Chapter - VIII

Conclusions

Since time immemorial, gender has played a significant role in the lives of people. In prehistoric times, when the Stone Age man went out to hunt or gather food, the woman stayed back to tend the home and cattle, and do domestic chores. Thus was sexual division in labour born.

Man and woman were created equal and the Law makes no discrimination between the sexes. Still gender bias prevails in an overt or covert form all over the world. Gender is a category that will not go away. Gender bias is indeed a global phenomenon.

The 20th century promoted the cause of gender justice by internalising struggles for equality by women and other oppressed people. Women's struggles against their subordination were intertwined in varying degrees with ideologies and movements based on the values of freedom, self-determination, equality, democracy and justice. In the mid-1990s the context in which the international struggle for advance of women's rights is being waged has been transformed. Debates being actively promoted today twist the very premises and value on which the movement had been based. Terms like empowerment, choice reproductive freedom, spiritual autonomy, etc. are being appropriated by forces inimical to the goals of the women's movement.

It is important to note these international developments since they have influenced the movement in India from the start. Equality, democracy and freedom were at the same time, actual, notional and ideological goals which the women's movement addressed in all
their connotations including specific gender perspective and components.¹

In India, since the Vedic age, women have enjoyed equality of status with men as "Sahadharmini". But with the passage of time, the position of women in society has deteriorated. Till the advent of the Haryaks, Indian woman enjoyed great freedom and prestige, but due to certain social, economic and political exigencies and the unhappy impact of alien ideologies, inhuman restrictions clamped on them, they were relegated to a position of servility and insignificance and they were burdened with several taboos and restrictions. Indian society has been a tradition bound society in which the traditionalists would present an idealised picture of women substantiating their claims on the basis of certain reference from the Vedic and classical literature. Women have been socially, morally, economically, physically and sexually exploited in India since long, sometimes in the name of traditions, sometimes on the pretext of writings in the scriptures and sometimes by the social sanctions. The people who thus exploit the women, generally claim with due justification that what they do is not exploitation. They also claim that their deeds should not be branded as atrocities. To support their claim that women are always given their due, they say that Indian women were encouraged to participate in all scholarly pursuits, they married men of their choice and enjoyed much respect in their husband's homes. This has been the position even before the days of Ramayana. Later on, even the Buddhist social

structure offered the woman an alternative spiritual mode of life in place of married state. But actually the lot of Indian woman have lower status in the male dominated society. Such examples are only exceptions. Such freedoms were restricted only to principle and the actual position of woman in the past, since the post Vedic age, has been that of suffering. The Indian woman whether it was Seeta, Gandhari or Draupadi, has always been a tale of subservience. She symbolises a curious intermeshing of low-status, ritual contempt, sophisticated sexual partnership and dedication. So much so that sometime back, the Backward Classes Commission received a representation that the women, as a whole, should be treated as a backward class.

In these circumstances, it is highly important to guard against hasty conclusions based on the position of woman in any particular period of history. A close study of different types of societies reveal that the position of women has never been on the equal footing with the man at any given time. The position of women in the rural areas and middle and lower classes in the urban area seem to be restricted to toil, comprising the service of husband and other members of his family. At present even the working woman has to manage the whole household chores single handedly whereas the husband only caters to his duties at his place of work. Women at large are reduced to low status of drudging slaves, who are expected to remain behind the thick curtains, produce children, look after the household, cast their softer desires and self effacement. There is no woman who has not suffered at one time or another the harassment, humiliation, exploitation and violence
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that shadows her sex. In daily life, women are routinely defined by sex and even if not at all men are potential kidnappers, rapists, batterers and murderers of women, all women are potential victims.

Although in India colonial rule and the freedom struggle marked the beginning of an awakening among women, differing streams within the anti-imperialist anti-feudal struggle posited different, even contentious images of identities for women. But the nationalist consensus symbolised in the Fundamental Rights Resolution of the Indian National Congress, 1931 postulated freedom, justice, dignity and equality for women as essential for nation-building. The Constitution assured these rights. In the post-independence period, however, women exploring avenues for socio-economic and political mobility came up against the limitations of a third world ex-colonial State. This posed conflicts between their new rights and the values carefully promoted by a long standing patriarchal social hierarchy.

The women's movement undoubtedly began with the notion of women's rights - to education, to property. But it also contained the germ of a desire on the part of woman - to play some role in public life. This aspiration soon developed into the debate - social work, or woman's needs versus political action for the country's freedom. The debate often centred round the repercussions, or result of interaction between the two. Would not involvement in politics damage the women's cause? Part of this undoubtedly stemmed from viewing the colonial government as a source of support. This was soon to be over-taken by the logic of nationalism and the theory that woman's status could only change with freedom for the country.

The hidden agenda behind the debate however was the issue of limitation of women's role in public life. The emphasis on difference to man's roles was still accepted, and forays into political activism were regarded as entering man's domain. The progress of the nationalist movement, and increasing identification of woman leaders with it submerged this debate for the time being. Gandhi's view, that participation in the struggle, by promoting the use of India-made goods, fund raising, and strengthening men's participation by women's moral support was a part of women's Dharam (duty) helped to overcome doubts.

The supportive role soon gave way to women's determination to play a full role, on terms of equality with men. Coming to their determination national leaders admitted them as full partners in the struggle and accepted complete equality in 1931.

But the rationale behind this shift was never explicitly articulated or clarified, with the result of continued ambivalence within the women's movement and the leadership of the new nation.

The issue of women's political role in post-independence India has acquired three major dimensions. The first, made possible by the Constitutional guarantee of equality, is participation in the decision-making institutions from the grassroots to the national government. While women's desire to participate is demonstrated by increasing mobilisation as voters, the extremely low presence of women in the representative bodies makes their role ineffective, in spite of the presence of a few women in high offices.

The second dimension is the operationalisation of women's rights, economic, social and political, to translate the constitutional
promises into reality. After being dormant for over three decades, this aspect has resurfaced, and is being pursued with some vigour by the woman's movement, with varying degrees of responses from government, political parties, media and general public opinion. The legal framework provides a strong base in this case, making it rather difficult for any institution or political group to adopt an overtly negative stance to the demands of the women's movement. Besides, the growing mobilisation by women's organisations is increasing women's visibility as a potential force that may need to be topped in the competition for power.

The third dimension - the purpose of women's participation, the nature of the impact they may, or wish to make on the political process, and the manner in which they wish to achieve their aims has given rise to the greatest controversies. A generation after independence it is difficult for anyone to advocate limits on women's political role, though many men and women still nurse such a view. The desire to maintain a cultural identity, born under the experience of colonial rule, however persists, and expression of a desire to be "different" from western feminists is very common.

Equally strong is the influence of the socialist tradition, which directs women to identify with social transformation for creation of an equal, non-exploitative society. A section of radical Gandhians advocate the goal of an equal society as the aim of their role in politics.

The radical feminists, the advocates of an autonomous women's movement are in a minority, who cannot obtain the support either of the more left oriented groups or of the centrist and right wing groups. The radical feminists are impatient with the
other groups' desire to win cooperation from men in their mobilisation. The left groups on the other hand, suspect the radical feminist of trying to weaken the left forces by driving a wedge between man and woman. Their second argument, supported by most of the moderate section, is that structural changes in society cannot be brought about by women acting in isolation and hostility to man, women are not separate from society, and are shaped by social forces as much as men. This debate is strengthened by a third world versus the capitalist First world argument that erupted in international conferences on women. The concept of a separatist women's movement has originated from the West and hence is suspect.

The main concern of the movement, as it emerged, were laid out in the issues opened up by the Report of the Committee on the status of women in India (CSWI) which drew attention to the wide diversities in 'culturally' prescribed gender roles in India's plural society. The Committee raised serious doubts about the 'development' or 'modernisation' models that not only ignored the real differences that revolved round caste, class and ethnic history but exaggerated the influence of religion, culture and social attitudes on gender role prescription. Questioning the continued invisibility of women in areas/sectors where they were largely involved, the CSWI pleaded for a renewed concern that would reflect real life issues and aspirations of the majority of women. The CSWI noted clear linkages between existing and growing social and economic disparities and women's status in education, the economy,

society and the polity, putting the demand for equality on actual historical terrains.

The combination of fundamentalism and globalisation poses an awesome challenge. Fundamentalism provides an ideological framework while globalisation and glorification of the market provides the operative instrument to demolish women's claims to equality, freedom and dignity as individuals. The contemporary women's movement in India spans a large canvas. There are small groups as well as large national level organisations. While some are recent having been framed only over the last two decades, others go back to over 50 or even 100 years. Some organisations focus on single issues while mass organisations cover a vast range. The organisational structure as well as activities undertaken differ.

The movement has been fraught with tensions, rifts and differences, reflecting differing notions of what are women's issues or how the movement should proceed to focus on these. In the 1970s, the movement took off as part of an overall build-up against the authoritarian regime symbolised, ironically, by a woman Prime Minister. It then got fragmented and even perhaps insulated. The 1990s represent a trough in the political graph, where the need to join hands and build alliances with other forces is even greater.

No doubt gender equality is guaranteed in the Preamble and in various articles of the Constitution but gender-bias and gender-

assymetry is present in every sphere of life, political, economic, social, religious and ideological. It manifests itself in matters of nutrition, health, employment and inheritance, whether it is discrimination against the girl-child or against the women worker, gender bias is the root cause.

While in India, long before the Constitution, the role of law was emphasised by Gandhiji when he wrote that there should be no legal inequality between men and women. Our policy makers have blindly followed the model of Western countries only in legislating and then leaving the matter of improvement or full implementation of the legislation to other voluntary bodies. We have often forgotten that when a change comes as a result of concerted action by women, like the right to vote, or equal pay for equal work, the awareness has already been created. The legal change when it comes is known to a large number of women. Literacy in the Western countries has further helped in bringing the knowledge of the policy makers to the women themselves and then perhaps the push for its implementation has come from the women's organisations and labour groups.

A totally different example where law was used for the purpose of emancipating was in Uzbekistan when it was part of the Soviet Union. Prior to the Revolution, there was almost cent-percent illiteracy among the women who were all Muslims. Using religion - shariat - the women had been kept completely subjected. To emancipate them, First, special legislation was promulgated which aimed at eliminating women's unequal status, particularly family and marital relations. However, Govt. realise that real emancipation can be secured only by drawing her into economic activity. Special
measures were taken to enable a woman to combine her role as a mother and yet make it possible for her to work.

The approach was that mere proclamation of legal equality was meaningless when one had to fight and change years of tradition which had kept the women backward. Multi-pronged approach was taken. The legal provisions were therefore supported by economic, social, cultural and other measures. Equal pay for equal work was only the first step but the more meaningful one was to ensure that women did get the work. Training of women crash programmes to eradicate illiteracy from vigilante committees and women's cooperatives were some of the steps. In short, the government measures aided by the women's organisation clearly indicated that mere enactment of laws was nothing. The more important measure was to give the supporting machinery and create the awareness which would ensure the eradication of inequality. The progress was understandably slow - as breaking the hold of religion was no easy task. But the goal was ultimately reached. These are two of the models we have where law is used to bring about a change in the status of women and ensure her an equal status.

In India we have opted for the first model of merely legislating which we certainly have done. To raise the political status we recognised that every citizen of India has the right to vote. There is one electoral roll and no person is ineligible for election inter alia on the ground of sex. Similarly, to raise the economic status of the women the fundamental rights provide equal opportunities and now, by a special enactment - Equal Remuneration Act - both men and women doing same or similar work must be paid the same rate. Mutual
consent as a ground for divorce was introduced in our law when most countries were granting divorce only on the guilt principle. But quiet unlike Uzbekistan experience, the responsibility of the policy makers have ceased after putting the various laws on the statute book. The Soviet experience of a multi-pronged attack setting up of women cooperatives or vigilante bodies have never been considered in India.

An example of the situation prevailing in India is provided by the reply of the Labour Minister when asked what special provisions were being made to prevent the displacement of women from various industries. He replied that the government was committed to the policy of non-discrimination; therefore, if women were not appointed because of her sex, the government was concerned but generating more employment or preventing workers being retrenched on the ground of technological change was not the policy of the government. In this context it is worth noting that a conference called by the European Community Commission of representatives of national committees for female labour and for equal opportunity unanimously recommended that women should be represented on the negotiations relating to the introduction of new technologies and its effects, and training programmes relating to these new technologies should ensure full participation of women both young and adult.

But what has been net result of our efforts at raising the status of women and ensuring to them political, social and economic justice through legislation? Access to courts, assertion of rights given by the matrimonial laws like equal rights of divorce, equal opportunities of employment or equal pay have benefitted only those women who have knowledge and the means to get the remedy. It has
instead of bringing about equality of the sexes brought about inequality among the women themselves with the elite and the well-off being the beneficiaries of legislation and the majority remaining where they were.

The social problems which face women vary according to their economic status and social class. While the poor have to struggle for their means of subsistence and there are the problems of education of migrant labours' children, problem of health, care of infants, inequality of wages for men and women, lack of mobility of women, lack of transport facilities for girls' education, the upper strata of society has different problems - the problems of caste system, parda (which prevents them from availing of the much needed opportunities of higher education). There are problems of sati, dowry, child marriages, non-application of women's right to property. There are problems of social inequalities, finding perpetuation in amniocentesis tests meant to disturb the wonderful balance of nature between the number of male and female children.

The very first thing which occurs to any observer of the Indian society is the preference for the male child and this is not confined to any particular section of society. The girl child is not welcome in the Indian family and her life is extinguished even before she comes in the world, thanks to the latest advances in medical science. The "craze" for a male child to continue the family's lineage and as old age insurance has led to the systematic marginalisation of the girl-child, which in its most extreme form takes the inhuman shape of female infanticide. Amniocentesis too has started being against the female foetus. The recent "Putrakameshti Yagna" in Kerala, which was a yagna for a male heir, raised a furore all over the country.6

It is not only because of the problem of dowry (which has been discussed earlier) that the girl child is unwelcome. There are other reasons also which have sanction in religion. Hindu religion authorises the male child only to do pindadan for the departed parents and to offer water to the Pitras. Also the girl child is considered Paravya dhan from the very beginning which means that she is at her parents house temporarily as a guest. It is a male child who is expected to support the parents in their old age.

For all these reasons the girl child is not accorded equal treatment with her male sibling. Discrimination can be noticed in matters of food, education, clothing etc. The education of girls was discouraged and did not go beyond the school stage even in educated family.

The girl child is an awkward term. But it accurately identifies the most oppressed minority in the developing world. Here is to be found the widest prevalence of disease and lack of schooling, the severest malnutrition, the highest incidence of household abuse. This is in fact an invisible child, so little does her own family seem to bother about her.

Some groups are working in this field to help girls develop their potential. However, it is field still short of initiatives—even though the girl of today is the mother of tomorrow's family, the cradle of all our futures.

Forty-seven years after her rights were recognised in the Constitution of India, the girl child remains enslaved. The

discrimination against the male child persists, resulting in neglect and denial of basic food and health care. Seen as a liability from birth, education for her has become unimportant. Her contribution remains restricted within the four walls of domesticity her obvious help in the family income insignificant.

Only a few enlightened in our society realize the impact that a woman has on her family. That if educated now, generations to come will benefit from the improved quality of life that a girl child can influence.

And in spite of observing the International Women’s Year and International Decade for Women and the SAARC year of the girl child, very little has been achieved in concrete terms towards removing the all-pervading global gender bias.

In 1992 report on the state of the world, says that "equalising women’s access to education should be given top priority". It adds that education not only contributes to their personal development, but to smaller families and better health for children. Thus female illiteracy has to be tackled on a war footing, specially in the Third world.

A basic statistics paint a grim picture over 400 million women with 75% illiteracy, work 10-14 hrs daily, undergo 4-6 pregnancies and run low-income households. In spite of a large number of female-headed households, specially in rural areas, they have failed to make a dent in the process of nation building.

Another area which has been of great concern to the women is the rising incidence not only demands for dowry but also the accompanying violence. The prevalence of dowry among some sections
of the Hindu community was fairly common. A census study conducted in 1961, however, concluded that the majority of the population still practised the opposite custom of bride-price or bride-wealth, not dowry. Among the groups practising dowry, the institution was partly justified as compensation for the girl who would be deprived of a share in her father's property. All gifts given to a girl at the time of the marriage by her natal family, her relatives as well as her in law were regarded as her 'stridhan' (personal wealth of the women). However, with the enactment of the Hindu Succession Act, there should have been change, but instead demands for dowry kept on increasing and spread to communities which had never had this practice earlier. Ultimately with pressure from the members of parliament, particularly the women members, the Government decided to have a legislation banning the giving and taking of dowry. The Dowry Prohibition Act was passed in 1961.

But lack of commitment to eradicate this menace by strong supportive machinery, made the Act totally ineffective and it was difficult to find any convictions under it partly due to the fact that both the giver and the taker were placed in the same category and punished equally. The judicial approach on this issue are more helpful. Though the Bombay High Court refused to consider a demand made by the bridegroom's family as being dowry unless the demand was agreed to be given, the Supreme Court set the record straight. "Having regard to the dominant object of the Act which is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage .... a liberal construction has to be given ... virtual daily reports of young married women dying of
burns. The pressure within and outside Parliament finally led to the amendment of the Act in 1984 and again in 1985 though in a manner which satisfied neither the women members of Parliament nor the women's organisations which had been demanding it.

Where legislation has really reflected the societal anguish has been the enactment of special addition in the Indian Penal Code relating to dowry deaths. The Report was given suo moto by the Law Commission in 1983. Fortunately the government did not delay but proceeded to add this section to the Indian Penal Code. It becomes applicable when a woman dies within seven years of her marriage due to burns or bodily injury or under circumstances which are not normal. The presumption in such cases will be that the husband or his relatives may have caused or brought about the death. The provision, undoubtedly, is a step forward to deal with a social menace, but what detracts from its potential effect is the clause that makes it applicable only when there is evidence of cruelty or harassment of the women by her husband or her in-laws. As this cruelty or harassment is usually within the house where she is living with her husband and/or in-laws, obviously the only witnesses will be the ones who have subjected her to such cruelty. They are not likely to offer the evidence which will send them to jail. This was brought out clearly in the observation of the Supreme Court in a case where the young woman had died under circumstances which pointed clearly to its being a dowry death. The Court said: "It is an offence brutal and barbaric. It is generally committed inside the house and more often with a circumstance to give an impression that it was a suicidal death".
From the figures available the cases of conviction where a young girl dies from unnatural causes are so few because many of the cases are pigeon-holed as accident or suicide. An unnatural death or even a suicide within seven years of the marriage particularly, when she is a mother, should raise a strong presumption that she may have been driven to committing suicide. Often cruelty may fall short of physical cruelty, but mental cruelty is no less. This point was made by justice Desai in explaining the rationale for adding this provision to the penal code:

"Short of physical cruelty, mental cruelty making continued existence an intolerable drudgery was not punishable. If ultimately she commits suicide, the guilty escaped punishment for want of an adequate provision. Conscience of the modern society violently reacted to this lacuna."

The additions of this provision and the one for dealing with dowry deaths were expected too make a real dent in the problem and deaths of young women should have come down drastically. But the rising number of deaths of young women reported to parliament every year, gives a very dismal picture, commenting on this hiatus, the Supreme Court observed: "It is not enough if the legal order with sanction alone moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of society. The investigating agency must display a live concern and sharpen their wit. They must penetrate into every dark corner and collect all the evidence. The court must also display greater sensitivity to criminality and avoid on all counts soft justice."
It is indeed ironical that in a country where women are put on a pedestal and worshipped as goddesses, crimes against women have risen by 104% during the last decade. The inbuilt social prejudice against women as inferior beings and objects of cruelty have perpetuated such crimes.\(^8\)

Violence is perpetrated through the given institutions of the state, community, the family and society at large. It draws sustenance from prevailing ideologies which seek to propagate status quoism through advocacy of 'failing-in-line' be it in response to transgression of social norms or laws, which are defended in the name of age-old customs and tradition, religions or caste identities or even political dissidence.\(^9\)

The Supreme Court's acquittal of two policemen involved in the rape of a minor tribal girl (Mathura case) brought to the fore several crucial aspects of women's oppression, viz. the roles of class and caste in oppression of women and the issue of accountability of public servants and the judiciary in achieving the constitutional guarantees. These were pointedly raised by four law teachers in their protest to the chief justice.\(^{10}\)

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\(^8\) Maitra-Dinna, Anjana, \textit{op.cit.}, p.17.

\(^9\) Agnihotri, Indu, Mazumdar, Vina, \textit{op.cit.}

\(^{10}\) Professor Upendra Baxi of Delhi University Law School noticed this case in a law journal and together with three colleagues, Kaghunath Kelkar and Lotika Sarkar of Delhi University and Vasudha Dhagamwera of Pune University, wrote an open letter to the Chief Justice urging him to review the case. Subhadra Butalia, "The Rape of Mathura", \textit{The Week} (March 8-14, 1980), pp.10-13.
Though the agitation\textsuperscript{11} sparked off by the Mathura case led to significant changes in the Evidence Act, the Criminal Procedure Code and the Indian Penal Code including the introduction of a category of custodial rape, the changes introduced were not sufficient. There is the inability and unwillingness of the state machinery to act in a manner as to collect evidence in order to prove rape. As has been highlighted in the case of rape of nuns in Gujaraula, U.P., the law leaves sufficient loopholes for agencies such as the concerned police and medical personnel to not act, with perfect impunity.

In recent years there has been a spate of incidents of stripping, rape and other forms of humiliation inflicted on dalits as well as other women in different parts of the country in recent years. This is in addition to earlier instance of lynching of women on suspicious of being 'witches'. Many have seen in these the reflection of new political configurations and conflicts arising out of the aspirations of upwardly mobile backward castes. This comes along with reassertion of authority by traditional community and religion-based structures. Claiming sanction and power of wield authority on the basis of various brands of identities, there is in contemporary India a powerful ganging-up of conservative and reactionary forces which aggressively impose moral precepts. Where other processes fail, gender equality and women's right to freedom is opposed through intimidation, humiliation.

\textsuperscript{11} Women's organisations demanded the case be reopened. When the Supreme Court dismissed these petitions on technical grounds, women in New Delhi and Bombay demonstrated in the streets shouting: "Supreme Court Supreme Court against you, where can we report?" "The Rape Rap", \textit{India Today} (June 10, 1983), p.44.
and violence in complete violence of norms of civil society.

what is important is that even as the movement for women's rights has strengthened, there is the opposite phenomenon of increasing social acceptance of violence and its use for political purposes. This violence is limited neither to the personal sphere nor to the frame-work of men-women relationships. It is notable that response from social scientists on the theme of violence in general and specific to women has not been very illuminating.

Despite a stronger law, under which the sentence for custodial rape was emanced to a minimum of ten years rigorous imprisonment, there are few prosecutions even as the number of registered rape cases increase each year. From 5,298 rape cases registered in 1982, the number increased to 6,356 by 1985. These of course, represent only the tip of the iceberg as the majority of rape cases remains unreported.12

The most significant of the legislations brought about as a result of the women's movement have been in the field of criminal law. These legislations have been to change (a) the law of rape enacted over a century ago (b) the Dowry Prohibition Act (1961)—which had become a classical example of a paper figure; (c) laws to punish cruelty to women by husbands and in-laws which often drove women to commit suicide; and (d) changes in the Evidence Act. Each of these came in response to the demands of the women's movement.

A totally different area in which the women's groups achieved partial success was in their demand for setting up of family courts.

The committee on the status of women in India had in its report recommended "the adversary system for settlement of family problems be abandoned and establishment of family courts ... where the procedure should be informal and which will adopt the conciliatory method and informal procedure with the aim of achieving socially desirable results. But the provision for the appointment of judges requires that the person to be appointed must be one who will "commit to protect and preserve the institution of marriage." Enough has already been written which will show that judges are not fallible and they too have their male bias and are more often than not steeped in patriarchal values. A number of studies has shown that an Act meant for the benefit of the woman has achieved very little success. Delays continue. Women who are often poor and barely literate, find a court which seems to be totally insensitive to their requirements. The judges often appear to think that their job is to "protect and preserve the institution of marriage" at any cost. The result is that many times the judges compel "a wailing and weeping wife to go with her husband" as the husband's home is her home. The Family Court Act is thus one other legislation which is meant to benefit the woman in many cases but has turned out to be quite the opposite. Only persistent demand from all concerned will enable some of the provisions to be amended. If the National Commission for women makes a study of how the few family courts which have been set up are functioning. Perhaps some changes may be brought about.

To commemorate the International year of the family, Joint women's programme (JWP) organized a national seminar on "The Indian Family and women" during November 24-25, 1994 in A. Delhi. More than
60 women activists, scholars, lawyers as well as government officials attended the seminar and dwelt upon the maladies of the Indian families in the context of women's rights. 13

Recommendations:

The seminar made the following recommendations relating to:

A. Crime against women

- Changes in the family and criminal laws to prevent throwing out of women from the marital home and immediate action on crimes against women.
- Crimes against women cells to be set up all over the country.
- Special hostels for victims of marital and sexual assault.

B. Compulsory registration of all marriages

- Joint ownership of all matrimonial property.
- Registration of the gifts received at the time of marriage.
- Family courts should be set up and effectively utilized to reduce the protracted legal process to settle matrimonial disputes.
- Uniform national law on adoption and custody of children of estranged parents.
- Adequate interim maintenance to deserted or divorced women till the court decides the issue.

C. Single woman

- Government flats at subsidized rates for women-headed families and single women.
- Shelter homes for destitute women with facilities for job

- Special clubs for single women.
- Hostels for dalit and tribal women pursuing higher education.
- Mandatory registration of women domestic workers to bring abuses to the notice of women protection cell of police.

If violence was the rallying issue for women's organisations, the marginalisation and impoverishment of the majority of women within the transforming economy became the entry point for academic into the movement. The complexities of the relationship between macro-economic changes and women's status issues at different levels of society had been neglected by social analysts till now. The Women's Studies Programme of the Indian Council of Social Science Research helped to start a research process heavily biased in favour of 'invisible' women i.e. poor working women in rural and urban areas. The focus on economic themes by the Indian Association of Women's Studies in its National Conference facilitated the interaction between academics and activists.

The memorandum - Indian Women in the Eighties: Development Imperatives, one of the first joint statements by women's organisations stated that:

...unless explicit provision for the imperative developmental needs of women is made in the sixth five Year Plan, the conditions of women will continue to decline notwithstanding constitutional pledges of equality and justice and the parliamentary mandate for removal of disparities and discrimination. 14

As a result for the first time in the planning history of India a chapter on women and Development appeared in the sixth five Year plan (Chapter 27). It is stated explicitly that without economic independence, equal access to education, skill-training and family planning services, the constitutional guarantee of equality would remain a myth. Henceforth all anti poverty programmes were directed to include women as targets.

The closing year of the Women's Decade marked a high tide. The Govt.of India hosted the second NAM Conference on women and Development. But the tide receded fast. The widening divergence of views between the government and the NGOs became clear with the release of two documents in 1988.

Shramshakti, the Report of the National Commission on Self Employed Women and women in the informal sector to an extent represented the voice of a substantial section of the women's movement and of women's studies' scholars, who were induced into its various task forces.

The National Perspective Plan for Women (NPP) up to the year 2000 was, on the other hand, prepared by a team of consultants for the Department of Women and Child Development with no interaction with activists. The NPP as well as NAM's New Delhi Document had admitted that the marginalisation of women had been "intensified by the current processes of economic change and may continue in future."

Today Indian women feel that the structural adjustment programmes (SAP) and the package of economic 'reforms' threaten not only earlier gains, but also the stated national goals by successive
governments. While the movement was critiquing the development model, SAP has now removed the few regulatory/compensatory aspects of India's mixed economy, leaving global market forces the sole players in the field.

The overall impact of SAP has to be understood in the context of the overbearing reality that already 94 percent of women workers are part of the informal sector and that they constitute half the labour force in the unorganised sector. What is the future lying ahead for women in an economy which itself shall be struggling to find a space within the model of 'sustainable development' under the aegis of a carefully orchestrated Structural Adjustment Programme?

The working woman is burdened with the twin responsibility of being a perfect housewife and a diligent worker. She receives little or no cooperation at home in the performance of her domestic chores. In her workplace, gender bias raises its ugly head and she is denied opportunities for promotion or training and is not even looked upon as a serious worker. In spite of prevailing laws, many women, specially in the lower strata, get lower wages as compared to men. Such prejudices result in women being given low paid and unskilled jobs. She may even be denied maternity benefits and even harassed sexually.

A World Bank country study on gender and poverty 1991 reports: "India has invested and continues to invest far less in its women workers than in its working men. Women are less endowed with

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productive resources—all of them could bring higher returns to the labour". Working women can contribute substantially to the national income of the country, and in the process, raise the standard of living of the people. The 1992 gender and poverty report of the World Bank states, "Market forces have great potential to influence gender ideology and to increase the perceived value of women."

Judging by the standards of many developing and even developed countries, the legal and political rights conferred on women in India would thus appear to be considerably high. The spread of education and access to positions of influence and power in the professions and in government will have undoubtedly brought about a transformation in the opportunities legally open to women to develop their talents and to participate in all spheres of activities competing with men on equal terms.

Women's involvement in the nationalist movement was significant as it recognized that given the opportunity, women had the capacity and the ability to participate in politics. It is creditable that in 1937, India had the third place among countries having the largest number of women legislators. The participation of women in the freedom movement of the country forms a glorious chapter of Indian History. Since then, women have enjoyed the same right as men to vote and to seek elections to the local bodies, the Legislative Assemblies and the Parliament and other elective bodies, to hold public offices and perform all public functions at par with men. Thus, India has outpaced other countries of the world with regard to the status of women in the field of politics.

It has been argued that political equality is meaningless in a
country where the mass of the population suffers from poverty, continuous threat of starvation, illiteracy, lack of health and inequality of class, status and power. It is more so in the case of women who suffer from another dimension of inequality, namely the weight of traditional attitudes that regard them as physically, intellectually and socially inferior to men. It is, however, clear from Mahatma Gandhi's statement that the equal legal and political rights of women were only to be a starting point to enable the society to transform itself by ending all exploitation, a process in which women would be the prime movers. In the field of politics, voting rights have not enabled her to achieve political status enjoyed by men. However, women's position in India is not discouraging as compared to the other countries of the world. As shown in the document prepared by the United Nations Social and Economic Council in 1967, as late as 1966, only 55 out of 144 members states of the United Nations had women members in their respective parliaments. So far as India is concerned, in pre-independence days too a number of women had served on various provincial and central legislatures as well as in the constituent assembly. Even today India compares favourable with most of the advanced countries so far as higher positions in the political field are concerned.

India has a strong federal system and the subject of women's development comes under the jurisdiction of both the Central and State governments. With the recent 73rd and 74th Constitutional Amendments relating to decentralisation and the major responsibility for social sector development, being valued to local governments, the need to use language and designations that convey the spirit of the
laws adequately becomes more urgent.

Despite equal voting rights, a majority of women, especially in the rural areas act as "rubber stamps". They are not allowed to exercise their choice. Women constitute a very small percentage of members in the Parliament and other elected bodies. According to a Govt. report in the International Year of Women (1975), "Two of the worst enemies of women have been the traditional female and the conservative male."¹⁶

The conspicuous visibility of the dominant man in control especially in the aftermath of the green revolution and the white revolution, has only strengthened the devaluation of women. The man emerged as the holder and controller of power in all spheres external and internal. The women, on the other hand, with hardly any socio-cultural recognition and entitlement rights to a share of resources, emerge severely deprived and discriminated against in every area ranging from food intake to access to medical facilities and education etc. In the socio-culture context and the given hierarchies of power and authority, women do not emerge as even entitled to decision-making and remain without a say, not only in the production and distribution processes but also in the sphere of expenditure. The old cultural constraints, which have determinedly been kept alive have not only ideologically conditioned her non-participation in decision-making, but have also physically inhibited her from decision making fora, with detrimental repercussions on her.

In tightening the reins of patriarchy and in reinforcing its ideology, women emerge as a willing party to their own marginalization and exploitation. They even give it a moral sanctity and legitimacy which shows a self-imposed subalternism. This acceptance is born out of the cultural, ideological and psychological gender conditioning which has led to the internalization of the idea of their own inferiority and subordination.

This along with the intra-gender conflicts and exploitation operating within the household based upon life cycle, status, age seniority and gender relationship, testifies to the complicity of women with the patriarchal order. For example, the older controlling woman who becomes herself a patriarch, imposes authority on behalf of men and perpetuates the patriarchal ideology, forms a class apart.

According to Tram Choudhary, "yet, the voice of woman is not merely a monologic voice... women are heard speaking in two voices, one of them is frequently apparently supporting of the patriarchal order...." According to her "the other voice which emerges is an independent voice subversive of the patriarchal order and its specific content. It marks and ridicules control and authority, and their various relationships by inverting the ordinary rules and social protest not only at annual festival times but also on other social occasions. Older women may use this voice both as a protest and as control." Obviously, the male attempt to curb these disorderly voices and the social practices subverted by them which are related to women highlights the perceived threatening potential by certain social groups.
The Constitutional and Legislative initiatives to invest women with rights and equality and protect them against social discriminations, violence and atrocities add up to a revolution. The major challenge of the century is to have these legislations and programmes implemented. At the same time it is imperative that women should unite and fight against all the forms of gender discrimination and abuse.

A full decade after demand for changes in the law, women's groups in India are being forced to consider whether enlightened laws in themselves are enough to enhance the status of all women. The recent Suman Rani case, in which the Supreme Court halved the sentence of two policemen convicted of rape by a lower court, is the immediate reason for this provocation.

But just as a dowry law has not stopped the practice of dowry giving or bride-burning, and the Supreme Court judgement in the Mary Roy case on the inheritance of Syrian Christian women do not stop their fathers from making special wills disinheriting them, how will another such law fare? 17

It is our submission that women's rights can be realised only when they are adequately represented on the law-enforcing agencies like the police and the judiciary. It has been found that the male officers are not free from gender bias and hence very often the women do not get justice. Either the police refuses to register their complaints or when the case reaches the judiciary after being registered, an attempt is often made to reduce the seriousness of

17 Kalpana Sharma, "Women in India: Law and Reality," The Times of India, 30.3.89, N.Delhi.
offence and if punishment is given to the culprit, it is not enough to deter recurrence of such crimes. Our hypothesis is based on the Mathura case. It is not an isolated case, but as the newspaper reports tell us, such cases are happening almost everyday in one or other part of the country. The entrenched values of some of our judges which believe in male superiority and the subordinate position of women makes them often forget the constitutional mandate of equality of sexes or the international campaign for human rights for both men women. There is an interesting parallel in such reactions/attitudes of the judiciary to issue of what is socially understandable and therefore defensible with the known preference shown by police personnel - even in women's cells - to bring about a compromise between the contesting parties. It appears that in their eagerness to play this social reconciliatory role - members of both the professions are apt to ignore their own primary Constitutional duty - to uphold and enforce the law. Reacting to this tendency among the police, one retired officer remarked: Conciliation cannot replace investigation - which is the police's primary professional responsibility" (National Conference on Crime Against women, 30.11.1992).

Members of the judiciary and police officers are still drawn mainly from the middle class. Cases relating to women continue to be viewed as social and the laws relating to them - even when they feature in the Penal law are seen as social legislation and their enforcement, therefore, can be subordinated to the particular individual's (Judge, jury, police, others) own sense of the social good, rather than the rule of law which represents the collective
and constitutionally valid assessment of the social good.

What has come out clearly is that hurried legislation by
the Government under pressure from groups is almost as good as
not having any laws unless the implementing machinery is made
sensitive to why the legislation was required. Massive legal
awareness needs to be created if laws passed to implement the
constitutional mandate and stop violations of human rights of
women do not remain only on paper.

One major contributory factor has been the failure to create
an awareness among especially the lower ranks of the police force.
It is at the police station that the victim of rape has to go and
and it is here that she needs to be told about the necessity of
medical examination and what should go into the FIR and what are
her rights. In at least two cases recently, the Sessions Judge
has passed strictures on the Delhi Police when a married girl was
gang raped. If cases like this could happen in the capital city,
one can understand what happens to hundreds of Mathurias who are
raped and seek justice. Preventing the very first steps of reporting
and registration frustrate all efforts to pursue the case.

It would be unfair to conclude from some cases that the
judiciary has not been sensitised by the campaign both during the
Mathura case and later during the amendment of the law. But the
attitude has been ambivalent. Extreme sensitivity was shown in one
case (Bhoginbhai Hirajibhai V State of Gujarat) where the Court states
clearly that not acting on the testimony of a victim of rape and
requiring corroboration is adding insult to injury.

But when it comes to giving the sentence of rape what is the
attitude of the judge? The Court was overtaken with sympathy for the
accused who had lost his job. The incident had occurred almost seven years ago and he "must have suffered great humiliation in the society". The ends of justice would therefore be met according to the judges, if the sentence of two and a half years imposed by the High Court is reduced to 15 months. For sexually molesting two young girls - they being friends of his daughter - the court is moved by his plight and gives the ridiculous sentence of 15 months for one of the most heinous offences.

Even when the judges are sensitive (like the Supreme Court bench which expressed strong views against the High Court judgement in a custodial rape case), the patriarchal bias, however, comes out when it is a question of sentence for rape. Having observed that when "a person in uniform commits such a serious crime of rape on a young girl in her teens, there is no room for sympathy or pity. The punishment must in such cases be exemplary", the Court demonstrated its view of this 'exemplary punishment' - five years rigorous imprisonment.

Both these cases bring out some interesting facts. The sensitivity of the judges has extended to realise that conventional forms of resistance like marks of injury should not be considered when the victim is a young girl faced by a much older and stronger person. Secondly, the judges appreciated the intention behind the law that in such cases the statement of the victim that she has been raped should not require corroboration. But when it comes to giving the punishment, it is forgotten that the punishment must fit crime.

As recently as January, 1995, the Indian Government approved
an amendment in Section 376 of the Criminal Procedure Code relating to rape offences so that "character, reputation, conduct or the status of the woman or the delay in reporting the commission of an offence under this (Sub-sections 1 and 2) shall not be an adequate and special reason for imposing a sentence of imprisonment for a term of less than seven to 10 years".

The wave of fundamentalist,xenophobic upsurges sweeping across the world threatens the International women's movement as a whole. In India the complex social structures, economic constraints and political opportunism have provided ample breeding ground for the growth of revivalist ideologies and identity politics. These have adopted aggressive postures showing scant regard for the Indian Constitution or the fundamental rights it guarantees. All religious, ethnic or cultural fundamentalists are basically hostile to gender equality whatever the rhetoric they profess. Activists express concern at the rupture with the essence of progressive movements of the 19th and early 20th centuries. 18

It is not insignificant that coinciding with the rising religious fundamentalism in the country, issues concerning women are also being communalised. Whether it is Sati or maintenance for divorced Muslim women, or inheritance rights, or a uniform civil code, the crucial issues of the rights of women as human beings are getting tangled in arguments supporting either religion or tradition. People who support change but do not want to appear out of touch with

the dominant reality are bending over backwards to explain traditions such as Sati. Inadvertently, they are playing into the hands of those who would like to perpetuate every tradition that relegates women to a secondary status.

Those who attack these traditions, are now dubbed as either western or armchair activists and dismissed for their ostensible lack of understanding of something called the Indian reality.

These reactions to any criticism of so-called tradition are but one aspect of the tremendous resistance to change. Yet, without a change in this system, even the best of laws will fail to make a difference to the lives of women.

The national machinery as a set of structures and systems has seldom remained the same at any two given points of time. Some of the more evanescent structures have come and gone, while others of earlier vintage, have endured. Taking this dynamic view of the situation, alternative formulation such as "Institutional Mechanisms for the Advancement of Women" could be adopted. Mechanisms evolve, change and respond to movements in the internal and external environment. The concept of women's advancement should be at the centre, supported by all the mechanisms working around it, in a concentric formation.

One of the features of the national machinery has been the tendency to concentrate more on programmatic & "delivery" aspects rather than the broad mandate of women's development and empowerment. This means that the realisation of an alternative and more equal organisation of society than that which exists at present, in terms of both the structure and function of relationship between
men and women, remains a distant goal.

Very often, the personnel who operationalise the structures are unable to grasp the "essentials" or non-negotiable elements of their organisational mandates, because of lack of skills in gender analysis and lack of gender sensitivity. They, therefore, concentrate on what they see as concrete programmatic objectives. In this backdrop, the structures often do not facilitate the cause of the advancement of women.

Considerable documentation of the post-Nairobi decade on the working of these machineries showed that they did not succeed fully in the objective of "mainstreaming" or "integrating women in development". Women still continued to be largely peripheral to the macro-planning processes as well as to development planning. Mainstreaming required the rationalisation of resource allocation in all policies and programmes so as to benefit women equitably. The reason for the lack of success of the National Machineries were many, ranging from their location in the under-resourced and invisible ministeries and departments of social welfare, to their overload of function and their lack of outreach to the bulk of poor but economically active women.

Public debate is taking place around the need to review the scope and definition of the National Machinery. This was also the consensus of the 3aNC workshop which met in February 1994 in Delhi to discuss regional inputs into the world conference. The National Machinery, it was resolved, should have a broader connotation so as to include all structures and mechanisms which support the cause of women, whether formally recognised and demarcated or not.
In 1990, by an Act of Parliament, the National Commission for women (NCW) was set up with the specific charter to monitor all matters relating to the constitutional and legal rights provided to women and thus strengthen the national machinery. The Commission has so far reviewed 14 legislations concerning women and proposed amendment bills have been submitted to the government of India for suitable action.

Addressing a press conference on the steps taken by the commission to improve the condition of women in India, Mrs. Mohini Jiri, Chairperson of the Commission informed that the NCW will soon set up a 24-hour Control Room to provide immediate relief to women in distress.

In order to meet the needs of women and children, there has been a progressive increase in the plan outlays over the last four development decades. The outlay of Rs.4 crores in the First Plan (1951-56) has gone up to Rs.2000 crores in the Eighth Five Year Plan (1992-97).

Within the broad goals laid down by the Five Year Plans, Government has consciously fostered an enabling policy environment in which women's concerns are properly reflected, articulated and seriously addressed. 19

The flow of benefits to women in the three core sectors of education, health and employment are to be monitored vigilantly. Women must be enabled to function as equal partners and participants in the developmental process. This approach of the Eighth Plan

marks a definite shift from 'development' to 'empowerment' of women.

As part of this effort many policy instruments have been brought-forth over the years. In addition to women specific policies, there are important women-related policies like the National Policy on Education (1986), The National Health Policy (1983), The National Population Policy (1993) and the National Nutrition Policy (1993).

In spite of these singular policies, programmes and achievements certain critical areas call for immediate attention. They are related to the following:

1. Inadequacy of institutional mechanisms for the advancement of women.
2. Persistent and institutionalised discrimination against the girl child.
3. Feminisation of poverty.
4. Gender blindness in macro-economic policies.
5. Invisibility of women's contribution to the economy and environmental sustenance.
6. Poor participation by women in decision-making structures and processes.
7. Gender gaps in literacy, education and health.
10. Gender biased societal norms.
11. Negative portrayals and perpetuation of gender stereotypes by mass media.

From Mexico to Copenhagen on to Nairobi and finally to Beijing, is just two decades of contemporary social history. In terms of
time frame, two decades of social history constitute a very short span. However, if one looks at the history of the struggle for women's rights both in India and in the world, this period has been one of the most eventful. From the fervent feminism of the sixties to the introspections on women's status in the seventies, to women-in-development debates in the eighties and to focus on gender issues in the nineties, has been a momentous but short transition. From women's problems to women's issues, finally to women's perspectives, there has been a whole reshaping of paradigms of development.

The Indian experience in improving the quality of life of the people and promoting equity provides a wealth of ideas and practices for new directions for the future. The achievements are significant and reflect the efforts made in all directions: the thrust towards poverty eradication, investment in social and economic infrastructure, spread of extension services, information dissemination and strengthening of institutions - social, economic and political - both governmental and non-governmental. This political and administrative framework has also ensured space for reflection and accommodation of the diversity and heterogeneity of India.

A deep concern about the rights and status of women has marked Indian political thinking. A striking feature in Indian society has been the symbiotic and mutually complementary relationship that has developed over the years between government, women's movement and non-Governmental organisations. The women's movement in India continuously interacts with and influences public opinion and government action. This is a tribute both to the maturity of thinking within Government and the movement and to the deep-rooted democratic tradition of this nation.
The law can not be a harbinger of social change nor can it be a norm setter. Is the role of law only to put its stamp when society has clearly indicated that it wants a change? The answer is a clear no. While law alone may not be able to bring about social change, it is a catalytic agent but there has to be a clear understanding about the goal or the pattern of society that is being envisaged for which law is playing a role, otherwise society remains static and law a dead letter.

To conclude, man and woman are not really ruling party and the opposition that they have to go about conspiring to overthrow each other.

It is important to remember that the struggle is against injustice and inequality, not against the male sex. If we must proceed towards a better society, it will not do for the two sexes to behave as if they were perpetually on a battle ground. Both must come to a compromise. Equal rights can be ensured only when man and woman have attained the same level of consciousness. Men must be made to see that this world is not their exclusive possession—it belongs to both sexes. And man and woman both belong to the world.