CHAPTER VII

CONCLUDING REMARKS

In preceding chapters an attempt was made to study the position of women generally and under the Indian Family Law. The study clearly revealed that in a patriarchal system, the woman occupies a secondary position. Her subordination is reinforced through cultural value system and socio-economic/political ethos. Although all over the world there is now a crusade for gender equality, it still remains a distant goal. The principle which governs the existing relationship between the two sexes presupposes the subordination of one sex to another. This is wrong in itself and is one of the chief hindrances to social progress and egalitarianism. It ought to be replaced by a principle of perfect equality\(^1\), admitting no power or privilege on the one side, nor disability on the other. Number of legislations have been passed since independence reinforcing this principle and for improving the status of the 'second sex'. But the social prohibitions play a more compelling role in our society than do legal permissions. The socially approved patterns of thoughts and behaviours assign to women a distinctly inferior role. This results into a queer contrast between our precepts and practices between legally mandated equality and actual gender inequality\(^2\).

We also made an effort to show how religion based personal laws discriminate against women. Although the
Constitution in Art. 25 guarantees the fundamental right to practise, profess and propagate religion, that right is subject to public order, morality and health and to other provisions of Part III of the Constitution. It means that such freedom of religion has to be subject to the fundamental rights guaranteed by articles 14 to 32. Further, the State has been given power to make laws (a) regulating or restricting any economic, financial, political or other secular activity associated with religious practice and (b) providing for social welfare and reform and the throwing open of Hindu religious institutions to all sections of Hindus.

The Constitution thus envisages an interventionist role for the state, such intervention being for the purpose of social welfare or reform or for regulating or restricting political, financial or secular activity associated with religion. Since man-woman equality is one of the fundamental rights, such State-intervention for the purpose of promoting equality of sexes, even if it penetrates into freedom of religion, is constitutionally mandated. Inspite of such constitutional mandate religion based personal laws continue to exist. The patriarchal social order reinforces women's subordination in the name of religion. Revivalism and religious fundamentalism are pressing into service for stalling social change towards equality and justice. It is the women who stand to loose most if such revivalism or fundamentalism are not arrested. Therefore, any religious practice or tradition which denies equality, liberty or justice to woman must be rejected. Unfortunately, political
leaderships have not been helpful in moulding social attitudes, probably because of the electoral considerations and lack of farsightedness. Women are being denied equal opportunities in every walk of life. They do not have control over resources. There is no overall appraisal of a woman's personality. She is viewed only in specific roles. The essence of the women's life still remains her marriage. And marriage has different meanings for men and women. Usually in a patriarchal social structure, men are supposed to work for earning money and women are supposed to look after home and do child breeding and rearing. But the work of caring and home making is little recognised and is undervalued as work. While there are many dimensions to caring, some very positive and rewarding, it is nevertheless an activity that takes time and energy, and constraints the other activities inside and outside the house, in particular, the ability to earn money. Non-recognition of the economic value of their effort in running the house and assuming all domestic responsibilities thus freeing the husbands for their avocation, leads to their economic dependence on men during the marriage and even after the breakdown of the marriage.

The maintenance provision in law is therefore not recognised as compensation for the contribution that she had made to the matrimony. But the predominant consideration behind it remains a charity. It is viewed as an act of benevolence on part of the husband. The legal requirement to support a wife after the break down of marriage, creates probably a sense of resentment resulting in reluctance in
paying maintenance.

In preceding chapters we studied the process through which an indigent woman is required to go for securing her legal right of maintenance. In India, thousands of women suffer the agony of abandonment. The societal pressures prevent them from asking for relief against male injustice, much less rebel against it. However, fire of the stomach drives some of them to seek the pittance which the law offers by way of maintenance. The law of maintenance is found in almost all the personal laws as well as in the secular law of the Criminal Procedure Code. We studied how these substantive legal provisions of maintenance grew and developed through the vicissitude of statutory enactments and decisional law. We also studied cases decided by the trial courts. The reasons for studying these cases were: In majority of the cases, decisions of the trial courts became final, as very few cases go in appeal to the higher courts. Thus we could study the actual functioning of the law by analysing these trial court judgments. Further, questions of facts are always decided by the trial courts. Therefore, we could understand the real factual problems faced by the parties at the grass root level. Lastly, appreciation of evidence, application of laws to facts and interpretations of laws as was done by the trial court judges, helped us understand the judicial attitude of the lowest rank in the judicial system. While analysing these trial court decisions, we strongly felt that the parties were not much aware of their legal rights otherwise the number of maintenance claims in matrimonial
petitions decided under the HMA would not have been so small 4.

Further, out of the matrimonial petitions in which maintenance was claimed, it was granted in very few cases by the courts 5. One of the important reasons for this, was the adversary procedures adopted by courts in deciding the maintenance issues. The cases filed under sec.125 also clearly revealed that maintenance was granted only in 41% cases (106 out of 258). We felt that the judges were too technical and were also arbitrary while recognising the right and fixing the amount of maintenance. We arrived at this conclusion after analysing the court records which showed us the way in which evidence was appreciated and the law was interpreted. We also felt that humane considerations were absent while decisions were given on the issue of maintenance. We felt that this was the result of adversary procedure followed for trying these cases. We felt that litigation in regard to family problems should not be viewed in terms of failure or success of legal action but should be viewed as a social therapeutic problem needing solution. Resolution of family conflicts involves humane considerations. Therefore, we submit that the traditional adversary system be abandoned completely in resolving the family disputes and be replaced by conciliatory methods and informal procedure. Such was the recommendation of the Committee, appointed for studying "the status of women" 6. In pursuance of that, the Family Court Act was enacted in the year 1984. The emphasis of the Act is on settlement and
informal procedures and speedy disposal. But the Family Courts have not come into existence in all the states even after eight years of its enactment! So far, only in seven states the Family Courts are established\(^7\). We submit that such courts should be established at the earliest throughout the country. We also suggest that the circuit family courts (moving) should be established to take justice to the doorsteps of rural people.

Working of some of the family courts, which have come into existence, is not upto the expectation. It is criticised by many\(^8\). The success of this new forum is dependent on its personnel including the counsellors. They need a special training for handling family disputes. The judges who have been appointed so far, belong to the traditional system of dispensing justice; it is doubtful how far they will be able to imbibe the new ideology of dispute settlement/resolution and practise it. The counsellors who have been appointed so far, do not have proper legal background. Therefore, concern has been expressed about the matters such as the councillor's role, their influence and objectivity; the possible inequality of the parties' bargaining powers; the difference in the parties' intellectual, emotional and material resources etc.\(^9\). A proper care will have to be taken in future these issues if family courts are to work satisfactorily.

A lot is expected from the judges of this new forum. The first and foremost that is they have to adopt
conciliatory approach. Naturally, they will have to give up the technicalities of the law, wherever possible, in the interest of justice. In fact, the Family Court Act allows them to evolve their own informal procedures. Liberal interpretations of the legal provisions will have to be done. In fact, we submit that orientation of these judges will have to be done from gender justice perspective. They need to go beyond the facts brought before them by the parties and resolve disputes amicably. From the facts, if they learn, that the parties are not even aware of their legal rights, it is expected from these judges, that they should also make the parties aware of the relevant legal provisions. We also felt that the judges should not merely decide the case on the basis of compromise filed before them by both the parties. But they should try to find out the real truth by going beyond the terms of the compromise. They should see before delivering the judgement that it will not be detrimental or derogatory to woman's interests. The Family Court emphasises the protection of the sanctity of the marriage as one of its main cherished aims. Should it be so? Should justness of the marriage and justness of its continuance be not relevant factors? The bias in favour of sanctity of marriage tends to reinforce patriarchal values.

All these suggestions are based on our analysis of the trial court decisions relating to the issue of maintenance. We generally, felt that women were less aware of their legal rights, particularly rural women. They need to be told about their legal rights. The maintenance provision was used in
large number of cases for achieving some other matrimonial relief and was given a subordinate priority. Maintenance claims, though made initially, were given up later on, inspite of women being economically destitute. To cure this, we felt that speedy disposal of the cases by the courts will certainly help such women. This was often done in order to secure the matrimonial remedy sought for. Claim for maintenance therefore had to be bargained in order to secure divorce or seperation etc. The responsibility of proving income was put on the wives, which they could not comply with. This ultimately resulted into the awarding of paltry amount for maintenance by the courts. Thus we felt, that the judges, with the help of social workers attached to the courts, should be able to assess the proper income of the husband.

Due to the technical interpretations adopted by the courts, maintenance was refused in those cases where the marriage petitions were not decreed in favour of the petitioners. We felt that the judges should have avoided such interpretations and should have granted maintenance. The filing of restitution petitions should not have delayed the conducting of proceedings under sec.125. The second wife's position vis-a-vis her right to maintenance should have been considered more sympathetically by the judges. We generally felt, that the judges need to play a more assertive role, at least, in the matters of maintenance. We submit this, because in mutual consent divorce petitions, wives' claims to maintenance were not protected generally. Maintenance was not
granted in 90% of mutual consent divorce petitions. On the initiative taken by the judges, maintenance was granted in 19 cases out of 400! We also felt that wherever possible judges should insist on a lump sum payment to avoid problems of recovery in future.

Our submissions, so far were regarding the expectations from the family court judges. We also pointed out that till today in only in 7 states Family Courts are established. But we wish to highlight on order XXXII-A of the Civil Procedure Code emphatically, which was introduced in the year 1974. The order prescribes the reconciliatory approach for handling the family disputes. So long as the family courts do not come in existence, the civil courts should make the maximum use of this provisions. The only suggestion in addition to the above mentioned, here is, that the work of handling family problems should be handed over to particular courts. Judges of such courts would also need special training. It is expected that with such arrangement the judges will be able to do better justice to people. However, this should be a stop gap arrangement. This should continue only till the family courts come in force.

While analysing the role of judges, we also studied the role of lawyers. We felt that both, the judges and the lawyers, were victims of the adversary system. The lawyers used manipulative techniques in delaying the matters. But this is an inherent aspect of the adversary procedure in which the lawyers need not be blamed. Giving up the adversary
system and following the inquisitorial/conciliatory approach as suggested earlier, will be the only solution in the present circumstances. However, apart from the defects originating from the adversary systems, we felt that the lawyers will have to play more active role. At present, inadequate, negligent, incompetent, manipulative lawyering is very much under attack from the public. People have welcomed non-appearance of lawyers in the family courts. If the lawyer fraternity wishes to assert its role in justice system, it will have to regain the confidence of the people.

Thus, we felt that these systemic constraints arising due to the adversary system and the functionaries, who operate the system need to be taken care of. The State, non-govermental voluntary organisations and educational institutions should take initiative for conducting refresher courses for judges, lawyers and also for social workers. There is a need for establishing a national forum as well regional fora where judges, lawyers, social workers, academicians will come together and will have dialogue with each other. Such meetings will certainly help improve the present justice systems.

So far we have pointed out the efforts that are required to be made in future for minimising the systemic constraints. Along with these efforts, we submit that, there is also need for evolving and adopting new concepts in our matrimonial jurisprudence for protecting women's interests.
Recognition and Adoption of New Concepts:

We felt that there is a need for laying down of a formula for calculating the amount of maintenance to be paid to the needy person. It is in the best interests of all the parties involved, that the maintenance obligation be both equitable and realistic. Not only this, but evaluation of such formula is also important for the legitimacy of maintenance claim. The legal provisions as they are today, give total discretion to the judges to fix the amount of maintenance. Analysis of the reputed judicial decisions (e.g. Shah Bano was granted only Rs.179.20 p.m. as maintenance) pointed out that such discretion was used many a times arbitrarily. Analysis of the trial court decisions equally pointed out that the meager amounts having no logical relation with the incomes of the obligors were granted. We have pointed out in Chapter VI, the disparities between maintenance orders passes against husbands with similar incomes. In the absence of specific guidelines, it was not surprising that maintenance amount tended to be inconsistent and often insufficient to meet the needs of the claimant. The term maintenance as defined in some statutes covers provisions for food, clothing, shelter, medicine. But the amounts granted by the courts were hardly sufficient to meet the bare minimum needs of life. Provision for shelter remained merely a theoretical proposition.

Therefore we strongly urge that an appropriate formula for determining maintenance amount be laid down. Developing
an appropriate formula is bound to be extremely complicated because many factors affect an obligor's liability to pay maintenance. But an ideal formula can be evolved by appointing a committee consisting of judges, economists, social scientists, social workers and lawyers. The committee should consider income of the parties, standard of their living before the break-down of the marriage, number of children, living expenses, cost of living, other liabilities and special circumstances like health problems, to evolve an objective formula that would result in arriving at predictable, consistent and equitable amount of maintenance. The standard deductions from the gross income to be allowed for calculating the net income will also have to be identified.

The most difficult task in implementing such formula, would be the determination of the husband's income and his ability to pay. The present law puts burden of proving the income of the husband on the wife. This provision almost amounts to denial of the right of maintenance to the wife. We earnestly appeal that this law needs to be changed immediately. The social workers attached to the family courts, and wherever family courts are not established, the voluntary social workers (or lawyers may be appointed as commissioner) by courts to gather information by paying home visits, interviewing the concerned persons and to assess the income of the husbands. The husband should be given an opportunity to refute such assessment and should be allowed to bring on record his real income, in case of any dispute.
Once such standardisation for the fixation of maintenance is evolved, we are sure, that the in awarding the amount of maintenance will be reduced. We also suggest, that wherever possible a voluntary settlement by lump sum payment should be welcome. But it should also be within the ideal framework discussed above. Such lump sum payments, in fact, wherever possible be encouraged to avoid problems of recovery of arrears of maintenance in future.

Secondly, we felt that there is a need for the establishment of a state support system for the destitute and indigent persons. We should give thought to those cases in which amount of maintenance granted by the court is paltry, with which claimant's basic needs can not be satisfied. If the husband is really not in a position to pay maintenance enough to enable the wife to sustain, the woman should get support from the State. A scheme will have to be evolved for providing such support to the needy persons. Such a scheme may be evolved with the help of following guidelines:

a) A minimum amount of the state support should be fixed initially in consultation with the experts from various fields. If any indigent woman approaches for securing the benefit of the scheme, then on establishment of a prima facie case, she should be paid that minimum amount for her support. The maximum care will have to be taken to see that misuse of such scheme at this stage is not done by people. A regular follow up in such cases might be beneficial.

b) A court order for her maintenance shall be obtained thereafter.
c) If a woman has already received an order of maintenance from the court, but the husband refuses to pay her, the State should take care of such cases also.

d) The State should establish a public corporation for the enforcement of such court orders and should recover the maintenance amount from the obligor.

e) If the amount awarded by the court is less than the minimum fixed under the state support scheme, the State should reimburse itself from such court award.

f) If the amount awarded by the court is more than the minimum fixed under the state support scheme, the difference between the two after the recovery of the amount from the husband, should be paid to the wife. The State should reimburse to itself the minimum that was already paid to the wife.

g) Lastly, under the state support scheme, the State shall provide community living centres for the discarded wives and their children. Such centres shall provide residence, food and clothing. It shall also give vocational training as well as provide formal education which in turn will help them to become self-sufficient. The centre shall have small scale business units providing employment opportunities for women. It shall have its own school for the children of these destitute women. Establishing such school itself will create job opportunities for such women. In short, we suggest that such centres shall become self-supportive in due course.

Apart from evolving a formula for fixing the amount of maintenance and evolving the state support scheme, we submit
that the term 'maintenance' to be used with reference to wife's entitlement after break down of the marriage, itself needs to be reconsidered. Women are economically dependent on men. Her household work is not valued as a gainful productive work. We suggest that maintenance should be paid to her in the form of 'compensation' for services rendered by her to the matrimony during the marriage. It should not be in the form of charity. But it should be her entitlement for the contribution that she had made to the matrimonial home. Replacing the term maintenance by compensation will automatically take away the assessment of maintenance amount on the basis of her conduct. We submit that conduct of the parties should not remain the main consideration in fixing the amount. But other factors suggested earlier should decide the amount of maintenance.

Once we accept the concept of compensation to which the wife should be entitled to on separation from her husband, it would take us obviously towards the concept of matrimonial property. So far the Indian Law (except in Goa) has not recognized this concept. The committee on 'the status of women' pointed out in 1974 the need for legal recognition of the contribution made by the wife through housework, for determining ownership of her matrimonial property, instead of continuing the archaic test of actual financial contributions. The committee recommended that the separated wife should be entitled to at least 1/3rd of the assets acquired at the time of and during the marriage.
One may have differences of opinion regarding the extent of the wife's share in the matrimonial property and various ingredients which might constitute the matrimonial property. We submit that this is high time we construct the concept of matrimonial property. Entitlement of the wife to the matrimonial property will have to be considered more seriously in future. We suggest that from the date of the marriage to the date of the separation, whatever may be the acquired assets of the spouses, those should be added together to form matrimonial property. The choice should be left to the parties for inclusion of the assets acquired before the marriage, into the matrimonial property. We submit Stridhan should not be included in the matrimonial property and should remain as her separate property. All the movable and immovable properties acquired during the coverture should be in the name of both the spouses. On separation, equal division should take place of such matrimonial property. If there are children, then the two should contribute equally for the creation of a fund for children.

The situations where there are less or no accumulated assets, the wife shall get 'compensation' (maintenance) from the husband as a right.

We submit that in deserving cases, the court may pass an order of maintenance restricting the period for which the wife should get it in addition to the share in the matrimonial property. The wife should try to become economically independent during this period. Depending on her potentials, such orders may be passed. However, her potential
capacity should not be the criterion for fixing the amount of
maintenance at the initial stage. Such time bound order, may
be reviewed and renewed in due course. We submit that such
orders might assure the effective enforcement of the
maintenance claim.

However, we are aware that such time bound orders of
maintenance would do real justice only when equal job
opportunities are provided to women. Mere equal job
opportunities also might not serve the purpose unless
circumstances are created where she will be looked upon by
the society as well by herself as an independent person.

Along with the legal right to matrimonial property,
one needs to consider the right of the wife to the
matrimonial home. Marriage deprives the daughter of her
right over the parental home to be used as a shelter. And
after marriage the wife's residence within matrimonial home
is strictly subject to her ability to keep on adjusting to
husband's family. And in case of breakdown of the marriage,
she has to leave the home. In such situations, there is a
need to protect at least the occupational right of the wife
in matrimonial home. Considering the socio-economic
situations and scarcity of housing, the need for shelter is
universal. But it is much more for discarded women because
they are 'women' and can not take shelter on pavements!

Apart from recognition of these new concepts, we
suggest that the amendments are required to be carried out in
the existing laws of maintenance. These suggestions are based
on the experience that we got while going through the trial court decisions. Majority of our suggestions regarding the secular law of maintenance under sec.125 of the Cr.P.C. are already included in the 132nd report of the Law Commission.

Amendments to the Existing Laws

1) The law should clearly make a provision for including socio-economic background of the parties while drafting the maintenance claims. This would certainly help to analyse the cases in a better way.

2) The law should recognise the right of maintenance of second wife which is not so today under sec.125 of Cr.P.C. and there are conflicting decision of the High Court on issue under sec.25 of the HMA.

3) The maintenance claim in matrimonial cases should not remain merely an ancillary claim as it stands today. It should be recognised as a right by itself. Women may be reluctant to approach the Magistrates' Criminal Court for securing their right to maintenance under sec.125. This problem may not remain where the family courts have come in existence as these courts have the jurisdiction to try the cases under sec.125 also. But at majority of the places such courts have not come in existence. Hence this suggestion.

4) There is another angle also for the above suggestion. At present, there are conflicting views of the High Courts regarding whether maintenance should be granted or not, on dismissal of the marriage petition. If the marriage petition is not decreed in favour of the petitioner, the majority of
the High Courts refuse to grant maintenance to the wife because her claim is ancillary to the main claim in the marriage petition. We submit that if the ancillary nature of maintenance remedy is removed, this problem will be solved automatically.

In other words, we submit that non-decreeing the marriage petition should not be an obstacle in awarding maintenance under the matrimonial laws.

5) The law should make a provision that maintenance shall be granted from the date on which the wife was required to leave the matrimonial home. Today the law awards it from the date of the order of the court as a general rule.

6) There is also a need for making a specific provision for interim maintenance under sec.125. The Supreme Court has given a decision that interim maintenance should be granted under Sec.125\(^1\). It is found that the decisions of the Supreme Court do not percolate down to the mofussil town courts and their Bars. therefore, enactment of a legislative provision might be better. The interim maintenance should specifically cover the cost of travelling and lawyers fees also.

7) The statutory ceiling of Rs.500 incorporated in sec.125(1) should be deleted. It has become irrelevant because of inflation and rise in the cost of living. Besides incorporating a statutory ceiling which can not be updated without amending the law from time to time is impracticable. Consequential amendments will also have to be made in sec.127(1).

8) It needs to be clarified by adding an explanation to
s 125(1) that having a pure temporary job should not
disentitle a woman from claiming maintenance. It further
needs to be added that her earnings should be taken into
account while fixing the amount but merely having some
earnings irrespective of how much, should not disentitle her
from claiming maintenance. The explanation should also
mention that the amount of maintenance should take cognizance
of future emergencies and provide for it.
9) First proviso to sec.125(3) disabling a claimant from
recovering the maintenance amount on expiry of one year
should be deleted.
10) Proviso to sec.125(3) pertaining to considerations of the
offer of the husband to maintain the wife after the passing
of the order should be deleted.
11) In determining the amount of maintenance apart from
personal income of the husband if he has any, other resources
should be considered.
12) To avoid the problems in recovering the maintenance
ordered under sec.125, the husband should be asked to deposit
the allowance for a period upto six months, in advance, in
fit cases.
13) The order of maintenance should be issued against the
employer of the person liable to pay the monthly allowance.
The employer should be directed to deduct from the salary of
such person a sum equivalent to the amount of maintenance
ordered by the court.
14) The husband shall not be absolved from his liabilities to
pay maintenance even if he is sent to jail under sec.125(3).
There is a supreme court decision to this effect but it needs to be incorporated into the statutory law\textsuperscript{15}.

15) A nominal court fee shall be charged for filing a maintenance claim under any of the existing laws. This suggestion has a particular reference to Sec.18 of the HAMA. A wife is required to pay heavy court fee for claiming under Sec.18(2) of the HAMA. This court fee either should be abolished or should be brought on par with the other maintenance laws.

16) Sec.125 of the Cr. P.C. shall be made applicable to the Muslim divorcees.

17) Lastly, we submit that there should be one uniform law of maintenance for all the persons irrespective of the religion to which they belong. Uniformity of the law and procedures should be a fundamental aim of any justice system if the intention is to provide a service that is comprehensible and consistent, efficient, accessible and fair.

18) We may make a passing reference here to the recent development that has taken place under the English Law regarding the ex-wife’s right to maintenance\textsuperscript{16}. The matrimonial and Family Proceedings Act of 1984, has introduced a number of changes in the divorce law. But the most widely publicized aspect of the legislation has been reduction of the husband's financial liabilities towards their ex-wives. The change in legislation is based on a view of ex-wives as drones and parasites content to live off their poor, hardworking husbands who are probably struggling to keep a new family whilst paying out large sums to their work-shy former wives. This outrage against such women is further
fuelled by the belief that, in the days of equality, women can not demand the advantages of liberation and independence without accepting the disadvantages of self-sufficiency.

However, it is to be noted that this new enactment reducing the husband's liability to pay maintenance to his wife, is criticised vigorously even in England.

In near future, it is quite likely that the demand may be made to amend the Indian Law on the basis of the English Law. However, we feel strongly that so long as women continue to suffer from inequality and economic dependence, there is no question of applying the English legal principles to Indian Law. The fact that the overwhelming majority of women have not achieved financial independence will have to be borne in mind by our legislatures, in case such demand comes up in future!

Epilogue

The focus of this study was on women's problem of maintenance which arises after the breakdown of marriage. The right to maintenance has a direct corelation to economic dependence of women on men. This economic dependence of women is purposely perpetuated by restricting their activities within the household. The household work is neither respected nor treated as a productive gainful work. The status conscious society has always weighed in favour of man's productive activities and his actual earning capacities. In consequence, in the development process women have been
marginalised to a great extent. Development is a total concept embracing the political, economic, social, cultural, legal and other dimensions of human endeavour. It entails specifically the development of national economic resources and the creation of conditions appropriate for physical, moral, intellectual and cultural growth for individuals and groups. Participation of women in development thus, requires action, leading to changes in attitudes and in the roles of men and women. The rights and roles of women have always been treated as secondary in the sphere of economic activities. The visibility of middle-class women in white-collared occupations has led to an illusion of their progress, hiding the stark reality of more and more marginalisation of the majority of women. The impact of transition to a modern economy has meant the exclusion of an increasing number and proportion of women from active participation in the productive process. The majority of those who participate do not receive equal treatment, security of employment or humane conditions at work. A very large number of them are subject to exploitation of various kinds. Legislative actions initiated to curb this, have made some impact in the organised sector. But the vast unorganised sector, where majority of the women work force is concentrated, suffers a lot in every way and there is absolutely no protection provided for conditions of work, wages or opportunities. In order to release women from their dependent and unequal status, improvement of their employment opportunities and earning powers has to be given
the highest priority. The contributions made by the housewife to the running and management of a family will have to be admitted as economically and socially productive and contributing to national savings and development. Marriage and motherhood should not become disabilities preventing women from fulfilling their full and proper role in the task of national development. Therefore, the obligation of child rearing should be shared by the mother, the father and the society. Disabilities and inequalities imposed on women will have to be seen in the total context of a society, where large sections of the population male and female, adults and children, - suffer under the oppression of an exploitative system. It will not be possible to remove these inequalities for women only. Any policy or movement for the emancipation and development of women will have to become a part of a total movement for removal of all inequalities and oppressive social institutions. Such were the guidelines evolved by the committee on its own, for analysing the status of women in India\textsuperscript{19}. The committee submitted its report in 1974. Today, in 1992 not much has been done in pursuance of fulfilling the above mentioned recommendations! The National Perspective Plan for women 1986-2000 was submitted to the Government of India in 1988. The NPP emphasised developmental strategies rather than welfaristic approach for improvement of the status of woman. The plan pointed out that gender based injustice would not be mitigated merely by allocating more resources for women within the prevailing patterns and structures of development but it would require an alternative
strategy of national development.

The National Commission of Self Employed Women and Women in the Informal Sector, appointed by the Government, also submitted its report in 1988. It was the first time that a national commission was appointed to focus attention on poor women and their economic oppression. The commission pointed out the plight of the majority of women working in the unorganised sector. The commission strongly recommended that for improving the economic status of poor women, there was need to devise concrete strategies to help enhance the ownership of the control over productive assets by these women. A plot of land, housing, free pattas, animals, licence, bank accounts were some of the aspects which the commission pointed out. Number of other suggestions were made by the commission in improvement of the economic status of women. But so far nothing has been to comply with these recommendations of the commission.

In 1989 another enactment viz. the National Commission for Women Act was enacted. The commission is expected to work at three levels:

a) to review the existing laws from the point of view of gender justice and to suggest necessary amendments therein.
b) to provide guidelines to Parliament for improving the status of women and lastly,
c) to act as grievance redressal forum.

The commission has to perform a stupendous task. Recently, a chairman for this commission has been appointed.
The resources and the manpower with which it has to work seem to be very scanty. The task before the commission is ambitious and challenging. Let us hope that in near future, the necessary dynamic affirmative action programme will emerge through its working which will help improve the status of women.

Empowerment of Women

The Constitution of India proclaims equality among all citizens. But our social structure being patriarchal where women are treated subordinate to men in all walks of life, legal equality is not translated into reality. The gap has remained between the theoretical propositions and their actual realisations. The circumstances have not been created in which a woman can believe that she is a person and her sex is not secondary. She still considers her femininity as a handicap. The virtues which are prized in her and which she is conditioned to prize in herself are not calculated to help her to be independent in thought or action. She is made to believe that she is not an independent individual person in her own right but her existence is always dependent on some male relation. It is not a situation in which she can stand up and exercise the rights which the constitution envisages that each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. It also visualises that social and economic inequalities are to be arranged so that they are both a) reasonably expected to be everyone's advantage and b)
attached to positions and offices open to all. One of the measures to bring this dream into reality is to empower people and particularly women. Empowerment from gender justice perspective means acquisition and exercise of competence to utilize the existing system for securing the entitlement provided therein, to challenge and even alter it wherever necessary in order to bring about a more just and equitable distribution of resources and entitlements. We will have to add various inputs for achieving it. There are three critical dimensions which are part of a process leading to the acquisition and exercise of power. The process begins with the development of consciousness about issues, leads to organisation and finally results in mobilization.

At the first level are those activities geared toward raising individual consciousness. They are primarily focussed on developing an understanding of the problem, viz. women's subordination as manifested in a variety of issues, at the level of personal awareness. Activities geared towards raising individual consciousness cover spreading of knowledge about her 'individuality', creating self-respect in her, spreading legal literacy, creating legal awareness to use law. At the second level is organisational consciousness. Understanding of the problem moves from the individual toward the group and an identification with other women as objects of injustice or discriminations. This collective element is manifest in activities which increase the capacity of women to work together for the achievement of common goals based on a common understanding of the problem. This certainly helps
build self confidence.

The third level is mobilization. The collective skills and resources of the group are translated into action to produce the desired changes. This process certainly covers the political empowerment which needs the skills of articulating grievances and executing influences.

To achieve the goal of empowerment, the educational component is the most important one. Ignorance breeds powerlessness. Therefore education is an important input for empowerment. Education enables women to reflect on themselves and their roles and to develop the capacity to participate rationally, critically and democratically in the process of development.

Thus through their empowerment women will be sensitised to their inherent rights and their status. They will secure the enjoyment of their legal rights and will fight for redressing injustices. Through their empowerment they will make the bureaucracy accountable and also responsive to women's issues.

However, to accelerate this process of empowerment, deliberate and planned efforts are necessary. Responsibility of this acceleration has to be shared by the State and the community. We therefore, urge that community organisations, particularly women's organisations, should mobilize their activities towards this process. They should mount a campaign for raising consciousness about the identity of women, for
disseminating information about the legal rights of women to increase their awareness, organising them to fight collectively against injustices and to assert their rights and finally for mobilising them to produce the desired social change.

Women's movement does exist in India today. But it is of a recent origin and is mostly urban based with no grassroot connection. A lot has to be done to achieve the perfect equality. This responsibility has to be shared by all those who believe in gender justice. A major role will have to be played by non governmental women's organisation. However, these organisations must bear in mind that women's problems are part of the larger societal problems and are essentially linked with the structural and value systems that needs to be changed. In a transition from an unequal and unjust social order to an equalitierian and just social order, all under privileged sections of society have to ascend in vertical order. But such ascend does not come automatically. It is required to be planned and programmed. Here the law acts as an instrument of social engineering. A law will not be made in a democratic policy unless there is sufficient political compulsion for its enactment. Women's organisations will have to supply such impetus for legislation and its enactment and enforcement. Simultaneously, they will have to evolve a programme to sensitize the lawyers, judges, bureaucracy and people's representation about women's issues.

In sum, the law can be used as an effective - though not sufficient - means to promote structural, attitudinal and
behavioral changes to promote women's empowerment. Let us hope, that the women's movement in India, will adopt all these suggestions to raise the status of women.
Notes


4. See Chapter VI part 1.

5. Ibid.


10. See sec 10(3) of the Act.

11. *Supra Note 6* p.141.


Shama Chatterjee, "In Quest for Shelter", *Lex Et Juris*, June 1989, p.36.


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