CHAPTER – III

WOMEN'S RIGHTS AND THEIR POSITION UNDER THE
CONSTITUTION OF INDIA:

The Constitution of India was framed with a double consciousness, one for rights of the citizen and another is the welfare of the whole society by means of Social Justice. It is the supreme document which signifies the territorial sovereignty of India in relationship with the International law. International law as we discussed in previous chapter and as we know it today, is that it is the body of rules regulating the relationship between the different nations. The relation of international law and India is reflected very clearly in the Constitution of India under Part-III - the fundamental rights and Part – IV – directive principles of States Policy. Most of the provisions of these two chapters have resemblance with the Universal Declaration of Human Rights. Article 51(c) foster respect for international law and treaty obligation deals the organized peoples with one another. Being a signatory to various international


conventions, covenants and to protocols on Human Rights, India has assumed the responsibility provide and protect rights of the women and therefore the Constitution confers a catena of rights for women. The Constitution of India is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the condition necessary for its achievement. The core of the commitment to the social revolution lies in the fundamental rights and in the directive principles. In the Constitution various means are provided whereby the citizen can move before the Supreme Court and High Courts against the violation of such constitutional rights and fundamental rights.

The preamble of the constitution aims at equality of status and opportunity, as ‘We, the people’ obviously includes the women also. This objective has been achieved by providing equality clause. The equality clause expressly prohibits discrimination on the basis of sex among others. Regarding women, though the Constitution of India contains both positive and negative provisions, yet it has to go a long way in securing gender justice under the umbrella of women’s human right. Nowadays, the Universal

Declaration (UDHR, 1948) is the model instrument and it is found to be reflected in a number of national constitutions and legislation. The Indian Constitution also included the provisions of UDHR, 1948. But the concept of 'Women's human right' is fairly a new concept, flourished only after the Vienna Declaration, 1993 and Beijing Declaration, 1995; and yet to be developed fully.

In fact, within a year of adoption of the Universal Declaration of Human Rights, the Constituent assembly incorporated in the Constitution of India, the substance of most of the rights of the Universal Declaration. The two parts - the Fundamental rights and the Directive Principles covered almost the entire field of the Universal Declaration of Human Rights. The Fundamental Rights have its root from Nehru Report which were again reminiscent of those of the American and post war European Constitution. The Directive Principles are the product of anti-colonial revolution which represent the casting off the economic inferiority of colonial status and assumption of economic and political control of the country.

144. The Universal Declaration of Human Rights, 1948.


Universal Declaration of Human Rights, 1948 also indicate two sets of rights: first, the traditional civil and political rights and secondly, the economic, social and cultural rights. Those rights are equally accessible by both man and woman and hence no specific human rights of women were found to be incorporated in the Universal Declaration. It is because the concept of women's human right is not at all seen in the Indian Constitution.

The Constitution is the supreme legislation for India, enacted by the Constituent Assembly. This supreme law of the land assures the dignity of the individual irrespective of their sex. Any legislation or law adopted in contravention of the Constitution is ultra vires the Constitution. Hence, it is clear that in India the Constitution of India is the ultimate goal for protecting the women's constitutional rights as well as human rights. Any violation of such rights of women may be protected by judicial remedy as provided by the Supreme Court under Article 32 and by the High Court under Article 226 in the form of Writ jurisdiction. Again, there is an elaborate system of enacted laws adopted in accordance with the provisions of the Constitution to protect the rights of women. In recent years, some more laws have been enacted for the purpose of eliminating discrimination towards women. While deciding these new forms of rights within the purview
of the Constitution of India, the remedy have to be extended and to be evaluated through interpretation by the judiciary and in due course. The Supreme Court of India give rise to some principles which are considered as the basic structure of the Constitution. It is observed finally that the judiciary and the Constitution of India have a close relationship to each other which led the way to analyze the judicial remedy that may incur for the violation of women’s human rights. A comparative analysis of the rights of women guaranteed by the Constitution and the Judge made laws formulated by the Supreme Court and other judicial organs on the facts of the disputing cases are discussed here which may reveal the actual position of the women’s human rights and their violation in India as well as in Assam.

**The Preamble** - The preamble contains the ideas and aspiration of the people of India. The main object and policy of the legislation is to give remedy to evils and inconvenience. In short, it contains a recital of the facts or state of the law for which it is proposed to legislate by the statute. But, where the language of the enacting article is clear and unambiguous, then the terms of the Preamble cannot qualify or cut down that enactment.


149. Bhim Singhji – Vs – Union of India. AIR 1981 SCC 234 (Paras 39, 71)
One of the golden ideals of the preamble to the Constitution is the equality of status and opportunity. In S.R.Bommai –Vs–Union of India\textsuperscript{150}, Supreme Court held that the Preamble is part of the basic structure of the Constitution. The basic structure permeates equality of status and opportunity. Thus, the equality clause expressly prohibits discrimination on the basis of sex and guarantees equality before the law and equal protection of laws irrespective of sex. Thus, logically the Indian constitution has ensured equal status to all, equal status between men and women. But in Re Berubari Union\textsuperscript{151}, formerly the Supreme Court held that the Preamble shows the general purpose behind the several provisions of the constitution, but, nevertheless, it is not a part of the Constitution. It may be a key to open the mind of the makers which may show the general purpose for which they made the several provisions in the Constitution.

But in Municipal Corporation of Delhi – Vs – Female Worker (Muster Roll)\textsuperscript{152}, the Court held that for awarding maternity benefit to poor illiterate women, the preamble to the constitution should be interpreted in the line of social and economic justice.

\textsuperscript{150} (1994) 3 SCC 1 at 149.
\textsuperscript{151} Berabari Union & Exchange of Enclaves Re. AIR 1960 SC 845.
\textsuperscript{152} AIR (SC) (2000) 1274.
Hence, it is clear that the position of the preamble under the Constitution itself has undergone experimental stage under which the concept like women’s human right did not get its place. Moreover, the Preamble to the Constitution of India was adopted in 1950 and the concept women’s human rights flourished only after 1993 and it is still developing. Hence the preamble recognize the equality between man and woman but not state about any special right for women.

**Fundamental Rights** :- The framers of the Indian Constitution were set to make a confluence of human rights and social welfare by evolving a concept of social justice in the Constitution of India. They therefore, included two independent parts – Part-III and Part-IV in our Constitution. Part-III is the fundamental rights, which are enforceable through Courts of Judiciary. The provisions regarding fundamental rights have been enshrined in Articles – 12 to 35 and they are applicable to both men and women. Though these rights are equally accessible by both men and women, but in practice, women are found to be more vulnerable and their rights are frequently violated. Thus in Unni Krishnan, the Court stated that it is not necessary that a

right to be recognized as fundamental right has to be found expressly
mentioned in Part-III of the Constitution. The Apex Court held that,
from Article 21 has sprung up a whole lot of human rights, viz. right
to legal aid and speedy trial, the right to means of livelihood, the right
to human dignity and privacy, right to health, right to pollution free
environment and right to education etc. These rights are common
rights which can be availed by both men and women.

But in recent time in Assam the increase of the violation of the
rights against women make the need to analyze the fundamental
rights more elaborately under the following dimensions:

**Right to Equality** :- Every person have the right to equality
under the Constitution of India when they are in similar situated.
Article-14 of the Constitution guarantees equality before the law and
the equal protection of laws have been specifically mentioned in
succeeding articles-15, 16, 17 and 18.

Therefore Article-14 provides that the State shall not deny to
any person equality before the law or equal protection of laws. Here
“Any person” extends to citizens as well as aliens, to natural persons
or artificial or legal persons as well\(^{154}\).The true meaning of equality,
in short, is uniformity of legal rights for all\(^{155}\).

---

Article-14, thus, uses two expressions to make the concept of equal treatment a binding principle of state action. The first all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual or group of individuals. The second expression the equal protection of laws directs that equal protection shall be secured to all persons in the enjoyment of their rights and privileges without favouritism of discrimination\textsuperscript{156}. Though there is no provision for discrimination, but the Supreme Court of India permits reasonable classification by the legislature for the purpose of achieving specific ends.\textsuperscript{157}

However in Air India – Vs – Nargesh Meerza\textsuperscript{158}, the Supreme Court held that a woman shall not be denied employment merely on the ground that she is a woman, as it amounts to violation of Article-14 of the Constitution. In this case the air-hostesses of Indian Air Lines and Air India had challenged the service rules which state that :-

\begin{quote}
Air-hostesses shall not marry for the first four years of their joining, they will lose their jobs if they become pregnant.
\end{quote}

\textsuperscript{156} V.N.Shukla’s Constitution of India – Mahendra P. Singh, 8\textsuperscript{th} Edi. Eastern Book Company, P-32.
\textsuperscript{157} Ram Krishna Dalmia – Vs – Justice Tendolkar. AIR 1958 SC 538.
\textsuperscript{158} AIR 1981. SC 1829.
They shall retire at the age of 35 years, unless Managing Director extends the term by ten years at his discretion."

The Supreme Court held that the first provision is legal, as it would help in promotion of the family planning programmes, and will increase the expenditures of airlines recruiting air hostages on temporary or adhoc basis. But the second and third provisions to be declared as unethical, arbitrary, unconstitutional and an open insult to Indian womanhood. Both these regulations were struck down as it violates Article-14 of the Constitution. The Apex Court upheld the first provision of the Rule which is applicable only to female air-hostesses but not for male air-hostesses and hence it is a violation of the reproductive right of women.

**Discriminatory Right** :- The expression discrimination, normally means, to make an adverse distinction between men and women. The discrimination involves an element of unfavourable bias and it is in that sense that the expression has to be understood in the context of this chapter.

The Constitution of India provides against discrimination and it is a fundamental right of the citizen of India, which mainly included the womenfolk.
Heading of Article-15 is prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article-15(1) provides the state shall not to discriminate against any citizen only on grounds of religion, race, caste, sex, place of birth or any of them.

Article-15(2) prohibits the citizen not to restrict any person on grounds of religion, race, caste, sex plan of birth or any of them access to any shops, restaurants, use of wells, tanks, bathing Ghats etc.

Article-15(3) permits the state to make any specific provision for women and children.

Article-15(4) states special provision for advancement of backward classes.

Again, in cases of equality of opportunity, public employment etc., article-16(2) says that, no citizen shall, on ground only of religion, race, caste, sex, place of birth, residence or any of them, we in eligible for or discriminated against in respect of any employment or office under the state. To uphold this constitutional goal the Supreme Court of India had given a number of judgments, some of which are the clear violation of women’s human rights. The actual
facts of some of the disputed suits also reveal the widespread violation of women's human rights in India.

Thus in Miss C. B. Muthamma–Vs–Union of India\textsuperscript{158}, the Apex Court held that the Rules relating to seniority and promotion in Indian Foreign Services which make discrimination only on the ground of sex is unconstitutional. In the instant case, a Writ Petition was filed before the Apex Court. It was contended that Miss Muthamma had been denied promotion to Grade-I on the ground of sex, which is the violation of Article-15 of the constitution of India. The Apex Court allowed the petition and held that Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) rules, 1961 which require that an unmarried woman in service should take permission of the Government before she marries. After marriage, she may be asked at any time to resign if it is felt that her family life affects her efficiency to the (I.F.S.) service. The Apex Court held it to be discriminatory against women and hence unconstitutional.

The Supreme Court in Sharion A Frontiers–vs–Elliot L. Richardson\textsuperscript{159}, held that hostile discrimination against women has always been struck down by the Supreme Court of India. Because, as sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special

\textsuperscript{158} (1973) 36 LL.D. 2583.
disabilities upon the numbers for their sex would seen to violate the basic concept of our system and hence legal burden should bear some relationship to individual responsibility.

The Apex Court in Dr. Preeti Srivastava – Vs – State of Madhya Pradesh\textsuperscript{160}, held that article-15(3) enables to special provisions being made for women and children notwithstanding Article-15(1) which imposes the mandate of non-discrimination on the ground of sex.

This was envisaged as a method of protective discrimination. However, the Court decided that at the level of admission to super speciality courses like Post-graduate, Institution of Medical Education and Research, Chandigarh, no special provisions are permissible, they being contrary to national interest.

Therefore, it is clear that though women enjoyed the discriminatory rights under the constitution, yet the cases before the Supreme Court reveal a reverse scene. Another examples of discrimination is the mothers' rights over minor as a natural guardian. Sec.6 of the Hindu Minority and Guardianship Act,1956 said that the mother is the natural guardian of her minor legitimate children only if the father is dead or otherwise incapable of acting as guardian. This provision had

\textsuperscript{160}. AIR (SC) (1999) 2894.
been raised in Ms. Githa Hariharan–Vs- Reserve Bank of India. In this case Sec.6(a) of the Hindu Minority and Guardianship Act, 1956 is violative of Article-14 and 15 of the Constitution. It was contended that the mother of the minor was relegated to inferior position by Reserve Bank of India on the ground of sex alone, since her right as natural guardian of minor is made cognizable only after father. Joint application was made by mother and father of minor child mutually agreed that mother would act as guardian seeking relief of RBI Bank in the name of minor. RBI advised the mother that the application be signed by father or to obtain certificate of guardianship by the mother. The Court directed the RBI to formulate appropriate methodology and held that the mother can act as natural guardian of the minor even during the lifetime of the father, who would be deemed to be absent for the purpose of Sec.6(a) of the Act. The Court also held that as India is signatory of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the domestic Court is bound to regard the International convention and norms and to prevent discrimination of all forms against women. Hence, in this case, though the rights of mother was violated by RBI, but the Supreme Court seek to redress this violation.

161. AIR 1999 SC 1149.
Political Rights of Women under Article-15 of the Indian Constitution

Right to vote and to take part in election is an important human right. But in India, controversy always remains as to whether political rights of women are fundamental right or not. In Nainsukh - Vs - State of U.P.\textsuperscript{162}, the Supreme Court of India rules that the general prohibition against discrimination in Clause (1) of article-15 also extends to political rights and so, protective discrimination can be used to secure political rights of women. Thus the Court realized the existence of violation of Political Rights of women and try to remove it.

Similarly, in Dattatrays Motiram - Vs -State of Bombay\textsuperscript{163}, the Bombay Municipal Borough Act,1925 providing for reservation of seats for women in the election to the Municipality was challenged on the ground of discrimination against men by providing special permission for women. The Court observed that women are more backward than men. It would be very difficult for women to be elected if there was no reservation in their favour and Government may take the view that women are necessary in local authorities before they decide any question relating to women.

But the reservation of seats for women in local bodies cannot

\textsuperscript{162}. 1953. SCR 1184.

\textsuperscript{163}. AIR 1953 Bombay 311.
be taken to mean as to discriminatory on the ground of sex. The Supreme Court of India in T. Sudhakar Reddy – Vs – Govt. of Andhra Pradesh\textsuperscript{164}, had upheld the Constitutional validity of proviso to Sec.316(1)(a) of the Andhra Pradesh Co-operative Societies Act, 1964 and of the Rules-22(c) and 22(A)(3)(a) framed thereunder relying upon the mandate of Article-15(3) of the constitution read with the said rules providing for nomination of two women members by the Register of the Managing Committee of the Co-operative with a right to vote and to participate in the committee’s meeting.

In 1992, by the 73\textsuperscript{rd} and 74\textsuperscript{th} Constitutional amendments the reservation of seats for women in Panchayat and in the Municipal have been incorporated by inserting Articles-243(d) and 243(t). According to the mandate of Article-243(b) of the Constitution in Panchayat, not less than one third of the total number of seats is to be filled by direct election in every Panchayat by women. These seats may be allotted by rotation to different Constituencies in a Panchayat which shall be not less than one third of total number of seats. Article-243(t) of the constitution makes similar provision regarding reservation of seats for women in the Municipalities. Thus, the

Government on the strength of the Constitutional powers made only a reservation of 33% seats for women in the local bodies.

Recently, the Parliament seek to introduce the 81st Constitutional Amendment Bill seeking to reserve one third of seats in Lok Sabha and State Assemblies for women, though the Bills have not yet been passed.

**Criminal offence and rights of Women under Article-15 of the Constitution** :- Crime is an irresistible element in a civilized society which gives the sufferance to the common people at large. Mostly women become the worse victim of criminal offence due to biological inferiority than men. Hence Article-15(3) empowers the State to make special provision for women. Thus, in the offence of adultery, sec.-497 of the Indian Penal Code, 1860 punishes only the male counterpart and exempt the women from punishment. In Abdul Aziz – Vs – State of Bombay165, the Constitutional validity of sec.495 I.P.C.was challenged on the ground that the classification was not reasonable as on the ground of sex alone. The Court relied upon the mandate of Article-15(3) of the Constitution to uphold the validity of the said proviso of the Code and observed that the classification was not only based on the ground of sex alone.

165. AIR. 1954 SC 321.
Similarly, the mandate of Sec.-437 of the Code of Criminal Procedure permits the release of a person accused of an offence on bail, but this is not required for woman or children or sick or infirm persons. In other words, this section permits distinction in favour of women even if there appears to be a reasonable ground for believing that they have been guilty of an offence punishable with death or imprisonment for life. This has been held by the Rajasthan High Court in Choki – Vs – State of Rajasthan\textsuperscript{166}, where it is said that it is valid on the ground that it makes special provision for women and therefore it is protected under Article-15(3) of the Constitution.

**Right to Freedom** :- Articles- 19 to 22 of the constitution deal with the right to freedom. It includes right to freedom of speech, protection in respect of conviction for offences, protection of life and personal liberty, private life and protection against arrest and detention etc. The Constitution of India guaranteed this right to freedom to women also. But the right to life, liberty, dignity and security of a person are the basic, inherent rights, irrespective of the sex and Act-21 of the Constitution incorporated these provisions.

\textsuperscript{166} AIR 1971 Raj. 30.
Thus, in C. Rajkumari - Vs - Commissioner of Police, Hyderabad\textsuperscript{167}, it has been held that if a beauty contest indecently represents any woman by depicting in any manner the figure of women, form, body or any part thereof in such a way so as to have the effect of being indecent or derogatory to or degrading women, or likely to deprive, corrupt and injure the public morality would violate the provisions of the Indecent Representation of Women (Prohibition) Act, 1986 and also unconstitutional as it violates Articles- 14, 21 and 51-A of the Constitution of India.

Again, in State of Punjab - Vs - Baldev Singh\textsuperscript{168}, the Supreme Court held that it is a basic right to a female to be treated with decency and dignity. Hence, searching the body of a woman offender by a male police officer will violate the basic human right of a woman.

\textbf{Right to Education} :- Education is one of the most important human rights available for all. The newly amended Article-21(A) incorporated the ‘right to education’ as a fundamental right\textsuperscript{169}.

\textbf{Article-21(A)} :- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

\textsuperscript{167} AIR 1998 AP 307.
\textsuperscript{168} AIR 1999 SC 2378.
\textsuperscript{169} The Constitution (Eighty-six Amendment) Act, 2002.
Thus, this newly amended Article provides compulsory education to girl child. Earlier, education to girl child or women were not encouraged by the people. These views of the Indian Society were also reflected in the earlier judgment of the Supreme Court. The Supreme Court was reluctant to grant the right to education to women. Thus, in Anjali Roy – Vs – State of West Bengal\textsuperscript{170}, the petitioner who passed her Intermediate Examination in second division was refused to give admission into third year (B.A.) class with Honours in Economics by the Principal of that College. The Supreme Court held that, though Article -15(3) has been made for the benefit of women, it is not required that the same facilities as those enjoyed by males in similar matters must be afforded to women also. The Court justified the action of the College and reiterated the decision of the College.

Similarly, in the case of Madras – Vs – Shanta Bai\textsuperscript{171}, the respondent was refused admission to the College by the Principal in pursuance of the directions given by the University not to admit

\textsuperscript{170} AIR 1952 Cal. 822.
\textsuperscript{171} AIR 1954 Madras 67.
women into the College. The Court decided in favour of the University and held that as in Article-29(2) the word ‘Sex’ has not been used, hence the University can deny admission to women in educational institutions for men.

However, in P. Sagar – Vs – State of Andhra Pradesh \(^{172}\), the Rules for selection for admission to Medical College in Andhra and Telangana Area, providing for reservation of 30% seats to women candidates was challenged as uncalled and unwanted. The High court observed that the petitioner ignores the provisions of article-15(3) which is an exception to Article-15(1). The Court held that in view of Article-15(3) reservation for women cannot be assaulted or disturbed in this case.

In Chandi Singh – Vs – State of U.P. \(^{173}\) the Supreme Court held that the right to live implies the right to education along with other rights.

Finally, the Supreme Court in Ashoka Kumar Thakur – Vs – Union of India \(^{174}\), held that free and compulsory education is now a fundamental right under article 21A. The State is duty bound to

---

172. AIR 1968 APL 65
implement this article on a priority basis, Union of India was directed to set a time limit within which this article is going to be completely implemented.

**Right against Exploitation** :- Article-23 of the Constitution provides the right against exploitation. This constitutional provision prohibits traffic in human beings. The Apex Court in Vishal Jeet- Vs Union of India¹⁷⁵, observed the fact that many unfortunate teen-aged female children and girls are being sold in various parts of the country, for paltry sum even by their parents finding themselves unable to maintain due to acute poverty. But the brokers in the flesh trade and brothel keepers hunt for these teen aged children and young girls to make money either purchase or kidnap them by deceitful means and forcibly engage them into flesh trade. The Immoral Traffic (Prevention) Act, 1956 aims at suppressing the evils of prostitution in women and girls, to rescue the fallen women and girls and to provide rehabilitation for them. In spite of the above stringent and rehabilitative provision of law under various Acts, the desired result has not been achieved. To restrict this malignation, severe and speedy legal action is required. Government also have to take adequate measure.

¹⁷⁵. AIR 1990 SC 1412.
Finally in this public interest litigation the Apex Court direct to constitute an advisory committee who will also consider trafficking of women along with the Devadasi system and Jogin tradition. The Court also directs all the State Govt. and Govt. of Union territories to take appropriate and speedy action under the existing laws in eradicating child prostitution, Devadasi and Jogin tradition.

**Directive Principle of State Policy :-** The Directive Principles of State Policy contained in Part-IV of the Constitution of India and incorporate many directives to the State to improve the status of women and for their protection by way of enacting the laws. The Directive Principles of State Policy detailed in article-37 to 51 of the Constitution and possess mainly, two characteristics – First, they are not enforceable in any court in general and therefore, if a directive is violated no remedy is available to the aggrieved party by judicial proceedings. Secondly, they are fundamental in governance of the country and it shall be the duty of the State to apply these principles in making laws. Thus, the Directive Principles of State Policy may be described as the active obligation of the State. The fundamental rights and directive principles of State Policy are both supplement to each
other and have to be construed harmoniously\textsuperscript{176}. Thus in Bandhua Mukti Morcha – Vs – Union of India \textsuperscript{177}, the Supreme Court specifically held that though the directive principles are unenforceable by the courts and the Courts cannot direct the legislature or executive to enforce them, once a legislation in pursuance of them has been passed, the Courts can order the state to enforce the law, particularly when non-enforcement of law leads to denial of a fundamental right. Thus, the directive principle aimed at securing social and economic freedom to women by appropriate action.

Therefore, article-39(a) directs the State to make its policy towards securing that the citizen, men and women, equally have the right to an adequate means of livelihood.

Article-39(d) directs the State to secure equal pay for equal work for both men and women.

Article-39(e) specifically directs the State not to abuse the health and strength of worker, whether men or women.

Article-42 of the constitution directs the State to make provisions for securing just and human conditions of work and for maternity relief.

\textsuperscript{177} AIR 1984 SC 802, 812.
Again, Article-44 directs the State to secure for citizens a uniform Civil Code throughout the territory of India.

Article-39A of the Constitution also provides equal justice and free legal aid. The State shall ensure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid by appropriate legislation or schemes or in any other way to ensure the existence of opportunities for securing justice.

Thus, in Hussainara Khatoon - Vs- State of Bihar 178, the Supreme Court held that free legal aid to be provided to the undertrial, poor and destitute women of Bihar Jail and considered that legal aid and speedy trial, are fundamental right of prisoner reads together with Article-21 of the Constitution.

Regarding equal pay for equal work under Article-39(d), the Supreme Court in M/s Mockinnon Mackanzie and Co. Ltd. – Vs – Audrey D Costa and another179, rejected the appeal against the decision of High Court directing the Management to pay Rs.7, 196.67 to a Lady Stenographer for the difference of basic pay along with the payment of D.A. amount difference from male Stenographer. The

179. (1987) 2SCC 469
facts of the case was that lady stenographers and male stenographers in a company were unequally remunerated. The difference in pay scale was due to settlement between the Company and the Union, Mrs. D Costa, after her termination appealed against the difference of remuneration in case of equal work before the authority appointed under Sub-Sec.(1) of Sec.7 of the Act. The Authority decided in her favour. Against that decision, petition was filed before the High Court. The High Court retained the same decision. Against the High Court decision, the petition was filed before the Supreme Court. The Apex Court did not find any ground to interfere with the judgment and dismissed the petition. Thus, the study of this case clearly shows the unequal treatment of women by the employer regarding payment for the work.

Article-23 of the Universal Declaration of Human Rights, 1948 explained right to work as human right which mean the right to work in free choice of employment, right to just and favourable condition of work, right to just and equal remuneration, including maternity benefit. It is also clear that this right to work can be availed by women equally and it is guaranteed by Article-39(e) of the Constitution of India.

But in practical life women have to face many disabilities as has been amply clear from judgment of many of its Supreme Court
cases. Thus, in Randhir Singh – Vs – Union of India\textsuperscript{180}, the Supreme Court held that equal pay for equal work is not a fundamental right, still it is a constitutional goal. This principle in Article-39(d) for both men and women is a directive principle. This principle is deducible by construing Articles-14 & 16 in the light of preamble.

In Consumer Education and Research Centre\textsuperscript{181}, the supreme Court amply specify that Life assured in Article-21 does not connote here animal existence. Right to health, medical aid to protect health and vigour of a worker while in service retirement is a fundamental right under Article-21 read with Article-39(e).

The sexual harassment of woman at the work place by man is one of the growing evils in modern India. The extreme form of sexual harassment even cueb the women’s right to work. In Vishaka – Vs - State of Rajasthan\textsuperscript{182}, the Supreme Court, realizing the need for effective legislation to curb sexual harassment of the working women, laid down some guidelines and norms for due observance at work place and other institutions which would be treated as law declared by the Court under article-141\textsuperscript{183} of the Constitution. The Court,

\begin{flushright}
180. AIR 1982 SC 879.
183. Art.141 – The law declared by the Supreme Court shall be binding on all Courts within the territory of India.
\end{flushright}
admitting the message of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) and the Beijing Declaration, held that the power to declare law is also derived from Article-32 of the constitution of India.

Marital Rights :- Right to marry and to found a family is one of the important human rights recognized by the Universal Declaration of Human Rights, 1948. These rights are recognized in India under the personal laws. Though the Constitution of India provides for Uniform Civil Code under the Directive Principles of state Policy in chapter-IV, but due to lack of uniformity in personal laws resulted the violation of women's right to marriage or marriage life. Initially, judiciary considered it to be a violation of right to privacy of the spouses. But in Sarla Mudgal – Vs – Union of India\textsuperscript{184}, the Supreme Court while dealing with the case observed that whether a Hindu husband married under Hindu Law and converted to Islam, without dissolving the first marriage can solemnize a second marriage. The Court held that such a marriage is illegal and the husband can be prosecuted for bigamy under sec.494 of the Indian Penal Code, 1860.

Section-497 of the Indian Penal Code was also challenged on

\textsuperscript{184. AIR 1995 3 SCC 635.}
the ground of Constitutional validity in Abdul Aziz – Vs – State of Bombay\textsuperscript{185}, as the Section punishes only the male counterpart and exempts the women from the punishment of adultery and hence it violates article-14 and 15(1) of the constitution. The Apex Court, however, upheld the validity of the provision on the ground that the classification was not based on the ground of sex alone and relied upon the mandate of article-15(3) of the constitution.

Again, in Pragati Vargese – Vs – Cyril George Vargese\textsuperscript{186}, the Bombay High Court held Section-10 of the Indian Divorce Act as violative of Article-21 of the Constitution, under which a Christian wife had to prove adultery along with cruelty or desertion while seeking divorce from her husband struck down the provision of Sec-10. The Court held that Sec-10 of the Act compels the wife to continue to live with a man who has deserted her or treated her with cruelty. Such a life is sub-human and violates the basic rights of women.

When the marital rights of a spouse are discussed, side by side another important issue derived. This issue is the maintenance. In a country like India, maintenance of wife and children is one of the most important rights, more particularly for women. Section 125 of the Code of criminal Procedure, 1973 makes the provision for

\begin{flushright}
\textsuperscript{185} AIR 1994 SC 321.
\textsuperscript{186} AIR 1997 Bom. 349.
\end{flushright}
maintenance of wife and children. The mandate of this section shows that it is natural and fundamental duty of every person to maintain his wife and children so long as they are not able to maintain themselves.  

Thus the provisions of section-125 of the code of Criminal Procedure, 1973 is provided for the protection of rights to livelihood of weaker sections of the society, i.e. neglected wives, discarded divorces and abandoned children. In Gupteswar Pandey – Vs – Ram Piari, the Patna High Court while upholding the Constitutional validity of section-125 of Criminal Procedure Code, observed that the provisions have been designed for the benefit or protection of class of women and children.

In Bai Tahira – Vs – Ali Hussain Fissalli, the Supreme Court also upheld the provisions of Section-125 of Criminal Procedure Code as Constitutionally valid on the ground that it is specially enacted to protect women and children, and therefore, falls within the

189. AIR 1979 SC 362.
constitutional sweep of Article-15(3), reinforced by Article-39\textsuperscript{190} of the Constitution.

Again, in the Shah Bano Case\textsuperscript{191}, the question raised before the Supreme Court was that whether Section-125 of the Criminal Procedure Code, which provides for maintenance of wives applies to Muslim women and whether Mohr absolves a Muslim husband for payment of maintenances on divorce under Section-127(3)(b)\textsuperscript{192}. The Supreme Court observed that Muslim husband is liable to provide maintenance for divorced wife who is unable to maintain herself. There is no conflict between provisions of Sec.125 and those of Muslim personal law. The Court held that wife includes divorced Muslim women so long as she has not remarried. Hence divorced Muslims wife is entitled to apply for maintenance under Sec.125 and that Mohr is not a sum which, under the Muslim personal law, is payable on divorce, Thus, in Shah Bano's Case, the Supreme Court considered the maintenance under Sec.125 as a right to Muslim women also.

\textsuperscript{190} Art.-39 – Certain principles of Policy to be followed by the State. eg. equal pay for equal work.
\textsuperscript{192} Sec.127(3)(b)-the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum, which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order –
(i) the case where such sum was paid before such order, from the date on which such order was made.
(ii) In any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman.
Similarly, in Danial Latafie & others – Vs – Union of India\textsuperscript{193}, while overruling the decision of the Gauhati High Court, the Supreme Court decided that Section-3\textsuperscript{194} of the Muslim Women (Protection of Rights on Divorce) Act, 1986 is not limited for the iddat period. Rather, it extends for the entire life of the divorced wife unless she remarries. The Supreme Court while upholding the Constitutional validity of the Act held that, a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husbands within the iddat period in terms of Section-3(1)(a) of the Act. In case of a divorced Muslim women who is unable to maintain herself, is entitled to “mata” by way of charity or kindness on the part of her former husband and not as a result of her right flowing to the divorced wife. Hence, a divorced Muslim woman who has not remarried and is unable to maintain herself after iddat period can proceed as provided under Sec.-4 of the Act against her relatives, including her children and parents. If any of the relatives being unable

\textsuperscript{193} 2001(3) GLT (SC)1.

\textsuperscript{194} Sec.3 – Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband.
to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance, and it is not in violation of articles-14, 15 & 39 of the constitution.

The Apex Court finally held that if the divorced wife is able to maintain herself the husband’s liability ceases with the expiration of the period of iddat, but if she is unable to maintain herself after the period of iddat, she is entitled to recourse to Sec-125, Cr.P.C. if her husband permit her. But in the Danial Latafie case again cut down the Muslim women’s right to maintenance within the period of iddat only.

From all the above discussion, it is therefore clear that to protect the women’s human rights relating to marriage, implementation of Uniform Civil Code, as suggested in Article-44 of the Directive Principles of State Policy as stated in the Constitution of India is of urgent necessity. The Supreme Court also, in its various decisions, repeatedly urged for the implementation of Uniform Civil Code throughout India. Unfortunately, the policy makers of the Country have not yet been able to motivate for the implementation of Uniform Civil Code.

**Fundamental Duties** :- Human rights and human duties are correlative to each other. A right can be established only when the other
people perform their duty to honour that right. The Constitution of India provides some duties towards women which the citizens have to perform. Thus, Article-51A(e) of the Constitution says about the duty of the citizen to renounce practices which are derogatory to the dignity of women. The United Nations, though, it does not recognize the duty directly, recognizes the State obligations to establish the human rights within their own nations.

Apart from these specific provisions, the other constitutional rights like right to property, rights during emergency etc. are equally available for women. Hence, analyzing the provisions of fundamental rights, directive principles and other constitutional rights and the judicial remedy available on such violation before the Supreme Court of India, all make it clear that women have to face different socio-legal and political violation. The Supreme Court of India, while protecting the women's rights have to undergo different socio-political situations which moulded and twisted the law, sometimes in favour of the women and sometimes against the women. In some cases, the facts of the disputed suit reveals the instances of human rights violation of women. However, it is not possible to discuss all the Supreme Court cases in details, in this Chapter due to limitation of space it is attempted to discuss in Chapter-VI under the Thesis. It is an undeniable fact that the municipal laws of India and the
international laws ratified by India give some protection to women. But this meagre protection is not conducive against the violation of women’s human rights. The supremacy of legislature and the practice of male chauvinism have also been reflected in some of the judgments which camouflage and jeopardize the basic concept of protection of human rights of women. Sometimes the constitutional goal of ‘independence of judiciary’ has also been kept under suspension by the interference of political pressure by way of enacting new legislations. Enactment of new laws for the protection of women have also not been able to give required safeguard to women to its full extent due to many lacunias within those laws which are to be rectified. Hence, in the next Chapter the lacunias within those protective laws for women and the violation arising out of those lacunias are discussed in details.