CHAPTER 2

WOMEN’S RIGHTS & CONTEMPORARY INDIAN SOCIETY
At this juncture it is important to reflect on the central theme of our discussion -- engagement of the police with women's rights. This, however, requires a thorough understanding of the state of women's rights in our society and our sensitivity to it. Only then it is possible to contextualise the role of police. In this chapter we have, therefore, concentrated on some of the key questions relating to women's rights. To begin with we have examined whether the discourse 'human right' is sufficiently sensitive to the specificity of the women's questions. A careful reading of the existing debate, as we have shown, suggests severe limits to the human rights discourse. In fact, it is possible to find a high degree of male bias and resultant indifference to the experiential domain of women in the rights discourse. It is, therefore, not surprising that the growing assertion of feminist consciousness and women's movements all over the world would try to alter the prevalent pattern of seeing human rights, and asset the importance of women's specific issues. We have examined the sociology of this awareness and its implications as far as sensitivity of the larger society to women's rights is concerned. As a matter of fact in this chapter we have discussed substantially different women's specific rights, legal issues and social engagement of the police.

I Towards a Gendered Critique of Human Rights Discourse

"The concept of human rights, like all vibrant vision is not static or the property of any one group; rather, its meaning expands as people reconceive of their needs and hopes in relation to it. In this spirit, feminists redefine human rights abuses to include the degradation and violation of women. The specific experiences of women must be added to traditional approaches to human rights in order to make women more visible and to transform the concept and practice of human rights in our culture so, that it takes better account of women’s lives." 1

The language of human rights occupies a pre- eminent position in the various discourses of political philosophy today. The Universal Declaration remains the most widely recognized statement of the rights to which every person on the planet is entitled. Despite their broad agreements and the significance of the human rights concept in international and national politics, its meaning remains controversial. Major international human rights instruments shy away from a definition of human rights. Rights rhetoric has always been critiqued as articulating political conservation from the perspective of the elite. Its legal framework is not conducive to social change. Further more, the human rights position presupposes a certain basic non-existent equality between people's conditions. In so far as people are situated in an unequal social structure with their identities circumscribed by

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various categories such as class, race and gender, their options remain foreclosed, preventing them from exercising their rights.\textsuperscript{2} By preaching universal standards of ethical values and human aspirations rights discourse imposes values that are essentially western on other cultures without taking into consideration their cultural specificities. The bone of contention between the universalistic concept of human rights and the proponent of cultural relativism is primarily over who defines, enforces and articulates them. As it now operates, primarily through the monitoring by the Northern Organization on violations in the South and lobbying of the Northern Governments to pressure Southern Governments to respect the human rights of their own population. Considering the immediate problems confronting the underdeveloped countries, it is also vehemently propagated that as long as the survival needs of a large populations is the primary concern, the issues within the rights discourse is an unaffordable luxury. The arguments add that the Western Nations can afford to address human rights issues, since they have already achieved a high economic standard of living at the expense of their third world colonies.\textsuperscript{3}

Under such circumstances proliferation of new age right movements and their claim for legitimacy is not at all surprising.

An analysis of rights from a gender perspective could well detract attention from issues which affect the whole community especially when non-realization of basic needs have not yet been possible. But what can not be overlooked is that as long as men and women play gendered roles, the culturally constructed notions of entitlements which are embedded within them deny women even their claims to humanity and consequently they are seen as carriers of lesser rights. Women are not only discriminated and denied against their fundamental rights to survival, access to resources and control over their produce but through the process of gendered socialization losing their autonomy, becomes weak, pliant and subservient.\textsuperscript{4}

An awareness of the existing tensions between what is deemed as universal Human Rights and Women’s rights would perhaps help to resolve some of the grey areas, leading to a more harmonious integration of gender issues.

The feminist response to the rights “Talk” has to be placed again within the broad frame work of their critique of liberal philosophy and legal theories in achieving parity between men and women in society.

Since the drafting of the universal declaration in 1948, women have had to fight vigorously to be included in the human rights vision. As Tomasevski\textsuperscript{5} recounts, an early draft of the declaration opened with “All men are brothers.” This reflected the

\textsuperscript{2} Poonacha .V (1995), “Gender within Human Rights Discourse”, SNDT Women’s University, Bombay. PP. 2
\textsuperscript{3} Ibid, PP. 3,4,5
gender chauvinism within the Commission on Human Rights, which was drafting the declaration, even though it was chaired by Eleanor Roosevelt, and despite the efforts of its female members. The Commission on the Status of Women (CSW) effectively opposed this exclusionary language. The final text of the Universal Declaration reaffirms the United Nation Charters postulate of the equal rights of Women, stating that “All human beings are born free and equal in dignity and rights” (Art. 1) and that “Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, National or Social origin, property, birth or other status.” (Art. 2)

“The concept of human rights, like all vibrant vision, is not static or the property of any one group, rather its meaning is written in a language that is male centric, women can never be sure of their inclusion. Though the use of male gender zed terms in the document was clearly generic, however, the use of “Man”, “Mankind” and “He” in the document has unfortunate consequences for women, for the language reveals sexist practices expands as people reconceived of their needs and hopes in relation to it.”

Let us for a moment put on the traditional lenses that have been worn to shape and develop human rights policy since the late 1940’s. What do we see? First, we see male, second we see a male being arbitrarily arrested and tortured. And third, we see a male being arbitrarily arrested and tortured somewhere in a developing country. Wearing a different pair of lenses- “gender lenses” - Women’s human rights activists have launched a critique of this dominant perspective. It is a perspective that not only violates the “Universality” and “Indivisibility” of the concepts embedded in the human right vision but also has contributed to slowing down the promotion and protection of women’s human rights.

Accepting male as Norm:

Universality is a central tenet of the Human Rights vision. In practice, the prevailing view has been that “Universal” human rights are best protected through the norm of non-discrimination, broadly formulated in the Universal Declaration of Human Rights, which entitle all to the rights and freedoms set forth there in, “Without distinction of any kind,” including distinctions based on sex, and this idea was enshrined in the 1966’s political Covenant and Economic Covenant and reinforced in all major human rights instruments. Traditionally, Human Rights thought and practice have accepted the male as the norm and the point of departure, legitimate concerns of women that lacked a male norm or experience have been considered irrelevant to the human rights frame-work. The result

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work. The result has been an absence of guarantees for fundamental rights and freedom when women as the actors are most affected.\(^7\)

A particularly clear example is gender based violence against women in all of its manifestations. As the Global Campaign for Women’s Human Rights highlighted in the 1993 world Conference in Vienna. “More women die each day from various forms of gender based violence than from any other type of human rights abuse. This ranges from female infanticide and disproportionate malnutrition of girl children, to the multiple forms of coercion, battering, mutilation, sexual assault and murder that many women face in every region of the world, throughout their lives, simply because they are female.”\(^8\) Yet, only recently has violence against women been recognized as a human rights violation and attracted attention from the international Human Rights Community.

This issue has been exacerbated by the insistence in traditional Human Rights theory on a division between public and private responsibility. These documents, however, define the relationship between the individual and the State within the public arena. Women’s lives remain circumscribed within the private area of family and are therefore, considered outside the purview of State protection. Activists for Women’s Human Rights have challenged this public/private split as a politically constructed barrier that has been used to justify inaction by the State and continued subordination of Women. Dichotomies such as nature/culture, mind/body also help to define the nature and capabilities of the two sexes. Men are seen as rational, self-interested individuals who participate in the public, Political World (Culture). Women due to their roles and reproductive functions are considered closely associated with nature and body.\(^9\) All human right instruments, be it national or international, reject the principles of non-intervention when violation of rights occur. Yet systematic violence against Women is treated as “customary” or a private matter and thus immune to public condemnation. If a person is murdered because of his or her politics, the world is justifiably outraged. But if a person is beaten or allowed to die because she is female, the world dismisses it as cultural tradition.\(^10\)

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\(^9\) Poonacha V (1995), “Gender within Human Rights Discourse”, SNDT Women’s University, Bombay. PP. 90-91

Neglecting Economic, Social, and Cultural Rights:

Despite the rhetoric, in practice the international Human Rights Community has privileged Civil and Political rights, which are often regarded as "the" human rights. At the same time, it has neglected the promotion and protections of social, economic and cultural rights, thereby ignoring some of women's most pressing concerns.

These developments were the results of political self interests of States and of cold war politics. As Tomasevski (1993) recounts, soon after the adoption of the Universal Declaration in 1948, work began on translating its principles into a formally-binding treaty. In the context of the cold war, Governments were not able to agree on a treaty positions where Communist & Developing Countries emphasized the protection of social and economic rights. Western Developed Countries gave preference to the protection of Civil and Political rights, which they argued, could be expressed in law, judged in court and assessed by the United Nations Human Rights Commission.11

The end result was the adoption of two separate treaties. The International covenant on Civil and Political Right (ICCPR) and the International Covenant on Economic, Social, Cultural Rights (The ICESCR). Civil and Political rights have received the lions share of attention and more resources by the international human rights Community and, therefore, plays a predominant role in the practice of human rights globally.12

The hierarchical importance given to Civil and Political rights has slowed progress in the recognition and protection of women's human rights because "much of the abuse that women experience is part of a larger socio-economic web that entraps women, making them vulnerable to abuses that are not solely political or caused by States."13 Some of the most urgent concerns of women's day to day existence involve the denial of economic, Social, and Cultural rights, including access to employment & credit, to adequate food and housing and to education and health care.

These concerns includes the impact of structural adjustment policies imposed by multilateral agencies, such as the World Bank and International Monetary Fund (IMF), that have affected women most harshly. Advocates of women's human rights are wrestling with this issue.14 They are also increasing by aware of the need to challenge the false belief
that women's human right are not an issue in developed Countries. Omnipresent Violence against women, and other gender specific Violence fortifies this.

This Universal Declaration of Human Rights (UDHR) is critiqued as a biological statement.\textsuperscript{15} While it indicates how human have risen above their biological animalness until they have become creature who ascribe. “rights to each other” it also makes evident that women continue to be defined and limited by their biology.

The encoded assumptions within the document about the ideal gender relationships are detrimental to women’s interests. For instance, Article - 1 treats the bi­social group, family. Part-3 States, that “the family is the natural and fundamental group unit of society and entitled to protection by society and the State.” These seemingly bland assertions can in reality jeopardize the human rights of women and children in many ways. For whenever supporting laws are enacted to protect the family there is the added risk of totalitarian control over the life of individual members of the household.

There are varying models of family such as nuclear, extended, matrilineal, patrilineal etc. By and large those vested with the powers to implement Article 16 of the UDHR and the collateral laws enacted to protect the institution of family tend to define it from their world view which may not have a bearing on the ground realities of peoples live. This might inadvertently lead to the promotion of those models of families that are oppressive to women and children. To be sure, in the absence of alternative social security systems, Women, particularly in the third world countries, rely on families in times of Crisis. On the other hand, divided and unsupportive families may be the places where there are the maximum violations of the human rights of women and children. Families with intensive cohesiveness may the spirit of universal oneness.

But the main problem is with part 3 of Article 16 in the phrase “entitled to protection by society and the State.” In practice this phrase seems to be widely interpreted to mean that all legal means are to used to keep families together. This could lend credence to religious and cultural practices which deny women the right to walk out of violent homes and could in effect, nullify the rights granted to the individual in Article 3, 4 (Slavery shall be prohibited in all its forms) and 5 (opposes the subjection of individual to torture or to cruel, inhuman or degrading treatment.)

Likewise human rights are neglected when judges, as they commonly do, send abused children back to the abusive families or when the Police refrain from taking

cognisance of the complaint of battered wives. By treating the institution of the family as sacrosanct and outside the purview of state interference, the State in effect strengthens the oppressive relationships within the household wherein men gain from the sexual and domestic labour of women. This reality thus would validate the Marxist criticism of bourgeois families as a fundamental unit which enables the State to protect its own power. Article 16, part 2 states that marriage shall be entered into only with the free and full consent of the intending spouses. Part-1 States that men and women are entitled to equal rights as to marriage, during marriage and in the course of its dissolution. The Problem is however, is with the first sentence of Part-1; "Men and women of full age, without any limitation due to race, Nationality or religion have the right to marry and to found a family." The word order of the phrase "Right to marry and to found a family" implies that marriage is required before procreation. Such an interpretation could curtail individual rights and also subtly decree a lower status for children born out of wedlock. In a social set up where in women continue to be defined in terms of their abilities to bring forth children, there would be further compulsions on women to procreate. Yet the process of in-vitro fertilization and other medical intervention in reproduction require a careful monitoring of women's bodies which in itself could constitute an impingement of women's rights to privacy and their right to bodily integrity.  

A third flaw in the UDHR is the failure to make an explicit statement of the right to one's own body. If this body is treated as something inviolable, then a human being has validity and recognition. Male behaviour often revels that women bodies are considered to be the property of men husbands, lovers, fathers, pimps. A father in many cultures assumes the right to marry his daughter off to the man of his choice and a husband assumes that marriage gives him unlimited access to his wife's body. Doctors arbitrarily assume that they need not get consent before interfering with a women's body and population planners in developing countries may even prescribe large scale injections to huge numbers of women to render them infertile. The right to one's own body if implemented in full would profoundly alter the prevalent perception of women.

Article 15 the right to Nationality, part-2 States: "No one shall be arbitrarily deprived of his Nationality nor denied the right to change his Nationality.” Perhaps this actually does mean only males. The equal rights of women with regard to nationality are clearly a problem in so many parts of the world that the 'Convention of the Nationality of married women' had to be adopted by the General Assembly of U.N in 1957. It states "States parties shall ensure in particular that neither marriage to an alien nor change of Nationality by the husband during marriage shall automatically change the Nationality of the wife, render her stateless or force upon her the Nationality of the

husband. It is obvious that the deprivation of Nationality, lack of the right to own property and the inability to participate in the Government of one's country are not trivial. Yet it is likely that the very words in which we expressed our aspirations in the UDHR, could hamper their fulfilment for women.

**Feminist Movements and Assertion of Women's Rights:**

Like other movements for women's rights, the women's human rights movements have evolved from women organizing on local, national, regional and international levels around issues that affect their daily lives. One special component of this movement is women's entry into the political “space” opened by the United Nations, women have taken advantage of the opportunities presented by International meetings such as the world conference on Human rights and those that took place during the UN Decade on women to organize among themselves, while transforming the official agenda. Women's rights traditionally have been treated as separate and not taken seriously by human rights organizations and governments. This attitude is reflected in the fact that when the United Nations resolved to hold its second world conference on Human Rights, its proposed agenda did not mention women or any gender-specific aspects of human rights. “Yet by the time the world conference ended in June 1993 Vienna, gender based violence and women's human rights emerged as one of the most talked about subjects, and women were recognized as a well organized human rights constituency.”

The movement for women's human rights can be traced back to the United Nations decade for women (1976-1985) which facilitated the proliferation of women's non-Governmental Organization (NGO's) in Third world Countries as well as the further establishment of U.N programme with respect to advancement of women. The decade ended with the Third United Nations world conference on women (Nairobi 1985), which brought greater awareness about the obstacles to women's advancement and generated a new momentum for collective action at the international and regional level. The "Forward- Looking strategies" of the conference document, placed greater emphasis on the deeper structural and institutional changes required in societies every where for women to achieve full equality. The third world Forum on women, Law and Development, held as part of the parallel NGO activities, identified two key strategies for action. Using the law as a resource for women's empowerment and creating regional women's rights networks.

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The adoption in 1979 of the United Nation Convention on the "Elimination of All Forms of Discrimination against women (CEDAW) constituted a landmark in the history of women's human rights. Until then there was no convention that comprehensively addressed women's rights within political, economic, cultural, social & family life. The drafting of CEDAW was orchestrated by the Commission on the status of women (CSW), which has been a major player pressuring for increased attention to women's issues within United Nations. India is also a signatory and has ratified it. CEDAW moves beyond the sex neutral norm that requires equal treatment of men and women, usually measured by how men are treated, to recognize the fact that the nature of discrimination against women and their distinctive gender characteristics are worthy of a legal response. The convention draws a distinction between defuse and defacto rights. Unlike other human rights treaties, CEDAW recognizes women are subject to pervasive and subtle forms of discrimination. It binds State parties to seek to modify cultural patterns of behaviour and attitudes regarding the sexes and attempts to impose standards of equality and non discrimination in private as well as public life. CEDAW also makes a strong case for the indivisibility of human rights. It entitles women to equal enjoyment with men not only of Civil and Political rights but also of economic, social and cultural rights, and it mandates both legal and development policy measures to guarantee the right of women in all areas of life.

The specific problems with CEDAW are 1) CEDAW has neither the necessary resources nor the authority to investigate individual or group claims of violations. 2) There is no complaints procedure by which individual women or group could seek international remedies for violations of the convention. 3) The reporting is the States responsibility, and women are excluded from the process. 4) Governments often do not submit reports, and when they do they are rarely self critical. 5) The interpretation of the articles tends to be left to the Governments, which often results in narrow definitions of rights and limited analyses of problems and remedies.20

When violence against women began to emerge as one of women's most urgent concern around the world and powerful unifying issue, in 1981 women's groups in the Latin American region held the first "Encuentro Feminista de Latinomerica y el cariba", which declared November 25 as International Day Against Violence. Whether women's organizations had been focusing on reproductive health, economic development or legal reform the problem of violence against women became increasingly visible as a major obstacle to the well being and advancement of women across the board. Within

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the United Nations, United Nations Development Fund for Women (UNIFEM) responded to this trend by making violence against women a major programme.21

The greatest obstacle to advancement of this work has been persuading human rights group to take gender as an important variable, as important as class and race. Gender-specific concerns have been treated as marginal by the male leaders of human rights organizations, although the situation has improved some what, thanks to the growth of the women’s movement and the increasing presence of women in human rights organization. First world based activities for women’s human rights face the additional challenge of bringing human rights language in practice home to their own backyard. In the U.S.A for example, activists must work to expose the hypocrisy of a government that presents itself as a champion of human rights in the world while it has failed to ratify major human rights based covenant including CEDAW.

Organizing globally is important because global actions are key to generating the necessary pressure for making changes in the international human rights system. At the same time gains at the international level are powerful tools for women to use at the local level, to create local pressure and as a recourse to seek redress of women’s human rights violations.

Section – II
Violation of Rights and Assertion of women in India

The women’s movement in India is a rich and vibrant movement, which has taken different forms in different parts of the country22. But absence of a single cohesive movement rather than being a source of weakness may be one of the strengths of the movement. Although it is scattered, and fragmented; it is a strong and plural movement.

India’s demographic profile and its multi cultural, religious, caste, class configurations resist any singular definition of the term women. Yet these very makers have been obfuscated by the projection of homogenized Indian women as urban, middle class, educated and upper caste. Historically there are two reasons for this First, in the nineteenth century itself, within the nationalist frame women were being constructed as urban, Hindu, upper castes and upper classes. This was an attempt by the upper caste Hindus to hold on to their privileges against other religious minorities and people from the lower castes and classes23.

21 Rosa Briceno, “Reclaiming Women’s Human Rights”.
Second the women's movement in its early stages on India as in the West, defined women in terms of biological difference. This tended to homogenize and universalize women's identity. In India, this identity got linked with urban, upper castes Hindus because most of the women leaders in the movement came from this stratum of the society.

Now we will attempt a brief interpretative history of women's movement in India, form the beginning of the 19th century until the present day. The division between pre and post Independence feminism in India is partly descriptive and partly convenient. The experience of colonial rule was one of the most important formative influences on the feminist movement of the early 20th Century, whereas an equivalent influence on contemporary feminism has been the experiment of democracy in Post-Independence India. This does not mean that there is no continuity between pre and post-independence women's movement: not only are our roots in the former, but distinctions between the two are made in the context of continuity.

Reform Movements: The 19th century was a period in which the rights and wrongs of women became major issues: if early attempts at reforming the condition under which Indian Women lived were largely conducted by men, by the late 19th century their wives, sisters, daughters, protégées and others affected by campaigns, such as that for women’s education, had themselves joined in the movements. It was in the 19th century that enlightened men like Raja Ram Mohan Roy, Dayananda Saraswathi Keshab chandra Sen, Ishwar Chandra Vidyasagar, Jyotiba Pule, Govinda Ranade, Maharshi Karve, Bhandarkar etc. championed Women’s causes. But throughout the period most campaigns for an amelioration of women’s condition were based on the liberal-democratic premise as most of these social reformers wanted to improve the position of women within the family, as wives and mothers and not expand their role in society. While early 19th century reformers argued that women’s difference from men was no reason for their subjugation, later reformers argued that it was precisely this difference, which made women socially useful (Women as mothers), and hence proper care for their conditions was socially necessary.

Nationalist Movement:

The First half of the 20th century saw a symbolic use of the mother as a rallying device, from feminist assertions of women’s power as mothers of the nations to terrorist invocations of the protective and ravening mother Goddess to the Gandhian lauding of the


24 “Is gender justice only a legal issue?” Political Stakes in UCC Debate Anvesh Law committee, Economic and Political Weekly 1-8 march 1997: 454)


spirit of endurance and suffering embodied in the mother\textsuperscript{28}. According to noted social
activist and Journalist Mrinal Pande, Ghandhijis whole philosophy of non-violence was drawn
from the life of Indian Women who, quietly and ungrudgingly, bore all insults and beating of
their wayward male folk. He was the first mass-mobiliser who saw the potential of women for
an organized movement. "Khadi" and became the first common bonds uniting the humble
village spinner to their well-to-do sisters of the upper-middle class urban families. By
encouraging women to opt for “swadeshi” and discard jewellery he was encouraging them to
cultivate the habit of choosing for themselves, not just clothes, but, a new way life. With the
“swadeshi” movement of the 1920’s Indian women from extremely traditional families began
to come out without veils, raise their voices against repression, and give up caste and clan
prejudices. Under his guidance in 1931 in the Karachi Annual Session, the Congress party
passed a formal resolution committing itself to the political equality of Indian women, much
before their European sisters had even won the right to vote\textsuperscript{29}. Because of his self-feminization
and his feminization of politics, Gandhi was hailed as the parent of the “Indian Women’s
movement”, and his depiction of women’s innate qualities was eagerly received by many
feminists as expanding and detailing many of their self definition. Despite this, his view of the
relationship between the sexes was neither fully nor widely accepted by feminists; while to
him the sexes were different and complementary, there was considerable ambivalence among
the feminists on this question.

A part from those who were committed to the Gandhian ideology of non-violence,
communist women too were involved in the national struggle. Among the major
revolutionaries were madam Bhikaji Kama, Kalpana Dutt, Satwati, Usha Mehta, Bina Das,
Aruna Asaf Ali etc. Women were involved in violent as well as non-violent nationalist
struggle. Their effort was equally commandable like Gandhians\textsuperscript{30}. But Leftist women found
themselves fighting “feudal ideas” on two fronts; within their parties and society.

There were other women close followers of Gandhi, who saw the economic and social
change as more important than legal and constitutional rights. They too were dissatisfied. But
many of these individuals also believed in voluntarism and focused their attention on grass-
roots projects\textsuperscript{31}.

\textsuperscript{28} Ibid PP 2-3.
\textsuperscript{29} Andal N.Jaipur, (2002), “Women & Indian Society : Options and constraints", Rawat Publications, Jaipur, PP-
174-175.
\textsuperscript{30} Geraldine Forbes. (2000), “Women in Modern India", Cambridge University, Australia PP 226-227\textsuperscript{30}. See also
Bombay, PP 68-69
\textsuperscript{31} Ibid PP 226.
Post-Independent India:

After Independence the Constitution of India came into force from 1950. The Indian Constitution declared equality a fundamental right. This document also guaranteed equal protection of the law, equal opportunities in public employment and prohibited discrimination in public places. The Hindu Code, passed as separate Acts, between 1950 and 1955, rewrote for Hindus, the laws of marriage and divorce, adoption and inheritance. Adult suffrage added women to the electoral roles and political parties pledged their commitment to women’s issues. The new state developed a bureaucratic structures designed to meet the specific needs of women. This included creating National Social welfare Board, assigning special duties to block development officers, and asking the Department of Health and Welfare to prepare a specific plan with women in mind.

In post-Independence India the contemporary feminist movement began by canvassing itself firmly on principles of equality and asserting that gender based structures, such as the sexual division of labour, oppressed and subordinated women. Many of the women who participated in the social reform and political activities of the 1920’s, 1930’s and 1940’s were pleased with the Constitutional provisions and legal reform. Belonging to the upper and middle classes of society, they were poised to become the beneficiaries of new opportunities. These women agreed with government that economic growth was the most salient issue and shared the assumption that women would gain from expected prosperity. But the communist women were the most vocal in expressing their dissatisfaction with constitutional provision, five years plans, government and party promises.

Despite 5 year plans and other measures, the 1974 committee on the status of women pointed out that the dynamics of social change and development had adversely affected women and they manifested all signs of a backward group, i.e., in declining sex ratio, lower life expectancy, higher infant and maternal mortality, declining work participation, increasing illiteracy, rising migration, etc. The International Decade for women (1975-1985) heightened the awareness of people on the plight of Indian women. For the first time, unlike other resistance groups, a movement of women sprouted, who saw themselves as individual in their own right. It was no more men crusading for women’s issues but women for women’s issues. Lots of women’s organizations emerged which aimed at empathising everyone on women’s issues, and collectivising experiences of the oppressed women to channelise the urge for change in the position of women in all spheres. The new consciousness gave rise to not only feminist activists but feminist-activists researchers as well. And a whole body of literature appeared and continued to pour day in and day out.

33 Ibid. PP-174-175.
Despite sporadic criticism, the Indian Government's commitment to equality was not seriously challenged until 1974 when "Forward Equality" a report on the status of women was published. There had been an internal demand for such a document but the actual thing was in response to a United Nations request to all countries to prepare reports on the status of women for International Women’s Year scheduled for 1975. Authors of this report charged that women’s status had not improved but had, in fact, declined since independence.

“The review of the disabilities and constraints on women, which stems from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the constitution. . . . The social laws that sought to mitigate the problems of women in their family life, have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before independence.”

**Contemporary Women's Movement:-**

The first women's movement, dubbed in retrospect “first, wave feminism, condemned tradition and religion for women’s suffering and sought redress in education and legal change. According to Neera Desai, “participation of women in the Naxalbari Movement, anti-price rise demonstrations, Navnirman youth movement in Gujarat and Bihar, Rural revolt in Dhule District in Maharashtra and Chipko Movement provided a back drop for the ensuing struggles on women's issues”. Gail Omvedt has traced the origin of the contemporary women’s movement to the early 1970’s when rural and working women were first trained as leaders. The UN declaration of International women’s decade led to the appointment of the Guha committee and its subsequent report. Vina Majumdar remembered her shock when she first read the data being assembled by the Guha Committee. Her second reaction was anger and feeling that “something has to be done.” The heat and energy generated by “Forward Equality” and the emerging research data provided the intellectual foundation for a new women’s movement. This women’s movement continued to focus on traditional practices, beliefs and institutions as the source of oppression. One of the first steps taken by the leaders of this movement was to break the silence: to expose the “various categories of humiliation, atrocities, tortures and individual and mass assault to which they [women] were subjected.” This meant breaking through the image of the ideal woman as accommodative, self-sacrificing and devoted to serving her family.

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36 Toward Equality, report of the committee on the status of women in India, 1974, Govt of India Ministry of Education and social welfare, New Delhi. PP-359
40 Ibid PP 992.
What triggered and especially awakened and brought together women's organizations all over the country to fight against oppression of women, was the "Mathura" rape case of 1980. Soon, the Criminal Law Amendment Act, 1983 was passed penalizing custodial rape. Women activists had wanted rape recognized as violent crime but knew this legislation would not protect women from rape.

"Dowry murders", the term used to refer to the deaths by burning of young married women by their in-laws emerged as new phenomenon in the late 1970's. It was only in 1977-79 that the actions against dowry murders were initiated, when the "Mahila Dakshata Samiti" began to investigate and follow up some of these cases. As the campaign against these deaths escalated politicians hastened to condemn the practice and blame it on non-compliance with the Dowry Prohibition Act of 1961. But as this law was not enough, new law has been passed in 1986. This new legislation increased the punishment for accepting dowry and declared that in cases where a woman died an unnatural death, her property would devolve on her children or returned to her parents. The Campaign was over, new legislation had been passed, but dowry deaths continue.

In September of 1987 the death of Roop Kanwar, an 18-year-old woman burned to death with her husband's corpse in the village of Deorala in Rajasthan, claimed the attention of feminists. Roop Kanwar's death mobilized feminists and liberals to protest this so called custom of "Sati" as crime of violence, called "Cold-blooded murder" by some. The government reacted with legislation. Parliament passed a Sati Prevention Bill, a repeat of the 1829 legislation, and outlawed it's glorification According to Veena Oldenburg this law obfuscates the difference between voluntary and coerced Sati, defines Sati as a women's crime and makes the other people involved in the "Sati" guilty only of abetting the woman's act.

There was a sensational aspect to the Mathura case, Dowry deaths and the Deorala sati, that attracted both Indian Media and foreign attention. The Government responded to the urban campaigns about rape, dowry deaths and sati murders with legislation. According to Flavia Agnes "If oppression could be tackled by passing laws, then this decade could be adjudged a golden period for Indian women...Almost every single campaign against violence on women resulted in new legislation. Unfortunately, hard question about the deeper causes of this violence and the ability of the law to remedy the situation were rarely asked. The result has been a decade of extra ordinary legislation and subsequent despair because these laws

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1 Flavia Agnes (April 5, 1992), "Protecting women against violence"? Review of a Decade of Legislation 1980-1989, EPW 27, N017, PP. 19-33
have meant so little in practice. Once passed this legislation depended for enforcement on men whose view of women and their place in the world had not changed. In the process of “breaking the silence” feminist had turned to the government for help. The Government responded and assured women that it could and would be their “Protector” but used women’s issues for its own ends. Real issues have not been addressed but the state has emerged with more control of people’s private lives.

Even as questions of violence against women have brought a new and significant focus to the women’s movement other issues have fragmented this new solidarity. The gravest challenges have come from a revitalized and gendered communalism as illustrated by the Shah Bano case and the dispute over the mosque at Ayodhya.

In April 1985, the Supreme Court granted Shah Bano, a divorced Muslim woman, the right to financial support from her former husband after a long series of suits and appeals. The conservative, fundamentalist Muslim patriarchs protested: Amidst the protest from women’s organizations in 1986, Rajiv Gandhi-led congress Government introduced the Muslim women’s (Protection of Rights in Divorce) Bill denying Muslim women redress under section 125 and naming the natal family responsible for support in cases of destitution. Zoya Hasan, argues that Rajiv Gandhi’s govt. deliberately supported this bill in an effort to pacify Muslims angry about the reopening of the disputed Ayodhya site. The consequence, for women’s, was denial of the distinction between minority identity and gender identity. In the history of Indian women’s movement although the role of urban middle class women is undeniable, only by placing women’s struggles in the context of the hegemonic role played by rural power relation and family structures can we understand and evaluate the relative significance of urban and rural women’s struggles.

It is as difficult to generalize about rural women’s struggles in India as it is about their lives, because there is very little information about the ways in which rural women, both collectively and individually, have attempted to resist their oppression. Most of the struggles seem to have been triggered off around basic survival issues of the rural poor, and begin with the organization of the men and women around economic issues. Scarcity and restrictions on use of fuel, water, forest rights and demands for minimum wages and implementation for food for work programmes, especially during times of distress, have been the starting points of many rural struggles. Once women are galvanized in large numbers during the course of these struggles, they inevitably raise specific issues concerning their own oppression, and

powerlessness. A turning point in women’s mobilization and participation is usually triggered off when sexual violence or exploitation by the rural rich men and the issue of women’s dignity becomes important issues of everyday oppression in the family, such as wife beating or drunkenness, are taken up as a focus of struggle. This happened, e.g. in the course of the struggle of the landless poor, in Shahada Taluk, Dhulia district, Maharashtra and in the Bodhgaya struggle in Bihar.

The major reason for the limited effectiveness of the rural struggles is the increasing strength of the rural oppressors - the rich peasants and their allies, the police and the governmental bureaucracy. The middle and rich peasant castes and classes have been acquiring more and more political clout in the last few decades. Over the years the repressive machinery of the state has been immensely strengthened and enlarged. It would be difficult to find instances of the rural poor having been offered any real protection and support by the government machinery in their struggle against the powerful groups in the village. In spite of all these obstacles the anti-alcohol agitation in Andhra Pradesh and similar campaign in other parts of India were started and sustained by poor, low-caste often working class women. The movement to protect the environment (chipko) was begun by poor women in a village called Reni in the northern hill regions of India, and only after that did it spread to other parts of the country.

Perhaps the most significant development for women in the last few decades has been the introduction of 33% reservation for women in local and village level elections. This move was received with considerable scepticism. But women have shown that once they have power, they are able to use it, to the benefit of society in general and women in particular establishment of national Commission for Women (1990) and National Human Rights commission in (1993) gave necessary tooth and nail to the women’s movement for securing human rights. For every step the movements taken forward, there will be a possible backlash, a possible regression. As activists never tire of repeating, out of the deepest repression the greatest resistance is born.

This is usually understood to mean that we should first organize women on women’s issues and then join hands with other oppressed groups such as dalits, tribals, or the working class in their struggles. That makes us no more than a women’s interest group seeking alliances with other interest groups. According to Madhu Kishwar, much more important is to recognize that:-

a) Women constitute half of all oppressed sections and, therefore, they do not simply have to ally themselves with the struggles of these sections, but as tribals, as workers as Dalits, they need to take an active and leading part in all these movements as well as in the struggle for their own rights.
b) There is a need to integrate women's issues within the various movements for civil liberties and democratic rights. The concept of democratic rights and civil liberties needs to be redefined taking into account the specific form of women's bondage.

c) What are considered "general social issues" have no less a bearing on women's lives. For instance let us say we are concerned by the fact that two thirds of India's illiterates are women. If we took further, we will discover that the gap between the literacy rates of men and of women is one of the consequences of a series of misplaced priorities and discrimination\(^47\).

So far the attempts made to challenge the oppressive cultural stereotypes of women have focused mainly on the portrayal of women in modern mass media such as advertisements, radio, television, films and textbooks. But the culture of women’s subservience in India, especially in villages, does not draw its primary sustenance from these new sources of ideological control. We must identify and with those common underlying cultural sources of discrimination against women on which the modern forms of mass media draw in order to reinforce the existing prejudices.

Thus, it is evident that women's cry for justice has always been [if they were taken seriously] responded by patriarchal state and civil society in the form of enacting laws. These laws have noble intentions, but most of the time without any practical implementation as they were created in haste and sexist social milieu was not in a position to accept it. Our next section will show how such piece-meal effort of both International and National agencies for guaranteeing rights to women have failed and their invariable & unavoidable fall-outs.

III - Consequences of the Feminist Assertion: Rethinking Women's Rights

A. The Nationality Problem :-

Women's disability with regard to citizenship is a problem in many countries, underscored by the fact that Article 9 on nationality is one of the most highly revered articles of the women's convention. Women's legal inability to bestow their nationality on their children born of foreign husbands often leaves legitimate children Stateless. It was pointed out that CEDAW, perhaps together with the children's committee established under the convention on the rights of the child, might be encouraged to develop a general

\(^{47}\) Ibid., PP-47.
recommendation on women's ability to convey nationality to their children, and that it be made an issue during the 1994 International Year of the Family.

B. **Discriminatory Personal Law:**

In many regions of the world, personal law governs legal relations in all matters regarding marriage, divorce, maintenance, child custody and guardianship and inheritance on the basis of religious identity. Even in India, Indian Government retains personal law that discriminates against women for reasons of political expediency. The Government does not want to interfere with personal matters in the ethnic (usually minority) community. According to Radhika Coomaraswamy personal law is usually maintained as part of the politics of communalism and with that context Shah Bano, and women like her, have no rights. All men are created equal but women are bound by the position relegated to them by the different systems of personal law, laws which govern the most important area of their lives, the family. She pointed out that personal law is the most impervious to change in favour of women's right. She also asserted unless we begin to examine law's approach to family and the private space in greater detail and understand the dynamics more fully with regard to ideological constructions which resist legal change, we will not be able to bring right to the family. And without equity in the family, there will not be equity in the society.

C. **Customary Property Law:**

State must ensure that whatever cultural values and practices are permitted by domestic law must comply with the human rights principle of freedom from discrimination on the basis of sex. Because of this women's property rights be addressed carefully and pragmatically at the national, regional and international levels. According to Florence Butegwa at national level most Governments are not taking the necessary legislative steps to change law, practices, and customs with regard to women's property rights. Moreover, she also observed that women's groups working to reform discriminatory laws and practices are dismissed by some Government as misguided elite women following Western concepts. The situation is compounded by women's lack of awareness of law and lack of opportunity to avail that.

At international level Butegwa suggests that women's rights groups in developed countries must exert pressure on aid policies, loan & grant policies of international organizations like IMF, WB etc., So, that they encourage change on recipient state's law that discriminate against women's property rights. Donor Government and multilateral founder needs to ensure that women have equal access with men to the benefits of their loans.

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D. **Reproductive Rights** :-

States should establish a gender perspective in their health polices that considers the social discrimination of women as an element which contributes to the ill-health of women. All health institution should ensure women the right to decide on all issues that affect their health, their life and their sexuality. The new policy requires provision of a full range of reproductive health services including infertility services, safe and effective contraception, integrated treatment for incomplete abortion and treatment for menopausal women. The policy emphasizes the need for special attention to high risk women, such as adolescents and victims of violence. CEDAW should pressurize States in developing health policies in this fashion.

**Violence Against Women** :-

Forms of violence against women include domestic violence (murder, rape and battery) by husband or other male partners, genital mutilation, gender based violence by Police and security forces (including torture of detained women), gender based violence against women during armed conflict, gender based violence against women refugees and asylum seekers, violence associated with prostitution and pornography, violence in the workplace, including sexual harassment, forced pregnancy, forced abortion and forced sterilization. According to CopeLon, domestic violence against women is systemic and structural, a mechanism of the patriarchal control of women that is built on male superiority and female inferiority.

The debate is with the question whether domestic violence is better characterized as a violation of the civil and political right to liberty or security, or as a violation of the non-discrimination right to equal resources for crime control. The former characterization may do more in the long term to integrate women's experiences of injustice into the concepts of international human rights law, but the latter may enjoy greater short-term success precisely because it poses less of a fundamental challenge to patriarchal systems.

We should look for strategies that would enhance international standards of prohibition of violence against women and would bring the issue of violence against women into the mainstream human rights work.

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50 Ibid PP 21
How To Make International Human Rights Law More Effective for Women

State Responsibility for Violations of Women's Rights.

The international law of State responsibility makes a State legally accountable for breaches of international obligations that are attributable or imputable to the State. In other words, only a State and its agents can commit a human rights violation. Non-State actors are not generally accountable under international human rights law, but the State may sometimes be held responsible for related human rights violations. Modern development of international human rights law through State adherence to multilateral human rights conventions has enhanced prospects of State accountability, and women may be able to turn these development to their advantage. 51

The international human rights movements has used three distinct theories of Government accountability.

**Government agency:** This theory treats an act of private violence as the act of a Government agent and therefore requires that such violence be ended outright, the theory of Government complicity requires simply that the state should not condone private violence.

**Government Complicity through failure to act:** Here a State is doing the bare minimum in combating domestic violence to escape charges of complicity. An unequal application of theory allows insistence on greater diligence as a matter of international human rights law.

**Government responsibility for the unequal application of the law:** Non-discrimination provisions of the political covenant can also be used to require that the same level of State resources used to enforce criminal laws against private acts of violence be devoted to crimes against women under the non-discrimination theory of accountability, need to receive at least as through an investigation and as vigorous a prosecution as crimes against men.

**International Protection:**

Application of human rights norms to the practices alleged to violate women's rights has to be approached in a variety of ways. Any one method may be fragile and inadequate, but there are cumulative ways in which women can make right their own. We will examine the perspective of different protective bodies that derive their authority from separate human rights treaties or from the UN charter.

(a) **Treaty-Based Bodies**

All major human rights treaties provide for a system of reporting. State parties are required to make regular reports to the responsible supervisory bodies on the steps they have taken to implement their obligations and the difficulties they have experienced in

doing so. Reports are examined by the relevant treaty bodies in the presence of representatives of the States concerned. All committees receive information informally from NGOs. The examination process, particularly if the proceedings receive international or national publicity, can provide an occasion for exerting pressure on states.

All human rights treaty bodies have the power to make general comments or general recommendations. But with the exception of CEDAW gender plays a relatively minor role in the general comments of most committees. Nonetheless, they are grateful for, and in need of, expert input from NGOs and thus this process is available for advancement of women’s rights.

It is said that most national NGOs, which might be able to exploit the reporting procedure, may know little about it. Appropriate format for submission of material, and how most effectively to lobby members of a committee or to generate publicity. Every government needs to be encouraged to publish treaty reports in the local language, to share them as a matter of course with the relevant NGO’s, and even to debate them in the national parliament.52

The Human Rights Committee, established under the political convenant, has an individual complaint procedure. This procedure is available in nearly seventy countries that have ratified the optional protocol to the political convenant. From a women’s perspective this jurisprudence developed by this Committee is limited by the adoption of the “Similarity and Difference” test of discrimination.

The Committee on the Elimination of Discrimination against women (CEDAW) monitors States parties compliance with the Women’s convention. The work of CEDAW is far more effective when its members have resource to sources of information in addition to data contained in reports of State parties. CEDAW has also requested UN specialized agencies to provide it with relevant information and encourages NGO’s to send them information particularly on major problems facing women in the reporting countries.

The committee on the Elimination of Racial Discrimination established under the Race convention, provides an important forum for raising issues of discrimination against women belonging to racial minorities.

The committee on Economic, Social and Cultural rights monitors State parties compliance with the Economic convenant. Important research shows how economic development has exacerbated women’s marginalization, despite programmatic initiatives to

52 Ibid, PP 24.
integrate women into development. Economic committee seeks experts opinion to bridge this gap.

(b) **Charter-based bodies :-**

The UN Commissions on the Status of Women has the authority to review communications sent to it by individuals and organizations in order to identify those that appear to reveal "a consistent pattern of reliably attested injustice and discriminatory practices against women. The commission is authorized under this procedure to examine communications as a source of information only for purposes of identifying general trends and patterns of violations against women. The commission can make general recommendations but it is not authorized to take any other action. Various women's groups and organizations suggested that the commission should be encouraged to improve this procedure for the purposes of identifying specific situations in which individuals needs redress, or inequitable country situations and conducting through studies of them.

(c) **Regional Protection :-**

Regional human rights conventions have been applied only sparingly to violations of women's human rights. European Court of Human Rights, Inter-American Court of Human Rights, European Commission of Human Rights, Inter-American Commission of Human Rights.... all are concerned with complaints concerning women's legal status. And yet there are many ways at regional levels beyond specifically judicial approaches to enhance the norm of the prohibition of all forms of discrimination against women. Advocacy at the regional level provides opportunities that do not exist at the international level. Geographic proximity, cultural similarity and economic interdependence can all facilitate the development and application of human rights standards. Regional systems can provide opportunities to establish legitimacy of women's human rights within the cultures of the region.

(d) **Domestic Protection**

Domestic protection of women's human rights is usually the first line of defence for women. The international protection machinery is only subsidiary to the national machinery. This is only possible when State can afford to have a prior opportunity to redress alleged violations by its own means and within the frame-work of its domestic legal system.

**Indian Scenario:**

Although the pursuit of gender justice spans over long time baring a few pockets of modernized and liberated sections of women, by and large gender injustice and inequality have continued through in some respects, they have become much more visible due to increased access to mass media and greater consciousness among women. Religious
revivalism has rejuvenated some old forms of gender exploitation as is seen by the resurgence of “Sati” in Rajasthan recently. Rapes, dowry deaths, female infanticide as well as female foeticide have proliferated which are symptomatic of greater marginalisation and commodification of women. “What can the law do to achieve gender justice? Besides protecting a woman from discrimination and atrocities, it can empower her in various ways by equipping her with rights and power so as to enable her to fight against male hegemony. Women empowerment is to be seen as a concomitant of the total process of social change leading to a just society and therefore its success will depend upon the success of the supportive socio-economic policies and simultaneous changes in the political process”

The two basic human rights instruments, the United Nations Charter and the Universal Declaration of Human Rights, ensure equality in variety of ways. However, it is the convention on the Elimination of all forms of Discrimination against women adopted by general Assembly in 1979, which is the most comprehensive instrument on the human rights of the women and contains more concrete provisions aimed at the real implementation of the rights already recognized. India has ratified the convention on 9th July 1993.

**Government of India Commitments made at the Fourth World UN Conference on Women-1995.**

- Increase investment in education to 60% of the GDP with major focus on women and girls.
- Universalize mother and child care programme to every region of the country.
- Formulate and operationalise a national policy on women which will continuously guide and inform action at every level.
- Set up a Commissioner for women’s Rights to act as public defender of women’s human rights.
- Institutionalise a national level mechanism to monitor the implementation of the platform for action.

The concept of “equality and non-discrimination” finds its due place in the Constitution of India and many other legal documents, but it is the social and cultural factors which impede the realization of this concept and, in some cases, even in enacting the legal prescriptions to eradicate discrimination against women. The constitution does not use the word ‘gender’ It uses the word ‘Sex’ in articles 15(1),16(2), 325 which prohibits discrimination on the basis of ascriptive grounds. It has a sexist provision in article 15(3) which enables the State to provide “specially” for women.

To provide women with their due right, to eliminate their subordination and establish gender equality, "empowerment" is a positive concept. It requires affirmative State action in support of those who are to be empowered. Law can create such empowerment through three methods. These are as follows.

1) It can cause empowerment directly by conferring rights on the person whom it intends to empower or by imposing liabilities on other persons towards the persons whom it intends to empower or by imposing liabilities on other person towards the person to be empowered.

2) It can cause empowerment by strengthening the institutional infrastructure for enforcing such rights and liabilities and

3) It can cause empowerment by supporting, stimulating and monitoring the attitudinal and value changes in society.54

There are four methods through which rights or power can be conferred on a person.

A) By creating penal sanctions against certain types of behaviour that violate the dignity or liberty of women

B) By creating new proprietary entitlement for women such as giving them a share in property or assuring them a right to work and on equal wages etc.

C) By providing preferential treatment to women or providing for compensatory discrimination in their favour by reserving jobs or seats in local self-governing institutions and

D) By facilitating the exercise of liberty or freedom by such persons.

Since in my work I'm mainly concentrating on the Police a law enforcement machinery of the State as a custodian, promoter and facilitator of women's rights I would like to go to the details of penal sanction against certain types of behaviour that violate the dignity and liberty of women; because this is the area where police intervention is most sought after.

According to the National Crime Record Bureau, although women may be victims in any of the crimes, be it murder, robbery, cheating or any other, the crimes in which only women are the victims and which is directed specifically against them are characterized as "Crime against women."

Crime against women's are broadly classified under two categories.

The Crimes Identified Under the Indian Penal Code (IPC)
1) Rape (Section 376 IPC)
2) Kidnapping and Abduction for different purposes (363, 373 IPC)
3) Homicide for Dowry, Dowry Deaths or their attempts (302, 304-B IPC)
4) Torture, both mental and physical (498-A IPC)
5) Molestation (354 IPC)
6) Sexual Harassment (509 IPC)
7) Importation of girls (up to 21 years of age) (366-B IPC)

The Crimes Identified Under the Special Laws (SLL)
4) Indecent Representation of women (Prohibition) Act, 1986. 
   Apart from these, there are other important laws.
   3) The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) 
      Act, 1994

A) Rape:
   "Rape is not only a crime against the women (victim), it is a crime against the entire 
   society. It destroys the entire psychology of a woman and pushes her into deep emotional 
   crisis. It is crime against basic human rights and is violative of the 
   victims most cherished of the fundamental rights, namely the "Right to Life" contained in 
   Article 21.
   
   {Supreme Court in Bodhisattwa Gautam V/s Subhra Chakraborty (1996) ISCC 490)

   Section 375 defines the statutory offence of rape. It denotes the sexual intercourse with a 
   woman.

   First - Against her will

   Secondly - Without her consent.

   Thirdly - With her consent, when her consent has been obtained by putting her 
   Or any person in whom she is interested in fear of death or fear.

   Fourthly - With her consent, when the man knows that he is not her 
   husband, and that her consent is given because she believes that 
   he is another man to whom she is or believes herself to be 
   lawfully married.
Fifthly - With her consent, when at the times of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that.

Sixthly - With or without her consent, when she is under sixteen years of age.

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>375 &amp; 376</td>
<td>Sexual intercourse by a man with a woman against her will without her consent or consent obtained fraudulently. Intercourse with his wife who is below 12 years of age.</td>
<td>Minimum imprisonment for 7 years up to life imprisonment and fine. Imprisonment for 2 years.</td>
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<tr>
<td>376 A</td>
<td>Intercourse by a man with his wife during separation.</td>
<td>Imprisonment for 2 years and fine.</td>
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<tr>
<td>376 B</td>
<td>Intercourse by a public servant with woman in his custody.</td>
<td>Imprisonment for 5 years and fine.</td>
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<tr>
<td>376 C</td>
<td>Intercourse by Superintendent of Jail, remand Home.</td>
<td>Imprisonment for 5 years and fine.</td>
</tr>
<tr>
<td>376 D</td>
<td>Intercourse by members of management or staff of a hospital with any woman in the hospital.</td>
<td>Imprisonment for 5 years and fine.</td>
</tr>
<tr>
<td>377</td>
<td>Unnatural Offence voluntary carnal intercourse against the order of nature with any woman i.e. oral or anal sex with man or animal.</td>
<td>Imprisonment for 10 years and fine.</td>
</tr>
</tbody>
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**Corresponding Improvements :-**

**A. In Camera Trial:** A further improvement in the law relating to sexual offences has been made in the provisions of sections 228A Indian Penal Code, Section 327 (2) of Cr.P.C and section 114 A of the Indian Evidence Act which too introduced by the amendment Act 1983. It punishes a person who discloses the names or identity of the rape victim. Section 228 A of IPC punishes a person who prints or publishes the name or any matter which may identify any person against whom rape was committed or alleged to be committed.

Recently the Supreme Court has held that trial of rape cases must invariably be held in camera. (State of Punjab Vs Gurmit Singh 1996(1) Supreme Court 485) The SC
further held that the Courts should as far as possible, avoid disclosing the names of the prosecutrix in their orders to save further embarrassment to the victim.

B. **Presumption of Rape:** Under Section 114A of the Indian Evidence Act 1872, in a prosecution of rape under section 376 of IPC where sexual intercourse by the accused is proved and the question is whether there was consent of the woman alleged to have been raped the Court shall presume that she did not consent.

In the case of rape conviction can be based on the sole testimony of the prosecutrix without any corroboration, if her testimony is otherwise worthy of credence. However corroboration by medical evidence can be insisted upon where such evidence is forth coming. Absence of existence injuries on person of the prosecutrix does not make her version a false one on that ground.

C. **Compensation to Rape Victim:**

Right of the rape victim to receive compensation flows from Article 21 of the Constitution. Every Court has jurisdiction to grant compensation not only at the final stage of trial but also to award interim compensation at any interlocutory stage of trial. The Supreme Court suggested that Criminal Injuries compensation Board or the Court should award compensation to the victims by taking into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth. If this occurs as a result of the rape. However, it is unfortunate that the Government has not implemented the said directive of the court till today.

D. **Marital Rape:**

As a general proposition a husband can not be guilty of a rape on his wife, when she is over the age of fifteen. No doubt the reason for that is that on marriage the wife consents to the husbands exercising the marital right of intercourse during such time as the ordinary relations created by the marriage contract subsists between them. But wherever the justice have made an order on the ground of the husband’s persistent cruelty, containing a provision that the wife be no longer bound to cohabit with her husband by a decree of judicial separation, thereafter it prohibits her husband to have intercourse with her without her consent. This shows the patriarchal bias of our legal system.

However it is felt that section 376A dealing with rape by judicially separated husband should be treated as an ordinary rape, on a ridiculous reason to facilitate reconciliation. It is noteworthy that marital rape is an offence in United States of America, Sweeden, Denmark and Australia.
E. **Rape on Prostitutes or on Woman of Disrepute:**

Rape victim need not be a woman of chaste character. A prostitute can be raped, and it is no excuse that the woman was a prostitute. Recently (12th Nov, 2002) Govt of India took a praiseworthy step in a bid to enhance the prestige and empower women. The Union Cabinet has decided to amend the archaic law regarding cross-examination of rape victims. To begin with the Center has decided to scrap section 155(4) of the Indian Evidence Act. It believes that there is no connection between the offence of sexual assault and the general character of the victim. They also held such unrestrained questioning of the victim can destroy or damage the self respect of the victim and intensifies her trauma.

**Role of Police and Criminal justice System:**

1) The complainant of the cases of sexual assault should be provided with legal representation. It is important to have some one who is well acquainted with the criminal justice system, so that the person can prepare her for the proceedings and for the case, to assist her in the Police station and in the court and to provide her with guidance as to how she might obtain help of a different nature from other agencies e.g. counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainants interests in the Police Station represent her till the end of the case. Police can arrange for this help with collaboration with NGO’s and women’s organizations.

2) Since the victim of sexual assault might very well be in a distressed state upon arrival at the Police Station, a list of advocates well versed in dealing such cases should be kept at the Police station for victims who might not have a particular lawyer in mind or whose lawyer was not available. Like all criminal matters the victim cannot have an independent lawyer, unless she makes an application for appointing a special prosecutor. Any advocate with 10 years of practice can be appointed as a special public prosecutor.

3) In all the trials related to cases of rape anonymity of the victims must be maintained.

4) Police should get medical examination done for both the alleged victim and offender at the earliest possible.

5) All marks of violence both external and internal in the body, scratches, abrasions, bruises etc. should be checked carefully. Police should make thorough examination of the dresses of the prosecutrix wearing during occurrence of event and blood and seminal stain, broken nails, bangles hairs etc. from the spot of the event.

6) While emphasizing the need to sensitise, male Police Officers too admit that irrespective of gender of the investigative office, they should be trained on regular basis to handle such cases of sensitive nature.

7) Though Police has most important role to play in rape cases, right from the registering F.I.R, getting medical examination done and speedy disposal of the
case to provide justice, but it has been observed that most rape cases go unreported primarily due to the complications involved in the Police investigation.

8) For their part, the Police too have a grievance that many a time in spite of their nabbing the culprits, the victim backs out and refuses to pursue the case. Thus it is not the quantum of punishment but the certainty of punishment which is important. That is why although cherished by many the punishment like death sentence or castration are not desirable. Because general trend of judiciary is that, “Greater the punishment the lesser the conviction.”

B) Provisions Relating to Sexual Offences In The Indian Penal Code:

<table>
<thead>
<tr>
<th>Sections</th>
<th>Offence</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>511</td>
<td>Attempt to commit Rape.</td>
<td>Imprisonment for life or imprisonment half the period meant for the rape.</td>
</tr>
<tr>
<td>109</td>
<td>Aiding and abetting rape</td>
<td>Imprisonment for life and fine.</td>
</tr>
<tr>
<td>34</td>
<td>Common Intention (gang rape)</td>
<td>Imprisonment for life or fine or both.</td>
</tr>
<tr>
<td>201</td>
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<td>342</td>
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<td>House trespass or house breaking by night after preparation for causing hurt.</td>
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<td>354</td>
<td>Assault or criminal force to women with an intention to outrage her modesty.</td>
<td>Imprisonment for 2 years or fine or both.</td>
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<tr>
<td>509</td>
<td>Outraging the modesty of women physically/verbally/gestures/exhibits (Eve teasing)</td>
<td>Simple imprisonment for 1 year or fine or both.</td>
</tr>
<tr>
<td>499,500</td>
<td>Defamation</td>
<td>Imprisonment for up to 2 years with fine or both.</td>
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<tr>
<td>366</td>
<td>Kidnapping, abduction with intention to compel the women to marry against her will. In order that she may be forced or seduced to illicit intercourse.</td>
<td>Imprisonment for 10 years &amp; fine.</td>
</tr>
</tbody>
</table>
Knowing that she is likely to be compelled into marriage or forced seduced into illicit Intercourse or seduction.

366 A Procuring a girl bellow 18 years with intention or knowledge of the intention to force or seduce to illicit intercourse. Imprisonment for 10 years and fine.

366 B Importation of girls below 21 years with knowledge of the intention to force or seduce to illicit intercourse. Imprisonment for 10 years and fine.

367 Kidnapping or abducting with intention or knowledge of the intention to subject a person to grievous hurt, slavery or to the unnatural lust of any person. Imprisonment for 10 years and fine.

372 Selling a minor person below 18 years for the purpose of prostitution or for illicit intercourse or for any unlawful and immoral purpose or knowledge of such intention. Imprisonment for 10 years and fine.

373 Buying a minor person below 18 years for prostitution or for illicit intercourse or for any unlawful and immoral purpose or knowledge of such intention. Imprisonment for 10 years and fine.

C) CRUELTY BY HUSBAND OR RELATIVES FOR DOWRY - 498 (A)

Section 498 A of the Indian Penal Code deals with cruelty by husband or relatives of husband of a woman who is subjected to such cruelty in connection with demand for dowry. The section has been introduced in the code by the Criminal Law (Amendment) Act, 1983, to combat the evil practice of dowry deaths. By the same Act Section 113 A has been added to the Indian Evidence Act to raise a presumption regarding abetment of suicide by a married woman to the following effect.

When the question is whether the commission of Suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or relative of her husband had subjected her to cruelty, the court may presume having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
**Punishment :-**

When the husband or the relative of a woman subjected such woman to cruelty, he or they shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The 'Cruelty' defined in the explanation says that harassment of a woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security is cruelty. The section was brought into force on December 25, 1983.

If a cruelty or harassment of the kind describe in the Act is method out to a mistress which leads her to commit suicide, the section would cover her also. (V. Yedukondala Vs. State A.P 1988 Cri LJ. 1538 A.P)

Where the wife had condoned the matrimonial cruelty of which she was the victim and had resumed consortium with her husband, the court found no obstruction in the provisions of the section in permitting them to compound the complaint and, therefore ordered accordingly. In a similar case, similar approach was not adopted by the Andhra Pradesh High Court which pointed out that the wife can not be permitted to withdraw the charge sheet if it is filed by the police.

**D) Dowry Death and Dowry Suicide 304(B):-**

According to Section 304, where the death of women is caused by any burns or bodily injury under abnormal circumstances within seven years of a marriage such death is called dowry death and the husband or relative of such deceased wife shall be deemed to have caused to death and is punishable with imprisonment to not less than 7 years which may extend for life. The offence has the following ingredients:

1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
2) Such death should have occurred within seven years of her marriage.
3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
4) Such cruelty or harassment should be for or in connection with demand for dowry.

Where it was proved that the mother-in-law and sister-in-law of the deceased were taunting the bride for bringing less dowry and having given birth to a female child and thereby driving her to commit suicide, it would amount to causing dowry death. In a recent decision { Ravindra Trimbak Chouthmal Vs State of Maharastra (1996) 4scc 148} Supreme Court has held that Dowry death has ceased to belong to the species of "the rarest of the rare" However, unless a dowry death is considered as the "rarest of rare case" death penalty can not be imposed. This judgment needs a review by the larger bench.55

E) **The Dowry Prohibition Act, 1961:**

Any property agreed to be given in connection with marriage before or after the marriage amounts to "Dowry". The evil of dowry system has been a matter of serious concern to every one in view of its ever-increasing and disturbing proportions.

The recommendations made by the Joint Committee of the Houses to examine the question of working of the Dowry Prohibition Act 1961, gave way to the Criminal Law (Second Amendment) Dowry Prohibition (Amendment) Act 1984. Although the Dowry Prohibition (Amendment) Act 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organizations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

**The salient features of the bill are:-**

a) The minimum punishment for taking or abetting the taking of dowry under Section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

b) The burden of proving that there was no demand for dowry will be on the person who makes or abets the taking of dowry.

c) The Statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

d) Any advertisement in any newspaper, periodical, Journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousands rupees.

e) Offences under the Act are proposed to be cognizable, non-bailable and non-compoundable.

f) Provisions has also been made for the appointment of Dowry prohibition Officers by the State Govts for effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom two shall be women)

g) A new offence of "Dowry death" is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872.

h) Giving presents to the bride or bridegroom is not considered dowry provided they are entered in a list to be maintained by both the parties.
The property received by a woman at the time of the marriage is her “Stridhan” and belongs exclusively to her and the same is to be retained by her notwithstanding from whom she got the property or valuables.

If any person other than the woman has actually received dowry, the Act requires that the person should transfer it to the woman within 3 months from the date of marriage or the date of its receipt of the dowry.

Till such transfers are made the man holds the property as a trustee for the benefit of the woman failure to transfer within 3 months is punishable.

Complaint for dowry harassment may be lodged by the aggrieved party, her parents, or by any recognized welfare institution or by the court on its own knowledge (Suo moto).

**Immoral Traffic (Prevention) Act. 1956:**

"Prostitution always remains as a running sore in the body of civilization and destroys all morals....... Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent...."

Supreme Court in Vishal Jeeet Vs Union of India { (1990) 3 SCC 318}

In India Prostitution is tolerated and regulated. Prostitution is per se not a crime. Prostitution is not abolished/prohibited/banned. The Act intends to criminalize and penalize the institutions/Industry (brothel, brothel keepers, procurers, imps, touts, middleman, landlords etc.) But actually ends up criminalizing and penalizing women.

Article 23 of Indian constitution prohibits trafficking in human being. Right against any kind of exploitation is a fundamental right in India. India is also a signatory of the International convention at New York in 1950, which required a legislation to implement the same. Accordingly the parliament has passed the suppression of Immoral Traffic in women and girls bill of 1954 which became the Immoral Traffic in women & girls Act, 1956 and it was shortly known as SITA. This Act was covering only the females and children. In order to cover even the males, the Act was renamed as Immoral Traffic (Prevention) Act, 1956 by an amendment in 1986. Now the Act covers both males and females as it uses the expression “Persons.”

**Salient Features of the Act:**

1) Trafficking of persons – male/female is (Section3-6) prohibited.
2) Prevention of sexual exploitation of person for Commercial purposes.
3) Soliciting and/or seduction in public places is a crime. (sec 7 & 8)
4) Offences involving children/minor- stringent punishment.
5) Does not address the health concerns of the persons trafficked.
6) Provides for rescue and rehabilitation of the prostituted women.
(Sec 10-A,16 & 17,21)
7) voluntary rehabilitation (Sec 19)
8) Removal of prostitutes from any place on complaint (Sec 20)
9) Special enforcement mechanism (sec 13-15)
10) This does not focus on persons who are voluntarily in this field.
11) Provides for mandatory testing for STD (Sec 15(5-A))

**Offences:**

- Keeping brothel or allowing the premises to be kept as a brothel.
- Leasing/using a premises for brothel (landlord / tenant, lessor/lessee)
- Living on the earnings of prostitution (Sec.4)
- Procuring, inducing, taking a person for the sake of prostitution.
- Detaining persons in the brothel/premises where prostitution is carried on, with an intention to have sexual intercourse with a person who is not a spouse.
- Enhanced punishment for subsequent offence.
- Stringent punishment for the above said offence where the person involved is a child/minor.
- Special Courts are to be set-up for trial of cases under this Act.
- An offence under this Act is cognizable i.e. a Police Officer can arrest without a warrant.
- Special Police Office (SPO) not below the rank of Inspector to be specified by the State Govt. to deal with matters under this Act. Trafficking Police Officers to be appointed by Central Govt. to deal with interstate trafficking.
- Non-Official advisory body consisting of not less than 5 leading social welfare workers of that area, including women social welfare workers to advice on questions of general importance regarding working of the Act.

**Rescue and Rehabilitation of Prostitutes and their children:**

1) All the State Government and the Government of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy actions under the existing laws in eradicating child prostitution without giving room for any complaint of culpable indifference.

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2) All the State Govts and Government of Union territories should take steps in providing adequate and rehabilitative homes manned by well qualified, trained social workers. Psychiatrists and doctors.

The Supreme Court has delivered a judgment of far reaching consequences, pertaining to the rescue and rehabilitation of prostitutes and also their children. In Gaurav Jain Vs Union of India the Court speaking through Justice K. Ramaswamy (1997) 8 Scc 114, has elaborately dealt with the issue. The gist of the version is:

1) Counselling, Cajoling and coercion are necessary to effectively enforce the provisions of the Immoral Traffic (Prevention) Act and the Juvenile Justice Act.

2) It is the duty of the State and all voluntary non-governmental organization and public spirited persons to come to the aid of the prostitutes to retrieve them by lending them a helping hand to lead life with dignity of persons, self-employment through provision of education financial support.

3) Women found in the flesh trade should be viewed more as victim of adverse socio-economic circumstances rather than as offender in our society. The commercial exploitation of sex may be regarded as a crime but those trapped in custom oriented prostitution should be viewed as victim of gender oriented vulnerability.

4) The customary initiation of women in the practice of Devadasi, Jogins and venkatasius prevalent in Andra Pradesh, Karnataka and Maharastra areas and the resultant practice of prostitution is a crime against humanity, violation of human rights and obnoxious to the constitution and the Human Rights Act.

The Apex Court deserves praise for such initiative, which in fact should have taken by Political branches of the Government i.e. the legislative & executive.

G) The Karnataka Devadasi (Prohibition of Dedication) Act, 1982:-

Devdasi is a Sanskrit word, meaning there by female servant of god. Initially, dedicated women were appointed and some were voluntarily engaged in looking after cleanliness, maintenance etc. of the temple. So, they used to serve the God. Gradually their service was shifted. The kings sponsored the cult that they are the representatives of God on earth. Service to king was told to be a part of service to God. Such women were expert in music and dance. The devdasies are mostly from the low-caste and poor sections. Now it has become prostitution with so called religious sanction. Even nearly thousands of girls are dedicated to Goddess "Yellamma," "Renuka" mostly in the States of Karnataka and Maharastra, who after a brief period of concubinage, become accessible to prostitution.

Persons who perform, promotes, takes part in or abets the performance of any ceremonies or act for dedicating a women as devadasi shall be punishable with
imprisonment for a period extended up to 3 years. And fine up to two thousands rupees.

→ The punishment is higher if her parent or guardian or the relative does the dedication of the woman, i.e. imprisonment for a minimum term of 2 years and up to 5 years and a fine of Rs Two thousands.

→ A devadasi entering into a marriage shall not be invalid and no issues of such marriages shall be illegitimate by reasons of such woman being a devadasi.

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

"Sati" means the burning or burying alive of,

1) Any widow along with the body of her deceased husband or any relative or with any article, object or thing associated with the husband or such relative, or

2) Any woman to along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise.

The menace of Sati is prevalent in India from time immemorial. The law prohibiting sati was promulgated 150 years ago, but the recent Deorala incident at Rajasthan giving nation-wide publicity to it have put even the law makers and protectors of law to suspect. It is an assault on the dignity of woman, be it enacted by parliament in the Thirty Eight years after the inception of the Republic of India as follows :-

1) This act may be called the Commission of Sati (Prevention) Act 1987.

2) It extends to the whole of India except the State of Jammu and Kashmir.

3) It shall come into force in a State on such date (w.e.f. 2nd March 1988)

4) Any person who commits Sati or does any act towards such commission is punishable with imprisonment that may extend to one year or fine or with both.

5) Persons abets the commission of such Sati, either directly or indirectly, shall be punishable with life imprisonment and fine.

**Abetment includes :-**

- Making the woman believe that the Commission of Sati would result in some spiritual benefit to her or to the deceased husbands family.

- Encouraging a woman to remain fixed in her resolve to commit Sati and thus instigating her to commit Sati.

- Participating in any procession in connection with the commission of Sati.

- Being present at the place where Sati is committed.

- Preventing or obstructing a woman from saving herself from being burnt or buried alive.

- Obstructing or interfering with the Police in discharge of their duties of taking steps to prevent the commission of Sati.
Glorification of Sati is punishable with imprisonment for not less than one year which may extend up to 7 years and fine of Rs 5000/- to Rs 30,000/-. The Government has power to remove the temple or any other structure which has been existence for not less than 20 years, where any form of worship or performance of any ceremony is carried on with a view to perpetuate the honour or preserve the memory of the person in respect of who such sati has been committed.

The collector or the District Magistrate has powers to seize properties or funds that has been acquired or collected for the purpose of glorification of the commission of sati.

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

The Act prohibits depiction in any manner the figure of woman, body or any part there of in such a way that has the effect of being indecent or derogatory to or denigrating woman. It intends to prevent women being depicted as sex objects in the media for commercial gain or prevent the commodification of women.

It penalizes persons who publishes or arranges or takes part in the publication or arrangements or takes part in the publication or exhibition of any advertisement which contain indecent representation of women in any form.

It penalizes persons who sell, hire, distribute, circulate or send by posts any books, pamphlet paper, slide, film, writings, drawings, paintings, photograph, figures, or representation which contains indecent representation of women in any form.

The punishment is imprisonment for a term which may extend to 2 years with fine up to Rs 2000/-. However, certain exceptions are made in favour of religion, art, learning and ancient monuments.

The Act empowers Gazetted Officers authorized by the State Government to enter and search premises, seize articles and examine records or materials which he has reasons to believe to be in the nature of contraventions of the Act.

Provisions in Indian Penal Code Regarding Obscenity:

<table>
<thead>
<tr>
<th>Sections</th>
<th>Offence</th>
<th>Punishment</th>
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</thead>
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<td>292</td>
<td>Sale of obscene books</td>
<td>Imprisonment for 2 years with fine.</td>
</tr>
<tr>
<td>292-A</td>
<td>Printing of gross indecent or scurrilous matter or matter intended for blackmail</td>
<td>Imprisonment for 2 years/fine/both.</td>
</tr>
<tr>
<td>293</td>
<td>Sale of obscene objects to young person.</td>
<td>Imprisonment for 3 years with fine.</td>
</tr>
<tr>
<td>294</td>
<td>Obscene songs.</td>
<td>Imprisonment for 3 months.</td>
</tr>
</tbody>
</table>
J) **The Medical Termination of Pregnancy Act 1971** :-

Abortion in India has been legalized since the year 1971. The medical practitioners under the following circumstances could perform abortion up to 20 weeks of gestation.

1) If the doctor is of the opinion that continuance of the pregnancy would involve a risk to the life of the pregnant woman or would cause grave injury to her physical or mental health.

2) If the continuation of pregnancy causes substantial risk that if the child were born it would suffer such physical or mental abnormalities, or to be seriously handicapped.

3) If the pregnancy is caused by rape and the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman.

4) If pregnancy occurs as a result of failure of family planning device, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

5) No pregnancy shall be terminated without the consent of the pregnant woman.

6) Termination of pregnancy shall be made only in hospital established or maintained by the Government or such other place as approved by the Government.

K) **Domestic Violence** :-

The existing criminal law provisions can be used to initiate proceedings against the husband or his relatives in the Magistrate Court where the incident took place.

- A complaint can be filed under section 498-A for any physical or mental harassment/torture/abuse, etc.

- The complaint has to be filed as early as possible in the jurisdiction of Police Station.

- The complaint must contain all the facts and brief narration of the events both the past and immediate cause just before filing of the complaint.

- These events must be of such a nature that it causes grave injury or danger to the life or health of the woman or drives a woman to commit suicide.

- Offences under Sec 498-A are cognizable i.e. the Police Officer can arrest without a warrant and non-bailable i.e. the Police themselves can not grant bail, and the same has to be obtained in the court.

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57 Recently parliament has introduced a bill on Domestic Violence. Details of the bills are not available with the researcher.
Civil Remedy ::

Women can file suit under order VII Rule 1 of the Code of Civil Procedure in the family court or there is no family court in a Civil Court against the husband or relatives who harassing the woman to seek any of the following orders.

- That the spouse or and his relatives are restrained from ousting the woman and her children from the marital home/Matrimonial home.
- That exclusive possession of the matrimonial home should be granted to the woman and her children.
- That the spouse or and his relatives may be restrained from entering the premises or any part of it which is in the woman’s occupation.
- That the spouse or and his relatives be restrained from alienating/transferring the matrimonial home by way of sale, gift, rent or inducing any third party in to the matrimonial home.
- That the personal property of the woman be resorted to her.
- That the spouse or and his relatives be restrained from further abusing/molesting the woman or her children.

In case of a Hindu women, she can seek for separate residence under Section 18 of the Hindu Adoption and Maintenance Act.

(Support Services to counter violence against women in Karnataka)

L) SEXUAL HARASSMENT IN WORK PLACE ::

There is no specific law regarding the sexual harassment Supreme Court has laid down guidelines in Vishaka case (AIR 1997 Supreme Court 3011)

Any Unwelcome Sexually Determined Behaviour – Direct or Implicit ::

* Physical contact and advances.
* Demand or request for sexual favours.
* Sexually coloured remarks.
* Showing Pornography.
* Any other unwelcome, Physical, Verbal or non-verbal conduct of sexual nature.

Such Acts committed Amounts to Sexual Harassment ::

→ When the victim has a reasonable apprehension
→ that such conduct is humiliating.
→ Constitute health and safely problem.
→ When the victim has a reasonable ground to believe that her
→ Objections to such acts would disadvantage, would prejudice her in connection with work, recruitment, promotion, creates an hostile work atmosphere.
→ When non-consent/objections to such acts entails adverse consequences.
Duties and Obligations as per Judgment:-

- Identify the acts that constitute sexual harassment.
- Prohibit acts of sexual Harassment workplace/precincts/residence.
- Penalize commission of acts of sexual Harassment.
- Abetment to be defined to include non-action of the official concerned.
- Notify, publish and circulate acts prohibited.
- Provide congenial atmosphere work leisure & health hygiene That no women employee should have grounds to believe that she is disadvantaged in connection with her work.
- Provide optional transfer, if the victim feels necessary.
- Incorporate sexual Harassment in conduct rules.
- Incorporate in the industrial standing order.
- Initiate disciplinary proceeding.
- Initiate criminal proceeding under IPC.
- Ensure prevention of victimization and discrimination of victims & witness.
- Facilitate discussions in employee employer meetings.
- Create awareness among women about sexual harassment.
- Duty to provide Procedure for Resolution Complaint Mechanism headed by women.
- Duties of the Committee provide counselling medical aid. Legal aid, maintain confidentiality and time bound inquiry.


The Act prohibits misuse of pre-natal diagnostic techniques for determination of sex of foetus leading to female foeticide. It prohibits advertisement of pre-natal diagnostic techniques for detection of sex of the child. The Act permits and regulates use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorder and only under following conditions by registered institutions.

- The age of pregnant woman is above 35 years.
- The pregnant woman has undergone 2 or more spontaneous abortions or foetal loss.
- The pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other generic disorder.
- The pregnant woman must consent in writing to undergo such procedure.
- The pregnant woman must be explained all known side effects of such procedure.

The medical practitioner who offers such services and the person who seeks such persons are liable for punishment of imprisonment up to 3 years and fine which may extend up to ten thousand. In addition action can be taken by the Medical Council of India to
remove the name of such doctors who has been convicted for such an offence for a period of 2 years.

National Commission For Women :-

An act to constitute a National Commission for women was enacted by Indian Parliament in the Forty-First year of the Republic of India i.e. 1990.

The Commission Consists of :-

a) A Chair person, committed to the cause of women, to be nominated by the central Government.

b) Five members to be nominated by the central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women’s voluntary organizations (including women activities) administration, economic development, health, education or social welfare provided that at least one member each shall be from amongst persons belonging to the scheduled castes and scheduled tribes respectively.

A member secretary to be nominated by the central Government, who shall be

a) an expert in the field of management, organizational structure, or sociological movement or

b) an officer who is a member of a civil service of the Union or of an all India Service or holds a civil post under the Union with appropriate experience.

Functions of the Commission :-

a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.

b) Present to the Central Government, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards.

c) Make in such reports recommendation for the effective implementation of those safeguards for improving the conditions of women by the Union or State.

d) review from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments there to so as to suggest remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislation.

e) take up the cases of violation of the provisions or the constitution and of other laws relating to women with the appropriate authorities.

f) look into complaints and take suo-motto notice of matter relating to

→ deprivation of women’s rights.

→ Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality & development.

→ Non-compliance of policy decisions, guidelines or instructions, aimed at mitigating hardships and ensuring welfare and providing relief to women.
g) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.

h) Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their achievement.

i) participate and advice on the planning process of socio-economic development of women.

j) Evaluate the progress of the development of women under the Union and any State.

k) Inspect or cause to be inspected a jail, remand home, women's institutions or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action if found necessary.

l) Fund litigation involving issues affecting a large body of women.

m) Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil.

n) Any other matter which may be referred to it by the central Govt.

The Central Government shall refer all the reports before the each House of parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any of such recommendations. Where any such report or any part there of relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report to such State Govt who shall cause it to be laid before the legislature for the aforesaid purpose.

The Commission shall, while investigating any matter have all the powers of a civil court trying a suit and, in particular in respect of the following matters, namely:

a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath.

b) Requiring the discovery and production of any document.

c) Receiving evidence on affidavits.

d) Requisitioning any public record or copy thereof from any court or office.

e) Issuing Commissions for the examination of witnesses.

f) Any other matter which may be prescribed.

IV - Police and Women's Rights: Challenges Ahead

How are women's experiences of violence from men to be interpreted? What services do women need? How does one particular service, the Police deal with women's needs? How are violent men to be controlled?
In their daily course of work Police personnel interact with women in various capacities as a complainant, as a victim, as an offender, as a colleague and so on. Police function today is more than just to maintain law and order situation. “Police goals are constantly changing with the change of time and as a consequence traditional Police functions are not enough to cover all aspects of Police functions. The concept of Police function in our society expressed a varying set of emotions ranging from fear to relief.”

The police effort to control crime suggests three broad functional objectives. They are

**Prevention:** Police sponsored Crime prevention programmes deal with the involvement of citizens in protecting themselves from crime.

**Suppression:** Police administration’s perception is that a “real Police work” is investigating crimes and arresting the criminals to suppress further crimes.

**Oppressions:** Where as suppression of crime is the reasonable use of power or authority to control criminal as well as non-criminal conduct.

Preventive model of Police programme is more suitable for a good Police Public relation as it can give more satisfaction to the public in comparison to crime fighting or suppression model of functioning. In this connection Nirmal Kanti Chakraborty has mentioned four hypothetical models of Police non-crime services which may help the Police to handle Crime against women more effectively. These are

**The Crime Prophylactic model:**

This model postulates that Police intervention in many matters, specially in domestic crisis. Neighbour quarrel, nuisance, complaints, can defuse situations that might develop into full blown criminal incidents it left unattended by the Police at preliminary stages.

b) **The Police Knowledge model:**

This model facilitates to develop knowledge about community patterns and many individuals which will be useful in anticipating crimes and solving many problems of the citizens.

c) **The Social Work model:**

This model supposes that through programmes like juvenile service, attending interaction with local NGO, local festivals, functions and patrolling; law abiding norms can be internalised easily.

d) **The Community Cooperation model:**

This model postulates that the Police officers duty is to convince the members of the public that they are not there merely to catch the Criminals, but rather to

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strengthen the entire fabric of Community life by maintaining order and providing assistance to the public. They will boost the confidence of the society.\(^{59}\)

Focusing on the policing needs of women that results from men's violence, challenges the paradigms of both mainstream and radical criminologists. Contextualizing narrow question concerning crime control or the protection of the community against Crime raises fundamental political questions about the nature of the social order that Police are expected to protect. The social order is characterized by power structures that divide and hierarchically structures the community into classes, races and sexual groups and by gender. Because the Police are accorded a front line position in the maintenance of society as presently constructed their role is fundamentally political.\(^{60}\)

As the aim of Policing is traditionally defined as the maintenance of public order, most analyses have focused on policing in the public Arena. The Police is seen to have dual role policing social relations in areas deemed public and preventing crime. The former is particularly well understood in the policing of public protest in relation to political struggles around industrial and economic issues and the consequent change in class relations. However political struggles challenging existing social divisions based on race and imperialisation, sexuality and gender are also characterized by inequality, exploitation, and oppression and consume considerable Police resources.\(^{61}\)

Defining the problem for policing in terms of the maintenance of public order is socially legitimated by the belief that the Police can adopt a neutral social role. This is guaranteed by local or community accountability. For example if racist and sexist ideologies predominate in a community, then community accountability can not guarantee progressive change in Police policy or practice.\(^{62}\)

The conceptual division of social life into public and private is a social construction that arises out of gendered social relations. The reification of the public and the private is an ideology that explains and fortifies the decriminalisation of men's violence against women viewed on the level of the individual, men and women act in the social world as gendered subjects. This means that not only are the Police engaging in a world inhabited by gendered subjects in unequal power relationships but the Police also are gendered and constitute a part. They are not above or outside, they also struggles around gendered relations. Identifying the Police as gendered subjects provide insight into their public order and crime prevention activities.


\(^{61}\) Ibid, P. 186

\(^{62}\) Ibid, P. 186
As a part of their crime prevention role, the Police are accorded a formal responsibility for citizen’s safety that includes offering protection from violent crime. While citizen is an apparently engendered term, it would be a mistake to assume men and women are treated the same. Understanding about citizen safety is mediated by assumption about gender. By and large men are regarded as capable of self-protection and women are protected through their dependency on men. Women outside of men’s protection are then defined as deviant women, provocative women, undeserving of protection. The disposition of the criminal justice system towards women shows two contradictory trends. One of paternalism/chivalry (preferential treatment) and the other sexism/penalism (discriminatory treatment) The bottom line in paternalism, sexism debate is that women are treated leniently or harshly by the criminal justice system not because they are women, but because they conform to or deviate from the “appropriate feminine behaviour and demeanour.”

Thus a major task ahead is to find a way by which feminists can promote the view that woman should be free of violence without compromising women’s independence. This is not easy, but failure to engage in the debate on policing and to secure benefits for women will leave many women open to further abuse and even death. Sexual assault and murder, including a review of the interviewing skills needed for women and children victimized by sexual violence.

Reforms introduced in this political climate require careful scrutiny. It is possible to envisage partial reform that ostensibly brings benefits to some women but serves only to secure women more firmly under family control. This would undermine the feminist goal of independence or autonomy for women. For example, a greater commitment to pursue, prosecute and punish rapists who are strangers to women while at the same time

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63 Ibid, P. 187
64 Debashis Panigrahi, “Gender Sensitization in Law Enforcement”, Prime Ministers Essay Contest, SVPNPA Ministry of Home Affairs
denying protection to women victimized by husbands, lovers, fathers, brothers, or other relatives and associates, obscures the unacceptable face of hitherto patriarchy. This process itself increases the power of men in the family over women by defining rapists as some one other than the men whom women live with and know. This is the formula of old wine in new bottle.

In recent years the emphasis is on increasing the number of women Police Personnel in the force. The assumption is that the shared gendered experience of life will make it easier for women officers to understand what was happened, but in practice some report that women Police are even less sympathetic than their male colleagues. The explanation for this lies in the power of masculinity within the organization of policing. Women who enter the force can be overshadowed by an institution that rigorously reinforces a gendered male view of policing and of men and women. As an individual a woman Officer may have, and show, understanding and empathy with women victimized by male violence, but such attitudes run counter to the dominant ideology of her profession. The presence of a small number of women in contemporary Police forces can not dent a male dominated institution committed to securing the gendered status quo.

Effective policing of violence against women and providing her with her due right requires a deeper understanding of the power structures of patriarchy and the role of men’s violence in reinforcing these power inequalities. Police protection for women requires that the Police should understand and respond to the needs of women by ending the violence, by providing any necessary information about legal rights and community resources, and by assisting the woman to achieve the outcome she defines as most workable. But we should keep this in mind that Police is only a cog in the wheel of criminal justice system. Other decision makers form clerks of the court, to the prosecution service and judges can influence the outcome of any case where the women’s human right is the matter of concern.

In pluralistic developing societies as ours NGO’s have “an infiltrating catalysing capacity which official departments do not possess.” In view of growing problems of crimes against women, the Police leadership at the State and District levels should take adequate steps to sensitise and motivate their subordinates at the cutting edge level to utilize the services of women groups at the optimum level. This would inevitably enhance the performance of the force in prevention and control of crimes against women. Because public support is the basis of good policing. It should be the policy of the State Government to

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encourage formation at least one women group in each District for taking various programmes for the care and protection of the victims of sexual offences and also for providing legal aid to them.\textsuperscript{68}

This chapter and the earlier one have provided the conceptual and historical background. It would now be easier for us to situate the work in the appropriate socio-historical context and empirically observe the engagement of police with women’s rights. This invariably takes us to our field-centric chapters. In the next chapter we wish to concentrate on the Karnataka Society and examine carefully the state of women’s rights and associated sociological questions.