CHAPTER- II

WOMEN'S RIGHTS: A HISTORICAL PERSPECTIVE

The development of any society is judged in terms of the position held by women in that society. Since men and women are considered as two wheels of the vehicle of society, both wheels should work in tandem to move the vehicle of society.

Women constitute about half of the world's population. Yet they are placed at various disadvantageous positions due to gender difference. History has evidences that women have been regarded as the property of men; to be bought and sold or stolen as part of the game. Women were regarded as negotiable property. In India, the situation is very bleak. In Indian society, women have been exploited in the name of religion and have been weighed down by the social sanctions. With the advent of independence, a new impetus was given to the social reforms for women. The Constitution of India granted them equality of status and provided opportunities for their progress. Against all odds and obstacles, women all over the world have launched powerful movements to fight against gender discrimination and injustice. They are mobilizing against violence and oppression, and are demanding equal rights, greater opportunities for
development, equitable laws, and control over their earning and bodies. This growing solidarity among them and the willingness to struggle for their rights can be expressed as 'feminism'.

The word 'feminism' originated as a medical term to describe the feminization of a male body, or women with masculine traits. It was used in France in the nineteenth century. It was used in the United States in the early part of the twentieth century to refer to one group of women which asserted the exceptionality of women. It soon used to indicate a political stand of someone dedicated to changing the social position of women. Despite the fact that the usage of the term is comparatively new, it has become common practice to refer to early writers and thinkers—for e.g. the eighteenth-century writer Mary Wollstonecraft, as 'feminist', in acknowledgement of the connections between their arguments and those of modern feminism.

STREAMS OF FEMINISM:

- **Liberal feminism**: - Liberal feminism essentially claims that because women are also rational beings like men, they are entitled to the same legal and political rights. Liberal feminists have, therefore, argued and campaigned over the last three hundred years for women's right to education, employment, political participation and full legal equality. Liberal feminism concentrates on rights in
the public sphere and does not analyse power relationships that may exist within the home or private life. It assumes that the justice of its cause will ensure its success and that men will have no reason to oppose it. Although it is premised upon the perception that women as a group are now deprived, it argues that it is up to individual women to make the most of their opportunities, once political and legal equality have been won.

- Marxist Feminism: - Marxist feminists argue that in the society formal equal rights can benefit only a few middle-class women. Most women, like most men, will remain oppressed until the capitalist economic system is replaced by communism. From this perspective, the key to women's liberation is their entry into the paid labour market and their participation in the class struggle. It is only in communist society that the economic dependency, that is the basis of women's oppression, will disappear, and communal childcare and housekeeping will free them from domestic drudgery and allow them to participate fully in productive life. Such changes cannot be achieved simply by demanding justice, for they are the product of a particular stage of economic development. Sexual equality cannot therefore be achieved at will, but only in specific historical circumstances.
• **Radical Feminism:** - According to radical feminists, both these theories ignore the nature of male power. Radical feminism was first fully articulated in the late 1960s, and it argues that men's patriarchal power over women is the primary power relationship in human society. It further argues that this power is not confined to the public worlds of economic and political activity, but that it characterizes all relationships between the sexes, including the most intimate. This insistence that 'the personal is political' involves a re-definition of power and its basis in 'private' life. Some radical feminists argue further that differences in behaviour and attributes between men and women are biologically determined rather than socially acquired, and that women embody superior qualities. For some, this means that all men are to be considered 'the' enemy, and lesbian separatism becomes the only viable feminist option. Others reject this, but agree that men as a group oppress women in all areas of life, and that an understanding of this must be central to any feminist politics.

• **Modern Feminism:** - Some modern socialist feminists claim to combine the best of both Marxist and radical feminism. They agree with radical feminism's insistence on the ubiquity of male power and its insistence that all areas of life be seen as political. They
seek to understand relationship of patriarchy with other forms of
domination. In particular, they try to explore the ways in which
class and sex oppression interacts in capitalist society. In terms of
feminist politics they advocate struggle at all levels. This will
sometimes involve autonomous women's organizations, but will
also involve working with men. Unlike liberal and orthodox
Marxist feminists, these socialist feminists argue that men have at
least a short-term interest in maintaining present gender
inequalities. Unlike some radical feminists, however, they do not
see the interests of men and women as permanently opposed. There
are four distinct feminist approaches which attribute women's
situation to bad law, a bad economic situation, and bad men or to a
combination of these.³

Some sub-movements of feminist philosophy have developed over the
years. Some other types of feminism are listed below:

- **Anarcha Feminism:** Anarcha-feminism combines anarchism with
feminism. It generally views patriarchy as an expression of reflex
hierarchy. Anarcha-feminists believe that the fight against
patriarchy is a necessary part of class struggle, and struggle against
the State. Significant historic anarcha-feminists comprise Emma
Goldman, Federica Montseny, Voltairine de Cleyre and Lucy
Parsons. Modern anarcha-feminist writers-theorists comprise Germaine Greer, L. Susan Brown and the eco-feminist Starhawk.

- **Black Feminism:**- Black feminism believes that forms of feminism that struggle to overcome sexism and class oppression but ignore race can differentiate against many people, including women, through racial prejudice. The Combahee River Collective (1974) argued that the liberation of black women needs the end of racism, sexism, and class oppression. Early feminist movements were led particularly by white women who advocated woman’s suffrage and had generally overlooked repression based on racism and classism. Alice Walker and other feminists pointed out the repression that black woman experienced. Angela Davis expressed an argument centered on the intersection of race, gender, and class in her book, ‘Women, Race, and Class’.

- **Post colonial and third world feminism:**- This type of feminism is critical of radical feminism and liberal feminism. Postcolonial feminists argue that colonial cruelty may result in the veneration of pre-colonial culture, which could mean the acceptance or refusal to deal with, innate issues of gender inequality. Postcolonial feminists have reacted against universalizing tendencies in Western feminist thought. They have also reacted against lack of attention to gender
issues of the thought. Third-world feminists took part in feminist politics in third-world countries. Women from the third world, who have been engaged in the feminist movement, like Chandra Talpade Mohanty and Sarojini Sahoo, condemn Western feminism for its ethnocentric views.4

Feminists disagree in the 'difference/equality' debate. Many feminists have always been unwilling to grant any political significance to the biological differences between two sexes, on the grounds that these will always be used to women's disadvantage. Nevertheless, some feminists have long argued that women are innately superior, and there is now a strong strand within modern radical feminism that insists that biological differences color the whole of our lives. In particular, it is argued that men are innately competitive, aggressive and sexually predatory, while women's biological capacity to give birth means that they embody the 'womanly virtues' of peace, nurturing and co-operation. Some argue further that women actually think differently from men and that intuition and empathy can give rise to a higher understanding than male calculation and reason. For some, it is the diffused nature of women's sexuality that gives them access to 'non-linear' forms of understanding. Outside the confinement of main logic, such arguments may provide a useful corrective to traditional views of human nature and rationality.
whereby male-identified modes of activity and thinking are uncritically
taken as the norm, and 'objectivity is in fact a guise for male bias.
However, ultimately all feminists advocate equality between sexes.  

**HISTORY OF FEMINISM:**

The history of feminist movement has been divided into three "waves" by
various feminist scholars. The first wave was mainly concerned with
women's right to vote. It comprised women's suffrage movements of the
nineteenth and early twentieth centuries. The second wave campaigned
for legal and social rights for women. This movement was associated
with the ideas and actions of 1960s women's liberation movement. The
third wave, beginning in the 1990s, was a continuation and reaction to the
apparent failures of previous feminist movements. Similar to the third
wave, which reacted and continued to the theories of the second wave, the
fourth wave endorsed the concepts that third wave feminists had put
forward.

**First wave:-**

First-wave feminism was a comprehensive period of feminist activity
during the nineteenth century and early twentieth century in the United
Kingdom and the United States. At first, it focused on the promotion of
equal contract and property rights for women, but, by the end of the
nineteenth century, it focused primarily on gaining political power,
particularly women's right to vote. Feminists such as Voltairine de Cleyre and Margaret Sanger were still campaigning for women's rights.8

The goal for most of the first wave feminists was largely to get white middle and upper-class women inside the public and cultural world from which they were excluded. The general themes of this early movement were virtue, equality, rationality and ‘nurture over nature’. Most Of these feminist writings did not fundamentally challenge the public/private divide. It was only during the latter part of first wave feminism and the early part of second wave feminism that feminists began to challenge women's exclusion from the public sphere and their role in the private sphere. Mary Wollstonecraft was one of the first modern feminist writers. She published her essay, ‘A Vindication on the Rights of Women’ in 1792, in response to Rousseau's political and educational writings, which differentiated the roles of men and women based on 'nature'. At the heart of her theory is the very liberal principle that women have the ability for reason as men do. John Stuart Mill and many of those who fought for women's right to vote in the nineteenth century joined Wollstonecraft in the reinforcement of women's role in the private sphere, while challenging the assumption that women should be excluded on the basis of her irrationality or closeness to nature, emotion and instinct.

Most of the white suffragists took up this dichotomy between public and
private, within the context of Victorian morality, to bolster their case for white middle-class women, as it was her role in the private sphere, and the virtues associated with it, which made the white middle-class woman uniquely qualified to be part of the cultural and rational realm and, therefore, a citizen with the right to vote. Elizabeth Cady Stanton, one of the key figures in the suffragist movement in the USA, writes of men's attributes as belonging to the public world outside of reason and language.

White middle-class women fought to enter the political realm on the basis of their distance from the natural sphere. Their role in the private sphere, they argued, strengthened their claims to be part of the world of culture and reason. Black women, on the other hand, were cast as part of the natural world, while, through their work as domestic servants in the private sphere, they were connected, in the minds of many white middle-class women, even more strongly with 'nature' and 'natural' needs. While Stanton and fellow white suffragist Susan B. Anthony openly opposed the Fourteenth Amendment to the American Constitution, which in 1866 gave black men the right to vote.

Sojourner Truth, the only black woman present at the Women's Rights Convention (1850), stood throughout her life for the rights of black women to vote. Sojourner Truth was just one among many African
American women who were involved in the struggle for the vote in the United States. Contrary to some white feminist accounts of the history of American suffrage movement, black women were very active in first wave feminism. Black women were active in the struggle for those denied the vote on the basis of either gender or race. White feminists have often failed to incorporate this history into their generalized notion of 'feminist history', often constructing black women, instead, as marginalized or victims.  

In the United States, leaders of this movement (Lucretia Mott, Lucy Stone, Elizabeth Cady Stanton, and Susan B. Anthony) campaigned for women's right to vote and all were strongly inclined by ‘Quaker thought’. American first-wave feminism occupied Frances Willard, who belonged to conservative Christian groups and Matilda Joslyn Gage, who was more radical. This movement had ended with the way of the Nineteenth Amendment to the United States Constitution (1919), granting women the right to vote in all states. In Britain, the Suffragists fought for the women's vote. In 1918, the Representation of the People Act 1918 was passed, giving way to the vote to women over the age of 30 who owned houses. In 1928, this was unmitigated to all women over twenty-one.

Second wave feminism focused equally on fighting social and cultural disparities as political disparities.
Second Wave:-

Second-wave feminism was the period of activity in the early 1960s which ended through the late 1980s. The first wave focused on women's enfranchisement and admission to the occupations as well as the right to own property. The second-wave feminists fought for the liberation from the oppressiveness of a patriarchal society. The struggle for the vote stayed the emblematic centre of first wave feminism. For second wave feminists, the main struggle was the female body, its representation and the meaning attached to the truth of biological dissimilarity.

Simone de Beauvoir's classic text, ‘The Second Sex’, is the final expression of the first wave feminist's belief in humanism, equality and reason. She takes up the dualisms of western thought between public and private and culture and nature into her theory. She argues that one is not born but rather becomes a woman, in other words 'gender' is socially rather than naturally constructed and woman is defined in relation to men. She is perhaps the first of the second wave, hyphenated feminists namely, ‘existentialist feminist’. De Beauvoir sees the role as wife and mother as often in direct conflict with the role as an independent woman.

With Betty Friedan began what has been called contemporary liberal feminism; with Sheila Rowbotham came socialist/Marxist feminism; with
Juliet Mitchell came psychoanalytical feminism; and Kate Millet's Sexual Politics ushered in radical feminism. All these thinkers shared a common belief in the universality of women's condition, with little analysis of the differences between women on the basis of sexual or racial identity. The search for solutions had to begin with the link between gender and the dualisms of public/private and culture/nature. Betty Friedan, the founder and first president of the American National Organization of Women, and author of ‘The Feminine Mystique’, wrote in 1953 of 'the problem that had no name' the enormous psychological distress shown by a whole generation of women mainly middle-class white, who were limited to the private field. Friedan's solution, in line with liberal feminists such as Wollstonecraft and Taylor, and with Simone de Beauvoir, was twofold: greater educational opportunities for women and re-entry into the work force.

Socialist feminists dealt with the issue of gender and class in their analyses. For Marxist and socialist feminists, the family and private property were closely related in history, politics and economics. For feminists like Juliet Mitchell and Sheila Rowbotham, traditional Marxism and socialism were correct on the fundamental underpinnings of capitalist society, but had failed to account for either the role of patriarchy in history or the sexual as opposed to class division of labour. The family
serves two purposes, according to Mitchell: the economic function of reproducing a productive labour force and arena for the consumption of market goods; and the ideological function of reproducing the mythology surrounding the family and mystifying its economic reality: Mitchell's conclusion, therefore, is that while feminism must embrace the cultural world over the biological sphere, women's liberation will only be achieved when the family and private sphere is dissolved. Like Mitchell, Sheila Rowbotham argues that arguments about biological determinism are highly suspect for women. She warns fellow feminists from searching for 'women's nature' as so much of the world is socially constructed. While liberal feminists are more prepared to challenge the culture/nature divide, they nevertheless hold on to the public/private divide as central to the liberal framework. Socialist feminists are similarly prepared to give up on the public/private divide but need to hold on to the culture/nature divide as the backbone of their socialist tenets. In response to socialist feminism and its emphasis on materialism and reproduction, the psychoanalytical feminists argued that the oppression of women must also be understood in terms of the development of the mind.

Feminists who adopted the psychoanalytical framework began by challenging or transforming some of the more objectionable aspects of Freudian analysis. They argued that Freud's biological foundationalism,
that 'anatomy is destiny' or 'nature determines culture', is misguided. Feminists like Karen Homey and Clara Thompson conclude that 'development is a process of growth away from one's biology and towards mastery of one's environment'. ¹⁵ Nancy Chodorow introduces two important concepts to feminist analysis. First, she concludes that men and women are fundamentally different; second, she posits that neither nature nor nurture can explain this difference. This approach has been called 'object-relations theory'. ¹⁶

The final form of second wave feminism is radical feminism. Like the other schools of thought in this category, radical feminism believes in culture overcoming biology, in a category of 'women' versus 'men', and in universal solutions to the problem faced by all women. Unlike socialist and liberal feminists, however, many of the radical feminists were not interested in women becoming either the same as or equal to men; the objective was to break down patriarchy and emancipate women. This group of feminists, including Kate Millet, Shulamith Firestone, Adrienne Rich, Mary Daly, create enormous challenges for other forms of hyphenated feminism. ¹⁷ Kate Millet's 'Sexual Politics', published in 1970, was also a ground-breaking work.

A new concept was introduced into feminist thought, 'the woman-identified woman' and the 'lesbian continuum'. It was used in the essay published in 1970 by the New York Radical lesbians.¹⁸
The feminist activist and author, Carol Hanisch created the slogan “Personal is Political” which became synonymous with the second wave.\(^1\) Thus, first wave feminism and second wave feminism, or hyphenated feminism, has evolved over time. Within them we find not only the tensions between traditional political frameworks and developing but simultaneously the seeds of a new form of feminism being sown.\(^2\)

**Third Wave:-**

The late 1980s and 1990s have witnessed the emergence of a new, third wave of feminism. Third wave feminism(s) begin with a breakdown in the marriages between feminism and other theoretical schools.\(^3\) Third-wave feminism came up as a response to apparent failures of the second wave. It was a response to the reaction against initiatives created by the second wave.\(^4\)

In 1995, two books — ‘Listen Up: Voices from the Next Feminist Generation’ and ‘To Be Real: Telling the Truth and Changing the Face of Feminism’ — were published. They posed some new questions and challenges to a previous generation of feminists. These collections of essays were followed in the summer of 1997 with a special issue of Hypatia. Editor Rebecca Walker makes clear that personal stories are the most truly political in the 'personal is political' sense of feminism and more accessible, and because they respect the difference of perspectives among women.\(^5\)
Thus, third wave feminism is rooted in the questions raised by feminists of colour and lesbian and queer theorists about the nature of identity, the meaning of 'gender' and working through some of the contradictions elicited by such questions. It is these challenges, posed by feminists a decade ago, that created the momentum for a wave which is now beginning to crest, and wash over these feminists across the board.  

A post-structuralist explanation of sexual category and sexuality was essential for the most of the third wave's ideology. Third-wave feminism had debates between different feminists, such as the psychologist Carol Gilligan who believed on the differences between the sexes and those who believed that there were no such differences and social conditioning was crucial for gender roles.  

Fourth Wave:-  

Some feminists believe the flow of feminist issues rely on social media technology for communicating and organizing their activism efforts. 

According to Pythia Peay (2005), Jennifer Baumgardner (2011) and Kira (2012-2013) a fourth wave may exist, dated as beginning in 2005-2006. Main features of Fourth Wave are after-abortion talk lines, plus-size fashion support, pursuit of reproductive justice, male feminism, transgenderism support, sex work acceptance and blogs -Twitter campaigns.
Betty Dodson (2014), one of the leaders of the early 1980s pro-sex feminist movement, had spoken that she considers herself a fourth wave feminist. According to the fourth wave feminist, one can be obsessive about women’s rights and still read Cosmo. So it can be concluded that fourth wave of feminism is all about equality.  

SCOPE OF FEMINISM:

Feminist movement became successful because women in different situations developed their own alternatives and prepared for the goals, most important to them. Women were clear about gender equality, so they worked together to achieve it. Feminist movement created the genuine changes in the world. This movement enrolled the biggest number of members. Historian Nancy Cott stated that feminism was a desire that was impossible to translate into a program without centrifugal outcomes. During the movement, women achieved many objectives—abortion law reform, fair chances of employment, inclusion in affirmative action, greater representation in media, equal access to school and athletic activities. Despite this, birth rates declined and life expectancy increased. Women wanted more out of their marriages and from men, education, and themselves. So the scope of feminism has become immense.
UNO AND WOMEN RIGHTS:

Nobel prize winner Amartya Sen points out that “The afflicted world in which we live is characterized by deeply unequal sharing of the burden of adversities between women and men......gender inequality is not one homogeneous phenomenon but a collection of disparate and interlinked problems”. The pervasive inequalities existing in the society are the basic gender issues that lead to deficiency of human rights for women. Even now millions of women throughout the world live in conditions of deprivation and without fundamental human rights for no other reason but their being women. Following international documents have led to the protection of rights of women in the world:

• United Nation's Charter:

The advancement of women has been the focus of the work of the United Nations since its creation which is evident by the United Nations Charter that declares promoting esteem for human rights and basic freedom for the people without differences (as to race, sex, language or religion) as one of its purpose.

• Universal Declaration of Human Rights, 1948:

The United Nations’ historic 'Universal Declaration of Human Rights' took place on 10 December, 1948. This was a momentous step towards
enriching the quality of human life and realizing its full human rights. The Declaration is based on inputs from the UN Commission on human rights and the commission on the status of women. It sets up a general status of attainment for people of all the nations. It makes clear that the equal and inalienable rights form the base of freedom, justice and harmony in this world. 30

- **Convention on the Political Rights of Women, 1952:**

This convention provides for equal political rights for women. The states are obligated to ensure that women have the right to use their vote in elections, to be elected and to hold public office on equal terms with men. Women are entitled to be free from discrimination in the exercise of these rights. The document recognizes the discriminatory practices that hinder women's participation and obligates the state party to equalize the status of women and help women in the enjoyment and exercise of political rights.

- **Convention on the Nationality of Married Women, 1957:** The draft of the convention was prepared by the commission on status of women and in 1957 the General Assembly adopted the convention. The contracting state parties of the convention have undertaken some commitments. Like neither the intended attainment of the nationality of another state nor shall the repudiation of its nationality by one of its
nationals stop the withholding of its nationality by the wife of such national.

- **Declaration on the Elimination of All Forms of Discrimination against Women, 1967:**

In 1967, the United Nations promulgated the declaration on the elimination of all forms of discrimination against women. An important aspect of the rights of women under this declaration is that it calls for member states to submit reports on the status of women in their own countries.

- **Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974:**

Through this declaration, the assembly demanded that states abide by the Geneva conventions and other mechanisms of international law relative to respect for human rights in armed conflicts. It specifically noted the relevance in armed conflict of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and the Declaration of the Rights of the Child. Some of the provisions of this declaration are: special protection in times of armed conflict and mistreatment of women during war as a criminal offense.
International Covenant on Civil and Political Rights, 1976:

The International Covenant on Civil and Political Rights (CCPR) was established in 1976. According to it, human rights contained in the document relate to women and men equally. It promises women the right to life, the right to be free from torture, cruel or debasing treatment, and the right to safety of person.

International Covenant on Economic, Social and Cultural Rights, 1976:

The International Covenant on Economic, Social and Cultural Rights (CESCR) was established in 1976. It sets up the Economic and Social Council, (ECOSOC) which checks fulfillments with the covenant and can present suggestions to the Commission on Human Rights.

CEDAW: The International Bill of Women's Rights-1979:

In 1979, the United Nations Adopted the ‘Convention on the Elimination of All Forms of Discrimination Against Women’ (CEDAW). This is known as the ‘International Bill of Women's Rights’. This landmark Bill was signed by India along with many other nations.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987:

CAT came into force in 1987. It condemned torture and violence against women. The convention also created the ‘Committee against Torture that received complaints from private individuals.
• **Convention on the Rights of the Child, 1990:**

CRC came into force in 1990. According to it, any human below the age of eighteen is a child. It provides protection to the girls from all forms of aggression, such as sexual abuse and trafficking. It also granted the right of equal education, highest achievable standard of health and a standard of living required for full growth of the girls.

• **General Recommendation 19, 1992:**

According to the General Recommendation 19 of the Convention on the Elimination of All Forms of Discrimination “violence that is directed at a woman because she is a woman or that affects women disproportionately is discrimination. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”.

• **Vienna Conference, June 1993:**

In June 1993, the Second World Conference on Human Rights was held in Vienna. It was again a landmark, not only for women's movements, but also for the international human rights movement. It acknowledged categorically that ‘women's rights are human rights’ and are an absolute, integral and inseparable part of universal human rights.
• **Declaration on Elimination of Violence against Women, 1993:**

The UN ‘Declaration on Elimination of Violence against Women’ in December 1993 was led by a strong feminist advocacy and worldwide concern for preventing violence against Women. According to it, violence results in (or is likely to result in) physical, sexual or mental injury or pain to women. Violence includes threats, intimidation or arbitrary denial of liberty. It can occur in public or in private life.\(^{35}\)

• **Beijing Declaration and Platform for Action 1995:**

The Beijing Declaration and Platform for Action was accepted by the Fourth World Conference on Women in 1995. It repeats the basic principal that the rights of women and girls are an “inalienable, integral and indivisible part of universal human rights”.\(^{36}\)

• **Optional Protocol of UN General Assembly, 1999:**

The UN General Assembly adopted the Optional Protocol to CEDAW in 1999. It allows individual women or groups of women who have drained familial remedies, to petition to the UN Committee on ‘Elimination of all Discrimination against Women’ about contraventions of Convention by their own state governments.\(^{37}\)
• **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000:**

The idea of the Protocol is to stop and fight trafficking and to make possible international collaboration against trafficking.

• **Millennium Summit 2000:**

United Nations Millennium Declaration “We resolve . . . to combat all forms of violence against women and to implement the Convention on the ‘Elimination of All Forms of Discrimination against Women’”.

**INDIA AND WOMEN RIGHTS:**

Women in India suffer from a variety of social and economic disabilities which avert them from exercising their human rights and freedom in society. Child marriage, especially of the female infant was common; widow marriage was prohibited. Even if she succeeded in escaping from the funeral pyre of her deceased husband where she was expected to be burnt alive, a divorce was generally looked down upon and her remarriage was socially disapproved. The preamble to the Constitution of India speaks of securing to all citizens of India parity of position and of chance as well as justice-social, economic and political. One of the directive principles of state guidelines ordains that the state should not make prejudice on the ground of gender and that it should direct its
guiding principle towards securing equal pay for equal work for both men and women. A number of other legislations have been enacted to raise the position of women. 39

Indian constitution ensures the equality of men and women. The following constitutional provisions protect the dignity of women:-

- Art. 14 of the constitution provides that the state shall not deny to any person parity before the law. The state shall not deny to the equal shield of the laws within the region of India. It proclaims equal opportunity for all people.

- Art. 15 (1) says that the state shall not differentiate against any national on grounds of religion, race, caste, sex, place of birth or any of them.

- Art. 15(3) provides that nothing in this article shall stop the state from making any particular provision for women and children.

- Art. 16(1) and Art.16 (2) provide for parity of chance in the matter of public employment. 40

- Article 21 (‘Protection of Life and Personal Liberty’) of the Constitution guarantees that person shall not be deprived of his life and individual liberty except according to procedure established by law.
Article 22 (‘Protection against Arrest and Detention in certain cases’) provides that:

(a) Every arrested or detained (in custody) person shall be informed about the grounds for such arrests (as soon as may be). Every arrested or detained (in custody) person has the right to consult, and to be defended by, a legal practitioner of his choice.

(b) Every arrested and detained (in custody) person shall be produced before the nearby magistrate within a time of twenty-four hours of such arrest not including the time necessary for the journey from the place of seizure to the court of the magistrate. No such person shall be held in detention further than the said period without the power of a magistrate.

These Fundamental Rights are predominantly important from the perspective of human rights of women. As the Fundamental Rights are justifiable, an aggrieved person can seek redressal through writ petitions.

The Constitution of India further declares in its Article 37 that the Directive Principles are "fundamental in the governance of the country" and that "it shall be the duty of the state to apply these principles in making laws". Thus the Constitution sanctions the
state to enact extraordinary provisions for the progress of women.\textsuperscript{41}

- Art. 38 directs that the state shall endeavor to endorse the wellbeing of the people by securing and protecting as efficiently as it may a social order in which justice- social, economic and political shall triumph. The state shall secure a social arrangement for the endorsement of wellbeing of the people. The state shall, in particular, endeavor to diminish the inequalities in income, status, facilities and opportunities, amongst individuals and groups of people residing in different regions or engaged in different professions.\textsuperscript{42}

- Art. 39(a) of the constitution grants that the states shall in particular direct its policy towards securing the citizens (men and women equally) the right to an adequate means of livelihood.

- Art. 39(b) of the constitution ensures equivalent pay for equivalent work. The objective is to eliminate discrimination found in some sectors where men are usually paid more than women though the amount of labour is same.

- Art. 39(c) of the constitution requires the state to protect health and strength of workers and to ensure that children are not ill-treated and citizens are not enforced by economic requirement to enter into professions inappropriate for their age and potency.\textsuperscript{43}
Art. 42 makes provision for justice and human condition of work and motherhood relief.

Art. 44 says that the state shall attempt to secure for the citizens a uniform civil code throughout the region of India.

Art. 51 (a) (e) provides that it will be the duty of all nationals of India to give up practices offensive to the dignity of women.

Art. 246 empowers parliament and state legislators to make laws in the areas which since the pre-constitution days fall in the domain of personal laws.\(^{44}\)

The 73rd and 74th constitutional amendment provided for 33 percent reservation of the places for women in urban and rural self governing bodies.\(^{45}\)

**WOMEN AND LAW IN INDIA:**

In order to make the de jure equality into a de facto one, women specific and women related legislation have been enacted to safeguard the rights and interests of women, besides protecting against discrimination, violence, atrocities and also to prevent socially undesirable practices.\(^{46}\)

- **Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946:**

The Act empowers the Hindu married women to claim for maintenance while residing separately from their husband, in case the husband is
suffering from some despicable illness not contracted from the wife or husband behave inhumanely and the stay of wife with her husband is dangerous or harmful or if the husband deserts her without her willingness or in case the husband adopts some other religion or in case the husband keeps some concubine or any other cause justifiable for separate residence. But a woman found guilty of adultery or religious changes cannot claim the above stated benefits according to this Act. 47

- **Special Marriage Act, 1954:**

  The Special Marriage Act provides for a civil marriage without any religious significance. Two persons of any religious persuasion, provided they are not within the degrees of prohibited relationship or are not married to any other person under any other religious ceremony and have both reached the age of the majority may be married under the Act.

- **Hindu Marriage Act, 1955:**

  All 'Hindus' who do not marry under the Special Marriage Act are administered by this Act. According to the Hindu Marriage Act the conditions for marriage are- (i) Both spouses must not have any former living spouse. (ii) Man should be 21 years inclusive and girl should be 18 years inclusive. (iii) Both spouses should not have any mental problem or illness. (iv) If the tradition or practices governing each of them authorizes a marriage between the two, then, the parties are not within the degree or
forbidden relationship. (v) If the tradition or practices governing them permits such marriage, then, the parties must not be X sapinda to each other. (vi) A Hindu cannot contract a second marriage with another person till the first marriage is broken up by divorce or verdict. (vii) The grounds on which the dissolution of the marriage can be approved by the court are brutality, infidelity, unsoundness of mind, abandonment, not being alive, suffering-from disease and shared consent. (viii) The dissolution of a marriage can be functional but not before the ending of one year of marriage or of passing of the verdict of judicial separation unless allowed by the court under extraordinary conditions.  

- **Hindu Succession Act, 1956:**

  Hindu succession act brought some basic changes, most important change is equal rights of inheritance among male and female heirs of some category: brother and sister, son and daughter. This Act has been applied on whole country. In this Act, women's right of inheritance has been sanctioned. The amendment to the Hindu Succession Act, giving daughters equal rights to ancestral property is applicable even for girls born before the law was changed in 2005.

- **The Hindu Adoption and Maintenance Act, 1956:**

  This act provides that no husband can adopt a child without taking permission from his wife. The unmarried adult woman was also given the
right to adopt a child. The act provides that the adopted person shall be less than 15 years. As regards to the maintenance, the act provides that the Hindu wife during the life time of her husband will have the right of maintenance. The widowed daughter-in-law or grand-daughter-in-law will also have the right of maintenance.

- **Equal Wages Act, 1976:**

  The Act makes provisions for equal wages for equal work or jobs having equal nature, and against any sort of discrimination with women regarding employment. Clauses of Act have been applied in all types of occupations. In public establishments and private establishments this Act is being implemented properly.  

- **Dowry Prohibition Act, 1961:**

  This Act prohibits the giving and taking of dowry. According to the act, dowry means any valuable property given or agreed to be given, either directly or indirectly by one party to the other party or by the parent of either party in a marriage or by other persons, to either party in the marriage or to any other person. It can be given at the time of marriage or before or any time after the marriage by the said parties. It is a punishable act with imprisonment for a term, which shall not be less than five years, and with fine, which shall not be less than fifteen thousand rupees or the sum of the value of such dowry, whichever is more.
A new section - Section 498A, has been introduced in IPC to deal with instances of cruelty to a woman by her spouse or the relatives of her spouse by making this offence carrying a prison term, which may expand to three years and also to fine.52

- **The Commission of Sati (Prevention) Act, 1987:**

The new anti-Sati Act, substitutes the various legislations that have been operative in different parts of the country with a Central law that seeks not only to prevent and punish the Commission of the act itself, but also to make an offence of any glorification of the act of Sati. Specifically, the Act makes it an illegal offence, equivalent to murder, the betterment or encouragement of a Sati or an attempted Sati. Such action is liable to sentence of death or life imprisonment, with an appropriate fine.53

- **Domestic Violence Act, 2005:**

Domestic violence manifests itself in the form of verbal, physical or psychological abuse. An act to combat domestic violence has been passed by the parliament termed ‘the protection of women from domestic violence act, 2005. This act was approved to provide more effective shield of the rights of women who are sufferers of hostility of any kind happening within the family. The act provides for procedure for obtaining orders of relief. Section 12, section 13, section 14, section 16, section 17, section 18, section 19 and section 20 provide various rights to aggrieved
person like—presenting an application to magistrate; undergoing counseling; getting directions from the magistrate, holding the proceedings on camera (according to the circumstances), residing in a shared household, getting protection orders by the magistrate, getting restraint from being dispossessing/disturbing the possession, getting monetary penalty for breach of protection order etc. In all, the act has been enacted to provide a remedy for women in civil laws for the protection of women from domestic violence and only future will tell the results of the laws enacted.

- **Pre-natal Diagnostic Technique (Regulation and Prevention of Misuse) Act. 1994 (PNDT Act):**

The PNDT Act aims to regulate the misuse of the advanced technology. Section 3 of the Act provides that no Genetic Counseling Centre or Genetic Laboratory or Genetic Clinic, unless registered, can carry out or combine with, or help in carrying out activities relating to pre-natal analytic techniques. The act was enforced largely to ban the use of ultrasound machines to identify female foetuses and abort them. The act has been amended in 2003 to make it more stringent to control sex selection not only at foetal stage but also at conception stage. Punishment under the act includes imprisonment for a term of 5 years and a fine of Rs. 1 lakh beside cancellation of the offending doctors' registration and license.⁵⁴
• **Sexual Harassment of Women at Workplace (Prevention and Redressal) Bill, 2004:**

This act grants the deterrence and redressal of sexual harassment of women at place of work. The bill traces its history to the ‘Vishakha guidelines’ issued by the apex court in Vishakha v/s state of Rajasthan. The Supreme Court’s judgment in Vishakha case was a milestone for various reasons. Sexual harassment was recognized under the Indian jurisprudence as a crucial problem faced by women workers. For the first time, the court also set out detailed guidelines to meet the problem effectively. Sexual harassment means any unwelcome sexually determined conduct. Sexual harassment at the workplace is an infringement of the fundamental right of gender equality and the right to life and liberty. It violates the rights under article 14, 15 and 21 of the Indian constitution.55

• **Indecent Representation of Women (Prohibition) Act 1986:**

In 1986, an Act has been passed according to which picturization of woman’s body in such a manner which is shameful or disrespectful for women has been forbidden. It bans all the advertisements, publications, books and magazines which demonstrate indecent image of women which spoil the character of youngsters also.56
• **The Immoral Traffic Prevention Act, 1956:**

According to the Act, passed in 1956 and amended in 1986, provision has been made to punish all those people who encourage or force the women to adopt prostitution by immoral flesh trading. For prostitution, adopted willingly or by force, all the women involved in it are to be punished separately and simultaneously efforts are to be made for their rehabilitation for their normal life. They are kept in State homes for women and by giving them professional training, they are made economically independent. In the amended act, for those helping directly or indirectly in flesh trading, provisions of severe imprisonment and fine have been made.  

• **National Commission of Women:**

Several commissions have been set up by the government to look into the status of women in the Indian society. Consecutive commissions on women have pointed out the imbalanced position of women, in each area of life, in Indian society. So, they have suggested the setting up of the National Commission of women. Keeping in view the desirability of a commission for women at the national level the National Commission for Women Bill, 1990 was introduced in the Lok Sabha on 22nd may, 1990 and passed by parliament and came in force in Jan 1992. The national commission is to examine and scrutinize all matters to protect women, to
present annual reports to central government upon working of these safeguards, to recommend measures for successful execution of the safeguards, to review the existing constitutional provisions, to look into grievances and take suo-motu notice of subjects relating to deficiency of women's rights, to call for research and investigation into problems of discrimination against women and recommend strategies for their removal, to undertake steps to suggest ways of ensuring; representation of women and identify factors responsible for impeding their advancement, to evaluate the progress of development of women, to inspect jails, remand homes, women institutions or similar places, to make periodical reports in matters or difficulties of women and any other matters which may be referred to it by the central government.  

- **The Maternity Benefit Act, 1961:**

In the Maternity Benefit Act, 1961 the provision has been made that during delivery, maternity leave for 12 weeks with full wages should be given to them. In the case of abortion or miscarriage also, leave with pay is to be given according to requirement. In the case of cesarean delivery, more leave should be granted but the pay will reduce along with the period of extra leave, services cannot be terminated on the basis of pregnancy now. In Employees State Insurance Act, 1948 provision of treatment has also been made.  

63
• **The Medical Termination of Pregnancy Act, 1971:**

This Act is first and foremost a good measure to look after the health of women. The Act makes lawful persuaded abortion by skilled doctors on compassionate and medical grounds. It also has a family planning aspect. Women can now have persuaded abortion through skilled doctors. 60

• **The Family Courts Act 1984:**

Under this Act Government of India have established family courts in order to facilitate quick decisions on marital disputes. Facility of informal agreements between the husband and wife is also provided. 61

• **Indian Divorce Act:**

According to the 'Indian Divorce Act, 1869, the ground of divorce regarded to the husband, states that, if the wife being guilty of adultery, (The wife, however, may not petition for divorce on grounds of adultery alone) adultery must have been committed together with incest, bigamy, rape, sodomy, bestiality or cruelty. Adultery coupled with desertion, for two years, may also be, ground for a wife suing for divorce. In a marriage that is void, the wife is not permitted to sue for maintenance. She is entitled to maintenance if avoidable marriage is annulled, or if a valid marriage is dissolved. In the event of a judicial separation, she is also entitled to maintenance. Where she is given due maintenance, the extent
she is entitled to claim varies not only according to the limitations imposed by the laws but also the decision of the judges. According to Hindu personal law, she is entitled to one-third of the joint income of her husband and herself. According to Muslim law, she may be given the agreed amount of mehr and continued support, she is legally entitled to it only during the period of iddat.

- **Marriage Law Amendment Act, 1976:**

By the Marriage Laws Amendment Act, 1976, the Hindu Marriage Act lays down that the children of annulled voidable marriages and children of void marriages, whether declared void or not, are legitimate children. This confers legitimacy on those marriages which are void under Section 11 of the Hindu Marriage Act. If the marriage is void for any other reason such as due to lack of proper ceremonies then such children will continue to be illegitimate. The children of such marriages are an heir to their parents alone. Bigamy is an offence, even with the consent of the other party. It is not permitted except under Muslim law, that a man should have more than one wife. The penalty for this is seven years imprisonment and a fine. Similarly for a woman who commits bigamy, adultery is considered a crime, with imprisonment for five years or a fine or both as penalty.\(^6\)
• **The Child Marriage Restraint (Amendment) Act, 1976:**

This is a landmark Act that increases the age of marriage for girls from 15 to 18 years and for boys 18 to 21 years. Offences under this Act come under cognizable category. To enter into a marriage a woman must, if she is under 18, have the consent of her natural or legal guardian. A minor girl may not be compelled into marriage. In case she is being forced into marriage, she may have recourse to the court. In the event that the marriage is solemnised, she may appeal for relief either in the form of annulment or of divorce under every personal law.63

• **The Indian Evidence Act, 1872:**

The act provides that if a woman has been subjected by a person to brutality or aggravation for, and any demand for dowry has been made, the court shall assume that such person had caused the dowry death.64

• **The Employees' State Insurance Act 1948:**

This Act is to provide dependant's remunerations, medical benefit, funeral expenses and maternity benefits.

• **Factories Act, 1948:**

This Act makes detailed provisions regarding health, safety and welfare of workers especially young persons and women in factories. Special provision for welfare of women has been provided like that of prohibition
of woman's employment near cotton-openers; latrine and urinals for women; crèches; prohibition on deployment near machinery in motion etc.

- **The Mines Act, 1952:**

  The Act provides that no woman shall be engaged in any part of a mine which is below ground or in any mine above ground (except between the hours of 6a.m. and 7 p.m.).

- **The Beedi and Cigar Worker (Condition of Employment) Act, 1966:**

  The Act grants that no woman or young person shall be required to work on any industrial premises except between 6 a.m. and 7 p.m. so as ensure the welfare and safety of women workers.  

- **Criminal Law Amendment Act, 2013:**

  The Criminal Law (Amendment) Act, 2013 is an Indian legislation conceded by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, which provides modification of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. According to this new landmark Act, certain acts, which were dealt under related laws, are offences (like acid attack, sexual harassment, voyeurism, stalking etc.) under the Indian Penal
Section 370 of Indian Penal Code (IPC) has been replaced with new sections, 370 and 370A. A new section, 376A has been added which affirms that if due to a person’s sexual assault, another person dies or reaches in a constant vegetative state, that person shall be punished with rigorous incarceration for a term which shall not be less than twenty years, but which may expand to imprisonment for life. Persons involved in "gang rape", regardless of their sex, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay sensible compensation to the victim.  

So, in the above reference, we find that the process of transforming of Indian society into a modern society had been slow. In the course of many centuries, several ugly social customs, religious dogmas, usages and traditions developed and most of these were responsible for creating hindrances in the way of progress and prosperity of the nation. Although the situation has improved for some women, however, even now women have to face many challenges in their day to day life.  

Female infanticides and female feticide are common phenomena in societies which place a high premium on male children.  

In The sphere of health, surveys have shown that nutritional
discrimination starts very early in life. A girl’s diet is inferior both in quality and quantity to the boy's diet and a higher number of girls and women suffer from malnutrition as compared to men and boys in the same age groups. 69

Male children are brought to hospital for treatment whenever they fall ill, but the girl-child's illness is often neglected especially in rural areas. 70

Conservative cultural values, coupled with assumption of domestic responsibilities are the causes of lower female literacy rates in India. 71

A girl child is often subjected to molestation, physical assault and even rape. The practice of child marriage continues unabated in Rajasthan, Bihar and other states, in spite of the existing Child Marriage (Restraint) Act, 1978. 72

Prostitution has registered an alarming increase. It is a highly organized crime which takes place despite the Prevention of Immoral Trafficking in Women Act. 73

The peak period for battering of the girl child is the initiating crawling, nappy wetting, mopping. 74 Of the total crimes against women committed in one year in our country, about 25% are molestation crimes. 75 Brazen acts such as duppata snatching, back patting and in some cases even forced kissing take place. 76 Eve teasers pinch, poke and touch women on the sly and sing obscene songs to embarrass them. 77
Women are tortured by husbands, in-laws, parents, siblings and other relatives.\textsuperscript{78}

Dowry death is a new term in criminology in India, and implies the death by murder or suicide of a young bride who is harassed by her husband and in-laws by making exorbitant and ever-increasing demands for money and for households’ articles to bring from her parents' house or at their expenses. Lack of property rights to women is a contributory factor.\textsuperscript{79} At a modest estimate, the figure of deaths in India that occurs due to a non-payment or partial payment of dowry could be placed around 5,000 in one year.\textsuperscript{80} Such incidents have their origins in social, economic and psychological factors, too deep-rooted to be tackled by amending the law.\textsuperscript{81}

A man is said to commit rape if sexual intercourse is against a woman’s will; without her free and voluntary consent; with her consent, when her consent is given under the misconception of fact and with or without her consent, when she is under sixteen years of age.\textsuperscript{82} It is a common crime against women all over the world. It is grossly under-reported because of the stigma attached to the victim.\textsuperscript{83}

Like rape, the incidences of kidnapping and abduction have also been increasing in our country.\textsuperscript{84}
Violence against women in the context of marriage becomes more significant when a husband who is supposed to love and protect his wife, beats her.\textsuperscript{85}

Fear of crime, lack of repairs and the danger of home accidents are everyday experiences for many elderly women.\textsuperscript{86}

*Custodial violence against women is violence by the very people who are supposed to protect them (i.e. members of law enforcement and criminal justice systems).*\textsuperscript{87}

**CONCLUSION:**

Thus, we may conclude, that in Indian society women are still marginalized and their problems multifold when they are incarcerated.

After taking a look at historical evolution of feminism, women rights and challenges faced by Indian women, we will take a look at prisoners' rights in the next chapter.
REFERENCES


10. www.gender.cawater-info.net/knowledge_base/rubricator/


15. Ibid, p-173

16. Ibid, p-175

17. Ibid, p-178

18. Ibid, p-180-181


21. Ibid, p-186-187


24. Ibid, p-192


55. Ibid, p-177-178


57. Ibid, p-129-130


64. *Ibid*, 305


71. *Ibid*, p-115

72. *Ibid*, p-116

73. *Ibid*, p-118

75. Ibid, p-17


77. Ibid, p-109

78. Ibid, p-112


86. *Ibid, p-28-29*
