CHAPTER V

VIOLATION AGAINST WOMEN AND REMEDIES

Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. Violence against women and girls includes physical, sexual, psychological and economic abuse. It is often known as “gender based” violence because it evolves in part from women’s subordinate status in society.¹

5.1 Violence Against Women

Violence against women exists at three levels. The first is the physical battering that leaves a woman bruised and with broken bones. The second kind of violence is the mental violence, where a woman’s self-esteem is whittled away through piercing derogatory words till it is systematically eroded. The third kind of violence is where a woman is made to lose her self worth, self-esteem and brought to the level of self-denial, such that she accepts violence as part of her everyday life.²

Women all over the world face violence in one form or other with varying degrees. Women are constantly subjected to harassment. They face many forms of violence they are domestic abuse, wife-beating, sexual harassment in work place, rape, trafficking in women, forced prostitution and so forth. It constitutes hostile physical and psychological acts. It is also in the form of threats that target women by reason and sex alone. Violence against women also manifests as an act of aggression against the self such as suicide, self mutilation and negligence of ailment, etc.³

² Ibid., pp.52-53.
5.1.1 Sati

One of the worst ordeals which the women were forced to undergo was sati. It was not universal in Tamil country. It was confined mostly to Tanjore and Trichirappalli districts alone, though a few cases occurred in other districts too. During the medieval period this evil practice prevalent many places in Tamil Nadu. In the beginning of the nineteenth century public officers were authorized to allow the performance of the rite, if it was applied for. The widow was administered intoxicating drugs to get her consent when she was in a state of drunkenness. Such conditions provoked the sympathy of some of the officers who wanted to exterminate this abominable rite.

In Madras the proposal to abolish it was first brought forward by G.M. Lushington, who, as Magistrate of Tanjore in 1813 and of Trichirappalli in 1819 recommended its suppression. In a letter to the government, he described how a widow had burnt herself in Tanjore before it could be known to the police and he requested the government to authorize him to prevent the rite. Humanitarian and Missionary societies in England evinced great enthusiasm in curbing this practice and it was in such an atmosphere that enquiries on sati were instituted in Madras.

Matters took a different turn when Bentinck became the Governor-General. He issued his famous minute on sati in 1829, by which the sati was made illegal. As soon as the Regulation XVII of 1829, prohibiting sati was announced, Stephen Rumbold

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6 Judicial Consultation, Dated 14 August 1813.

7 Judicial Consultation, Dated 31 August 1813.

Lushington, the then Governor of Madras, wrote a minute that the practice of sati, of burning or burying alive the widow of Hindus, illegal and punishable in the criminal court. After 1830, the cases of sati became very rare and a thing of the past.\(^9\)

As the result of the opposition, the **Commission of sati (prevention) Act 1987** was passed. Under this Act Commission of Sati and its glorification and for matters connected therewith or incidental to such an abatement is punishable with the maximum penalty i.e. death or imprisonment of life. Imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees. This Act is more effective for the abolition of the inhuman practice sati.\(^10\)

### 5.1.2 Child Marriage

Another cause which curbed the free growth of women was child marriage which fortunately was least prevalent in the Madras presidency. It was a more serious crime than sati, for the practice of sati involved only a few minutes of suffering, while child marriage plunged a girl into a life of suffering from the moment of her birth till her death, as child wife, child mother and very often a child widow.\(^11\)

According to the census of 1921, 24.5 per cent of Hindu girls between the ages of 10 and 15 were married.\(^12\) The practice of child marriage was common among Brahmanas, the usual age of marriage was between 7 and 10. The average age of

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\(^12\) Report of the Age of Consent Committee, 1929, p.53.
marriages for females among Brahmana was between 6 and 7. In addition to Brahmanas, among many non-brahmana castes also, it was in vogue.\textsuperscript{13}

Early marriage led to early maternity and early maternity was a great evil. It contributed very largely to maternal and infantile mortality, in many cases wrecked the physical system of the girl and generally led to degeneracy in the physique of the race. Let as compare the case of sati which was prevented by legislation with the case of early maternity.\textsuperscript{14}

Another evil connected with Hindu marriages was ill-sorted marriages. Young girls were married to bed-ridden old men due to economic and other necessities. The unhealthy result of early marriages and ill-sorted marriages ended in child widowhood. Widows in Hindu society were the victims of perpetual misery and humiliation and were not allowed to remarry however young they might be.\textsuperscript{15} The census report of the Madras presidency, 1891, the total population out of 10,000 there were 1916 widows among all castes, i.e., of the whole population 19.6 per cent were widows nearly 1/5 of the population.\textsuperscript{16}

As the result of the opposition, the \textbf{Child Marriage Restraint Act, 1929} was passed to eradicate the evil of child marriage. The objective is to eliminate the special evil which had the potentialities and dangers to the life and health of a female child, who could not withstand the stress and strain of married life and to avoid early deaths of such minor mothers. It extends to the whole of India except the state of Jammu and

\textsuperscript{13} G.O. No. 2249, Public Proceedings, Dated 24-09-1885, p.14.

\textsuperscript{14} P. Subramanian, \textit{op.cit.}, p. 80.

\textsuperscript{15} Proceedings of the Madras Government Public Department, 25 January 1871, p.97.

\textsuperscript{16} Census of Madras Presidency, Vol. XVIII, 1891, p. 129.
Kashmir and it applies also to all citizens of India within and beyond India. It came into force from first April, 1930.\textsuperscript{17}

The Child Marriage Restraint Act 1929 restrains the solemnization of child marriages. Under this act ‘child’ means a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age. ‘Minor’ means any person below 18 years of age. Whoever, being a male above 18 years of age and below 21, contracts a child marriage shall be punishable with simple imprisonment which may extend to 15 days, or with fine which may extend to 1000 rupees, or with both. Whoever, being a male above 21 years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.\textsuperscript{18} \textbf{Child Marriage Restraint Act, 1976} raised the age for marriage of a girl to 18 years from 15 years and that of a boy to 21 years and makes offences under this act cognizable.\textsuperscript{19}

5.1.3 Devadasi System

Another important evil practice on women is the devadasi system. The status of women was further lowered by the introduction of the devadasi system. Originally the devadasis were young women attached to the temples to raise funds for the temples through musical and dance performances.\textsuperscript{20} The devadasis seemed to have held a considerable position in the Tamil Country. In medieval period many parents used to offer their daughters to the temple priests during the times of hardship and

\textsuperscript{17} The Gazette of India, Ministry of Law and Justice, Part- II, Section- I, Government of India Press, New Delhi, 2007, p.6.

\textsuperscript{18} Hajira Kumar and Jaimon Varghese, Women’s Empowerment- Issues, Challenges, strategies, New Delhi, 2005, p.254.


\textsuperscript{20} Joy Gnanadason, A Forgotten History, Madurai, 1998, p.36.
famine.\textsuperscript{21} In the quarter of the twentieth century 1927, there were more than 20,000 devadasis in Madras Presidency.\textsuperscript{22} Dr. Muthulakshmi Reddi wanted to do away with the practice despite much opposition in the legislature. Her undaunted will, ceaseless efforts and perpetual persuasion, the Bill was passed into a Law on first February, 1929.\textsuperscript{23}

As the result of the opposition, the Abolition of Devadasi Act, 1929 was passed. It abolished taking care of Devadasi and to prevent the young girls from prostitution, the central government had brought a constitution in 1912 and 1913. After 1917 Dr. Muthulakshmi Reddy had played a vital role to bring an act in the parliament. In 1922 the people used to keep the young girls in the temples and made them as Devadasees. This thing was restricted and the act was brought in the parliament. Even then the Devadasi system could not be controlled.\textsuperscript{24}

In Tamil Nadu Dr. Muthulakshmi Reddy had taken some steps to rearrange the Hindu Act and they had abolished the Devadasi system. They cancelled the scholarship for Devadasees. By this act, punishment was given to those who encouraged the Devadasi system. They told the Devadasees to get married and live like other people. This had been a role model for Tamil Nadu and other Hindu societies. In 1929 this act had controlled the Devadasi system. In 1930, at Chennai, Chennai prostitution Abolishment act was passed. By this, many of the girls were protected from men. In 1947, Devadasi Abolishment Act was passed in the Indian Parliament. By this, the young girls kept in temples got abolished. In temple celebration, the dancing of girls were cancelled. It was a dead letter for long. It was

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\textsuperscript{21} P. Kamalesh Kumari, Women of Tamil Nadu, Madras, 1990, p.37.
\textsuperscript{22} Proceedings of the Madras Legislative Council, Vol. XXVI, 1929, p. 622.
\textsuperscript{23} New India, English Daily, 13 February 1930, p. 8.
\textsuperscript{24} Pinnalur M. Vivekanandan, Magalir Maenmiyum Satta Urimaigalum (Tamil), Chennai, 2004, p.105.
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totally abolished only by the Madras Act XXXI of 1947 by which the dedication of Hindu women to the temples became illegal.25

5.1.4 Sexual Abuse

Women suffer sexual harassment in the form of eve-teasing, body-touching, vulgar remarks and humiliation. Sexual abuse has kept women in a constant state of exasperation and humiliation and it restricts their freedom. Sexual harassment accounts for about 10-14 per cent of the crimes committed against women. The streets are lurking corners for road side Romeos who would, just for the thrill of it, brush against a woman or make cheap suggestive remarks and gestures, being confident that the hapless woman would do little to raise an alarm. Streets, public transports or even public places are seething cauldrons for sexual assaults and perverted acts. This kind of disgrace to women contributes to her inability to report the culprits and display her inner power and independence.26

Sexual harassment in the workplace is a growing concern for women. Employers abuse their authority to seek sexual favours from their female co-workers or subordinates, sometimes promising promotions or other forms of career advancement or simply creating an untenable and hostile work environment. Women who refuse to give in to such unwanted sexual advances are dismissed. But in recent years, many women have been coming forward to report such practices. Some are even taking their cases to court.27

25 Rosapoo and Kalyana Sundari, India Mahaliriyal (Tamil), Madurai, 2005, pp. 68-69.
26 Nirmala Jeyaraj, op.cit., p.48.
27 Ibid., p.49.
Tamil Nadu Prohibition of Harassment of Women Act, 1998 was passed by the government of Tamil Nadu against men who tease women. By that in schools, temples, churches, bus stops, roads, theatres, parks, celebration places, public work places or any other places if any boy teases a girl or does any of the bad things if will be taken as a sinful act. They will be given 3 years of imprisonment or a penalty of Rs. 10,000 fine. Otherwise they will get both the punishments together.\textsuperscript{28}

5.1.5 Kidnapping and Abduction

Kidnapping is taking away or enticing of a minor without the consent of the lawful guardian.\textsuperscript{29} Kidnapping and abduction have become an everyday problem in our society. It is shocking to see from the newspaper reports that countless girls and women are kidnapped or abducted for economic reasons or for pushing them into the den of prostitution. 80\% girls who are kidnapped are raped and sent to harems. There occur numerous deaths due to rape, suicides after rape and social pressures. Many girls become mentally deranged or develop psychological disabilities after being kidnapped, molested or raped. Many are murdered after being kidnapped for fear of being prosecuted or punished. The problem has been aggravated by slow legislative functions, silent women victims, social attitude towards the victims and lack of community support for the victimized women.\textsuperscript{30}

The volume of abduction in India is 2.0 per one lakh population. Among the victims abducted/kidnapped every year, 86.5\% are females and 13.5\% are males. Unmarried girls are more likely to be victims of abduction than married women. The


\textsuperscript{29} Madhusudan Pandit, \textit{op.cit.}, p.172.

\textsuperscript{30} Nirmala Jeyaraj, \textit{op.cit.}, p. 49.
two most important motives of abduction are sex and marriage. Abduction with an economic motive constitutes hardly one-tenth of the total abduction.\textsuperscript{31}

5.1.6 Eve-Teasing

Eve-teasing is an act of terror which violates a woman’s body and self respect. It is one of the many ways through which a woman is systematically made to feel inferior, weak and afraid. Eve-teasing has been defined as when a man by words either spoken or by signs and or by visible representation or by gesture does any act in public place or signs, recites or utters any indecent words or songs or ballad in any public place to the annoyance of any woman.\textsuperscript{32}

Eve-teasing and ragging are serious menaces in our society. Eve-teasing occurs mostly around women’s colleges, hostels, schools, bus stands, roads, park, beach, cinema halls and when women commute in buses or trains. Some who have been more seriously affected by eve-teasing do not have the courage to complain to the police. Some women have experienced that complaining to parents or authorities regarding eve-teasing has led them into further serious problems such as harassment or blockades on the road.\textsuperscript{33}

As the result of the opposition, the \textbf{Tamil Nadu Prohibition of Eve-Teasing Act, 1999} was passed. Under this Act whoever commits or participates in eve-teasing in any place of Tamil Nadu shall be punished with imprisonment for a term of one year or shall be liable to be fined which may extend to Rs. 1,00,000 or both.\textsuperscript{34}

\begin{itemize}
\item[31] Madhusudan Pandit, \textit{op.cit.}, pp.172-173.
\item[33] \textit{The Hindu}, English Daily, 12 October 2006, p.8.
\item[34] Nirmala Jeyaraj, \textit{op.cit.}, pp.50-51.
\end{itemize}
Replying to the discussion on the Tamil Nadu Prohibition of Eve-teasing Bill, Law Minister Aladi Aruna said it was introduced after carefully analyzing the situation in view of the tragic death of Sarika Shah, of Ethiraj College for women in Chennai, after an eve-teasing incident. Her death had shocked people and it was the duty of the Government to protect the modesty of women, besides giving them due respect and honour. But this violence still continues.\(^35\)

### 5.1.7 Ragging

Ragging means display of noisy, disorderly conduct doing any act which causes or likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution. It includes teasing, abusing of, playing practical jokes on, or causing hurt to such student or asking the student to do any act or perform something which such student will not in the ordinary course willingly do.\(^36\)

As the result of the opposition, the **Tamil Nadu Prohibition of Ragging Act, 1997** was passed. Under this Act, ragging within or outside any educational institution is prohibited. Whoever directly or indirectly commits, participates in, abets or propagates ragging within or outside any educational institution, shall be punished with imprisonment for a term which may extend to two years and shall be liable to a fine which may extend to ten thousand rupees.\(^37\)

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\(^35\) Pinnalur M. Vivekanandan, *op.cit.*, p. 108.


5.1.8 Rape

Rape is the most brutal form of aggression against women and it shakes the foundation of life of the victim. It is violation of a female’s integrity and dignity as a person. It is referred to as robbing a woman of her chastity, dishonouring her. Rape is the only crime in which the victim faces more degradation and social unacceptability and is often described as “Deathless shame” or “Living death”.\(^{38}\) Rape can occur anywhere, even in the family, where it can take the form of marital rape or incest. It occurs in the community, where a woman can fall prey to any abuser. It also occurs in situations of armed conflict and in refugee camps. Rape is the most heinous crime committed against womanhood. All crimes mentioned in the Indian Penal Code, rape is the most dehumanizing. While certain mitigating circumstances may be there to justify murder, rape cannot be justified. Rape is the only crime where the victim is also suspected to have colluded with the crime.\(^{39}\)

Age-wise, the percentage of victims of rape is highest in the age group of 16 to 30 years that is 64.1%. The victims below 10 years are 2.6%, victims between 10 and 16 years are 20.5%, and victims above 30 years are 12.8%.\(^{40}\) It is not only the poor girls who become rape victims but even the employees belonging to the middle class are sexually humiliated by their employers. Even deaf and dump, lunatic and blind, and women beggars are not spared. Women who come from the low-middle class and who are the main bread winners of their families bear sexual abuse silently and without protest. The age group of 15-20 years has the highest rate among victims while the offenders are mostly in the age group of 23-30. Youth is, thus, the main consideration in selecting victims.\(^{41}\)

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\(^{39}\) Nirmala Jeyaraj, *op.cit.*, pp.47.

\(^{40}\) Madhusudan Pandit, *op.cit.*, p.171.

\(^{41}\) Ahuja, Ram, *Crimes against Women*, Jaipur, 1897, p.127.
5.1.9 Prostitution and Traffic in Women

There are no licensed houses for prostitutes in Tamil Nadu. The Madras Suppression of Immoral Traffic Act V of 1930, suppresses this anti-social action in Tamil Nadu. The problem of prostitution has also to be solved outside the prison bars, by social rehabilitation work. It is a mental and moral sickness. Such unfortunate women who are found to be stealthily engaged in prostitution are rescued from the vicious trade by official as well as non-official agencies, and for this work the Madras State has a well organized vigilance service. Rescue homes are provided for those unfortunate women, to whom shelter and training in a useful craft are being given. The Association for Moral and Social Hygiene in India promotes the cause of improving the lot of the fallen sisters.42

As the result of the opposition, the Suppression of Immoral Traffic in Women and Girls Act, 1956 was passed. This Act prohibits trafficking in women and girls for purposes of prostitution as an organized means of living. The Act was amended in 1978 and further amended in September 1986 with the objective of making the penal provisions in the Act more stringent and effective.43 The Amendment Act is retitled as “The Immoral Traffic (Prevention) Act, 1986” and the salient features of this Act are widening the scope of Act to cover all persons whether male or female, who are sexually exploited for commercial purposes, enhancement of period of imprisonment where offences are committed against minors and children, appointment of Trafficking police Officers, who will have the powers to investigate inter-state offences, prescribing punishment as laid down for rape under the Indian Penal Code or the seduction of victims of trafficking while in custody, interrogations

42 A. Ramaswami, Gazetteer of India, Tamil Nadu State, Ramanathapuram District, Madras, 1972, p. 177.

43 Sankar Sen, op.cit., p.117.
of women and girls removed from the brothels to be held by women police officers or in their absence in the presence of women social workers, and setting up of special courts.\textsuperscript{44}

5.1.10 Dowry Deaths

The dowry system is fairly prevalent among all the castes and communities in Tamil Nadu. The amount of dowry depends mainly on the social status, education, occupation and wealth of the proposed bridegroom. The amount is paid either in cash or in the form of gold or jewellery or property.\textsuperscript{45}

Most dowry deaths occur in the privacy of the husband’s house and with the collusion of the family members. In dowry deaths, middle class women suffer a higher rate of victimization than lower class or upper class women. More than 70% victims belong to 21-24 years age group, that is, they are mature not only physically but socially and emotionally also. The composition of a family plays a crucial role in bride burning cases.\textsuperscript{46}

As the result of the opposition, the Dowry Prohibition Act, 1961 was passed. It extends to the whole of India except the state of Jammu and Kashmir and it applies also to all citizens of India within and beyond India. The Act was amended in 1984 to make the offence cognizable, to enhance the penalty both fine and imprisonment and to widen the scope of the Act to make it more effective.\textsuperscript{47} The Act was further amended in 1986 to make the penal provisions more effective and stringent. The

\textsuperscript{44} Mehartaj Begum, \textit{Human Rights in India}, New Delhi, 2000, p.176.

\textsuperscript{45} A. Ramaswami, \textit{op.cit.}, p. 175.

\textsuperscript{46} Madhusudan Pandit, \textit{op.cit.}, pp.174-175.

\textsuperscript{47} Pinnalur M. Vivekanandan, \textit{op.cit.}, p.107.
minimum punishment for taking or abetting of dowry has been raised to 5 years and a fine or Rs. 15,000. The advertisement in newspapers, periodicals, etc. offering a share of property as consideration for marriage is punishable. The amendment proposes the appointment of dowry prohibition officers by the state governments. Offences under the Act have been made non-bailable.48

5.1.11 Sex- Selection

The population statistics of India shows that the number of females to males has been declining over the decades from 972 females per 1000 males in the 1901 census to 941 into 1961 census and further to 927 in 1991 census. Only as per the 2001 census, this number has slightly increased into 932 females per 1000 males.49

One of the reasons for the declining of the sex ratios is the incidence of sex selection, and or sex determination followed by sex selective abortions. This constitutes a grave form of discrimination against women as women are affected as being part of a social class. This is not a pro-life or pro-choice issue. A woman’s right to abortion has to be upheld on the grounds of promoting women’s rights to equality. The right to abortion is the right to abort any foetus. The abortion of a female foetus following a sex determination test is an act of discrimination. As this act of discrimination can not be committed without the active intervention of medical professionals, it is essential to strictly enforce Laws directed towards regulating the practice of medical professionals.50

48 Hajira Kumar and Jaimon Varghese, op.cit., pp.479-480.


As the result of the opposition, the **Per-Natal Diagnostic Techniques [regulation and prevention of misuse] Act, 1994** was passed. By this Act no one can check the baby inside the embryo of a mother if it is a boy or a girl by the method of Ultra Sona Graphy. Doctors do not have any power to use this method. If they do this, they will get 3 years imprisonment and to pay a fine of Rs. 10,000. Again if they do this they will get 5 years of jail and Rs. 50,000 as fine. Also their names and recognitions of their education will be cancelled for three years from the state medical registration record. Again if they do the same crime, their names will be cancelled permanently from the state medical registration record.\(^{51}\)

If any parent meets the doctor to know the sex of the baby, he or she also will get punishment. They will get 3 years of jail, and Rs. 10,000 as fine. Again if they do the same, they will be punished for 5 years and to pay Rs. 50,000 as fine. In this act, the criminals will be arrested without warrant and also the crime comes under non-bailable section.\(^{52}\)

### 5.2 UNO and Women Rights


\(^{52}\)Ibid., pp. 154-155.
forms of Discrimination against Women 1967 were the efforts prior to the international decade of women 1976-1985.\textsuperscript{53}

The UN declared 1975 as the International Women’s Year. The same year witnessed the First World Conference of Women in Mexico City.\textsuperscript{54} The Second UN International Conference held at Copenhagen in Denmark in 1980. The Third World Conference was held in Nairobi, Kenya, in 1985. The Fourth World Conference on Women was held in 1995, in Beijing.\textsuperscript{55}

The Universal Declaration of Human Rights is the first and overarching United Nations document on human rights which makes explicit reference to equality for women not only in its preamble but also in several articles. Convention for Elimination of All Forms of Discrimination against Women was ratified by the United Nations Organization on 18 December, 1979 and the government of India is an active participant. On 19 June, 1993 the Government of India acceded to convention for elimination of all forms of discrimination against women and reiterated that discrimination against women violates the principle of equality of rights and respect for human dignity of equality.\textsuperscript{56}

\textbf{5.3 Constitutional Protection of Women}

The Constitutional Law is the supreme law of the land. The Constitutional Law provides equal opportunity to both sexes. On the eve of the Constituent Assembly in November 1946, the Congress adopted a resolution declaring that it

\textsuperscript{53} Hajira Kumar and Jaimon Varghese, \textit{op.cit.}, p.310.

\textsuperscript{54} \textit{www.un.org}.

\textsuperscript{55} Hajira Kumar and Jaimon Varghese, \textit{op.cit.}, p.311.

\textsuperscript{56} \textit{Ibid.}, pp. 17-18.
stands for a Constitution wherein social objectives are laid down to promote freedom, progress and equal opportunity for all the people of India. In that way the women got their rights constitutionally.  

**5.3.1 Fundamental Rights**

Part III of the Constitution provides various Fundamental Rights such as Right to Equality, Right to Freedom, Right of personal Liberty, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and Right to Constitutional Remedies. These rights are equally available to both men and women. Out of these, rights which are more related with the dignity of women are as follows.  

**5.3.1.1 Right to Equality**

The Constitution guarantees the right to equality to every citizen of India. Article 14 of the Constitution embodies the general principles of equality before the law and prohibits unreasonable restriction between persons. It provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Both these expressions, ‘equality before the law’ and ‘equal protection of the laws’, aim to effectuate one of the objectives i.e., equality of status, enshrined in the Preamble of the Constitution. These expressions have also been used in Universal Declaration of Human Rights. The basic purpose of this right is that the law should be applied to all equally and there should be no discrimination between one person and another. 

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57 Hajira Kumar and Jaimon Varghese, *op.cit.*, p.220.  
Article 15 provides that the State shall not discriminate citizens on the grounds of religion, race, caste, sex, place of birth or any of them. Similarly, Article 15(2) prohibits discrimination on the above grounds with regard to access to shops, public restaurants, hotels, places of public entertainment; or use of wells, tanks, bathing places, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.\textsuperscript{60}

Article 15 empowers the State to make special provisions for the protection and welfare of women and children as they require special treatment on account of their very nature. Article 15(3), various laws have been made, such as establishment of educational institutions by the state exclusively for women, reservation of seats for women in educational institutions, special maternity relief to women workers, special treatment for women in matter of granting bail, special treatment under Factories Act and Mines and Minerals Act, authorising service of summons on men only, and special treatment to women on considerations of public morals and rectitude.\textsuperscript{61}

Article 16(2) of the Constitution provides that the State shall not discriminate citizens on the basis of religion, race, caste, sex, place of birth, descent, residence or any of the matters of public employment. Article 16 embodies the particular application of general rule of equality laid down in Article 14 with special reference to appointment and employment under the State. Thus, no discrimination can be made in matters of public employment merely on the basis of sex.\textsuperscript{62}


\textsuperscript{62} Latika Menon, \textit{op.cit.}, p.76.
5.3.1.1 Equal Political Rights

To effectuate the principle of equality of status in the Preamble and Article 14 of the Constitution, political rights have also been provided by the Constitution itself. Article 325 of the Constitution provides that no person shall be ineligible for inclusion in special electoral roll on the grounds of religion, race, caste or sex. Similarly, Article 326 provides for the elections to the House of the people and to the Legislative Assemblies of State to be on the basis of adult suffrage. Thus, it is clear from the above provisions that the Constitution has provided equal political rights to men as well as to women.63

5.3.1.2 Right against Exploitation

Article 23 of the Constitution prohibits traffic in human beings, meaning thereby selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Under Article 35 of the Constitution, Parliament has been empowered to make laws for punishing acts prohibited by Article 23. In pursuance of this power, Parliament has enacted the Suppression of Immoral Traffic in women and Girls Act, 1955 and 1986 to make the prohibition under Article 23 effective by providing punishment for the acts which result in traffic in human beings.64

5.3.1.3 Right to Constitutional Remedy

Article 32 of the Constitution, which in itself is a Fundamental Right, is nothing but an effective machinery to the enforcement of Fundamental Rights. It

63 Indian Constitution, Article 326.
64 Indian Constitution, Article 23.
provides that if any Fundamental Right is taken away or abridged by the State, a person can directly move to the Supreme Court (or High Court under Article 226) for the enforcement of his/her Fundamental Right. This right is available equally to men as well as to women.65

5.4 Women and Remedial Acts

The women of Tamil Nadu have far long laboured under legal, religious and social disabilities. Attempts were made to remove them slowly by means of legislative laws and also by social reforms.66 The merits of important women laws are given below.

5.4.1 The Hindu Women Property Act, 1937

The act is produced for the equal share for women from their parent’s property. The Hindu Women Property Act came into practice in 1937.67 By this, widow women get the equal share in joint family or if separated they are also eligible for the share of her family’s property. If it is the property of a husband, it can be shared among wife, child and mother. The widow can live with the property but she can not sell it. So after her death, it will naturally go to her male child.68

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65 Indian Constitution, Article 32.
66 Kavita Mishra, op.cit., p.139.
67 Rosapoo and Kalyana Sundari, op.cit., p. 64.
68 Kalyana Sundari, op.cit., p. 117.
5.4.2 The Special Marriage Act, 1954

The Special Marriage Act was passed in September 1954. This Act permits marriage of people from different religious faiths without changing their religion and it stipulates minimum age for marriage as 18 years for girl and 21 years for boys.\(^69\) This Act came into force on the first January 1955. It extends to the whole of India except the state of Jammu and Kashmir. It protects the rights of women in Tamil Nadu through marriages.\(^70\)

5.4.3 Hindu Marriage Act, 1955

This act fixes minimum age for marriage as 18 years for girls and 21 years for boys.\(^71\) The salient feature of this act is that it makes monogamy Universal. Special Marriage Act, 1954 and The Hindu Marriage Act, 1955 were amended in 1976 to provide for the right of a girl to repudiate. Cruelty and desertion were added as grounds for divorce and mutual consent were recognized.\(^72\)

5.4.4 Hindu Succession Act, 1956

The Act confers the right of absolute ownership over property and the women can make ‘Will’ leaving her share of property to the heirs. Section 10 of the Act provides for the property of an intestate being divided among the heirs in accordance with certain prescribed rules for the benefit of women. Rule 1 states that intestate

\(^{69}\) A. Ramaswami, \textit{op.cit.}, p. 175.


\(^{71}\) Kalyana Sundari, \textit{op.cit.}, p. 118.

\(^{72}\) Mohini Chatterjee, \textit{Feminism and Women’s Human Rights}, Jaipur, 2004, p.11.
widow or if there are more widows than one, all the widows shall take one share. Rule 2 states that surviving son and daughter and the mothers of the intestate shall each take one share. Rule 3 states that the heirs in the branch of each deceased son or each predeceased daughter of the intestate are also entitled to get one share in the property. This Act protects the rights of women in Tamil Nadu.  

5.4.5 Hindu Adoption and Maintenance act, 1956

This Act makes it permissible any female Hindu who is of sound mind and who is not minor and who is not maimed or if maimed whose marriage has been dissolved or whose husband is dead or has completely renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, to take a son or daughter in adoption. The consent of father and mother is necessary for giving the child in adoption unless otherwise. This Act is one of the important Acts to increase the rights of women in Tamil Nadu.  

5.4.6 Hindu Minority and Guardianship Act, 1956

The Hindu Minority and Guardianship Act was passed in 1956. Under this act, the consent of wife is required for adopting a son or a daughter. It extends to whole of India except the state of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this act extends and to those who are outside the said territories.  

 REFERENCES

73 Kavita Mishra, op.cit., pp.129-130.

74 Kavita Mishra, op.cit., p.130.

5.4.7 The Maternity Benefit Act, 1961

This Act is applicable to every establishment, plantation, mine or factory which provides with payment of maternity benefit at the rate of average daily wages for the period of women’s actual absence. The Act was amended in April, 1976 to cover women, who do not fall within the purview of the Employee’s State Insurance Act, 1948. A proposal to further amend the Act is under consideration of the Labour Ministry.76

It may be added here that the Employees State Insurance Act, 1948 guarantees that all factories should provide sickness benefit, maternity benefit, medical and funeral benefit. Similarly Factories Act, 1948, Plantation Labour Act, 1951, Mines Act, 1952, which have co-relationship with women benefit, prohibit the employment of women from 7 p.m to 6 a.m. in factories, mines and plantation, and regulate the working hours and certain provisions for women’s safety and welfare. The government is authorized to fix the maximum load that they may be lifted by women and to open crèches also.77

5.4.8 The Equal Remuneration Act, 1976

This Act provides not only payments of equal wages for the same work of a similar nature, but also for a machinery for its implementation and advising the government to ensure increased employment to women. This Act is under further review for the benefit of women.78

76 Kavita Mishra, op.cit., p.131.
77 Pinnalur M. Vivekanandan, op.cit., p.136.
78 Kavita Mishra, op.cit., p.132.
5.4.9 The Contract Labour (Regulation) Act, 1978

This Act regulates the working conditions of contract labourers which includes women’s payment of wage and provides for welfare facilities and crèches for the children of working women engaged in construction work. It protects the rights of poor women workers in Tamil Nadu.\textsuperscript{79}

5.4.10 Criminal Law Amendment Act, 1983

The Indian Evidence Act, the Indian Penal Code and the Criminal Procedure Code were amended in 1983 to make the crimes against women much more stringent and effective and also to make a new provision in the Indian Penal Code to make cruelty against women by her husband or any relative of her husband punishable with imprisonment for a term which may extend to three years and also with fine. Wilful conduct of such a nature by the husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her, and harassment of a woman by her husband or by any relative of her husband with a view to coercing her or any relative to meet any unlawful demand for property would be punishable as cruelty.\textsuperscript{80}

5.4.11 Women’s Concession when they are Arrested

The Indian Constitution and the Indian Punishment Acts are equal for everyone but the women have several concessions. They are:

1. If any woman has to be checked before she is found guilty, she should be checked only by another woman.

\textsuperscript{79} Ibid., p.133.

\textsuperscript{80} Ibid., p.134.
2. If a woman should be taken as eye-witness, she will be asked questions when she is in her place.\textsuperscript{81}

3. No woman should be arrested after the sunset and before the sunrise.

4. If their mistake is minimum, they should be sent on bail immediately.

5. If any woman is to be checked in police station, she should be checked only by the woman police.

6. After the arrest, she would be put in the women’s jail in the police station. If there is no separate room for women, she should be shut in another room with their relatives. If there is no relative, any woman worker can stay with her.

7. If she needs medical checkup, it should be done by a Lady Doctor.

8. The traditional jewels like ‘thali’ or ‘ring’ should not be taken from the women, when they are in the jail.\textsuperscript{82}

**5.5 Reservation for Women in Panchayats**

In Tamil Nadu the two-tier system of panchayats operated very well till 1975 and elections were held regularly. Subsequently, the tenures of the Panchayat Unions and Village Panchayats were extended up to 1.2.1977 and 12.9.1979 respectively.\textsuperscript{83} Thereafter, Special Officers (Block Development Officer for all the Village Panchayats in a Block and Divisional Development Officer for all the Panchayat Unions in a Division) managed the rural Local Bodies till the next elections in 1986.\textsuperscript{84}

\textsuperscript{81} The Times of India, English Daily, 27 July 1989, p.9.

\textsuperscript{82} Pinnalur M. Vivekanandan, \textit{op. cit.}, p. 155.


\textsuperscript{84} D. Janaki, \textit{Women’s Issues}, Chennai, 2001, p. 120.
In 1989 an amendment was introduced to reserve 30% of the total seats at the level of the Village Panchayat for women. In 1991, by another amendment, it was stated that if women were not elected to these seats, women could be co-opted to ensure 30% representation in the Village Panchayats. Depending on the number of Village Panchayats in a panchayat union, a maximum of five seats were to be filled by women in the Panchayat Union Council. In addition, the District Collector could nominate a maximum of two women to the Panchayat Union Council.\textsuperscript{85}

During the 50 years of Independence, all the political parties seem to have reached a consensus to give women their due share in the exercise of political power by providing them reservations in the National and State Legislatures. Accordingly 81 Constitutional Amendment Bill was introduced on 13 September, 1996 in Lok Sabha and State Assemblies for women. Several opposition leaders objected to the Bill and demanded for the allotment of special quota for women belonging to the OBC’s. They have also resorted to lot of violence to stall the introduction of the Bill. Hence the Government was forced to withdraw the Bill. The next Government also introduced the Bill in Rajya Sabha which had also met with the same fate. It is a drastic step taken by the central government for the upliftment of women.\textsuperscript{86}

5.5.1 Constitution (73 Amendment) Act, 1992

In 1992, the 73 and 74 Amendments of the Indian Constitution were passed to honour Article 40 of the Directive Principles to establish institutions of self-government for the upliftment of villages. The amendments incorporated in two chapters, IX and IXa, of the constitution were supported by all members of parliament across party lines barring one who dissented on technical grounds. The amendments


indeed went further than Article 40, in their social sweep and significance, by providing for a definite minimum reservation for discriminated groups like Women, Scheduled Castes and Scheduled Tribes in the elected bodies and by requiring local area plans to include social justice along with economic development. The important changes brought about by the 73 and 74 Amendment to the Constitution are listed below:

a) Introduction of a three tier system – at the Village, Intermediate (Block) and District levels. [There are 12,620 Village Panchayats, 385 Panchayat Unions and 29 District Panchayats in Tamil Nadu].

b) Mandatory conduct of Local Body elections for every five years and conduct of elections before the expiry of the duration of the Local Body or before the expiry of a period of 6 months from the date of its dissolution.

c) Introduction of reservation of seats (i.e. ward members) and offices (i.e.Chairpersons/Presidents) for Scheduled Castes/Scheduled Tribes in proportion to their population in every Local Body with provision for rotation of the reserved seats and offices.

d) Introduction of reservation of one-third of total number of seats and offices for women with provision for rotation.

e) Constitution of a State Election Commission as an independent body to conduct elections to both rural and urban Local Bodies regularly.


89 G.O.(D) No. 695, Rural Development and Panchayat Raj (CGS3) Department, Dated 29-09-2008.
5.5.2 The Tamil Nadu Panchayats Act, 1994

The Tamil Nadu Panchayats Act, 1994 incorporates the provisions of the 73 and 74 Amendments to the Constitution of India. The salient features are, the panchayats would have a uniform duration of five years. If for some reasons, a panchayat gets dissolved, the period of dissolution would not exceed six months. Elections are obligatory before the expiry of the term of office or the period of dissolution. The Tamil Nadu State election Commission, an independent constitutional authority, would superintend, control and direct all elections of panchayats.\(^ {90}\) The State Finance commission would be constituted to ensure the financial health of the panchayats. Reservation of seats would be provided for Scheduled Castes and Scheduled Tribes in proportion to their population. Not less than one third of the total number of seats should be reserved for women. Reservation for Scheduled Castes, Scheduled Tribes and Women would be provided in all the offices of the chairpersons in rotation in all the three tiers.\(^ {91}\)

5.5.3 Constitution (85 Amendment) Act, 1999

The Constitutional 85 Amendment Bill or the Women’s Reservation Bill was introduced in 1999. The objects and reasons are given below.

Articles 243D and 243T inserted by the Constitution 73 Amendment Act, 1992 and the Constitution 74 Amendment Act, 1992 respectively provide that not less than one-third of the seats shall be reserved for women in every panchayat and every municipality. Further, the said articles provide that, from amongst the seats reserved

\(^ {90}\) G.O.(D) No. 727, Rural Development and Panchayat Raj (CGS3) Department, Dated 30-09-2008.

for the Scheduled Castes (SCs) and Scheduled Tribes (STs), not less than one-third seats shall be reserved for women belonging to the SCs or, as the case may be, the STs. The said articles also provide that such seats reserved for women may be allotted by rotation to different constituencies.\textsuperscript{92}

Having provided reservation for women in panchayats and municipalities, it was felt that reservation for women on the same lines be provided in the House of the People and in the Legislative Assemblies of the states by amending the Constitution. Accordingly, the Constitution 81 Amendment Bill, 1996 was introduced in the Lok Sabha on 12 September 1996. The said Bill sought to reserve not less than one-third of the total number of seats filled by direct elections in the House of the People and in the Legislative Assemblies of the state; for women, provided the number of seats of the state in the House of the People was more than two.\textsuperscript{93}

\textbf{5.5.4 Reservation of Seats for Women}

The Tamil Nadu Panchayats Act also provides for the reservation of seats to persons belonging to Scheduled Castes, Scheduled Tribes and Women in the elections of members of wards as well as the chairpersons of panchayats at all levels. i.e. village panchayat union and district panchayat. The Tamil Nadu panchayats (Reservation of seats and rotation of the reserved seats) issued in G.O.Ms.No.142, Rural Development Department, Dated 07.08.1995 (subsequently amended by G.O.Ms.No.178, Rural Development Department, Dated 04.10.1995 and G.O.Ms.No.189, Rural Development Department, Dated 11.10.1995) prescribe all the procedures for determining the number of seats to be reserved and for the allocation of wards/panchayat, where the reserved seats are fixed.\textsuperscript{94}

\textsuperscript{92} Kavita Mishra, \textit{op.cit.}, p. 229.

\textsuperscript{93} Government of India, Constitution 85 Amendment Act, 1999.

\textsuperscript{94} G.O.Ms.No.178, Rural Development Department, Dated 04-10-1995.
In every village panchayat, panchayat union council and district panchayat council, not less than one third shall be reserved for women including the number of seats reserved for women belonging to Scheduled Castes and Scheduled Tribes and Backward Classes out of the total number of seats fixed under rule 3 of the Tamil Nadu Panchayats Ruls, 1995. As per the Tamil Nadu Panchayat Act, 1994 and the Tamil Nadu Panchayat Rules 1995 the local bodies’ election in Tamil Nadu was conducted in 1996. For the first time one third seats were reserved for women including SC, ST, BC women. Rural women entered in to the public office at the grass root level.  

The Government of Tamil Nadu is committed to ensure that the Panchayat Raj Institutions function as effective institutions of Local Self-Government. In 1996, soon after the conclusion of the first ordinary elections to the three tiers of Panchayats, the Government constituted the First High Level Committee under the Chairmanship of Thiru L.C. Jain, the then fulltime Member of the State Planning Commission to give recommendations on the entrustment of powers and functions to the three tiers of Panchayats. The Committee submitted its report to the Government in April, 1997. Many of the recommendations of the L.C. Jain Committee have been crystallized into action towards empowering the Panchayats.  

Apart from the Rural Development Department, other departments such as Agriculture, Animal Husbandry, Forests, Social Welfare, Revenue, Khadi and Village Industries, Education, Health and Family Welfare, Adi Dravidar Welfare, Co-operative, Food and Consumer Protection, have issued Government Orders for devolution of powers and functions in their respective spheres to the three tiers of Panchayats.

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95 G.O.Ms.No.189, Rural Development Department, Dated 11-10-1995.
97 www.tamilnaduwomen.org.
Again, the Government in G.O. Ms. No. 320, Rural Development (C1) Department, dated 11.11.1997 constituted the Second High Level Committee under the Chairmanship of Thiru.Ko.Si.Mani, the then Hon’ble Rural Development and Local Administration Minister with experienced persons including sitting MLAs of various political parties as members of the Committee to recommend more devolution of powers and functions to the Panchayats. This High Level Committee submitted its report on 11.1.1999 with 1209 recommendations to the Government. The Government accepted 718 recommendations and issued orders for their implementation.\(^98\)

### 5.5.5 Reservation of Seats and Offices and Rotation

Article 243 D of the Constitution relates to reservation and rotation of seats for Scheduled Castes, Scheduled Tribes and Women in rural Local Bodies. The relevant provisions of Tamil Nadu Panchayats Act, 1994 are Sections 11, 20, 32 & 57. These are supplemented by the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.\(^99\)

The Rules provide for the reservation of seats by adopting a list of wards or Panchayats arranged in the descending order of the percentage of SCs, STs and Women and applying a ‘cut off’ at the point where the number of reserved seats and offices is equal to the prescribed ratio.\(^100\)

The periodicity of rotation is also fixed under the Rules. The Government amended Rule 7 of the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995 vide G.O.Ms. No. 105, RD & PR (C4) Department, dated 1.9.2006 by virtue of which the posts of Presidents of Village Panchayats and

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\(^99\) G.O. Ms. No. 320, Rural Development (C1) Department, Dated 11-11-1997.

\(^100\) [www.tn.gov.in](http://www.tn.gov.in).
Chairpersons of Panchayat Unions and District Panchayats reserved for SCs, STs and Women were rotated - after 10 years - for the October 2006 elections. While the posts of ward members of all the 3 tiers reserved for Women were rotated - after 10 years – those reserved for SCs and STs were not rotated; in other words, they would continue to be reserved as such until the Government directs otherwise.\(^\text{101}\)

In 2006 local body election, the reservation details of women in district panchayat chair persons, panchayat union council chair persons, village panchayat presidents, district panchayat ward members, panchayat union ward members and village panchayat ward members are clearly indicated in the following table 5.5.6.

### 5.5.6 Reservation of Offices and Seats for Women in 2006 Local Body Election.

<table>
<thead>
<tr>
<th>No</th>
<th>Category of Reservation</th>
<th>Total No of Offices/Seats</th>
<th>Reserved for Women</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Number</td>
</tr>
<tr>
<td>1</td>
<td>District Panchayat Chair Persons.</td>
<td>29</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>Panchayat Union Council Chair Persons.</td>
<td>385</td>
<td>140</td>
</tr>
<tr>
<td>3</td>
<td>Village Panchayat Presidents.</td>
<td>12618</td>
<td>4275</td>
</tr>
<tr>
<td>4</td>
<td>District Panchayat Ward Members.</td>
<td>656</td>
<td>226</td>
</tr>
<tr>
<td>5</td>
<td>Panchayat Union Ward Members.</td>
<td>6570</td>
<td>2302</td>
</tr>
<tr>
<td>6</td>
<td>Village Panchayat Ward Members.</td>
<td>97458</td>
<td>32638</td>
</tr>
</tbody>
</table>


In 2010 there are 2.36 lakh village panchayats and 28.18 lakh panchayat raj representatives in India. While at present 37 per cent of the panchayat raj representatives are women, a Draft Bill to increase the representation for women from 33.3 to 50 per cent has been introduced in parliament.\(^{103}\)

The year 2001 was observed as the year of women’s empowerment in order to create large-scale awareness about women’s rightful place in the mainstream of the nation’s development. The National Policy for the Empowerment of Women was adopted in 2001. Women are entitled 33% reservation in the Local Bodies. In Tamil Nadu, 30% jobs are reserved for women. The Constitution 108 Amendment Bill, 2008 was introduced in the Rajya Sabha. It seeks to reserve one-third of total number of seats for women in Lok Shaba and in each State Legislative Assembly.\(^{104}\)

The Tamil Nadu Government and voluntary organizations are helping much for the protection by the way of enacting various laws in the Assembly and doing protective measures for women. It is considered as the remedial steps to protect the weaker section of the society.

\(^{103}\) Thina Thanthi, Tamil Daily, 28 August 2009, p.1.