argument that because of these provisions they are not in a position to prosecute a woman with whom her husband committed adultery. But the real intention of the makers of the provision is to protect the women from the social stigma attached
to her if she is subjected to prosecution for adultery. So it is because of the fear of social stigma attached to the woman that the section makes only a man punishable and not a woman.

The Supreme Court has said, discrimination between man and woman with regard to Section 497 Indian Penal Code is not because of the fact that woman had sexual differences from man but because women in this country were so situated that special legislation was required to protect them. The Supreme Court held the Constitution itself provides special provision in the case of women and children and therefore Section 497 of the Indian Penal Code was not ultravires the Constitution.\(^7\)

Apart from this the Civil Procedure Code and Criminal Procedure Code also contain many provisions to protect the interest of women. Section 66 of the Civil Procedure Code prohibits arrest and detention of women in execution for payment of money. Section 62 of the same code provides for exemption of certain women from personal appearance in the court. Criminal Procedure Code also has special provision for women. From the analysis of the status of women in India, it can be seen that in spite of the constitutional guarantee of equality of sexes and social, political and economic justice and other legislations protecting and guaranteeing the rights of women, the discrimination and exploitation of women continues to be rampant.

\(^7\)Sowmithri Vishnu v. Union of India, 1985 Cri. L.J. 1302 (S.C.).
The status of the non-working women is adversely affected by economic dependence. The only economic security, which can be claimed by women in the case of separation, is the right to maintenance. In spite of the legislation regarding maintenance, due to the delay in procedure and the insufficiency of the amount, and because of the difficulty in executing the decree and if the husband is determined not to pay the amount, there is no other alternative to execute the amount.

Another problem faced by non-working women is in the case of breakdown of marriage, she has no other place to go but she has to undergo humiliation, pain and agony both physical and mental. In such situations her parents also did not welcome her. In order to overcome the problem India need an improved statute on the lines of Matrimonial Homes Act, 1967 of England and in such a situation even if the marriage is breakdown she should be given a right to reside in the matrimonial home and in appropriate cases the court should have the power to issue injunction against her husband preventing him from interfering with her possession.

Indecent Representation of Women

The law relating to obscenity is found in Sections 292, 293 and 294 of Indian Penal Code. There is a tendency to represent women indecently in advertisements and publications, which has the effect of lowering the status of women. The Indecent Representation of Women (Prohibition) Act, 1986 was passed to prevent this evil but in spite of the penal provisions in the Indian
Penal Code and the Act, women continued to be exploited for commercial purpose.

Section 366 of the Indian Penal Code deals with kidnapping or abducting a woman to compel her to marry against her will or for forced illicit intercourse. Sections 366A and 366B deal with persuasion of minor girls for the aforesaid purpose. Section 373 deals with buying and selling of minor girls for the purpose of prostitution. Section 359 deals with kidnapping and Section 363 deals with abduction.

In order to deal with the problem concerning women, a National Commission for Women has been constituted under the National Commission for Women Act, 1990.

Despite all these attempts, Chapter III and IV of the Constitution, and other welfare legislations, crimes and atrocities against women are on the increase. This is because of the fact that the authorities in charge of the enforcement of the law are always reluctant to enforce the law. Rape laws have been amended and Sections 376A, 376 B, 376 C and 376 D are included in the Penal Code to prevent sexual abuse in custody. But in spite of all these, instances of rape are on the increase and the courts are reluctant to award maximum punishment to the accused.

Despite the passing of the Dowry Prohibition Act, 1961 and the subsequent amendment in 1983 and 1986 brides are still harassed, tortured and
even burnt to extract more dowry. In spite of Section 498 A in the Indian Penal Code incidence of cruelty and wife beating are on the increase. The Child Marriage Restraint Act prohibited child marriage and prescribed punishments, but still child marriages are prevalent. The government has also not been able to control female foeticide. In domestic violence against woman, the woman continues to bear the atrocities committed against her because of the fact that she has no other place to go.

Nowadays the world as a whole witnessed a firm conviction of the international community to protect and promote the rights of women. But the unequal power distribution between man and woman, poverty, economic dependence, the reluctant attitude of the male members in the family to recognise the contribution given by woman to the family and society and equal sharing of responsibilities between man and woman and the traditional, customary, and religious attitudes of the society etc., places woman in a subordinate position. This is the reason why several atrocities are committed against woman in spite of the international and national movements for the protection and promotion of the rights of woman.

Empowerment of woman and thereby enabling her to participate in all the developmental and decision making process of the country and the elimination of all cultural, traditional and religious practices placing her in a subordinate position can to some extent improve the status of women.
Educating the women and creating awareness among them about their rights also helps to improve the status.

Combined efforts of the Executive, the Legislature and the Judiciary, law enforcement agencies, NGO’s, media, individual men and women are required to eliminate all forms of discrimination against women and crimes against women and above all to improve the status of women.