Chapter-

Conceptual framework and Theoretical perspective
CHAPTER III

CONCEPTUAL FRAMEWORK AND THEORETICAL PERSPECTIVE

"Woman is equal under the law of course, but is non-person in praxis. A woman is a human without rights. To-day, held in thralldom by homicidal custom, womanhood dies in flames for her gender crime."

-Justice Krishna Iyer. V.R

3.1 GENERAL

This chapter covers the concept, the nature of human rights and their indispensability to human flourishing. This is a conceptual framework and theoretical perspective relating to the conditions and the problems of women, which have been identified in the first two chapters of the study. It follows a comparative study of women's human rights in the political Constitutions of different democratic societies.

The origin of rights may be traced as far back as in the Babylonian law, Assyrian law, Hittite law and Dharma of Vedic Law. The city-State of Greece gave equal freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and the right of access to justice to their citizens. Similar rights were secured to the Romans by the jus civil of the Roman law. Thus, the origins of the concept of human rights are usually agreed to be found in the Greco-Roman natural law doctrines of Stoicism which held that a universal force pervades all creation and that human conduct should therefore, be judged according to the law of nature.

3.2 CONCEPT OF HUMAN RIGHTS

A 'human right' is a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. It is therefore difficult to give a precise definition of the term human rights. However, it can be said that the rights that all people have by virtue of their humanity are human rights. These are the rights, which no one can be deprived without a grave affront to justice. There are certain deeds, which should never be done, certain freedoms that should never be invaded, something that are supremely sacred. It is so because they may affect the human dignity. Thus, the idea of human rights is bound up with the idea of human dignity. Human rights are, therefore, those rights, which belong to an individual as a consequence of being human as a means to human dignity. These rights are associated with the traditional concept of natural law.

Human beings are rational by nature. They possess certain basic and inalienable rights by virtue of being members of human family, which are commonly known as 'human rights'. Human rights, being the birthrights, are, therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are in consonance with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. It is on account of their immense significance to human beings, human rights are also sometimes referred to fundamental rights, basic rights, natural rights and birthrights. Human rights are bound up with the idea of human dignity. Thus all those rights are essential for the maintenance of human dignity. Human right is one, which allows a human being to live with minimum human dignity and worth. Non-discrimination and equality are the very basis of human rights. The wit and wisdom of George Bernard Shaw epitomised that the worst sin

towards our fellow creatures is not to hate them, but to be indifferent to them: that's the essence of inhumanity.³ Salmon says, that a moral or natural right is an interest recognised and protected by a rule of morality, an interest the violation of which would be a moral wrong and respect for which is a moral duty. A legal right, on the other hand, is an interest recognised and protected by a rule of legal justice or law, an interest the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty. Rights promote human aspirations. Rights are categorised as political, civil, economic and cultural like right to life, liberty, equality, employment, education, practice any faith, etc. Some rights, particularly political and economic, are allowed to citizens only, the rest are for all to enjoy in a democracy. Rights enlarge the area of freedom, offer security from violence and discriminatory treatment and are expected to ensure general protection against all kinds of oppression. 'Right' is a social concept. Display of power may lead to the rule of jungle where might is right. Bentham for instance criticised the doctrine of natural rights. The term natural rights implies that in the dim distant past when there was no organised society people used to enjoy certain natural rights and natural liberty. John Locke, J.J. Rousseau and J.S. Mill were upholders of natural liberty and rights. Hobbes did not subscribe to the idea of definitive natural rights. He thought that rights were a gift of the sovereign authority which itself was instituted by the expressed consent of all the people.

An individual can seek human rights only in an organised community, where the civil social order exists. Thus, the principle of the protection of human rights is derived from the concept of man as a person and his relationship with an organised society, which cannot be separated from universal human nature. For all practical purposes, the genesis of this international aspect of human rights is not older than the Second World War, though the concept of an individual having certain inalienable rights as
against a sovereign State had its origin in the dim past, in the somewhat nebulous doctrines of natural law and natural rights.

Human rights are the offsprings of the liberal theory of natural rights. So close is the link that the two terms, natural rights and human rights are used interchangeably. Human beings possess them in their natural capacity as humans and not because of any particular system of law under which they may happen to live. The post-second world war period has witnessed successive proclamations on human rights. It started with the adoption in 1945, of the UN Charter, Article 55 of which provides that the world body shall promote universal respect for the observance of human rights and fundamental freedoms for all. Natural rights represented the struggle of men against various forms of intrusions and oppressions. These rights placed great emphasis on liberty, freedom and independence. But since this doctrine was theoretically suspected from the start it never acquired intellectual respectability and failed to exploit the ground it had won. Towards the end of eighteenth century Jeremy Bentham the founder of classical utilitarianism and analytical positivism mounted an attack on the doctrine of natural rights. Bentham argued that the doctrine of natural law or rights could settle nothing. The only proper basis for determining how people should live was the principle of utility. He held that laws and rights could be evaluated by reference to principle of utility and not be reference to a misleading belief in the existence of natural rights. Rights were, according to him, not a matter of moral or political legitimacy but owed exclusively to positive law. This view of rights as defined by law has been made famous by Bentham and John Austin, Hans Kelsen and H.L.A. Hart.

3.3 INDISPENSABLITY OF HUMAN RIGHTS

Human Rights are essential for all-round development of the personality of the individuals in the society. They must be protected. The
need for the protection has arisen because of inevitable increase in the
control over men's action by the governments, which by no means can be
regarded as desirable. The consciousness on the part of the human beings
as to their rights has also necessitated the protection by the States. It has
been realised that the functions of all the laws whether they are the rules of
municipal law or that of international law should be to protect them in the
interest of the humanity. One of the achievements of the contemporary
international law is to recognise human dignity and honour. Presently, there
is a widespread acceptance of the importance of human rights in the
international sphere. However, one will not hesitate to admit that there is a
confusion prevailing as to its precise nature and scope and the mode of
international law as to the protection of these rights.

Rousseau, the torchbearer of the Industrial Revolution, proclaimed
that men were endowed with inalienable rights of liberty, equality and
fraternity. With this clarion call, the fire of industrial revolution was kindled
and blazed all over the European continent consuming all shackles of
feudalism. Industrial Revolution led to the blooming of capitalism and giving
birth to fundamental rights in the State Constitutions.

Harold J. Laski observed that the rights are those conditions of social
life without which no man can seek in general, to be himself at his best.
Professor Hobhouse put it, as rights are what we expect from others and
others from all to promote social welfare. Thus the rights every one may
claim are partly those, which are necessary for the fulfilment of the functions
that society expects from him. Human beings have certain inherent,
inalienable, immutable and inviolate freedoms and rights, which nobody on
earth could take away. It was asserted that the State was bound to
recognize these rights and freedoms and allow them a free play. These
rights could not be tempered or interfered with in any circumstances by the
State. Thus human rights are based on the philosophy of natural law school
which propounded the new philosophy of law assented that the positive law ought to be subordinated to the natural law. *Ritchie* says that the person with rights and duties is the product of society and the rights of individual must therefore be judged from the point of view of the society as a whole and not from the point of view of the individual.\(^4\)

Ms. Hedy Muriel, the first Vice-chairman of the National Coalition on Domestic Violence said, “for many of us, it's safer to be out on the streets than to be in our own homes.” In the same context, *Ms. Lori Heise*, a senior researcher says, that societies tacitly condone this violence through their silence of worse yet, legitimise it through laws, customs and court opinions that blatantly discriminate against woman. An easy method of violating woman’s human rights has been outraging their modesty including sexual assault. By this act, severe mental and physical torture is inflicted on the women. It is generally agreed that human rights have developed in ‘generations’ and the second-generation social and economic rights follow first generation rights of civil and political liberties. Third generation rights are those demanded by various groups on the basis of gender, age, ability etc. The fourth generation rights are the rights of self-determination demanded by indigenous populations. *Bobbio* explains that the demands for greater protection of individuals change as societies change and the growth of social rights is directly linked to the transformation of society.\(^5\)

### 3.4 UNIVERSALITY OF HUMAN RIGHTS

Although at the end of First World War, some attempts on modest level were made through the Treaty of Versailles to promote and universalise human rights but it met with no success. Since the judicial conscience of the civilised world was very much in the favour of safeguarding the rights of

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\(^4\) Ritchie, *Natural Rights*, (1898) pp, 101-102

individuals against its violation by States, it was consistently realised that the rights of individuals must be universalised so that it may be guarded against its violation by one's own State.

*Rhoda Howard* strongly challenges the assertion that the human rights are universal and traceable in all cultures. She suggests that human rights are good that every one ought to accept on ethical basis. They are present in all cultures. Human rights are claims by individuals against society and State. They are private and inherent in the human person unmediated by social relations, are individual rights because only an isolated human being may exercise them and are autonomous as no authority other than the individual is required to make human rights claims. She contrasts this with the concept of dignity, which in her view is accorded to an individual as ascribed status or that is earned by adhering to a society's values, customs and norms. In fact assertion of individual rights violates many societies most fundamental beliefs that dignity involves quiet endurance of what human rights approach might consider injustice or inequality. She illustrates this with the example of the hostile reaction of many men and women to feminists and argues that it demonstrates the firmness of the underlying social belief in modern North America. But surely this example is a better illustration of how the underlying social beliefs can be oppressive to Sections of society and feminists have successfully challenged the beliefs about appropriate, dignified behaviour for women. The very idea of human rights is the result of Western political thought from the 18th century. The International Bill of Rights comprises the Charter of the United Nations, the Universal Declaration of Human Rights and the two international Covenants. The ideals for which the French revolution was fought, the political philosophy of *Locke* from which much of the American Bill of Rights drew inspiration had a decisive influence in the codification of the International Bill of Rights.

Rhoda E. Howard, *Dignity, Community, and Human Rights* in An-Naim (ed) p 81
The Universal Declaration of Human Rights was proclaimed by the General Assembly of UN as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member States themselves and among the peoples of territories under their jurisdiction. The debates on natural rights, coupled with the fruits of European struggles, did contribute to the modern notion of universal human rights. The fact that the universal Charter incorporated 'human dignity' and 'inalienable rights' as a part of its preamble is nothing but giving to what was called natural rights a moral and legal status. The Universal Declaration of Human Rights, 1948 was in a significant way a crystallisation of the legacy of rights. It is true that most of the rights included in the Charter are the products of individual v. collective at one level and market v. the State at another.

Howard argues that in most societies, dignity and justice are not based on any idea of the inalienable right of the physical, socially equal human being against the claims of family, community, or the State. She goes on to argue explicitly that most rights-protective societies are liberal societies that evolved after the eighteenth century in Europe and were a product of the specific social change—both structural and ideological—that created a new conception of the human being. Human rights are a particular expression of human dignity. Therefore to look for universalistic roots of human rights in different parts of the world or different religious traditions is to abstract those societies from culture and history. She agrees that it is true one can find analogies to contemporary human rights in religious traditions like Christianity and Judaism but one can also find moral precepts justifying inequality.
Traditionally human rights discourse has not been gender sensitive but feminists have started making demands that women need specific human rights. This demand can be extended to argue for a new conception of human rights for women in India. By making the definition of this human right context specific it is accepted that universality of human rights extends to the concept only of human rights but not to the substantive content.

Huda, A. Seif argues that merely making the universal human rights gender specific at a global level will not help because international legislation on women's rights is incapable of accounting for and responding to the deeply entrenched particularities of a given culture, its class demarcations, and its inter-woven socio-economic complexities of inequalities and prejudices.

The purpose of defining economic independence as a specific human right is that this is the core issue in transforming the conditions of life for Indian women. In ascertaining it as a right and a human right, the dignity for women demands economic self-sufficiency. This demand can be usefully compared to the recent proposal to reserve one third of Parliament seats for women in India. Such empowerment demands among other things a fundamental challenge to the social mores and practices that disadvantage women. At the very least it demands education and economic independence for all Indian women. As Bina Agarwal has said it is not just an increase in women's command over economic resources but also the process by which such increase occurs that has a critical bearing on gender relations. Any effort to change the present gender hierarchy must be multifaceted and emphasize empowerment of women through education and alternative sources of economic independence. Law however, has a specific significance in so far as it sets the normative standards and it is important


Huda A Seif, Contextualising Gender and Labour: Class, Ethnicity, and Global Politics


Bina Agarwal, A Field of one's own: Gender and Land Rights in South Asia 44 (1996)
that it upholds the standard of gender equality because then it can support other efforts at social transformation.

A complex set of factors operates together to prevent women from enforcing their legal entitlements. These include ideology of womanhood, cultural and religious injunctions and the stark realities of women's dependence on men kinsfolk. "No country in the world treats women as well as it does its men." Discrimination against women is incompatible with human dignity. It is an obstacle to the holistic development of the potentialities of women in the service of their motherland. This would enable women to play a significant role in the social, political, economic and cultural life of the family. Nevertheless, the die-hard patriarchal social systems the world over have sustained bias, prejudices and discriminations against women compelling them to bear perennial travails of disempowerment, subjugation and oppression. As a result crimes against women such as eve teasing, rape, molestation, child sexual abuse, custodial torture, domestic violence, sexual harassment at workplace continue to be a global problem today. Women represent a mere 10 percent of all elected legislatures worldwide. They however form a substantial proportion of migrant workers and contract labourers. For most women, primary health-care still remains a distant dream, as out of around 150-200 million pregnancies worldwide each year, about 23 million lead to serious complications resulting in half-a-million of these to end in the mother’s death. The multi-layered structures of dominance all over the world gave rise to serious doubts about validity of universal human rights. It is clear that the challenges to the universal rights have come from different directions and from different standpoints. Universality of Human rights and their enforcement shall not be neglected. The domination is unlawful. The universality of the problem of dominance should lead to universality of the solution. This means the terms of

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10 The Human Development Report, 1995
11 Jai sing, Indira, Making Human Rights Norms Measure up to Women's Needs The Lawyers Collective, Vol. 12 No. 2 at 9
discourse in human rights should shift from the problem to the solution. This transforms human rights from their present composition of laudable ends to employable means to realise the ends. This makes human rights a terrain where there is a possibility of convergence of means and ends.

3.5 THEORITICAL PERSPECTIVE OF HUMAN RIGHTS

The theoretical perspective of human rights begins with natural rights. The right to life was the earliest right to be recognised or that which human beings become conscious of the rights came to be considered as an inalienable right. Jacques Martian epitomises that human right is an inalienable right. A theory of natural rights presupposes the notional existence of a natural law that in turn is sustained by either a divine will as in Locke or by a metaphysical biology as in Aristotle. Also in a rational secular sense a law may be natural because human nature makes it essential for people to be constrained by rules in order to survive or achieve some purpose, which constitutes a natural goal of humanity.

The German thinkers Kant, Hegel and Marx, taking a macro view of universal history concluded that the human history of the world is none other than the progress of consciousness of freedom. The unfolding of universal history according to the first two Germans could be understood as the growth of equality of human freedom, from the unlimited freedom of only one under Eastern civilization to the highest development of freedom for all under liberal democracy in the West. Despite the fact that ancient Greek and Roman societies had slavery as an institution, some of the thinkers of these societies preached that man is the measure of everything and that slavery is unnatural. Women did not figure prominently in the classical thinking about freedom.
With Locke, the idea of human rights came to the centre of the political stage. He opens his theory of government with an analysis of the state of nature in order to show that individuals possess their rights even before governments come into existence. Locke’s 'individual' keeps not only the right to life, but the rights to liberty and property as well. All individuals without exception possess these rights. Equality governs the sphere of human rights. Individual cannot give up his natural rights. If a State attempts to deprive individuals of their natural rights, it is creating a condition whereby its citizen will become less than human. There are two dominant interpretations of rights in liberal theory. One relies on the natural rights tradition and the second on the positive rights tradition. The first tradition presupposes that human beings possess the moral rights, which allow them to make claims over each other not because they belong to any particular moral community or any positive legal order, but by simply being the type of creatures as they are. In other words, these rights are pre-conventional, morally prior to any institution or contractual arrangement. These rights are essentially negative in character and entail non-interference in the individual's activities by the State.

The positive rights tradition is closely linked to legal positivism, i.e., rational interpretation of law based on due deliberations resulting in written texts. It is also associated with welfare liberalism and maintains that individuals possess extensive positive claims on others and that these positive claims are on par with negative claims not only with respect to their prominence on the moral landscape but also with respect to their justification.

J.S. Mill does not invoke a theory of natural right while analysing the domain of individual liberty. He regards utility as the ultimate appeal on ethical questions. In his famous essay on liberty, Mill presents what he describes as 'one simple principle', which should determine the extent of
legitimate control of the society over the individual. *Mill* distinguishes between the part of a person's activities and thoughts, which concerns only him, and the part, which concerns others. Actions which harm other or which go against the rights of others are legitimate objects of legal interference, while actions, which harm no one, or only law should certainly not punish the individuals who perform them. The individual interests which; either by express legal provision or by tacit understanding ought to be considered as rights. *Mill* assumes that every individual has capacity for rational thought and action. Liberty of thought and discussion are the important aspect of individual's rights. Thus the pursuit of truth is made to coincide with enlightened pursuit of self-interest. He pleads for free development of individuality, free from the tyranny of popular opinion and social customs. Each individual should be free to form his own opinions and work out his own plan of life.

Many writers of the liberal traditions argue, quite often based on the human rights situations in the socialist countries, that *Marxism* does not contain a regime of rights. *Marx* completely departs from the liberal traditions in dealing with human rights. The liberals view rights as an end in itself and examine rights in isolation from the social conditions in which they are located. Rights by its very nature consist only in the application of an equal standard, says *Marx*. This cryptic statement defines human rights covering all its salient features. As the statement says, in a society where rights are observed human beings treat each other as equals, irrespective of their differences. Rights allow individuals to interact with each other as equals. Human rights are products of determinate human society. Human rights originated in the course of the fight against feudalism under the leadership of the newly emerging capitalist class. In feudalism inequalities were structured. While some had the privileged access to socio-political institutions others were excluded. The lords had freedom but all the other had only responsibilities. Due to inequalities of wealth and power in the
society rights became mere dead letter for majority. At the same time rights protect the privileges of a few. Marx has completely rejected liberal theory of rights, because rights in an unequal society would only legitimise inequalities. Of course he agrees that rights contribute to the destruction of structured inequalities. Therefore, in a capitalist society rights reinforce inequalities of power and wealth. Marx therefore, argued that real freedom i.e., freedom to realise one's own potentialities through social support is possible only when a classless society is established.

A.V. Dicey goes beyond moral rights or utilitarian principles. He sees to protect the rights of individuals by rule of law, which forms a fundamental principle of English Constitution. This principle has three meanings. Firstly, an individual is ruled by the law and by the law alone. He may be punished for breach of law, but for nothing else. It means, therefore, the absolute supremacy or predominance of regular law as opposed to the exercise of arbitrary power and of prerogative, or even of wide discretionary authority on the part of the government. Secondly, it means equality before the law, or the equal subjection of all classes and individuals to the ordinary law of the land administered by the ordinary law courts. Thus, the rule of law in this sense excludes the idea of any exemption of government officials or political functionaries or powerful people from the duty of obedience to the law, which governs other citizens. Thirdly, Constitution contains statements of guaranteed rights. These 'private rights' of an individual are protected by the law relating to arrest, civil defamation and criminal libel, unlawful assembly, etc., The right to personal liberty, according to Dicey, means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification.

Liberty is the end, the aim and the object of politics, says Bertrand Russell. While he regards freedom as the greatest of political goals, at the same time he thinks that the law and the government in their very essence
consist of restrictions on freedom. He neither admits of unlimited freedom for the individual nor approves of extensive power of the government. Russell writes, it is the individual in whom all that is good must be realised, and the free growth of the individual must be the supreme end of the political system, which is to refashion the world. The indispensable value for the individual who wishes to be creative is the freedom. Therefore, freedom is the greatest of all political goods. The spheres of justice and freedom are related respectively to mechanistic and humanistic viewpoints. Justice is concerned with external conditions of a good life, such as necessaries of life, while freedom is concerned with the personal pursuit of happiness according to one's own conception of well-being. The possession and enjoyment of which does not involve deprivations of other. Interference in such spheres is not justified. The liberty of the individual should be respected where his actions do not directly, obviously and indubitably do harm to other people. Therefore, as regards opinion, knowledge, art and private moral there should be no interference.

A theory of rights is an integral part of Rawls' notion of justice. His principles of justice are supposed to provide a way of assigning rights and duties in the basic institution of society. Rawls' search for an adequate basis for a philosophy of rights prompts him to reject utilitarianism as highly unsatisfactory. He believes that utilitarianism would allow the sacrifice of some peoples' rights even if it might raise the level of total or average well being in a society. The individual is the keystone in Rawls' theory of justice. He writes 'each person possesses an inviolability founded on justice that even the welfare of society, as a whole cannot override. For this reason justice denied that the loss of freedom for some is made right be greater good shared by others. Therefore, in a just society the liberties of equal citizenship are taken as settled, the rights secured by justice are not subject to political bargaining or to the calculus of social interests. A basic structure would include political institutions, economic arrangements, nature of the
family, etc. Rawls' principles of justice assign rights and duties by means of this basic structure. Rawls uses the contract theory to arrive at the principles of justice by rational choice. Rawls's principles of justice are supposed to determine proper or just distribution of social primary goods. The chief social primary goods are liberty, opportunity and powers, income and wealth, the bases of self-respect etc.

A basic liberty must be unlimited. Rawls describes the positions of authority and offices of command must be accessible to all. Subject to this constraint one arranges the social and economic inequalities so that everyone benefits. He describes this as the liberal principle of fair equality of opportunity. One important role of human rights, according to Rawls, is to specify the limits of State's sovereignty. Human rights are, therefore, distinct from Constitutional rights or the rights of democratic citizenship, or other kinds of rights emerging from the membership of political institutions.

Ronald Dworkin attempts to blend the Lockean natural rights tradition and the due process rights associated with legal philosophy. Whereas Lockean rights are principles governing the relationship among individuals, Dworkin's theory of rights pertains to the principles governing the relationship between individuals and their government. According to him individual rights are political trumps held by individuals. Dworkin believes that for a moral principle to have these two characteristics it cannot itself be based on some collective goal such as general utility, but must rather be based on considerations of individual dignity or equality of respect. Dworkin denies that human beings have a general right to liberty. The traditional notion of liberty as the absence of constraints placed by a government upon what an individual might do if he wants to; is not a feasible notion of right. An individual cannot have unlimited liberty to walk anywhere or talk anything, because government can impose reasonable restrictions on them on the grounds of general interest of general welfare. Dworkin presents a 'rights'
concept of rule of law. It assumes that citizens have moral rights and duties with respect to one another and political rights against the State as a whole. A society that achieves a high rating on each of the dimensions of the rights conception is almost certainly a just society.

The ideals articulated by the makers of the French and American Revolutions have universal norms. These are liberty, equality, fraternity and the right of the people to remove a government, which works against the interest of the people. Success of democracy hinges largely on the commitment and behaviour of the large body of well developed and dignified citizens to public and private good. This commitment can generate spontaneously if the State and the civil society treat their members equitably both in terms of entitlement to rights and enabling them particularly the weaker sections among them, with suitable assistance to enjoy right effectively. With small men and women who are underdeveloped, as J.S. reminded us, no great thing can really be accomplished.

3.6 HUMAN RIGHTS-MODERN REVOLUTIONS

The Magna Carta granted by King John of England to the English baron on June 15, 1215 ensured feudal rights and dues and to guarantee that the King would not encroach upon their privileges. The Carta implies that there were laws protecting the rights of subjects and communities, which the King is, bound to observe and if he fails to do so, be, compelled to observe by force. Thus, the Carta set forth the principle that the power of the King was not absolute. The Magna Carta’s importance lies on the interpretations of the principles by the succeeding generations, in 1216-17, during the reign of John’s son, Henry III, the Magna Carta was confirmed by Parliament, and in 1297 Edward I confirmed it in a modified form. The Carta was buttressed in 1628 by the Petition of Rights, and in 1689, by the Bill of rights, to form the platform for Parliamentary superiority over the Crown and
to give documentary authority for the rule of laws in England. In addition to the above the writings of St. Thomas Aquinas and Grotious also reflected the view that human beings are endowed with certain eternal and inalienable rights.

The *Magna Carta* is the most important Constitutional document of human history. Though English Constitution is known as unwritten Constitution, there are several written elements in it. *Magna Carta* and Bill of Rights are the written parts, which are being guarded by British even today. *Magna Carta* is thus the first ever written charter ensuring the rights of the people. It is described as the corner stone of English Liberty. *King John of England* granted the *Magna Carta* to English baron on June 15, 1215 to ensure feudal rights and dues and to guarantee that the King would not encroach upon their privileges. The *Magna Carta* implies that there were laws protecting the rights of subjects and communities, which the King is bound to observe and if he fails to do so, be, compelled to observe by force. Thus, the *Magna Carta* set forth the principle that the power of the King was not absolute.

Though *Magna Carta* was seen as a mere feudal document, which benefited mostly the baronial classes, it was in reality a reactionary document. The *Magna Carta* was in the foreground of men's thoughts throughout the 13th century. The charter makes frequent use of the word 'liberty' which meant in the early 13th century the privileges of a certain class, while today the word clearly denies special privileges or exemptions to any class. According to Chatham, the *Magna Carta*, along with the Petition of Rights and the Bill of Rights constitute the "Bible of the English Constitution". The importance of the Great Charter is to be found in the principle upon which it was based. It did not contain any provision for securing popular taxation, ministerial responsibility or trial by jury for the common people.
Magna Carta emphasises that there is a body of law in the State and the rights belonging to the subjects or to the community, which the king is bound to regard. If he violates them, he may be compelled against him to maintain it. The supreme achievement of England and her greatest contribution to the civilisation of human kind has been the evolution of a form of government in which liberty has been reconciled to order, and stability has been achieved without retarding progress. This form of government is known as Constitutional monarchy. The chief feature of the English Constitution is the continuity of its development. Magna Carta consisted of 63 articles and may be divided into several sectors each dealing with church, feudal obligations, law, justice, Constitutional clauses and so on. The entire 17th century witnessed the Constitutional struggle between the King and the Parliament over the question of sovereignty and the struggle was carried by Parliament in the name of the Magna Carta. In the 18th century leaders like Edmund Burke worshipped it. This Charter influenced even the American colonists when they drafted the Declaration of independence.

Bill of Rights of England was a very important document. It made William III and Mary as sovereigns of England. It laid down that all the future sovereigns of England were to be only Protestants. The Bill of Rights provided that, if William and Mary did not have children, then the throne should go to Anne, sister of Mary who was also a Protestant. This change in succession is important. It meant that the right of succession to the throne would depend upon the provision made by Parliament and not upon mere hereditary right. Thus the revolution destroyed the doctrine of Divine Right of Kings in England. The Magna Carta was buttressed in 1628 by the Petition of Rights, and in 1689 by the Bill of Rights to form the platform for Parliamentary superiority over the Crown and to give documentary authority for the rule of law in England. Bill of Rights provided that suspension of laws, levying of taxes and raising of an army could be done only with the consent of Parliament, which would meet more frequently. It provided trial
by jury, right to petition, freedom from excessive fines and punishments of persons accused and convicted of crimes and so on.

American revolution is otherwise known as the American war of independence. It was the revolt of thirteen British colonies in North America against the imperialism of the mother country. King George III who desired to revive the personal powers of the King ruled England at that time. The thirteen American colonies had each a Governor appointed by the Home Government as a kind of Viceroy of the monarch and each had a legislative assembly modelled after the English House of Commons, which passed local acts and voted governor's salary. Thus they enjoyed considerable degree of self-government. They wanted that their own assemblies should have equal rights with the British Parliament with a right to levy their own taxes and contribute in their own way to the expenses of the government. The American colonies objected to being taxed by a body sitting thousands of miles away and in which they had no representation. Therefore, they took up the slogan 'No taxation without representation'. Moreover, the British had abetted the spirit of self-reliance and independence by following a policy of 'salutary neglect' for a long period with respect to the colonies. It is therefore not surprising that the colonies steadily drifted towards independence.

The American Revolution, like all other revolutions, had its ideological basis. The colonial political leaders drew their inspiration from the English philosophers of the 17th century like Locke, Harrington, Edward Coke and others. Their doctrines of the state of nature, 'No taxation without representation' and the right of Revolution had profound influence on the colonists. The third American congress met a Philadelphia and drew up the famous Declaration of independence on 4th July 1776. The declaration proclaimed, that "all men are created equal and emphasised inalienable rights, popular sovereignty and the right of revolution. On the basis of this, the declaration solemnly affirmed that these unified colonies are to be, free
and independent States". Under the able leadership of George Washington, the American revolutionaries with the support of French and Spanish armies were able to defeat the English armies. In 1783, England recognised the independence of the United States of America.

The America Revolution carried the principles of the British Revolutions. It liquidated kingship and exalted representative government and popular sovereignty. As the British Revolutions of the 17th century had paved the way for the triumph of aristocracy in Britain, so the American Revolution of the 18th century paved the way for trial of democracy in the United States and in the World. Form the American Revolution emerged a new independent nation, the USA. The American declaration of independence on 4th July 1776 may be described as the birth certificate of the nation. Its emergence was a source of inspiration for oppressed people. The revolutionaries in France who launched the French Revolution were inspired by the example of America.

French Declaration was a violent revolt against absolutism of French monarchy and the Feudal oppression of the French aristocracy, which broke out in 1789. French Revolution was one of the major events in the history of the world. French Revolution refers to a series of events, which occurred in France between 1789 and 1799 by which divine right monarchy and Bourbon despotism were violently repudiated, a Republic was set up a class distinction and privileges disappeared in favour of social equality.

Political, social, economic, financial and intellectual causes which led to the outbreak of the French Revolution. The Ancient Regime in France exhibited worst form of absolutism in the 18th century. The kings followed Divine right theory. He levied all taxes as he chose. The French King was so automatic and powerful that Louis XIV could boast "I am the State". Kings like Louis XV and Louis XVI ruled the nation according to their queen's
wishes. On the eve of the Revolution, the French monarch had lost contact with the people and therefore the people were not prepared to tolerate an irresponsible government conducted by an irresponsible King.

The social and economic factors were the principle causes, which would ignite the sparks of revolution. Evidently French revolution is a classical case of revolution founded on economic and social maladies. The French Society consisted of three classes of people called the clergy, the nobility and the serfs. The first two classes owned most of the land while the commoners paid the bulk of the taxes and groaned under the weight of taxation. The nobles monopolised higher offices of army and administration. The bulk of the nation was peasants. Their condition was deplorable. They lived in one-roomed thatched hovels. They paid several direct and indirect taxes to the State, to the feudal lords and to the Church. There were also a number of indirect taxes like the salt tax. There was also the compulsory service rendered to the nobles and to the State. Though the peasants were not the originators of the revolution, their grievances were taken note of. The rise of middle class was a significant thing on the eve of the revolution. There was also an increasing demand for the abandonment of the mercantilist policies of the State. They looked upon to regulation of mercantilism, as oppressive restrictions on their freedom of business enterprise. Thus the desire of the businessman to be liberated from the clutches of mercantilism was one of the main causes for French Revolution.

The French Government became bankrupt due to ruinous wars and due to wastage of money over the construction of palaces as was done by Louis XIV. There was huge national debt and financial bankruptcy necessitated further taxation. But before granting further taxes, the nation demanded political reform and the struggle to obtain that power and opposition to its concession were the first tasks in the revolution.
Human rights being natural, inherent and inalienable, the State ought to recognise, enact and enforce the Bill of rights. Even if they are not recognised, the State must have commitment to honour such unrecognised rights. In this context the position of different countries is examined here.

The concept of human rights, embodying the minimum rights of an individual versus his own State, is as old as political philosophy. It assumed a concrete and justiciable shape when these individual rights came to be guaranteed against the State in written Constitution of the U.S.A in 1787, to which the Bill of Rights was formally added in 1791. The effect of incorporation of individual rights in the form of a Bill of Rights in a written Constitution is to incorporate human rights into the municipal law of a State, and to take them legally enforceable by an aggrieved individual against his State to invalidate any State act, legislative or executive, which is found by a court of law to have violated any of the Constitutionally guaranteed human rights belonging to the aggrieved individual.

It is this Constitutional aspect of human rights in different democracies together with a treatment, of all consequences, which result from the guarantee of human rights in national Constitutions. It is necessary to refer to the Common law of England, which has no written Constitution, because, historically, the concept of each of the human rights had its origin in the ordinary law of England, and these rights were enforced as such by Courts of law, as a part of what is known as the Common law.

ENGLAND: Equality before law has been taken from the English law. Professor Dicey described equality before law as one of the three principles of his doctrine of rule of law. Professor Jennings described the doctrine of

12 Law and the Constitution
equality before law as fundamental rule of common law.\textsuperscript{13} In India, Article 14 is a mixed provision of American and English law, one phrase “equality before law has been taken from English Law” and other phrase “equal protection of laws” from American law.

In the older Constitutions such as the unwritten one of England, such Constitution guarantees are not specifically stated. Their availability to citizens at any time depends upon the prevailing laws, which are framed according to the exigencies of the political situation. In Liversidge v. Anderson\textsuperscript{14} Lord Wright observed that in the Constitution of this country i.e., Great Britain there are no guarantee or absolute rights. The safeguard of British liberty is in the good sense of the people and in the system or representative and responsible government. In the words of professor G.M.Trevelyan, “the essence of the English Constitution is law, respected and enforced”. Professor Dicey had put it “In England the right to individual freedom is part of the Constitution because it is inherent in the ordinary law of the land, there is one which can hardly be destroyed without the thorough revolution in the institutions and manner of the nation”. Though the rights of Englishmen are neither defined not guaranteed, they do exist. Individual liberty in England is secured by judicial decisions by resort to ‘writ or ‘remedies’. The right in the charters like the Magna Carta, the Bill of Rights, etc., merely declared the existing common law. In England the following rights are enshrined.

- The right of personal freedom secured by Habeas Corpus Act
- The right to property protected by legal remedies
- The right to freedom of speech or discussion so as not to infringe the law of libel, slander and defamation etc.
- The right to association

\textsuperscript{13} British Constitution
\textsuperscript{14} 1941 A.C. 250
The right to trial in accordance with principles of natural justice such as the right to be heard, as reasonable opportunity to State one's case, and a man not to be a judge in his own case

UNITED STATES OF AMERICA: In American Constitution, amendments 4 and 14 provided full-fledged equality among the public at large although a little bit difficulty was realised in implementation of these equality provisions in America. Then the provision "no State shall deny to any person within its jurisdiction the equal protection of the laws" was added. "Equal protection of the laws" is a phrase born with the Fourteenth Amendment, the first specific recognition of the doctrine of equality in the Constitution. The dictum of the Declaration of Independence that "all men are treated equal," which was effectively used in the antislavery campaign, had a somewhat different import. The first Amendment states that "the Congress shall make no law...abridging the right of people peaceably to assemble, no State shall make or enforce any law which shall abridge the privileges or immunities of the citizen of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of laws.

The sacro sanct nature of fundamental rights has always been preserved in America. Justice Miller observed in USA "there are such rights in every free government beyond the control of the State. A government which recognized to such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is despotism of the many of the majority if you chose to call it so, but it is nonetheless despotism." In America, fundamental rights are regarded as the basic human right judged by the yardstick of the "due process" clause. In this context as laid down in Meyer

15 Savings and Loans Association v. Jopeka, (1875)22 Law Ed. 455 (461)
v. Nebraska,\textsuperscript{16} 'liberty is a term of wide connotation which includes not only freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common pursuits of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of one's conscience, and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men. In \textit{Maxwell v. Dow},\textsuperscript{17} these fundamental rights are comprehensively classed as "protection by the government, the enjoyment of life and liberty with right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole." The language of Section 2 Article IV and 14\textsuperscript{th} and 5\textsuperscript{th} amendments in the United States Constitution bring out the same idea of basic fundamental rights of American citizens. "No State shall deny to any person within its jurisdiction the equal protection of the laws."\textsuperscript{18}

\textbf{AUSTRALIA:} In Australia, the Constitution does not like that the USA attempt any comprehensive guarantee of individual rights or liberty. Free exercise of religion is guaranteed which prohibits any law antagonistic to such free exercise.\textsuperscript{19} Australia follows the pattern of Canada, though; there are no serious minority problems as the people are all imbued with British tradition. The common law affords all the protection. The only protective provisions in the common Wealth Act of 1900 (Section 116) prohibits the common wealth from making any law for establishing religion, or for improving any religious observance, or for prohibiting the free exercise of any religion; and it provides that no religious test shall be required as a qualification for any official or public trust under the common wealth. "A subject of the Queen, resident in any State shall not be subject in any other
State to any disability or discrimination which may not be applicable to him if he were a subject of the Queen resident in such other State."20

**USSR:** The erstwhile USSR has a Bill of Rights appended to her Constitution (1977) which is not judicially enforceable by an aggrieved individual to the same extent as in the USA or in India, the very fact that her Constitution has introduced human rights may eventually lead to adding legal sanction thereto, as world opinion in support of legally enforceable human rights gains ground. It is evident that though in the USSR the fundamental rights of citizens are not enforceable through the courts to invalidate legislation they are under the new Constitution enforceable against administrative acts of the States, buttressed by the positive right to compensation for their violation by the executive and administrative authorities. In other words, even in the USSR judicial review of administrative acts has been introduced to enforce human rights. The Constitution of USSR prescribes equality of citizen’s rights and basic rights, freedoms and duties. There is always a public trial and the right to be defended by counsel except where prohibited by law.21 The citizen is assured freedom of speech, freedom of press, freedom of assembly and freedom of procession and demonstrations but these should be in conformity with the interests of the working people.22 Inviolability of person is assured and there can be no arrest except by decision of court or with the sanction of a procurator.23 The inviolability of the home and privacy correspondence is guaranteed.24 Women have equal rights and all benefits appertaining their needs and sex.25 Article 36 assures equality of rights to citizens irrespective of their nationality or race in all spheres of economic, State, cultural and

20 Section 117
21 Article 157
22 Article 39&50
23 Article 54
24 Article 44&56
25 Article 53
political life. Right to leisure, maintenance in old age, and also when sick or incapacitated for work, are all recognised.\(^{26}\)

**FRANCE:** The French Constitution did not go to the length of the American Constitution in seeking to bind even a representative legislature to the natural rights declared in the Constitution. The fact of embodiment of the natural rights of man, in the Constitutions of the 18\(^{th}\) century, laid the foundation of 'fundamental rights' of the individual against his own sovereign. In the Constitution of the United States or India, the Bill of Rights is buttressed by judicial review, and the individual may have his fundamental rights enforced against his State through the courts of law almost in the same manner as he might enforce his ordinary legal rights against encroachment by his neighbour.

The effect of embodiment of a common law right as a fundamental right guaranteed by a written Constitution is that the Constitutional guarantee acts as a limitation on the otherwise unlimited powers of the legislature, so that the Constitution being the supreme law of the land, any law made by the legislature which violates a fundamental right guaranteed by the Constitution shall be void and of no effect.

**INDIA:** It is evident that during the period between 1946 and 1949, India had formulated the concept of human rights. In the substantive provisions of the Constitution, the human rights were divided into two parts, in much the same way as the International Covenant on Civil and Political Rights, and on Economic, Social and Cultural Rights did later (1966). In the Indian Constitution, the justiciable human rights, broadly speaking, were included in Part III, while the non justiciable social and economic rights were set forth in Part IV on the Directive Principles of State Policy.

\(^{26}\) Article 41,42&43
Article 15, Prohibits discrimination on grounds of religion race, caste, sex or place of birth. According to Article 15 the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, the use of wells, tanks bathing ghats, roads and place of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Nothing in the article shall prevent the State from making any special provision for women and children. Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

CANADA: The experience gathered from the Second World War, followed by the Universal Declaration, led to deliberations in Canada for the formulation of written safeguards for the protection of civil liberties, and the result was the enactment of the Canadian Bill of Rights, 1960, by the Dominion Parliament of Canada, which enumerated certain individual rights, such as equality before the law, and freedom of religion, speech, assembly, association and of the press. In 1984, the Canadian Supreme Court has established judicial review founded on the Charter^{27} on the ground that it is a Constitutional document as distinguished from an ordinary statute, and that by reason of Section 52(1) of the Canada Act, 1982 any law inconsistent with the Charter would be void, unless saved by Section 1 which permit the 'reasonable limits'.^{28} Being a Constitutional instrument, which is the supreme law of Canada (Section 52) is to be interpreted, in the main, in a manner similar to the interpretation of the American Constitution i.e.,


generous interpretation. Section 1 of the Canadian Charter of Rights and Freedoms states that the rights and freedoms guaranteed by it shall be subject only to such reasonable limits... as can be... justified in a free and democratic society.\textsuperscript{30}

Among the British Common Wealth countries, Canada has written Constitution enabling judicial review of legislative acts. But the British North American Act does not contain many Constitutional guarantees. Some provisions there are to protect the rights of the Roman Catholic and the French in Canada as also English Protestants in Quebec. Sectarian minorities are protected as also the French and English languages. But the citizen as such is not assured to specific rights, just as in English he had to seek the aid of common law and ordinary statue law.

**SWITZERLAND:** Switzerland is the oldest and most stable federative union. The Swiss Constitution is clear about its guarantees. Article 54 assures a wife on marriage the citizenship of the commune of her husband. Article 44 prohibits expulsion of the citizen from his canton of origin. Article 55 assures liberty of the press with certain necessary safeguards to prevent abuses. Freedom of association\textsuperscript{31} assurance of trial in the ordinary court of the land, abolition of ecclesiastical jurisdiction\textsuperscript{32} abolition of capital punishment\textsuperscript{33} trial by jury in penal cases\textsuperscript{34} equal right in the canton and the commune extended to the citizen\textsuperscript{35} right to settle in any part of Switzerland\textsuperscript{36} freedom of trade, economic rights and benefits such as old age and sickness insurance\textsuperscript{37} the

\textsuperscript{29} Hunter v. Southam, (1984) 11 DLR (4th) 641 9650 SC
\textsuperscript{30} Section 41(1) of the Constitution of Nigeria, 1979; Sections 40,41(1)(c) of the Constitution of Papua New Guinea (1987)
\textsuperscript{31} Article 56 Z
\textsuperscript{32} Article 58
\textsuperscript{33} Article 65
\textsuperscript{34} Article 106
\textsuperscript{35} Article 43
\textsuperscript{36} Article 45
\textsuperscript{37} Article 48
right to petition etc\textsuperscript{38} the liberty of conscience and creed\textsuperscript{39} etc. are all guaranteed to the Swiss citizen, whose political rights can be taken away only by federal legislation within the prescribed limit.\textsuperscript{40} "In Switzerland there are no subjects, nor any privileges of rank, birth, person or family"\textsuperscript{41}

**GERMANY:** The dignity of man shall be inviolable. To respect and protect it shall be the duty of all-State authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, or peace and of justice in the world.\textsuperscript{42} Everyone shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the Constitutional order or the moral code. Everyone shall have the right to life and to inviolability of his person. The liberty of the individual shall be inviolable. These rights may only be encroached upon pursuant to a law.\textsuperscript{43} International Covenant of Civil and Political Rights states, "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".\textsuperscript{44} All Germans have right to form unions and societies, associations, not contrary to the notions of international understanding and forbidden by law.\textsuperscript{45} In case of open-air meetings the right to assemble may be limited by legislation\textsuperscript{46}

**EIRE:** The State guarantees liberty for the exercise of the right of the citizen to assemble peaceably and without arms.\textsuperscript{47} "All citizens shall, as human persons, be held equal before law."\textsuperscript{48} This does not mean that the State

\begin{itemize}
\item \textsuperscript{38} Article 59
\item \textsuperscript{39} Article 50
\item \textsuperscript{40} Article 56
\item \textsuperscript{41} Article 4
\item \textsuperscript{42} Article 1
\item \textsuperscript{43} Article 2
\item \textsuperscript{44} Article 10
\item \textsuperscript{45} Article 9
\item \textsuperscript{46} Article 8
\item \textsuperscript{47} Section 40(6)(1)
\item \textsuperscript{48} Section 40(1)
\end{itemize}
shall not in its enactments have due regard to differences of capacity, physical and moral and of social function. Ireland provides all the safeguards for her its citizens. There is a guarantee of liberty to the citizen subject only to public order and morality. Freedom of speech, right to form association are all guaranteed subject only to public order and morality. No discrimination on the score to political creed, religion or class is countenanced as per Section 40. Sex is no bar to citizenship.\textsuperscript{49} Equality before law is assured.\textsuperscript{50} Private ownership is recognized.\textsuperscript{51} The institution is protected and no law can be passed for grant of dissolution of marriage.\textsuperscript{52} There are also directive principles of social policy set up.\textsuperscript{53} Trial by jury is assured.\textsuperscript{54} Personal liberty cannot be taken away except in accordance with law.\textsuperscript{55} The dwelling of citizen is inviolable.

\textbf{NIGERIA:} Most of the new Constitutions created after the Second World War has adopted written Constitutions with fundamental rights. Until the adoption of the Nigeria (Constitution) Order in Council, 1960 the adoption of a written Bill of Rights was regarded by British authorities (as in India) as unnecessary. In 1958, a Minority Commission headed by \textit{Sir Willink} recommended its adoption, which was followed by the Constitution Order of 1960. The Commission was influenced by the provisions of the European Convention on Human Rights, and recommended the adoption of most of the rights guaranteed by the Convention. The principle of unconstitutionality of a law violating the Constitutional guarantee of fundamental rights was established in 1961.\textsuperscript{56}

\textsuperscript{49} Section 9
\textsuperscript{50} Section 40
\textsuperscript{51} Section 43
\textsuperscript{52} Section 41
\textsuperscript{53} Section 45
\textsuperscript{54} Section 38
\textsuperscript{55} Section 40
\textsuperscript{56} Doherty \textit{v. Balewa}, (1961) 1 All NLR 604, affirmed by the Privy Council in (1963) 1 WLR 949 P.C
MALAYSIA: The Constitution of Malaysia, 1957, adopted (Part-III) certain 'fundamental liberties'. Judicial review has been expressly provided by the Constitution. An overall limitation on some of these fundamental liberties, however, as provided by Article 149 which says that they may be overridden by an Act of Parliament required for combating organised violence or acts prejudicial to public order or security of the federation.

JAMAICA: Fundamental rights were included in the Jamaica (Constitution) Order in Council, 1962. Judicial review was established by decisions of the Privy Council.

MAURITIUS: The Constitution of Mauritius, contained in the Mauritius Independence Order, 1968, guarantees certain 'human rights and freedoms'. Judicial review is available for enforcement of these rights.

KOREA: In competitive even the recent south Korean Constitution excels. "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."

BURMA: "All citizens irrespective of birth, religion, sex or race are equal before law; that is to say, there shall not by any arbitrary discrimination between one citizen or class of citizens and another." A person shall not be disqualified by sex, for being appointed to any civil service or civil posts
under the crown in India. There shall be liberty in the exercise of the right to assemble, subject to law, public order and morality.

ARGENTINA: The Constitution prohibits prerogative of blood or of birth, personal privileges and titles of nobility. All inhabitants are equal before the law and if they satisfy the requirements of fitness they are all equally admissible for employment.

CHILE: "All inhabitants of the Republic are assured equality before the law and also practice of all beliefs, liberty and conscience and the free exercise of all religions that may not be contrary to morality, good usage or to public order. No privileged calls is recognised nor any form of slavery. Any alien who does slave traffic cannot live in Chile nor be naturalized in the Republic."67

NICARAGUA: "All persons are equal before the law, no other difference being recognised among them than that of talent or virtue."68

JAPAN: Non-discrimination and equality in the eyes of law is assured which states "there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin."69 Article XXI postulates that the right to assembly.

3.8 COMMON RIGHTS IN DIFFERENT CONSTITUTIONS

Right to Privacy of correspondence

- India (Article 21)
- Federal Republic of Germany (Article 10)

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65 Section 275, Government of India Act, 1935
66 Section 17(11)
67 Article 10
68 Article 8
69 Article 14
Nicaragua (Article 110)  
Coasta Rica (Article 24)  
Rumania (Article 33)  
Czechoslovakia (Article 6)  
Korea (Article 4)

**Right to work**

- Rumania (Article 19)  
- Korea (Article 17)  
- Luxemburg (Article 10)  
- Czechoslovakia (Article 28)

**Right to Education**

- India (Article 21)  
- Rumania (Article 22)  
- Czechoslovakia (Article 12)

**Right to Equality**

- India (Article 14)  
- USA (Section 1 of 14th Amendment.)  
- Eire (Section 40(1))  
- Burma (Section 13)  
- Argentina (Article 16)  
- Chile (Article 10)  
- Nicaragua (Article 106)  
- Uruguay (Article 8)  
- Australia (Section 116)

**Right against discrimination**

- India (Article 15)  
- USA (Section 1) The 15th Amendment, 1870  
- Australia (Section 117)  
- Switzerland India (Article 4)  
- Japan (Article 14)

**Right to property**

- USA (Article 14th & 5th Amendments)  
- Eire (Article 43)  
- Burma (Section 298, The Government of India Act 1935)  
- Virginia (Article 1)  
- France (Article XVII)
Rumania (Article 7)
Czechoslovakia (Section 8)
Germany (Section 14)
Hungary (Section 8)
Germany (Section 22&23)
Costa Rica (Article 44)

Right to life

India (Article 21)
USA (5th & 14th Amendments)
Japan (Article XXXI)
Eire (Article 40(4))
Burma (Article 16)
Rumania (Article 28)
Czechoslovakia (Article 2&3)
Germany (Section 2)
Hungary (Article 57)
Costa Rica (Section 20)
United Nations (Article 3&7)

Right against traffic in human beings and forced labour

- India (Article 23)
- USA (Section 1&2)
- Burma (Article 19)
- Japan (Article XVIII)
- United Nations (Article 4)
- Germany (Article 12)

Right against employment of children in factories

- India (Article 24)
- Czechoslovakia (Article 11&21)
- Germany (Article 18)
- Costa Rica (Article 51)

Right to Constitutional remedies

- India (Article 32)
- Burma (Article 15(1)&25)
- USA (Article 1, Section 9(2))
- Eire (Article 28(3))
- Germany (Article 48)
3.9 HUMAN RIGHTS AND GENDER IDEOLOGY

"Law is what law does, not what law prates judged by performance test, gender justice laws have failed to takeoff hardly any statute to promote the power, status and equal protection of the girl child, the working woman, the destitute damsel or a divorcee has done her a fair deal." Dialectical insights in to the status of women in Indian society make a sad reading and summon angry action in religion, in every religion women find themselves inferior. Family is planned in such a manner that a thousand little things consume the energy and time of working women...the house of is the beast of burden with neither equity nor equality. "The unqualified human right to freedom of conscience and religion does not justify gender discrimination or the violation of women's fundamental rights." It is masculine caricature of social justice meted out to her as a matter of convenience. Women are offered second-class jobs for reasons not known to her but best known to masculine chauvinists.

"A woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom-to develop her personality to the full-as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in the life of the community, her is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals." "High standards, high-falutin diction! But how vicious is the scenario of gender discrimination and human rights hypocrisy in the land of Sita sentenced to life in forest and Sati sentenced to incinerated death? Alas, women everywhere face the

The precept and practice of the philosophy of human rights in relation to dignity of women in human rights perspective is entirely a matter of not only socio-legal domain but also fundamentally, a sensitive area of human concern punctuated by human touch and humane considerations. However, the life experiences that are for biological or social or traditional reasons typical for women and which underlie their quest and struggle for human rights must be addressed for a more adequate perspective on human rights.

It is a fact that sex-determination tests are leading to female foeticide in majority of the cases. It is harmful to the society from the demographic, social, cultural and moral point of view and since 1976 onwards the woman's movements in India had been consistently campaigning to create public opinion against this barbarous practice, lest the Indian woman should become an 'endangered species' within the coming half a century. No suitable legislation banning such test, however, had come into force until now. Such blatant violation of the right to life without having any parallel in any of the contemporary societies of the world is but a tell-tale account of their worded state of life. In certain States of India like Gujarat, Maharastra, Machya Pradesh, Uttar Pradesh and Bihar, the tests have been popular since these tests bring relief to the parents from the problem of paying dowry to their daughters at the time of their marriage. It is a veritable hell on earth that a woman is subject to molestation contrary to the general notion that places of custody are safe. The untold miseries inflicted on women are borne silently for obvious reasons. The cases of custodial abuse are seldom reported and even the facts of the reported cases are distorted by political interference and the guilty is left scot-free and brings himself to believe that he can play with law and order to whet his jaded appetites and carnal desires. The former President of USA, Bill Clinton's extra marital excursions

is a classical example of custodial abuse of the century where Monica Levenscky in a high drama had sued the President according to the law of the land and had guts to question the highest authority for justice which is dismally lacking in Indian women with her retarded mindset. Women are afraid of high-handed nature of political and non-political nature of semi-feudal structure in India. She cannot survive if she registers her protest not to speak of suing them in the court of law inspite of several legislative measures apparently guarantees protection. A person, being a public servant, a superintendent or manager of a jail or remand home, or a member of management of staff of a hospital may take undue advantage of his official position and induce or seduce any woman under his custody to have sexual intercourse with him. This may not amount to rape but is obviously an abuse of the women’s subservient position, and is also her physical exploitation. The Indian Penal code declares the above as offences and lays down punishment of 5 years imprisonment in each case. However, fear of moral stigma and social or courtroom harassment and an insensitive approach of the police generally prevent victims from reporting their exploitation by such authorities. As a result, the law is rendered a mere dead letter.

The Supreme Court of India pointed out legislative vacuum in this area in Vishakha v. State of Rajasthan. Declaring acts of sexual harassment against working woman as violative of her fundamental rights to gender-equality, life and liberty, the apex Court in its pioneering judgement laid down norms and guidelines in the matter. This case had arisen from the brutal gang rape of a social worker Bhanwari Devi in Rajasthan in vendetta after she antagonised some villagers by preventing a child-marriage. The vice of female’s sexual harassment afflicts even the higher echelons of society, as was revealed by the sensational molestation of Ms. Rupan Deol Bajaj, an

AIR 1997 SC. 3011
IAS office, by an inebriated State Police Chief Mr. K.P.S. Gill during a party at Chandigarh. Ms. Bajaj could fortunately win her case, whereas in the former incident the Sessions Court, Jaipur not only acquitted the accused, but also cast aspersions on the character of the hapless victim. Such incidents not only reveal the hazards to which a working woman may be exposed and the depravity to which sexual harassment might descend, but also the insensitive attitude of trial-courts towards the plight of the female victim unless she hails from the elite. Generally most workingwomen regard sexual harassment at work place as a mere occupational hazard, and prefer to bear in silence without reporting the matter for fear of job-loss, threat of transfer, adverse confidential report, disrepute to her family etc. "According to the police, in most incidents to do with eve-teasing and molestation, victims are reluctant to come forward and complaints are registered by police personnel on their own. Social workers, on their part, claim that victims of eve-teasing or molestation are reticent not only because their complaints are not dealt with properly, but, on occasions, the complainant is harassed by the police." The negative image of the police, fear of facing embarrassing questions during trial and a cumbersome and dilatory nature of legal proceedings add to female aversion for reporting such incidents.

Despite the worldwide support for women's rights proclaimed through innumerable declarations, conventions, national Constitution and the laws, women continue to be treated unequally the world over, including in India. Unless the present patriarchal system is not substituted by a truly just and egalitarian one, the firmly-rooted prejudices, authoritarian attitudes and conceited beliefs in the male psyche will continue to revolt against any meaningful step towards women's real empowerment. The fate of Women's Reservation Bills tabled in the Indian Parliament from time to time is a living testimony to this fact. At present this well-knit and deep-rooted

76 Legal News and Views Vol 14 No: 3 March 2000 p.2
77 The Hindusthan Times, New Delhi Ed, 6th May 1999
system standing on the foundation of family, religion, media and law renders
the subtle male-domination seem invincible and natural

"Gender ideology provides for women fewer responsibilities and more
restrictions than for men. Their rewards are more symbolic, and their rights
protective, while the rewards and rights of men are more ‘real’ and positive."78 Hypocrites who uphold masculinity make convenient laws based
on concocted ideologies in the garb of tradition and religion and perpetuate
gender subordination. Lip sympathy and sugar coated pills are administered
to women only to impose eternal domination. It is quite amazing that
women’s mindset is oriented and conditioned to docile submission of their
lives to bear with the bitter cup of violence and indignities silently.

"Sex jurisprudence cannot proceed on the basis of assumed equality
of male and female sections of Indian society. For centuries the Indian
woman has suffered economic deprivation and social subjugation. The
Indian culture has been built on the concept of male superiority and the
subordinate status of the woman. This has resulted in her complete
extermination from the field of economic independence."79 Power and
authority, domination and subordination are different factors to be addressed
in the light of gender perspective. Sex is a biologically determined, where as
the gender is the socially determined, implying what it means to be a man or
woman. Thus gender should be a fundamental category for analysis,
understanding and action. The stereotyped roles of women within narrow
male-centric parameters of gender ideology set a limit on the Constitutional
and legal status of women even when gender equality is guaranteed by the
State and recognized by various international rights instruments. The
perception of women in terms of stereotypes underlies police and
government apathy and judicial conservatism when violations occur.

78 Polk and Stein, 1972; Chafetz, 1978, p. 51
79 Hari Swarup, For whom the Law is Made p. 221-222 Veena Publishers, 1981
A modern State is often hesitant to bring about perceptible change in the mindset of men against conservatism and tradition-bound practices. Despite the assurance of gender equity within the Indian Constitution, the situation of women, as pointed out by the Committee on Status of Women in 1974 and later in other documents, and more recently by the Reports of the National Commission for Women, is far from satisfactory in India. In fact, a cycle of gender violence can be traced from prenatal to old age and death where women are concerned. According to World Health Organisation, girls in many developing countries receive less nourishment and suffer from malnutrition at higher rates than boys. Girls receive less health care too. They are also victims of harmful practices rooted in culture and tradition, like genital mutilation. Violence against women therefore needs to be situated within the discourse on human rights so that a normative framework is available for accountability both of the governments and within societies.

The human rights discourse has perhaps been premised on the idea that the human condition is gender neutral probably because women did not participate in any significant degree in it. The questions relating to rights also have traditionally been debated primarily in relation to the assertion of civil and political rights vis-à-vis the State. There is a need to include a gendered perspective on rights and address gender-related issues, which affect a large number of women. The right to life for example must touch upon issues of the often unquestioned and silently accepted violence against women, their torture through practices such as dowry-related violence, female circumcision, sex determination of the foetus not for medical but gendered reasons, female infanticide, etc. "Many a female children are killed even before they acquire the age of viability in mothers womb. How unfortunate, are such children, whose sex is determined well before they
have attained the practical life process in the mothers womb.\textsuperscript{80} Foeticide was prohibited and classified as murder, equal to neglect of Vedas, incest and drinking of spirituous liquors. Man even considered a woman who had undergone abortion a murderer of her husband or of a Brahmin or an outcaste. The Buddhists, who condemned the destruction of life, laid down that the bhiku ‘who intentionally destroys a human being by way of abortion, is no Samana and no follower of Sakeyaputta’. As per Gandhiji, ‘abortion was more in violation of the principle of the ahimsa than the artificial birth control which was morally blameworthy’. Every human being including the unborn child in the womb of its mother receives the right to life directly from the Almighty God but not from parents, society or any other authority. MTP Act is misused. With a series of related scientific and medical developments it has become possible to determine accurately, the sex of the unborn in a way that is easy, safe and completely painless. Ultrasound application has evolved and over-whelming and spontaneous demand for its use in obstetrics and gynaecology. Tragedy lies with the female bearing mothers even if it is legitimate, and in fact they are refused abortions in hospital under the provisions of Medical Termination of Pregnancy Act, they are forced to get aborted. Since the Act provides termination of pregnancy only upto 20 weeks of uterine life and not beyond that, while the time of abortion, desired after sex determination test, has already crossed the limit of the prescribed statutory time limit. The poor female carrying the female foetus is left with no alternative than to submit to the abortionist. Moreover, the reasons listed in MTP Act for termination of pregnancy do not allow abortion on the basis of gender. The evil of female foeticide is increasing day by day due to the unchecked commercial sectors in the form of nursing homes and installation of ultrasonography devices in various towns and localities. Thus it has become a profiteering trade for ultrasonographers and abortionists at the cost of the fair sex. Jammu too has crossed the limits in this regard.

According to an estimate 30-50 female babies are aborted and killed in Jammu daily.\textsuperscript{81}

In view of the indispensably pivotal role played by women in the spheres of family and society, the human rights affecting women in particular call for urgent and foremost attention in the interest of justice, equality and human dignity. "The Human Rights of women and of the girl-child are the inalienable, integral and indivisible part of human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community".\textsuperscript{82} But men sitting in their ivory towers commit women to the cloistered virtue. This prevents women's participation in all spheres of activity of family and community owing to traditional, cultural, psychological factors playing a negative role many a time misleading women.

"Gender-based discrimination represents the ugly face of society. Women who constitute half of the world's population and work two thirds of world's working hours should earn just 1/10\textsuperscript{th} of world's property and also should remain victim of inequality and injustice. The term 'gender' and 'sex' are often used interchangeably in every day life, but in sociological literature they are frequently differentiated. The term 'sex' is applied to differences between men and women that are based on biological differences, which as anatomy, physiology, hormones and chromosomes, and in this respect people are female or male. The term 'gender' is applied to the cultural aspects of male and female roles. In other words, the behaviour, personality and other social attributes become the basis of masculine and feminine roles. It refers to the social classification into masculine and feminine. Sexuality and the different capacities of men and women in the reproductive

The World Conference on Human Rights, 1993}
process are particularly likely to be thought of as giving 'natural' reasons for gender divisions in society. "Discrimination against South Asian women begins at, or even before, birth. " Gender bias against the girl child is rampant everywhere. Other than children, we also come across women who are severely malnourished."

Karl Marx’s version on gender is different from others as he makes it clear that "different human beings have different capabilities and different needs and thus the concept of equality did not find much favour with him. The notion of equal opportunity is the essence of his gender ideology. In gender equality, equal opportunity is sought for both genders. But, though the concept of equal opportunity appears attractively simple, it is inherently conservative. The competition is inherently and always unequal. Much of the demand for equality, and virtually all of the demand for equal experience in the equality of opportunity principle, including gender equality, is really a demand for an equal right and opportunity to become unequal. The task of liberating women has to be viewed not relative to a flawed male model as it is in the concept of gender equality but in setting goals for itself which are women’s goals in their own right as human beings and as women, not related to whatever be the achievement of men or the scope provided for development of men, by men. It is not necessary that what men consider achievement, or the parameters for it, are in quality, what best achievement and its parameters should be for all human beings. The position is that men in an overarching almost universal male supremacist patriarchal order, have made a mess of the world and have crated in it situations rife with all kinds of inequalities, subordination, exploitation, violence and oppression. In fact men have not allowed even their own gender to be able to attain its parameters nor have they founded orders where all of their own kind, leave

84 Human Development in South Asia 2000, The Gender Question, Mahbub ul Haq
Human Development Centre, Oxford, 2000 p.2
85 Legal News & Views Vol 14 No:3 March 2000 p. 6
along women, have equal scope for development. The focus of the women's movement, therefore, should not be gender equality, which should be done way with but the demand for human rights. First of all as human beings and for those oppressed and exploited whether they be men or women and secondly, the demand for women's rights as women, this struggle at two levels has to be waged in partnership and in harmony with males. For, both women and men have a stake in a more dignified, richer, fuller and more humane life and in the deconstruction of the dehumanising patriarchal order and a construction of a democratic order which would hopefully result in the emergence of new kinds of women and men and more integrating, cooperative, meaningful, cementing and egalitarian relationship between men and women. "Over the past few years there has been some confusion concerning the words 'sex' and 'gender'. Sex has come generally to mean biological differences (at a minimum, chromosomal, hormonal, and morphological) between males and females. Gender has come to mean the socio-culturally constructed components attached to each sex." "Sex' represents the biological differences between females and males. 'Gender' represents the socially constructed differences between women and men, girls and boys, in a given society. While both the sexes suffer due to being locked in their rigid and narrowly defined gender roles, it is the women who pay the price in a much more obvious way. Therefore women cannot be blamed for their genetic and biological process but violators of women's rights are the principal culprits of gender discrimination.

India, with its vast continental dimensions, diversified cultural and traditional values has contributed to the vertical and horizontal stratification of women. Dignity of women is affected when certain women of all communities are denied the basic right of equality, as it is evident from mal

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66 Saraswati Haider, Manushi No: 100 May-June 1997 Manushi Trust, New Delhi
67 Supra p.28
68 Human Development in South Asia 2000, The Gender Question, Mahbub ul Haq
Human Development Centre, Oxford, 2000 p.25
treatment meted out to girl children and women folk. "Gender stratification refers to the extent to which males and females who are otherwise social equals (e.g., in terms of age, social class, race/ethnicity, and religion) are equal in their access to the scarce and valued resources of their society. Higher the level of gender stratification, greater the inequality between males and females. Empirically, gender stratification has always meant some degree of female disadvantage. The scarce and valued resources that may be unequally distributed by gender include at least the following: material goods, services provided by other, leisure, prestige-conferring roles, health care and nutrition, personal autonomy, physical safety, opportunities for psychic enrichment and gratification, and opportunities for education and training."89

3.10 HUMAN RIGHTS PROBLEMS OF WOMEN

The study tries to address the human rights problems, which have been identified in the first two chapters. Right to equality, which is the cornerstone of all human rights, has been mentioned in the Universal Declaration of Human Rights. 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.'90 The question came in a very interesting manner before the Supreme Court in Miss C.B. Muthamma v. Union of India.91 The Indian Foreign Service (Conduct and Discipline) Rules, 1961 laid down that 'no married woman shall be entitled as of right to be appointed to the service,' and 'a woman member of the service shall obtain the permission of the Government in writing before her marriage is solemnized, and at any time after the marriage a woman member may be

89 Janet Saltzman Chafetz, Gender Equity, an Integrated theory of Stability and change, Sage publications, New Delhi, 1990 p 29
90 Article 7 UDHR
91 AIR 1979 SC 1868
required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service. Krishna Iyer, J., observed that 'at the first blush this is a defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of man aching the weaker sex for getting how the struggle against women thraldom. Freedom is indivisible, so is justice. That the founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity, viz., Indian women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate or Parliament, makes rules in the teeth of part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

A major criticism on notion of universal human rights is coming from the feminist world-view. The feminists have been pointing out that the universal rights proved to be rhetoric, as it did not bridge the gap between the genders in the concrete reality. It is true that the concept of natural rights was replaced by the concept of right of man. Writers like Eleanor Roosevelt who preferred the term human rights in turn questioned this. Thus the women's rights as human rights came into currency. The discrimination against women all over the world, irrespective differences, remained universal. The institutionalised forms of discrimination and dominance produced and reproduced day in and day out have hit women and their dignity very hard. Added to it the violence against women in the recent years has had a quantum jump. The right to life is a human right which must be ensured. The right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a fundamental right
under Article 21, read with Articles 39) e), 41, 43, 48-A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. Justice Ramaswamy said that the right health to a worker is an integral fact of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Right to life includes protection of the health and strength of the worker as a minimum requirement to enable a person to live with human dignity.

Right to life under Article 21 of Indian Constitution implies right to health. Health is wealth after all. It is quite tragic to notice in most of the families in India that the lion's share of the family bread goes to the male heads. The lady of the house believes that it is her religious duty to cater to the needs of the breadbasket of men in the house first and she remains the residual claimant of the morsels and the leftover food. Many a time she starves. Malnutrition has a telling effect on her health. She falls sick. There is scant attention towards her health with less or no medical and nursing care for her. On contrary when a man falls sick should the women at home play the role of a nurse? "The overall picture is one of overlapping and complementary forms of exclusion. Because the traditionalism of South Asian cultural and religious practices is enshrined in legal codes, measures which discriminate against women are normalised in the legal sphere. In India 18% more girls than boys die before their fifth birthday. In Mumbai, where 84% of gynaecologists admit that they perform sex-determination tests, there were 40,000 known cases of foeticide in 1984 alone. Indian mothers realise that their girl children will face such discrimination all their lives, many of them make the painful decision to abort the foetuses of girls rather than subject them to lives of hardship."

92 Consumer Education and Research Centre v. Union of India AIR 1995 SC 922
The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.\textsuperscript{93} In a trend-setting judgment, the Supreme Court declared the right of a worker to good health, medical care and safe hygienic workplace as embodied in a person's fundamental right to life.\textsuperscript{94} Similarly, right to a healthy environment\textsuperscript{95} and to emergency medical aid\textsuperscript{96} have also been declared a fundamental right for being essential facets of right to life. But in a country where around 40% of its population is living below the poverty line, it is not surprising that a considerable proportion of its female population suffers from acute problems of health and nutrition. Mothers in India continued to be the most vulnerable section of the population craving for primary health care. Maternal mortality rate in the country is 50 times more than in the developed countries.\textsuperscript{97} To quote a report by the Commission on the Status of Women, "because women need more iron than men and because they tend to receive a lower share in the distribution of food, globally 43% of women and 5% of pregnant women suffer from anaemia. In developing countries 56% of women are anaemic. Thirty thousand babies are stillborn every year because their mothers lack iodine, and over 1,20,000 are born cretins."\textsuperscript{98} This hopeless state of affairs affects her right to health and dignity.

Men and women are entitled to equal rights to marry and found a family. They are entitled to equal rights for marriage and dissolution.\textsuperscript{99} Marriage shall be entered into only with free and full consent of the intending spouses.\textsuperscript{100} The right to marry implies that the woman has the right not to

\textsuperscript{93} Art. 47, Chapter IV, Directive Principles of State Policy Indian Constitution
\textsuperscript{94} Consumer Education and Research Centre v. Union of India (1995) 3 SCC. 42
\textsuperscript{95} Dr. B.L Wadhera v. Union of India (1996) 2 SCC 594
\textsuperscript{96} Permanand Kataria v. Union of India (AIR 1989 SC 2039; Paxhim Bango Khet Mazdoor
Samita v. State of West Bengal (1998) 4 SCC. 37
\textsuperscript{98} Commission on Status of Women, Thirty Ninth Session, New York March 15-April
14, 1995
\textsuperscript{99} Article 16, UDHR
\textsuperscript{100} Article 16(2) UDHR
marry. An unmarried woman is generally looked down upon. Any personal law does not deny a widow’s remarriage but the Hindu society makes it practically difficult if not impossible for her to undertake such a venture. Statutory provisions regarding restitution of conjugal rights threaten a woman and compel her to reside at her husband’s home even when it is not advantageous. Thus many a time the woman is constrained to give up her employment or career. Woman must have reproductive choice. She must have every right to determine to beget the child of any sex. It has been categorically stated that motherhood and childhood are entitle to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same protection. But the society does not concede this right to a woman. The Medical Termination of Pregnancy Act empowers a woman to prefer abortion in certain specified circumstances. Yet, the society in general and her family in particular do not permit her to exercise this right.

A woman is enjoined by personal laws to accept the overtures of her husband for her sexual company unless it causes hurt. Many legal pronouncements tend to grant the husband rights over the wife’s body. Her wishes and inclinations are generally ignored. The wife is said to have granted a license to the husband by the act of marriage. Sometimes it results in marital rape. This situation is intolerable and affects the very dignity. ‘No one shall be subjected to arbitrary interferences with his privacy, family, home or correspondence, nor to attack upon his honour and reputation. Every one has the right to the protection of the law against such interference or attacks.’ Right to privacy has not come much for discussion in the High Courts or the Supreme Court, though latest trends clearly indicate that it is regarded as part of personal liberty guaranteed under Article 21. The question of right to privacy came before the Indian courts in situations, which were not conducive to the recognition of

101 Article 25(2) UDHR
102 Article 12 UDHR
development of the right. In *State of Maharashtra v. Madhukar*\(^{103}\) and *Meera Mathur v. Life Insurance Corporation*\(^{104}\) the Supreme Court has no doubt that right of privacy is part of the fundamental right guaranteed by Article 21. Expounding the meaning of right of privacy, in *Madhukar*'s case the Supreme Court observed that the right to privacy is as much available to a woman of easy virtue as it is available to a virtuous person. In this case a police inspector went to the house of one Barubai, a prostitute, and demanded to have sex with her. On her refusal to agree he tried to force it upon her. She raised hue and cry. People gathered and his attempt was foiled. On the inspector being prosecuted for attempting to rape her, he pleaded that she was a woman of easy virtue and her testimony should not be given any credence.\(^{105}\) The Supreme Court rejected his plea.

In *Chairman, Railway Board v. Chandrima Das*,\(^{106}\) the Supreme Court has held that where a foreign national, a Bangladeshi woman was gang raped compensation can be granted under Public Law (Constitution) for violation of fundamental rights on the ground of Domestic Jurisdiction based on Constitutional provisions and Human Rights Jurisprudence. The Court said that where a rape was committed by railway employees on a woman in a building belonging to railways a writ petition filed by victim against the government for compensation is maintainable under Article 226 of the Constitution. As regards the question whether fundamental rights are available to a foreign nationals, or not the court held that the relief can be granted to the victim for two reasons, firstly, on ground of Domestic jurisprudence based on Constitutional provisions and secondly, on the ground of human rights jurisprudence based on the Universal Declaration of Human Rights, 1948 which has the international recognition as the 'Moral Code of Conduct' having been adopted by the General Assembly of the
United Nations. As regards the contention that the fundamental rights are available only to 'citizens' and not to aliens, the Court held that since the word 'life' has been used in Article 21 of the Constitution and recognised a basic human right in the same sense as understood in the Universal Declaration of Human Rights, 1948, there is no reason why it should be given a narrow meaning. According to the tenor of the language used in Article 21 it will be available not only to every citizen of this country, but also to a 'person' who may not be a citizen of the country. Thus even those who are not citizens of this country and come her merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to 'life' in this country. Thus they also have the right to live, so long as they are here, with human dignity.

In a landmark judgment in the case of Bodhisathwa Gautam v. Subhra Chakraborty\(^{107}\) the Supreme Court awarded an interim compensation of Rs 1000 per month to the victim of rape until the trial court decides her charges of rape. The complainant Subhra Chakraborty was a student of the Baptist College Kohima and the accused Bodhisathwa was a lecturer in that college. According to the First Information Report filed by the complainant, the accused not only induced the complainant and cohabited with her, giving her a false assurance of marriage but also fraudulently gone through a certain marriage ceremony with knowledge and thereby dishonestly made the complainant to believe that she was lawfully married wife of the accused. Bodhisathwa married the complainant before the God he worshipped by putting her vermilion on her forehead and accepted her as his wife but later refused to recognise her as his life partner. The said ceremony made the complainant to believe that she was a lawfully married wife of the accused. Referring to the pitiable condition of a women in society Mr. Justice Saghir Abham observed that 'unfortunately, a woman in India,
belongs to a class for group of society who are in a disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and reacted as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Rape if a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, normally, the right to life contained in Article 21.’

In *Meera Mathur’s case*, LIC wanted some personal information from the female candidates who applies for the job. These related to her menstrual periods, her conceptions, her abortions, date of her last menstruation and whether she was pregnant. She did not supply this information correctly. At that time she was pregnant and sometime later after her appointment she sought leave. When she wanted to join back she was dismissed. Jagannatha Shetty, J., who delivered the judgment, said most of the information sought was embarrassing if not humiliating. The learned judge said that ‘the modesty and self-respect may perhaps preclude disclosure of such personal problems like whether her menstrual period is regular or painless, the number of conceptions taken place, how many have gone full term, etc. The corporation would de well to delete such volumes in the declaration. The Supreme Court considered this type of information as intrusion into the right of privacy. *Meera Mathur* was ordered to be reinstated.

‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’\(^{106}\) The society looks aside when a wife is punished or ill treated by her husband. It is accepted as a concomitant of

\(^{106}\) *Article 5 UDHR*
married life. That is how many tortures and dowry deaths go unreported and unpunished. Unless the husband is a cultured individual no wife can escape ill treatment. In India, society by and large, disapproves of a workingwoman. The woman is expected to take up any job with the approval of her husband. In some cases even a highly qualified or competent woman is directed to give up employment or career, or not to think of an occupation. 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against employment.'\textsuperscript{109} India is a signatory to ILO conventions and has enacted a plethora of labour and industrial laws aimed at \textit{inter alia} securing healthy and favourable conditions of work. However, all the laws providing for equal remuneration, maternity relief and leave, healthy and safe working conditions, minimum wages and overtime wages, fixed working hours, prohibition in hazardous employments etc. are flagrantly violated with impunity with tacit connivance of enforcement agencies.\textsuperscript{110} Women workers in Punjab were found suffering from repeated miscarriages due to heavy work up to advanced stages of pregnancy. The rate of miscarriages, stillbirths and infant mortality was found to be very high.\textsuperscript{111}

Gender makes all the difference and prejudice against women obviously is one of the reasons that women are kept away from opportunities in public sector. The traditionally accepted and unquestioned ideas of family autonomy or family integrity end up often in maintaining the power of the male head of the household which in turn is based on the entrenched idea that the male head of the family is entitled to rule over 'his' women and children without outside interference reflected, for example, in the typical patriarchal idea that a \textit{man's} home is his castle. Violations of human rights of women within cultural or familial confines are considered as private rather than public practices and outside the purview of human rights action. It is

\textsuperscript{109} Article 23(1) UDHR

\textsuperscript{110} Peoples Union for Democratic Rights \textit{v.} Union of India (AIR 1982 SC. 1473)

\textsuperscript{111} The Hindusthan Times (Editorial) New Delhi Ed. 24\textsuperscript{th} April, 1995
precisely at this juncture there is identity crisis for women in India and her dignity is no body’s concern and she is at the cross roads craving for the direction where dignity is a distant dream. This pitiable situation is attributable in no small measure to the callous nature of patriarchal hegemony in spite of equal opportunities being given to women by way of reservations in legislative bodies and top executive positions. The entire rumpus created on the floors of legislatures and tall promises made on the press and media is nothing short of hypocrisy of century. Every political party promises equal representation to women in public life and performance is dismal failure and the Women’s Reservation Bill which has been mooted out in the Parliament at length has not been translated in to action and the only reason is gender apathy of the fuddy-duddy conservative diehards ruling the roost as though equal representation to women in upholding her dignity is a myth and her future is misty.

Though the Constitution of India prohibits discrimination against women and provides for them several protective measures, in the matter of inheritance and property rights, women are clearly subject to discrimination. Neither the personal laws based on religion nor the secular or civil laws governing property rights give Indian women equal rights to property. The Hindu Succession Act, 1966 gives equal share to women in the properties of their father. This Act empowers women to acquire absolute rights over property and dispose it off. But this Act does not entitle a woman to become a member of the coparcenary and cannot ask for partition. These laws are discriminatory against women and have a bias in favour of the male heirs. The State governments of Kerala and Andhra Pradesh have sought to remove some of these discriminations with a view to give the daughter’s coparcenary ownership in the family property on the same level as the sons. But even these changes do not go far enough and still discriminate against

112 National Perspective Plan for women (New Delhi; Anmol publications, 1991) Ch.8, pp 133-150
the married daughter and a widow and do not apply equally to the separate properties of the father in the Hindu customary law. In the customary law of certain tribes, only male members are recognised as valid heirs and an unmarried daughter is only entitled to maintenance. In India Muslim and Parsi women have some property rights but not equal rights with their brothers. Under Muslim and Parsi law, the son gets twice share of the sister. The Syrian Christian women of Kerala were not entitled to any property, till the Supreme Court ruled that the Syrian Christian women are eligible for equal right to property under the Indian Succession Act, 1966. Neither the personal laws, nor the civil laws recognise the value of women’s work in the house. Therefore, on divorce, the husband and wife do not share the family property. Instead, she is left without a home, income or any other economic security. Very often, when the husband throws out his wife, she is left without any source of income and is even deprived of her ‘stridhana’. The Supreme Court has however, held that the stridhana property of a married woman is placed in the custody of matrimonial home and it is bound to be returned as and when she demands it. But in practice, the ‘stridhana’ is rarely returned, and even if returned not entirely, to the divorced woman. Thus, the State’s proclamation to achieve equality of the sexes is defeated partly by its own laws and partly by the ineffective implementation of these laws. Except in the case of a small number of married women, the jewellery and other valuables including financial assets given as part of ‘stridhana’ are largely under the effective control of their husbands or their families. In joint families, it is not uncommon for such jewellery and valuables being used as collateral security for the family loans. In rural areas, a good part of the jewellery is used for raising bank loans and when the family fails to repay the loans, the banks auction the pledged gold and recover the loan amount. Thus women have very limited control over the use of gold and other valuables given as part of ‘stridhana’.
The laws relating to land ceiling have also failed to take into cognisance interests of women as co-owners or cultivators of land. The land ceiling laws implemented by most states provided for a separate unit of ceiling for major sons in the family but not for major daughters, married or unmarried. Although from the point of implementation of ceiling laws one more unit of land in the name of major daughters would have further defeated its objectives, nonetheless, the discrimination cannot be denied. Further, in the matter of allotment of government lands, it is usually, the male head of the family who gets ‘patta’ in his name. Women's rights over common property resources such as grazing lands and tanks and fruit bearing trees are also very limited. ‘Everyone has the right to own property alone as well as in association with others.’114 ‘No one shall be arbitrarily deprived of his property.’115 In India the absolute property of a woman gained recognition from age-old times.

The limited estate of a Hindu widow prevalent till 1955 has been done away with. In law a woman's earnings and her property are to be her own. But the present male dominated society deprives her of that right. She is obliged to handover her earnings to her husband or his family or allow her husband to exercise rights over her property. This may plausibly appear to be a just provision of law. This is violated in practice, as society does not permit woman to take up any appointment of her choice. Moreover the society prevents women from taking up jobs of their liking. The women are generally relegated to areas where either the remuneration is poor or where the recognition is next to nothing. Every one, without discrimination, has the right to equal pay for equal work116 is set at nought in effect.

114 Article 17(1) UDHR
115 Article 17(ii) UDHR
116 Article 23(2) UDHR
The Universal Declaration of Human Rights, 1948 is a landmark in the history of human rights, professing the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights, without any distinctions including that of sex. The International Covenant of Economic, Social and Cultural Rights, 1966, the International Covenant on Civil and Political Rights, 1966; a number of regional rights charters, viz European Convention for the Protection of Human Rights and Freedoms, 1950; African Convention on Human Rights and People’s Rights, 1981 and American Convention of Human Rights, 1969 all include provisions for progressive protection and guarantees for women. The UN and other organizations from time to time have also focused attention exhaustively on gender issues. Thus, the UN General Assembly unanimously adopted a Declaration of Eliminations of Discrimination Against Women in November 1967 (DEDAW), resolving to abolish sex-discriminatory laws and practices, to grant women equal rights with men in matters of civil law including absolute interest in property and free choice and consent in marriage. The ‘Second World Conference on Human Rights held at Vienna in June, 1993 called for full and equal participation of women in all aspects of public life. This World Conference declared that all human rights are derived from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms. The Declaration affirmed that all human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis while the significance of natural and regional particularities and various historical, cultural, and religious backgrounds must be borne in mind, it held that it was the duty of States, regardless of their political, cultural systems, to promote and protect all human rights. A significant development took place in India by the enactment of the
Protection of Human Rights Act, 1993, by Parliament. The Act defines the 'human rights' to mean the rights relating to life, liberty, equality and dignity of the individual.\footnote{Section 2(d), The Protection of Human Rights Act, 1993} Article 25(1) of UDHR reads, 'every one has the right to a standard of living adequate for health and well being of himself and his family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Yet the women in the family come last in matters of food, clothing, medical care etc. Their needs are not taken note of and they are ignored. Hence they suffer invariably.

'Every one has the right to take part in the government of his country, directly or through freely chosen representatives.'\footnote{Article 21(1) UDHR} Naturally it applies to women also. The percentage of women in Parliament and legislatures is less than 10% of the membership. Apart from the above their representation in decision-making bodies, authorities and the high committees of political parties is horribly low even in socialist countries. 'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to scientific advancement and its benefits.'\footnote{Article 27(1) UDHR} Laws do not prohibit woman's participation in cultural life of the community. Social traditions and family customs do debar the women from such activity. Recognizing the nature of gender-discrimination as systematic and purposive, the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), 1981 prohibited all distinctions, restrictions and exclusions impairing or nullifying the enjoyment and exercise by women of human rights and fundamental freedoms. The issue of women's right to health and to control their reproductive capacities was recognized in Cairo's International Conference on Population and Development, 1994. Gender equality was reaffirmed as fundamental prerequisite for social justice in the 'Fourth World Conference
on Women' held in 1995 in Beijing. The United Nations has rightly addressed itself to this stupendous task of championing the cause of universal human rights to ensure dignity of life and living. "The General Assembly, considering that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including any distinction as to sex.

Taking into account the Resolutions, Declarations, Conventions and Recommendations of the United Nations and the specialized agencies designed to eliminate all forms of discrimination and to promote equal rights for men and women, it is considered that discrimination against women is incompatible with human dignity, and with the welfare of the family and of society, which prevents their participation on equal terms with men, in the political, social, economic and cultural life of their countries. It is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity.

Equality and equity between men and women have been the central focus of all UN sponsored world conferences on women. In recent years the focus of women activists has expanded from equality to encompass more immediate personal threats against women. The UN General Assembly adopted the Declaration on the Elimination of Violence Against Women (1993) and this became the first universal legal instrument combating violence against women. The Fourth World Conference on Women held in Beijing has also adopted prevention of violence and protection of women as one of the issues in the Platform for Action. The concept that 'women's
rights are human rights’ acknowledges the fact that violation of a woman's rights even in the home is a societal concern in which the State must take action. Since most of the violence takes place in 'private' it is difficult to assist the victims. Women in India are able to seek protection against violence under Indian Penal code, Section, 49-A which reads 'whoever, being husband or the relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.' Wife battering is treated as a private matter and religion sanctions the authority of the husband over the wife, the major source of violence and oppression is family itself. In rural and slum areas wife battering is accepted because it is believed that husband has a right over his wife's body and others should not interfere.


The International convention of Women has created profound stir in the mind of India government, as a result of which it started to think over
afresh the real position and condition of Indian women. Indian society and government are male-dominated. In the international field, human rights have been recognized and enunciated by the Universal Declaration of Human Rights, 1948. However, no legal obligation was imposed on the States to give effect to its provisions. It has been proclaimed a "common standard of achievement for all people and all nations." To implement those human rights, two separate covenants were adopted in 1996, one on civil and political rights and the other, on economic, social and cultural rights which came into force in 1976. India ratified both the covenants on 27th March 1979. In spite of all this, violation of human rights is frequently reported all over the world. The situation of the world has become very shaky. There is no security of life at all. Life has become expendable. In every sphere, it is full of dissatisfaction and restlessness. People become restive and human values vanished from the society. Brutality has become the norm of civilization. The worldwide assurance of human rights would consist of gross inhumanity on the one hand and determining and satisfying the claims of the aggrieved, on the other. All the crucial problems of political and civic existence in human society today relate to the problems of human rights. "There are either no efforts or half-hearted efforts towards their empowerment, i.e., their placement in decision-making and sharing power with men on equal terms. At the III UN conference on Women in Nairobi in 1985, in the "forward Looking Strategies for the Advancement of Women to the Year 2000", the participating governments resolved for the empowerment of the women in order to realise the concept of equality."^{120}

In 1989, the CEDAW took up the issue of violence against women at its Eighth session by adopting General Recommendation no 12 on Violence.

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^{120} At the International Conference on Population and development (ICPD) held in Cairo in September 1994, the nations agreed that empowering women must be at the centre of efforts to address the problems of population and development. Women's equality was considered to be a gateway to population. UN Newsletter, Vol. 50 (6 May 1995), p.4
Against Women. The emphasis in the Recommendation is upon utilizing the existing anti-discrimination provisions of the Women's convention to address the problem of violence against women. It requires State parties to act to protect women against violence of any kind occurring within the family at the workplace or in any other area of social life. State parties are therefore now required to include in their periodic reports to the CEDAW details of action taken to eliminate violence against women. States are reminded that full implementation of their obligations under the Women's Convention requires them to take positive measures to eliminate all forms of violence against women. Recommendation no: 19 draw upon Article 2(e) of the Women's Convention, which requires states to take measures to eliminate discrimination against women by any person. In addition, it fixes the responsibility to the State, not only for its own acts of violence against women, but for those acts of violence against women committed by private persons, where the State fails to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and for providing compensation.

The CEDAW initiative paved the way for a number of other developments at the international level during the early 1990s. In 1991, the Sub-commission on Discrimination and Minorities received the first report from the newly appointed Special Rapporteur on Traditional Practices Affecting the Health of Women and children and in the same year, an expert group was convened at the request of ECOSOC to prepare a Draft Declaration on Violence Against Women. At the same time, a draft convention was prepared by the Inter-American Commission.

122 Ibid
The following United Nations' instruments focused on women's emancipation.

- The Universal Declaration of Human Rights of Human Rights (1948) in which principles of equality and non-discrimination were promoted and stressed upon.
- The Convention concerning night work of women employed in industry (Revised, 1948)
- The Convention for the Suppression of the Traffic in Persons and of the Prostitution of others (1949)
- The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951
- The Convention on the Political Rights of Women (1952)
- The supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and practices similar to slavery (1956)
- The Convention concerning Discrimination in Respect of Employment and Occupations, 1958
- International Women's Year (1975)
- World Conference of the International Women's Year, Mexico City, 1975
- The UN Decade for Women: Equality, Development and Peace (1976-85) called for gender equality in development. As a result, the convention on Discrimination Against Women (1979) was adopted and 157 countries adopted Nairobi Forward Looking Strategies.
- The Declaration on the Elimination of Discrimination against Women (1967) (DEDAW)
- The Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace (1975)
- The Convention on the Elimination of All forms of Discrimination against Women (1979)(CEDAW)
The World Conference of the United Nations Decade for Women, Programme of Action for the Second Half of the UN Decade for Women, Copenhagen (1980)

The Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981

The World Conference to Review and Appraise the Achievements of the UN Decade for Women, Nairobi (1985)

The Nairobi Forward Looking Strategies for the Advancement of Women.

The United Nations Conference on Environment and Development, Rio de Janeiro (1992) declared that women have vital role in environment management and development. Therefore, their full participation is essential to achieve sustainable development.

The World Conference on Human Rights, Vienna (1993) stated that the human rights of women and of girls are an inalienable, integral and indivisible art of universal human rights. It expressed concern for the various forms of discrimination and violence to which women continue to be exposed all over the world. It urged the eradication of all forms of discrimination against women, both hidden and overt.


The Fourth World Conference on Women, Beijing, September 1995 drew up a platform for action to complete the unfinished work of Nairobi forward looking strategies and emphasised upon women's participation in decision-making on all issues, which affect society.

At Beijing Conference of 1995, the governments, having so dismally failed to carry out their own earlier solemn resolutions, promised again to ensure “the full implementation of the human rights of women and of the girl
child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms" and further stated that "women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision making process and access to power, are fundamental for the achievement of equality, development and peace." Beijing Plat for Action has identified the following critical areas for concern:

1. Institutional mechanisms for the advancement of women
2. Human rights of women
3. Women and poverty
4. Women and the economy
5. Education and training of women
6. Women and health
7. Women in power and decision-making
8. Violence against women
9. Women and armed conflict
10. Women and the media
11. Women and the environment and
12. The girl child.

Beijing plus five balance sheet (India) is a policy and programme initiatives as enunciated below:

- Women's Bureau undertaking review of discriminatory laws
- Supreme Court rulings: dowry demands can constitute cruelty, and thus can be grounds for divorce (1998);
- Single women have right to adopt (1998);
- Women are the natural guardians of a child (1999);
- Equal inheritance rights (1999)
- Mumbai High Court rulings: Muslim alimony regulations revised in women's favour (1998);
Marriage registration made compulsory
Titles for State housing to be issued jointly to women and men
Army Wives Welfare Association achieved abolition of clause that denied pensions to remarried widows (1999)

Women, despite the printed rhetoric, suffer discrimination and indignity so damnable that dehumanisation is the gender reality of India. The World Human Order finds women's status high on the agenda of change. "The United Nations is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the universal recognition in law of equality of rights between men and women, and to exploring ways to give women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms."\(^{125}\)

The Indian Constitution reflects rule of law bereft of gender discrimination in accordance with the spirit of international instruments. The implications are of far reaching consequences, which would mean a blow to age old conservatism ruling the roost to keep Indian women in utter distress. The founding fathers of the Constitution of India have incorporated the international spirit of gender equality as the basic structure of the law of the land.

\(^{125}\) The United Nations and Human Rights, United Nations, New York, 1984 p 148