CHAPTER II

WOMEN’S RIGHTS: INTERNATIONAL AND NATIONAL INSTRUMENTS

In this chapter we shall discuss about the women’s rights from international and national perspectives. Accordingly, an attempt has been made to analyse the international and national instruments ratified and adopted by the Govt. of India to ensure rights of women. An understanding of the national perspective will enable us to understand the legal mechanisms available for protection and promotion of rights of Women and to examine the role of SCWs against this background.

Women’s right, among other issues related to human rights, occupies an important position. It has attracted the attention of both national and international communities including scholars, activists, governmental and non-governmental organisations and others mainly due to the fact that women have been assigned a secondary position in the society. Women’s rights connotes an idea that being a human being women must be entitled to all those rights which are necessary for the fullest development of their personality and dignity. In addition, they should be provided with certain other rights because of the biological differences between both sexes. Although the concept of women’s right is often understood as the outcome of post world war period but its essence can be found in the philosophical writings of early centuries. Social activist like Mary Wollstonecraft in her book “A Vindication of the Rights of Women” (1833) argued for the citizenship rights to women; to make women as parties to the social contracts. Women should be treated equal with men in all spheres and they should be given right to education equal with men.35 John Stuart Mill, a 19th century political philosopher, in his “The Subjection of Women” (1869) argued that women should be given the opportunity of suffrage, education and employment. For Mill development of women is necessary not only for women’s sake but for

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humankind itself.\textsuperscript{36} As a member of English Parliament, he also argued for the rights of women in the sphere of property, inheritance and custody. He even, like Wollstonecraft and Margaret Fuller, argued for the right of women to be considered as free rational beings that shall choose their own style of life without following dictations of others.\textsuperscript{37} It is thus clear that Mill propounded for women’s rights for equal political participation, education and employment and above all the rights of women to be considered as human being.

During 19\textsuperscript{th} century different movements for women’s rights such as, for equal status of women with men in political, economic and social spheres, for legal protection of women against discriminations etc. were important steps contributing towards the integration of the holistic concept of women’s rights. In spite of all those philosophical writings, social and political movements the condition of women throughout the world did not improve much till the middle part of 20\textsuperscript{th} century mainly because of the inadequacy of legal protections granted towards them.

\textbf{International Perspective:}

The establishment of United Nations (UN) in 1945 is an important milestone in the promotion and protection of women’s rights. The concern of the UN for upholding the rights of women can be understood from the following initiative taken by it.

\textbf{Commissions:}

The concern of the UN on the marginalised position of women and the need to promote the women’s right as human rights is evident from its initiative in the establishment of the Commission on the Status of Women in 1946. Under the following head we shall talk about this Commission.

\textsuperscript{36} Subrata Mukherjee and Sushila Ramaswamy, \textit{A History of Political Thought – Plato to Marx} (New Delhi: Prentice Hall of India Private Limited, 1999), 330.

\textsuperscript{37} Ibid., 333.
Commission on the Status of Women (CSW) (1946):

In order to bring gender equality and development of women in practice the UN established Commission on the Status of Women (CSW) under the United Nations Economic and Social Council (ECOSOC) by ECOSOC resolution 11(II) of 21 June 1946. India was one of the fifteen original members of the commission. The Commission was established to prepare recommendations and reports to the ECOSOC on promoting women's rights in political, economic, civil, social and educational fields and to make recommendations on any urgent problems related to women's rights. The Commission acts as a principal global policy making body in the matters related to women.

The Commission's mandate was expanded in 1987 by the ECOSOC through its resolution no. 1987/22 in the year 1987. According to it the functions of CSW is to promote the objectives of equality, development and peace, monitor the implementation of measures for the advancement of women, and to review and appraise the progress made at the global, national, regional and sub regional levels. Thus the CSW under the UN-ECOSOC since its establishment has developed several Conventions and Conferences in order to promote gender equality and advancement of women. It also comes within the purview of CSW to follow up the actions taken and progress made on the recommendations adopted in the conventions and conferences.

Conventions and Declarations:

In course of its initiative for the upliftment of women’s rights the UN, besides establishing the Commission, has adopted a number of Conventions and Declarations. We shall now highlight some important Conventions and Declarations.

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39 Ibid., 2.
Universal Declaration of Human Rights (UDHR) (1948):

The UN has adopted the Universal Declaration of Human Rights (UDHR) by its resolution 217A (III) on 10 December 1948. The UDHR is a fundamental document on human rights; it recognises the equality between men and women in every sphere of life. The Preamble of the UDHR affirms faith in fundamental human rights and in the equal rights of both men and women.\(^{40}\) Article 2 of the UDHR, besides its Preamble, recognizes that all rights and freedoms as enshrined in the UDHR is applicable to all human beings irrespective of sex. Thus the adoption of UDHR is a major foundation in providing civil, political, economic and social rights, freedom and justice to women along with men.

Convention on the Political Rights of Women (1952):

The Convention on the Political Rights of Women was adopted by the General Assembly on 20\(^{th}\) December 1952 and came into force on 7\(^{th}\) July 1954. Article 1, 2 & 3 of the Convention recognises the equality between sexes in the areas of right to vote, right to elect and right to hold public offices of the country respectively.\(^{41}\) The Convention thus gives women the equal right - as they constitute half of the society – to govern their own society by themselves by choosing their representatives. They can also be a member of the decision making body either in the legislature or in the executive. Thus the Convention recognises the equal status of men and women irrespective of any kind of discrimination in the spheres of decision making and the enjoyment of political rights.

Convention on the Nationality of Married Women (1957):

The Convention on the Nationality of Married Women was adopted by the General Assembly vide resolution 1040 (XI) on 29\(^{th}\) January 1957 and it came into force on 11\(^{th}\) August 1958. In accordance with the provisions as enshrined in the Article 15 of UDHR- which recognises the right to nationality- the

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\(^{40}\) Datta Roy, Protecting Human Rights.

Convention recognises the nationality of a woman irrespective of marriage. Article 1 of the Convention recognises that neither marriage nor its dissolution between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.\textsuperscript{42}

Article 2 of the same Convention further recognises that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.\textsuperscript{43} Ratifying state parties recognises that an alien wife of any of its nationals may acquire nationality of her husband through specially privileged naturalisation procedures [Article-3(1)]. However, the concerned country has every right to impose certain limitations on such nationality for greater interest of the national security.\textsuperscript{44}

\textbf{Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962):}

To ensure women with their rights it is important to provide them the right to choose their life partner. To recognise that very right of women the General Assembly of United Nations vide resolution 1763 A (XVII) adopted the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages on 7\textsuperscript{th} November 1962 and it came into force on 9\textsuperscript{th} December 1964.

Recalling the Article 16 of the UDHR, which recognises the right of men and women to choose their partner, and other provisions of United Nations, this Convention stated that marriage should be entered into with the full and free consent of both men and women and such consent should be expressed by them in person after proper publicity about the marriage and in the presence of the

\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
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... competent authority to solemnise the marriage and of witnesses [Article-1(1)].

Besides this the Convention also states that the signatory States to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses (Article-2). Article 3 of the Convention states that all marriages should be registered by the competent authority. Thus the Convention recognises the very essential right of women i.e. the right to choose their own partners without any kind of fear.

Declaration on the Elimination of Discrimination against Women (1967):

Declaration on the Elimination of Discrimination against Women was proclaimed by the General Assembly resolution 2263(XXII) on 7 November 1967. The UN Charter, UDHR, various conventions, declarations, resolutions etc. have recognised the equality of men and women in all spheres of life. In spite of all these discrimination against women persists which creates obstacles in the fullest development of the potentialities of women in services of the country and humanity.

Recognising the fundamental fact that full and complete development of a country and the welfare of the world can only be achieved through the participation of women along with men, the Declaration in Article 1 states that discrimination against women is unjust and it is an offence against human dignity. Article 2 rightly proclaims that all appropriate measures should be taken to abolish existing...

46 Ibid.
48 Ibid., 2.
laws, customs, regulations and practices which are discriminatory against
women.\textsuperscript{49}

Article 4, 5 & 6 recognises the political rights of women, right to nationality and
right to property & inheritance respectively. Article 9 of the Declaration
proclaims that necessary measures should be taken to ensure equal rights of
women with men in education at all levels.\textsuperscript{50} Besides these the Declaration also
recognises the right of women to equal pay for equal work, right to receive family
allowances on equal terms with men etc.

**Declaration on the Protection of Women and Children in
Emergency and Armed Conflict (1974):**

In any armed conflict situation primary victims are women and children though in
maximum cases they are not participants of such conflicts. To save women and
children in conflict situation the General Assembly adopted the Declaration on
the Protection of Women and Children in Emergency and Armed Conflict vide
resolution 3318 (XXIX) on 14 December 1974.

The Declaration prohibits and condemn any attack or bombing on civilians
particularly on women and children. It also considers all forms of repression and
cruel and inhuman treatment - including imprisonment, torture, shooting, mass
arrests, collective punishment etc - against women and children committed during
military operations as criminal activity.\textsuperscript{51}

Article 6 of the Declaration clearly states that women and children belonging to
the civilian population and who are in emergency situation or in armed conflict in
the struggle for peace, self-determination, national liberation and independence,
or who live in occupied territories, shall not be deprived of shelter, food, medical
aid or other inalienable rights in accordance with international covenants,

\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid.
declarations, conventions. Thus the Declaration is an important protective mechanism to protect the most vulnerable groups - women and children - in conflict situations.

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979):**

The General Assembly of United Nations on 18th December 1979 has adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which is often regarded as International Bill of Rights for Women. The Convention came into force on 3rd September 1981. It comprises 30 articles. The Convention describes discriminations against women and also proposes actions to be taken by nations to end such discriminations. It is also regarded as the first human rights treaty to affirm the reproductive rights of women.

According to Article 1 of the Convention the term "discrimination against women" means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The Convention further proclaims that signatory States shall take all necessary steps in politico-socio-economic and cultural fields for ensuring fullest development and advancement of women, so that women can exercise and enjoy human rights and fundamental freedom equal with men (Article 3). Signatory States recognise that necessary steps shall be taken by them to suppress all forms of trafficking of women as well as exploitation of prostitution of women (Article 6) and ensure right of women to vote, to elect in all publicly elected bodies, to

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52 Ibid.
55 Ibid.
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hold public office, to represent the nation in the international level equal with men (Article 7 & 8). The Convention also ensures the equal right of women with men to acquire, change or retain their nationality. It states that neither marriage to any alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, make her stateless or forced her to acquire the nationality of the husband [Article 9(1)]. Article 10 recognises the right to education and Article 11 recognises the right to work as equal to men. Signatory States shall take necessary measures to establish equality between men and women in all matters relating to marriage and family relations (Article 16).  

Optional Protocol to the CEDAW (2000):

The General Assembly on 6th October 1999 adopted an Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women which came into force on 22nd December, 2000. This Optional Protocol contains 21 Articles. It proclaims that the signatory state parties recognise the competence of the Committee on the Elimination of Discrimination against Women, by ratifying this Protocol, to receive and consider complaints from individuals or groups. This Committee is constituted to monitor the state parties' compliance with the Convention.  

The Optional Protocol mentions two procedures for communication and inquiry:

(1) Communications Procedure- It allows individual women, or groups of women, to submit claims of violations of rights protected under CEDAW to the Committee.

(2) Inquiry Procedure- It allows the Committee to initiate inquiry in grave situations or systematic violations of women’s rights.  

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56 Ibid.
58 Ibid.
Conferences:

Under the auspices of the UN different world conferences have been organised. In the following we present a discussion on these Conferences.

World Conference of the International Women's Year in Mexico City (1975):

In order to spread awareness and attract the attention of people towards the condition of women world wide the General Assembly on 18th December, 1972 declared 1975 as International Women's Year. Accordingly many countries have formed national level committees to celebrate International Women’s Year in a befitting manner. During this period the UN also started to celebrate 8th March as International Women’s Day.

In this direction the First World Conference on women was held from 19th June to 2nd July 1975 in Mexico City. At this Conference three objectives were identified in relation to equality, peace and development for the Decade [Decade for Women (1976–1985)]59:

- Full gender equality and the elimination of gender discrimination;
- The integration and full participation of women in development;
- An increased contribution by women towards strengthening world peace.

The Conference also established the International Research and Training Institute for the Advancement of Women (INSTRAW). The energetic efforts of the participants particularly women participants led to the establishment of the United Nations Development Fund for Women (UNIFEM) in order to provide help to the development projects meant for women.

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Besides these, it also adopted Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace.\(^6\) The Declaration comprises 30 principles. Principle 1 of the Declaration proclaims that equality between women and men means equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities.\(^6\)

The Declaration also states that any obstacle in the way of equalising women with men should be eliminated so that women can participate in national development. In family and in society both men and women have equal rights and responsibilities and it should be properly guaranteed. Besides these the Declaration also proclaims that national policies should provide equal access to education and training to both women and men so that women can develop their intellectual potentialities. Women should also enjoy equal right to work and equal pay for equal work.\(^6\)

**United Nations Decade for Women (1976–1985):**

The General Assembly through its resolution on the World Conference of the International Women's Year proclaims that the period from 1976 to 1985 shall be United Nations Decade for Women: Equality, Development and Peace, to be devoted to effective and sustained international, national and regional action to implement the World Plan of Action and related resolutions of the Conference (Point No. 2).\(^6\) During this decade the second and third world conferences on women were held in Copenhagen (1980) and Nairobi (1985) respectively. Apart from these a number of conferences have been held; and many declarations and conventions on women’s rights have been adopted. Among the various

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\(^6\) Ibid.

\(^6\) Ibid.

instruments the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an important one that was adopted in 1979.

The Second World Conference on Women, Copenhagen (1980):

The UN convened the Second World Conference on Women from 14th to 30th July 1980 in the Copenhagen. It was organised for reviewing the progress made and action taken on the recommendations of the First World Conference on Women held in Mexico City in the year 1975. The Second Conference, apart from reviewing the actions also focuses on three important issues necessary for women – employment, health and education. Basically these three issues are related to the broad issues of equality, development and peace. It was realised in the Second Conference that these broad issues cannot be realised unless they are refined into specific sectors. The Second World Conference also called for national measures to ensure property rights, child custody and right to nationality for women.


The Third World Conference was held in Nairobi, Kenya from 15th to 26th July 1985. The UN convened this Conference to evaluate the progress made and action taken during the period 1976 to 1985 i.e. during the UN Decade for Women. The Conference also aimed to formulate a new course of action for the development of women. The members present in the Conference agreed that though substantial progress had been made during UN Decade for Women there were still a great deal to be done for women. The main focus of the Conference was on the violence against women.

After a prolonged deliberation the Nairobi Conference adopted ‘the Nairobi Forward-looking Strategies’ which is a basic document of actions and measures to

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be taken by the member states from 1986 to 2000. The Nairobi Forward Looking Strategies’ emphasised that national governments should take necessary steps for the establishment of equality of women with men. The document also urged that the Governments, while preparing and evaluating national plans and programmes of action may incorporate measures to overcome obstacles to the advancement of women and take necessary steps to include women in the development process equal with men.

Fourth World Conference on Women (Beijing) (1995):

The Fourth World Conference on Women was convened by the United Nations from 4th to 15th September 1995 in Beijing, China. Though the informal name of the conference is Beijing Women’s Conference but formally this conference is known as ‘The Fourth World Conference on Women: Action for Equality, Development and Peace’.

In this Conference representing states adopted a Declaration on the Platform for Action. In point no. 5 of the Declaration the representing states recognised the fact that though some progress has been made but ‘inequalities between women and men have persisted’. The representing states ensured that they would implement the ‘human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms’ (Point No. 9). They were convinced that the ‘Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace’ and also ‘Women’s rights are human rights’ (Point No. 13 & 14). The representing states also recognised the right of all women to control their own fertility (Point No. 17).

The representing states are determined to ‘Prevent and eliminate all forms of


The General Assembly on the recommendation of the Commission on the Status of Women convened a special session namely “Women 2000: Gender Equality, Development, and Peace for the Twenty first Century” popularly known as ‘Beijing +5’ in New York from 5th to 9th June, 2000 to assess the progress made and action taken in the implementation of the Beijing Platform for Action after five years of its adoption.

In this special session a political declaration and outcome document entitled "further actions and initiatives to implement the Beijing Declaration and Platform for Action" was adopted. In the special session the Commission on the Status on Women placed the report on the progress made and actions yet to be taken by the nations on the particular twelve critical areas identified in the Beijing Platform for Action.

After that the World Summit on the Information Society (2003) was convened in Geneva, a ten year review and reappraisal of the Beijing Platform (1995) was attempted in 2005 and the U.N. Decade for women was also given periodical extension at the international level to establish equal status of women and advancement of women for development of the society at large.


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National Perspective:

India achieved independence on 15th August 1947 and adopted the Constitution on 26th November 1949 which came into force from 26th January 1950. The written Indian Constitution is regarded as the fundamental law of the land. Besides different Acts passed by legislatures the Constitution in its Preamble and in different Articles recognises equality of rights between women and men.

Rights under the Indian Constitution:

The Indian Constitution in its Preamble sets various objectives and one important objective is to secure “equality of status and of opportunity” i.e. the Constitution recognises the equal status of all its Citizens both men and women and their equality in receiving opportunities. Part-III of the Indian Constitution depicts the fundamental rights of all Indian Citizens. Fundamental Rights comprises from Article 12 to 35 of the Indian Constitution which are applicable to all citizens equally irrespective of sex.

According to Article 15 (1) discrimination against any citizen of India can not be made on the ground of religion, race, caste, sex, place of birth by the Indian State. Further, Article 15(3) states that State can make some special provision for women and children. Thus, though Article-15(1) establishes gender equality but Article 15(3) allows States to make discriminations in favour of women for the uplift of women.

The Indian Constitution specifically mentions equality of opportunity for all citizens in matters relating to employment or appointment [Article 16 (1)]. It also categorically specifies that the State cannot discriminate or declare any citizen ineligible on the grounds of religion, race, caste, sex, descent, place of birth, residence [Article16(2)].

The Indian Constitution, besides the Fundamental Rights, in Part-IV provides the Directive Principles of State Policy which are considered as the positive attitude of States towards its citizens.

According to Article 39, the State shall direct its policy towards securing that all men and women equally should have the right to an adequate means of livelihood [Article 39 (a)]; they should have the ownership and control of the material resources of the community and these are to be distributed as best to subserve the common good [Article 39 (b)]; equal pay be paid to both men and women for equal work [Article 39 (d)]. Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. Besides these it is the Fundamental Duty of all Indian Citizens to “…… renounce practices derogatory to the dignity of women” [Article 51A (e)].

The 73rd and the 74th Constitutional Amendments are historic steps towards the uplift of women. According to Article 243D (3), “Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of reservation of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.” Similar provision of one-third reservation for women in case of Municipalities is provided in Article 243T of the Indian Constitution.

Besides these Constitutional provisions the Supreme Court of India which is the Apex Court in its several judgments has broaden the scope of different Articles of the Indian Constitution and protected the rights of women. For example, in Suchita Srivastava and Another v. Chandigarh administration the Apex Court in its verdict held that reproductive rights of women is a dimension of 'personal

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liberty’ under Article 21 of the Indian Constitution. Women can use this right for procreating or abstaining from procreating.\textsuperscript{72}

The Indian legislature has passed several Acts to provide protection to women against violation of their rights from time to time. In order to get a deep insight on the rights and protections available for women a brief analysis of different important legislations is required. There are some legislation which preceded the adoption of Indian Constitution such as, the Child Marriage Restraint Act, 1929. According to this Act, marriageable age for boys is 21 and for girls it is 18. Any person who conducts marriages of a girl and boy who have not attained the age of 18 and 21 respectively would be liable to be punished.

**Women and Personal Laws:**

**The Hindu Marriage Act, 1955:**

The Hindu Marriage Act, 1955 recognises the monogamy of marriage i.e. according to the section 5(i) of the Act, both the bride and bridegroom should not have living spouses at the time of their marriage. Further, marriage can only take place with the full consent of both boy and girl [Section 5 (ii) (a)]. Section 13 provides several grounds like, cruelty, desertion, incurable unsoundness of mind etc. for seeking divorce. Besides these, Section 13(2) provides special right to women to seek divorce if the husband after marriage is found guilty of rape or sodomy or bestiality.

The wife can also seek divorce if she faces cruelty, if her husband has “psychopathic disorder”, or any vulnerable diseases. Thus, the Hindu Marriage Act provides the right to women for a happy conjugal life.

**The Hindu Adoptions and Maintenance Act, 1956:**

The Hindu Adoption and Maintenance Act, 1956 provides for maintenance to women by their husbands. Section 18 (1) of the Act spells out that any Hindu wife

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is entitled to be maintained by her husband during her life time. She, even if residing separately, has right to maintenance if the husband is guilty of desertion, treated her with cruelty, suffering from leprosy, and has any other living wife etc. (Section 2). Hindu widow has the right to be maintained by her father in-law after the death of her husband [Section 19(1)].

The Hindu Succession Act, 1956:

The Hindu Succession Act, 1956 has been amended in the year 2005. According to this new amended Act, a Hindu girl whether married or unmarried has full right on the property of Hindu joint family. Any Hindu daughter is entitled to get the same share as the Hindu son. Further, the Act provides any Hindu female the full right to ownership over the property possessed by her.

Muslim Law and Marriage:

Muslims do not have any codified law to govern marriage. However, under Muslim law marriage is regarded as contract because one party makes an offer of marriage, the other party has right to accept or deny the offer. An important condition under Muslim law for valid marriage is the consent of both bride and bridegroom, two witnesses who would personally ask the bride whether she is ready for that marriage or not.73

Under Muslim law sexual intercourse before marriage is regarded as illicit and physical contact before marriage is also prohibited. Another important aspect of Muslim law is the payment of dower at the time of marriage by the husband to the wife. The wife has full right over the dower. In practice however, Muslim women have limited rights under Muslim law.

The Muslim Women (Protection of Rights on Divorce) Act, 1986:

The Muslim Women (Protection of Rights on Divorce) Act, 1986 and subsequent judgments by Courts on the basis of provisions of this Act are important steps towards ensuring rights of women on divorce. According to Section 3 a Muslim

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73 Ibid., 224.
divorced women is entitled to get maintenance during *iddat* period from her former husband, maintenance for her children up to two years from the date of their birth, *Mahr* or Dower agreed to be paid by the husband at the time of marriage. She has also right to get all properties given to her by her relatives or friends or the husband or husband’s relatives or husband’s friends.

The Gujarat High Court in Abdulla *v.* Mohnuma Saiyadhan case held that a Muslim women is entitled to get maintenance from her husband throughout her entire life or till she remarriages, her right to maintenance is not limited to the *iddat* period only.\(^74\)

**Women and Industrial Law:**

**The Factories Act, 1948:**

The Factories Act, 1948 provides that women should not be employed in factory for pressing cotton where cotton opener is at work. There must be crèches for children under the age of six years in every factory where more than thirty women workers are employed. The Act also provides that in factories there shall be separate latrines and urinals for men and women and clean washing facilities.

**The Maternity Benefit Act, 1961:**

Enactment of this Act upholds the idea that delivery and rearing of child is a social function and it is a societal responsibility. The Act provides that women should not be employed in any establishment within six weeks from the date of her delivery or miscarriage or medical termination of pregnancy; women have also the right to receive maternity benefits during that period.

Even after rejoining duties these women have right to get breaks two times in a day for rearing her baby until it attains the age of fifteen months. The Act also provides for appointment of inspectors who shall have powers to inspect industries where women are employed.

\(^{74}\) Ibid., 245.
The Equal Remuneration Act, 1976:

Following the Constitutional directives enshrined in Article 39 the Equal Remuneration Act, 1976 was passed. Section 4 of the Act provides that the employer is bound to pay equal remuneration to men and women if they perform equal work. Section 5 of the same Act provides that employers can not discriminate in recruiting employees on the basis of sex. Thus the Act provides wider scope for establishment of equality between men and women.

Supreme Court’s Guidelines on Sexual Harassment of Women at Workplace:

In the absence of a codified law on the sexual harassment of working women at workplace the Supreme Court of India in Vishaka v. State of Rajasthan has issued guidelines which are to be followed until proper legislation is made in this regard.

The Apex Court defined ‘sexual harassment’ as any unwelcome sexually determined behavior like physical contact or advances, demand for request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature which may be direct or by implication. The guideline also states that it is the duty of the employer to stop and prevent such occurrences and for this purpose the institution is required to constitute a committee on sexual harassment of working women to look into the cases of sexual harassment. It is important to mention that the Lok Sabha on 3rd September 2012 has passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2010.

Women and Medical Laws:

The Medical Termination of Pregnancy Act, 1971:

The Act provides a detailed elaboration of when, where and who can abort a foetus. According to Section 3 of the Act, pregnancy can be terminated only by a registered medical practitioner, if the continuance of pregnancy involves any risk

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to the life of the pregnant women or leads to serious injury to her physical or mental health. Such termination can only be done in Government hospitals or places recognised by the Government. In order to terminate the pregnancy of a girl below the age of 18 years or mentally ill the consent of her guardian in writing is required.

**The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**

This Act regulates the determination of sex before birth of the child. Section 3 of the Act provides that genetic counseling centres, genetic laboratories or genetic clinics can not be associated with the pre-natal diagnostic techniques without registering under this Act. Even genetic counseling centres, genetic laboratories or genetic clinics can not purchase ultrasound machine capable of determining sex of foetus unless these are registered under this Act. The Act also specifies only six grounds under which pre-natal diagnostic techniques can be used. Section 6 of the Act specifically states that though in some case pre-natal diagnostic techniques may be used but in no circumstances it can be used for determination sex of the foetus. The Act has also provision that the appropriate authority either *suo-motu* or on the basis of complaint, in case of violation of any provision of the Act, can issue notice to any genetic counseling centres, genetic laboratories or genetic clinics to state reason regarding the fact that why the registration should not be cancelled, and if not satisfied may cancel their registration. Section 27 states that any offence under this Act is cognizable, non-bailable and non-compoundable. Thus the Act protects the rights of foetus.

**Women and Social Laws:**

**The Immoral Traffic (Prevention) Act, 1956:**

The Act discusses about punishment for keeping brothel; allowing premises to be used for brothel; and for living on the earning of prostitute. It also makes procuring or inducing any person for prostitution a punishable offence.
The Act further prohibits establishment and running of brothels near public places. Section 13 of the Act has provision for appointment of a special police officer not below the rank of a sub-inspector in a particular area as notified by the State Governments who is empowered to search any places without warrant if he believes that and has reasonable ground to believe that in such areas offences punishable under this Act are committed. The special police officer has power even to arrest without warrant. All the offences under this Act are cognizable.

The Indecent Representation of Women (Prohibition) Act, 1986:

The Act prohibits indecent presentation of women through advertisements, paintings, writings, publications etc. Section 4 of the Act prohibits production, distribution, circulation or sending by post any book containing indecent representation of women.

The State Government by notification may authorise any Gazetted Officer, for a particular area, to search, seize papers, films etc. and even to examine any record, register, document and so on if he believes that any offence under this Act has been committed. The Act also provides that if any company violates any provision of this Act the office bearers at that time of that particular company shall be punished. The offences under this Act are cognizable and bailable.

The Commission of Sati (Prevention) Act, 1987:

‘Sati’ means burning or burying alive widow. This Act prohibits the barbaric custom of Indian society of burning widow alive along with her deceased husband immediately after his death. Under this Act attempting sati is punishable and abetment of sati either directly or indirectly is also punishable. The Court can give even death punishment on this count. Any one found glorifying the act of sati is also liable to be punished. Under section 7 of the Act the State Government may remove any temple or structure if it finds the preservation of the memory of sati in those temple or structures. The District Collector or Magistrate has the power to seize such articles which he believes has been preserved for glorification of
sati. The Act has provision to constitute one or more special courts to try the cases of sati.

Laws Relating to Violence against Women:

The Dowry Prohibition Act, 1961:

The Dowry Prohibition Act was passed in Parliament to prohibit taking as well as giving of dowry. Under Section 4 of the Act demanding of dowry directly or indirectly is punishable. That means, making mere demand of dowry itself constitutes the offence under this Act. Any advertisement in newspapers or in media showing property or money for marriage is also prohibited. The Act further makes any agreement for giving or taking of dowry void (under Section 5). Under Section 8 of the Act, such offences are cognizable, non-bailable and non-compoundable. A unique feature of the Act is that Section 8-A provides that it is the legal obligation of the accused person to proof that he has not committed the offence.

The Protection of Women from Domestic Violence Act, 2005:

The Protection of Women from Domestic Violence Act, 2005 is a significant legislation by the Indian Parliament for protecting women from violence within their homes. This Act is unique in nature as it has provisions to protect women who face violence not only from husband but also from brothers, father, sons or any person with whom the victim is living. While defining domestic violence the Act states that domestic violence means actual abuse or threat or abuse be it physical or sexual or verbal or emotional or economic. The Act also provides right to women for securing housing. She has full right to reside in her matrimonial home irrespective of the fact whether she has any right on that home or not.

The Act has provision for appointment of Protection Officers by State Governments for particular areas as specified by the Government. It is the
responsibility of the Protection Officer to ensure availability of shelter home for the victim and to provide them with facilities like legal aid, medical examination.

The National Commission for Women Act, 1990:

The Act provides for the constitution of the National Commission for Women. According to the Act it is the function of the Commission to investigate and examine all matters related to the safeguards of women and make necessary recommendations for proper implementation of those safeguards. The Commission has the power of taking any case _suo-motu_ if it thinks that the case is related to the violation of women’s rights. According to the provisions of this Act the Commission can inspect jails or other homes where women are kept and can summon any person for examination; can also call for production of any document etc.

Indian Penal Code, 1860:

All the provisions contained in Indian Penal Code (IPC) are equally applicable to all citizens of India. Apart from these, the IPC contains certain specific provisions particularly for Women.

Section 304-B states that any death of women that occurred due to burn or bodily injury or otherwise within seven years of marriage and if it is found that just before her death she was subjected to harassment or cruelty by her husband or by any relative of her husband could be referred as dowry death. While prohibiting dowry death the section states that the person who commits offences under this section shall be punished for a minimum of seven years and maximum of life imprisonment.  

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Section 312 provides for punishment of woman who causes miscarriage to herself or the person who causes miscarriage to any women and Section 313 provides for punishment for those who abort any pregnant women without her consent.  

Under Section 314 any person who does any act with an intention to cause miscarriage without the consent of the woman and if it causes the death of the woman shall be punished with either imprisonment for life or up to ten years and also fine.  

Section 354 states that if any person who assaults or use criminal force against any women that outrage the modesty of the women shall be punished with two years of imprisonment or with fine or with both.  

Any person who kidnaps or abducts any women in order to compel her to marry any person against her will or in that way if she is seduced or forced (by means of criminal intimidation) to have illicit sexual intercourse shall be punished with ten years of imprisonment under Section 366. The Section also states that if any woman is compelled to go from any place with an intention that she may be forced to illicit intercourse with another person is also punishable.  

If anyone by any means induce a girl below 18 years of age to go from any place or to do any act with an intention that the girl may be forced to illicit intercourse with another person shall be punished with ten years of imprisonment under Section 366-A.  

Section 366-B provides that if any girl below the age of 21 years is brought from outside India or from Jammu & Kashmir with an intention to force or seduce her to illicit intercourse with another person shall be punished.  

Section 375 clearly spells out the descriptions under which an act may be termed as rape.

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77 Ibid.  
78 Ibid.  
79 Ibid.  
80 Ibid.  
81 Ibid.  
82 Ibid.
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To it if any man does sexual intercourse with a woman against her will, without her consent, with her consent but consent are obtained under threat of death or hurt of her or any person to whom she is interested, with her consent but the man knows that the woman is lawfully married to another man, with her consent but due to unsoundness of mind or due to intoxication or the administration by him personally or through another of any stupefying or unwholesome substance she is unable to understand the consequences of such consent, with or without her consent if she is below the age of sixteen years. 83

Punishment for the crime of rape has been spelled out in Section 376. Under this section in case of the crime of rape the punishment is minimum seven years of imprisonment. However, it may be extended to ten years or life imprisonment. 84

Under Section 376-A if any husband makes sexual intercourse with wife during separation under decree or under some usages or customs and without her consent is punishable for two years of imprisonment and also with fine.

If any public servant taking advantage of his official position induces or seduces any women shall be punished for five years of imprisonment and also with fine under Section 376-B. 85

If any superintendent of jail or manager of any custodial home is found guilty of inducing or seducing any women under his custody shall be punished under Section 376-C. Punishment in such cases may be extended to five years of imprisonment with fine. 86

Under Section 376-D if any person of hospital management or staff of hospital taking advantage of his official position have sexual intercourse with any woman in the hospital shall be punished for five years of imprisonment and also fine. 87

83 Ibid.
84 Ibid.
85 Ibid.
86 Ibid.
87 Ibid.
According to Section 493 if any man makes any woman believe (by deceit) that she is his legally married wife (in actual who is not lawfully married to that man) and have sexual intercourse with her shall be punished for ten years of imprisonment and also fine.\textsuperscript{88}

Under Section 494 if any person (man or woman) marries during the subsistence of their first marriage shall be punished with seven years of imprisonment or fine.\textsuperscript{89}

Under Section 498 if any man takes away any married woman, with an intention to have illicit relationship with her, from her husband or from any person caring her on behalf of her husband shall be punished. For this offence punishment may extend up to two years with fine.\textsuperscript{90}

Section 498A states that if any husband or relatives of the husband subjects any married women to cruelty shall be punished with imprisonment which may extend to three years and also with fine.\textsuperscript{91}

Any person who utters any word, or makes any sound or gesture, or shows any object with an intention that any woman can hear such sound or see those gesture or objects shall be punished with one year or with fine or with both under Section 509.\textsuperscript{92}

\textbf{Indian Evidence Act, 1872:}

In order to make Section 498A of IPC more effective Section 113-A and Section 113-B have been introduced in the Indian Evidence Act.

Section 113-A under Indian Evidence Act, 1872 states that if any woman commits suicide within seven years of her marriage and if it is found that before her death she was subjected to cruelty by her husband or his relative then the Court may

\textsuperscript{88} Ibid.
\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid.
\textsuperscript{91} Ibid.
\textsuperscript{92} Ibid.
presume that the suicide have been abetted by her husband or such relative of her husband.

If it is found that before committing the suicide the woman faced torture from her husband or any of his relatives for dowry the Court shall presume that such death as a dowry death.

**The Code of Criminal Procedure, 1973:**

Under Section 125 of the Code of Criminal Procedure a man has to give maintenance to his wife, children (legitimate or illegitimate), father and mother if they are unable to maintain themselves. If the man refuses to give maintenance the Magistrate may order for imprisonment.

Besides these legislations India has also adopted several measures for the uplift of women through its Five Year Plan programmes.

**Women and Five Years Plans:**

**First Five Year Plan (1951-1956):**

The First Five Year Plan envisaged for providing adequate services to women. It emphasised that in order to establish equal status and rights of women together with their counterpart legislations should be enacted. The establishment of the Central Social Welfare Board (CSWB) for assisting voluntary organisations and to take up welfare programmes for women is important in this regard. The CSWB with the help of State Governments have organised State Social Welfare Boards throughout the country.

**Second Five Year Plan (1956-1961):**

The Second Five Year Plan under the CSWB continued to take up programmes and extended welfare projects meant for women. Further, it showed its great concern regarding the disparity of literacy rate of 7.9 % of women against 24.9 % of man. It emphasised on the social education through which a comprehensive approach for community action was taken up and also insisted on undertaking
national extension & community development programmes with the cooperation of people.

Third Five Year Plan (1961-1966):

The Third Five Year Plan gave importance to girls’ education. While showing its concern on the lower literacy rate of girls the plan envisaged that Rs. 175 crores would be devoted for girls education of which majority would be spent for primary and middle school stages.

Fourth Five Year Plan (1969-1974):

Fourth Five Year Plan continued to emphasise the special programmes for encouraging education of girls. It also stressed on providing sanitary facilities for girls.

Fifth Five Year Plan (1974-1979):

The Fifth Five Year Plan coincides with the UN Decade for Women. It emphasised on the training of women to help them in the field of employment. During this Plan Women’s Welfare and Development Bureau under the Ministry of Social Welfare, Government of India was set up in 1976.

Sixth Five Year Plan (1980-1985):

For the first time the issue of women’s development got a separate chapter in the Five Year Plan. The Sixth Five Year Plan reviewed the progress made on the basis of programmes adopted in the previous Five Year Plan. It agreed that though development of women has occurred but excessive mortality of female child, low rate of literacy and low economic status of women necessitates the need for giving more attention to the economic emancipation of them. The Plan thus identified threefold development of women, i.e. in the field of education, employment and health. These three sectors are interdependent and dependent on the total developmental process.
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Seventh Five Year Plan (1985-1990):

The Seventh Five Year Plan aimed at raising the socio-economic status of women to bring them in the mainstream of national development. In this regard the Plan incorporated numbers of programmes in the field of health, education and employment for women.

Eighth Five Year Plan (1992-1997):

The Eighth Five Year Plan reviewed the progress of the development programmes adopted for women during Seventh Plan period. The Eighth Five Year Plan aimed to ensure that the benefits of development projects should reach women. It rightly emphasised that women should be enabled to participate equally in the development projects rather than becoming mere beneficiaries of schemes. The Plan gave emphasis on the formation and strengthening of grassroots level women's groups as they could articulate local women's needs and help in decentralisation of planning and implementation of various programmes.

Ninth Five Year Plan (1997-2002):

With the objective of empowering women as agents of social change and development the Ninth Five Year Plan adopted "Women’s Component Plan" - a special strategy- in order to ensure that not less than 30% of funds/benefits flow to women from other developmental sectors. This Plan also emphasised on empowering women through Self Help Groups.

Tenth Five Year Plan (2002-2007):

With the same objective of Ninth Plan the Tenth Five Year Plan has also adopted ‘Sector-specific 3-Fold Strategy’ for empowering women through social empowerment, economic empowerment and gender justice.

“Social Empowerment - to create an enabling environment through various affirmative developmental policies and programmes for development of women
besides providing them easy and equal access to all the basic minimum services so as to enable them to realise their full potentials.

**Economic Empowerment** - to ensure provision of training, employment and income-generation activities with both ‘forward’ and ‘backward’ linkages with the ultimate objective of making all potential women economically independent and self-reliant; and

**Gender Justice** - to eliminate all forms of gender discrimination and thus, allow women to enjoy not only the de-jure but also the de-facto rights and fundamental freedom on par with men in all spheres, viz. political, economic, social, civil, cultural etc.  

**Eleventh Five Year Plan (2007-2012):**

The Eleventh Five Year Plan aimed at ending of discrimination faced by women. The plan incorporated gender perspective after thorough discussions and recognised women as agents of economic and social growth. The approach to gender equity is based on the recognition that interventions in favour of women must be multi-pronged and they must: (i) provide women with basic entitlements, (ii) address the reality of globalisation and its impact on women by prioritising economic empowerment, (iii) ensure an environment free from all forms of violence against women (VAW)—physical, economic, social, psychological etc., (iv) ensure the participation and adequate representation of women at the highest policy levels, particularly in Parliament and State Assemblies, and (v) strengthen existing institutional mechanisms and create new ones for gender mainstreaming and effective policy implementation.  

Besides all these, a numbers of schemes like Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG), Swayamsiddha, Swadhar etc;

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action plans and policies like the National Plan of Action (For Women) (1976), National Perspective Plan for Women (1988-2000), National Policy for Empowerment of Women (2001) etc.; committees like National Committee on Women’s Education (1958-59), the Committee on Status of Women (CSWI), 1974 etc. have been adopted. Further, institutions like Department of Women and Child Development (WCD), the National Commission for Women (NCW) and State Commissions for Women (SCW) have been established for women after independence.

**Summing Up:**

- The issue of women’s rights occupies an important space in the realm of human rights. The idea for protecting rights of women can be traced back to the writings of Mary Wollstonecraft, John Stuart Mill and many others. They argued for the uplift of the status of women and recognition of the rights of women.

- The legal recognition for the rights of women got a boost after the establishment of the UN in 1945 and more specifically after the establishment of the UN Commission on the Status of Women. The Charter of the UN recognises the equal rights of women together with their counterparts. It aimed at the achievement, promotion and protection of the rights of women.

- Besides recognising equality between men and women in the UN Charter and establishing the UN Commission on the Status of Women the UN also adopted a number of declarations & conventions and held conferences at international level to promote and protect rights and equal status of women in society.

- India, apart from ratifying different international instruments adopted by the UN for protection of the rights of women, has recognised equality between men and women in the Preamble of the Constitution and has recognised equal rights and status of women with men in Part-III (Fundamental Rights), Part-IV (Directive Principles of State Policy) and other Articles of the Constitution.
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- The Govt. of India has also enacted several legislation, incorporated provisions as legal mechanisms for protecting the rights of women.

- The Govt. of India has also adopted and recognised policies and programmes through Five Year Plans to promote women’s right at socio-economic level; establish equal status of women at the national level; develop the potentiality of women so that they can participate in the national developmental process.

- The most important Act and event in this direction is the adoption of the National Commission for Women Act, 1990 and the subsequent establishment of National Commission for Women in 1993. Different States have also established State Commissions for Women by enacting Act for their respective States. These Commissions for Women are Government recognised bodies to deal with the cases of violation of the rights of women as also to promote and protect their rights.

From the above discussion it is clear that though there was the urge for recognising the rights of women in the writings of philosophers of early centuries legal recognition and the process of establishing equal status of women with men has developed prominently in the post World War II period. During that period several mechanisms have been adopted both at the international and national level.

Against this background the structure, formation, function and status of the SCWs will be examined in the next chapter.