CHAPTER – 4
4.1 Women’s Rights Are Human Rights

The UN charter reaffirms its faith in fundamental human rights… equal rights of men and women and Art-1 of the Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in dignity and status. Human rights of women have been defined as “collective rights for a women to be seen and accepted as a person with the capacity to decide or act on her own behalf and to have equal access to resources and equitable social economic and political support to develop her full potential, exercise her rights as a full human being and to support the development of others”. We can analyse that denial of any such rights amounts to violation of women’s human rights.

Women and men [will] enjoy, in practice, equal rights, equal access to and control over productive resources, education, health, land, other forms of property, shelter, credit, information, knowledge, skills, technology and markets by adoption of affirmative action wherever necessary and by removing identified impediments.¹

“Life can be bitter to the very bone,
When one is poor, woman and alone”.

A woman has a four dimensional entity – mother, sister, wife, and daughter. According to the Bible she was created from the rib of a man—that is to say—from his middle, and therefore, to be treated not as inferior but equal to man. Also there are these thought provoking lines from the pen of an unknown author:
She was not made out of his head, sir,
To rule and to govern the man,
Nor was she made out of his feet, sir,
By man to be trampled upon
But she did come forth from his side, sir,
His equal and partner to be,
And now they are coupled together,
She oft proves the top of the tree

Even though women constitute half of the world’s population and perform two-thirds of world’s work, they receive only one-tenth of the world’s income and own less than one hundredth of its property. This speaks of a gender bias and deep-rooted prejudice and discrimination against women in general. Besides, a significant percentage of world’s female population is constantly subjected to crimes such as torture, starvation, eve teasing, humiliation, molestation, rape, female foeticide, infanticide, and prostitution, which present a gloomy picture of women’s position. These crimes amount to gross violation of the victims’ rights. But the irony is that women’s rights are not treated and dealt as human rights.²

“If a person is murdered because of his or her politics, the world justifiably responds with courage. But if a person is beaten or allowed to die because she is female, the world dismisses it as ‘cultural tradition’.

Violation of women’s human rights has been a world-wide phenomenon and almost all the countries of the world, irrespective of their advanced or backward socio-economic conditions have not been free from this crime. At the dawn of the 21st Century, women in India still get a raw deal. From literacy and mortality to health and work-related issues, it is an uphill struggle all the way.
In India where women constitute around 48.3 percent of the total population of more than one billion people, only around one million women are in good jobs. Consequently, women constitute only 31 percent of the adult labour force in India, this share being lower than their share in the population. The Economic Survey 2001, notes that the number of women in the past 40 years has more than doubled from 40 million in 1951 to 90 million in 1991, the percentage of women labour to total work force may have declined marginally. Similarly the literacy rate for women was around 39.4 percent in 1991 as compared to 63.9 percent for men. Female illiteracy continues to be particularly pronounced in rural areas where male literacy rate in 1997 was 68 percent, while female literacy rate was 43 percent. There is no denying the fact that the excesses committed against women in India have roots in the past, stereotyped and stem from our age-old attitudes of treating women as commodities rather than as thinking and living human beings. The general perception about how women should be dealt with is what these lines of a poem say:

“A woman a drum and a walnut tree
The more you beat them, the better they be”

However there have been in recent years a number of progressive pronouncements on women’s issues by the law courts. The rights of the women cannot be separated from the rights of all Indian citizens. As an individual, as participant in civil society, as, for example, a contract worker or a lawyer, or as a mother, daughter or wife, every human rights violation impacts on women. Recognizing this, the UN, in its 1995 global campaign “Women’s Rights are Human Rights”, highlighted the cases of individuals and groups of women who have been the invisible victims of human rights violations.
The Government of India has also recognized the particular vulnerabilities of women by its ratification of the UN Convention on the Elimination Of Discrimination Against Women, (CEDAW) in 1993, and earlier, of the UN Convention on the Political Rights Of Women, in 1961, and by passing numerous laws and amendments to legislations that seek to address specific violations of the rights of women.

4.2 Women’s Rights in the Constitution of India

There is no doubt that we are in the midst of a great revolution in the history of women. The evidence is everywhere; the voice of women is increasingly being heard in Parliaments, Courts and in the streets. In C. Masilamani Mudaliar V. Idol of Sri Swami Nattaswami the Supreme Court has referred to the UN Report 1980 in Para 23 which read as follows:

“Women constitute half of the world population, perform nearly two-thirds of house work, and receive one-tenth of the world’s income and own less than one hundredth percent of the world’s property”.

The said judgement says that half of the Indian population is women. They have always been discriminated and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality, and discrimination.\(^5\)

India, being a signatory to various International Conventions, Covenants and Protocols on human rights, has assumed the responsibility to provide and protect various rights of women. The Constitution of India guarantees equality of sexes and therefore the concept of “equality and non-discrimination” finds its due place in Indian Constitution, and to ensure these
principles Articles 14, 15 and 16 have been provided with equality provisions. Art.14 of the Constitution proclaims equality before law irrespective of sex. It has recognised the equality of man and woman in the eye of law. The Article states: “The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India”. Art.15 prohibits discrimination on the basis of sex or religion, race, caste, place of birth or any of them. Art.16 of the Constitution says, “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”. Art.19 guarantees freedom of speech, expression, peaceable assembly, association, and practice of any occupation. The right against exploitation prohibits forced labour and child labour. Cultural and educational rights concern the protection of the interest of minorities.

Besides providing the above fundamental rights the Constitution set out the Directive Principles of State Policy (DPSP), in part IV whereby the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, economic, social and political shall be provided to all citizens irrespective of sex. In pursuance of constitutional directive under Art 39 to provide equal pay for equal work for both men and women, Equal Remuneration Act was passed in 1976. In 1961 Maternity Benefit Act was passed in order to give effect to ILO convention on maternity benefit.

Many other laws have also been passed and progressively interpreted to prevent the exploitation of women, especially family related laws i.e. Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956, Dowry
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Prohibition Act 1961, in an effort to develop women’s personality and to raise her status in the society.

In addition to constitutional provisions some other measures have also been taken to improve women’s needs to raise their status. The first step in that direction is the drafting of the National Perspective Plan for Women, 1988-2000. The Perspective Plan for Women is an effort at a long term over all policy for Indian women, linked to national targets determined for the end of the century in respect of certain basic indicators especially of health, education, and employment. The second important step is establishment of the National Commission for Women in 1992, pursuant to the enactment of the National Commission Women Act 1990. The Commission is an autonomous body and consists of a chairperson, five members and one member secretary, all to be nominated by the Central Government based on a prescribed criteria, set up at the apex level to fulfill the critical objective of achieving equality of status and opportunity for women, safeguarding their interests and eliminating all forms of discrimination against them. Under section 10 the functions of the Commission include:

- Investigation and examination of all matters relating to the safeguards provided for women under the Constitution and other laws.

- Presenting to the central government annually or otherwise reports upon the working of those safeguards and giving in such reports/recommendations on those safeguards for improving the conditions of women.

- Taking up the cases of violations of the provision of the Constitution and of other laws relating to women with the appropriate authorities.
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- Looking into complaints and taking suo motu notice of matters relating to-
  (i) deprivation of women's rights, (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development, (iii) inspecting jails, remand homes, women's institutions or other places of custody where women are kept as prisoners and taking up with the concerned authorities for remedial actions, if found necessary.

- Funding litigation involving issues affecting a large body of women; and

- Any other matter, which may be referred to it by the Central government.

Another major step is the enactment of 73rd and 74th Amendments 1992, which mark a milestone in the participation of women in politics at the grass root level and may well serve to reverse the trends, which stifle their participation. Since India is a party to the Convention of Elimination of All Forms of Discrimination against Women, it is obliged to give effect to its provisions and eliminate discrimination against women in all its manifestations.

4.3 Women's Rights and International Standards

The rights of women along with men have been recognized in major human rights instruments since the establishment of the United Nations on the international platform. Indeed the UN charter itself reaffirms faith in fundamental human rights in equal rights of men and women. Human rights discourse may be regarded as a proper type of rhetorical expression, which is exemplified in the Universal Declaration of Human rights, 1948. The Universal Declaration is an expression of global hope for those millions of our
fellow men and women for whom the attainment of universal human rights is a goal and not yet an existing reality.

The inclusion of women's rights in key United Nations documents, however, has not brought about equality. Consequently a number of other human rights instrument have been passed both by the UN General Assembly and by specialized agencies with regard to various aspects of women’s rights. The two human rights Covenants, on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, reinforce the equality concept and forbid discrimination on accounts of sex. These Covenants refer to equal rights of men and women to the enjoyment of all Civil and Political rights including the right to marry and found a family. In 1951, the International Labour Organization (ILO), adopted a Convention concerning equal remuneration for men and women workers for work of equal values besides adopting two other Conventions to improve the working conditions of women: Viz. Convention on Prohibition of Night Work for Women Employed in Industry (1948), and the Convention Providing Maternity Protection (1952). The other Conventions of special importance to women are the Convention on the Political Rights of Women, 1952, the Convention on the Consent to Marriage, the Minimum Age for Marriage and Registration of Marriage (1962), and the Convention on the Nationality of Married Women (1957), which directly address issues related to the status of women. In addition the United Nations Educational Scientific and Cultural Organisation (UNESCO) has adopted the Convention against Discrimination in Education (1960) which prohibits “any distinction, exclusion, limitation or preference,” on account of sex. However it is the Convention on the Elimination of all Forms of Discrimination against Women, often described as a Bill of Rights for Women, has now been ratified by 154 countries and
adopted by the General Assembly in 1979, which is the major instrument relating to the status of women. It is the most comprehensive international legal instrument on the human rights of women and contains more concrete provisions aimed at the real implementation of the rights already recognised. India has ratified the Convention on 9 July 1993\textsuperscript{13}. The Convention has twin objectives: to prohibit discrimination and ensure equality. (Arts.2-4). The essence of the Convention is that for the first time it provides an extensive definition of the term “discrimination against women”, as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil and any other field. The Convention thus prohibits discrimination not only in public life but also in private life, which clearly includes family relations. The UN General Assembly adopted a Resolution (No.48/104) on 23 Feb 1994 in order to strengthen and complement the processes initiated under the CEDAW. The UN Declaration On The Elimination Of Violence Against Women (1993) cites violence against women as “one of the crucial mechanisms by which women are forced into a subordinate position compared to men”. The UN has appointed a Special Rapportuer on violence against women to collect data and recommend measures to eliminate such violence and its causes.

In addition to conventions and resolutions other activities also have been taken up at international level. As early as in 1947 the Commission on the Status of Women was established. It has become instrumental to develop the Principle of Equality of men and women. Besides this Commission, World Conferences were also held to highlight the women’s issues. The First Inter-
governmental Conference of Women was held in Mexico City in 1975 and the year was designated by the UN General Assembly as the International Year for Women's. The Second World Conference of Women was held in Copenhagen in 1980 focusing on three sub-themes: Education, Employment and Health. The Third World Conference on Women was held in Nairobi, in 1980; it adopted the Forward Looking Strategies (FLS) leading up to the year 2000. The Fourth World Conference on Women was held in Beijing, 1995, resulted in agreement by 189 delegations on a five-year plan to enhance the social, economic, and political empowerment of women with three main objectives: to equip the women to meet the challenges of 21st century for scientific, technological, economic and political development; to empower the women so as to enable them to take part in decision making and to draw up a platform of action for the completion of unfinished works. In this conference many issues regarding women such as health and education, employment, armed conflict, human rights, poverty alleviation, violence, environment and development were discussed at length.

4.4 Rights of Women And Their Violations

India has an elaborate system of laws to protect the rights of women, including the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (Widow Burning) Act, and the Dowry Prevention Act. However the Government is often unable to enforce these laws, especially in rural areas where traditions are deeply rooted. According to a Government of India study... violence against women -- including molestation, (the number of molestation had dropped from 533 in 2000 to 487 in 2001) rape, kidnapping, and dowry-deaths – has increased over the last decade. From the United States Government State Department Reports on Human Rights in India. In 1994 many obstacles to the
realization of women's human rights in India, as elsewhere, are social and cultural in nature, deeply rooted in the traditions of its communities. This report analyses the state of women's rights in India in terms of India's international legal obligations to protect women's rights under CEDAW and ICCPR, and reflects the main concerns of Khalsa Human Rights in focusing on the civil and political rights of women in India. According to the indicators published by the (UNDP) socio-economic status of women in India is very low in comparison with other developing countries. Based on a country's achievements in terms of women's life expectancy, literacy, and real income in comparison to that of the men, India ranks 99 on a list of 130 countries, behind Argentina, Mexico, China and Sri Lanka, and just above Pakistan and Bangladesh, which rank 103 and 108 respectively. While such indicators obviously cannot fully describe the true conditions in any society, such a poor performance in the case of India must be considered a cause for concern. Other statistical evidence, such as the fact that 25% of girls die from malnutrition before the age of 15 (in part a result of paying greater attention to the needs of male children) is even more difficult to argue with. Under Article 7 of CEDAW, India is obligated to ensure that women participate equally in the formulation and implementation of government policy and perform all public functions at all levels of government. This goal is clearly a long way from being realized. Less than 5% of those in Parliament or other government bodies are women. In addition, violation of women's human rights includes:

- Sexual or physical assault and mental harassment;
- Female foeticide and infanticide;
- Female circumcision/Female Genital mutilation (FGM);
- Dowry deaths, Sati, Forced prostitution;
Denial of her autonomy and authority over her body and
Domestic violence.

1. Dowry Deaths

According to Government figures there were a total of 5,377 dowry deaths in 1993, an increase of 12% from 1992. More cases of harassment for dowry deaths were reported in 1999 (1,158) than in 2000 (947).\(^\text{15}\) Despite the existence of rigorous laws to prevent dowry-deaths under a 1986 amendment to the Indian Penal Code (IPC), convictions are rare, and judges (usually men) are often uninterested and susceptible to bribery. Recent newspaper reports have focused on the alarming rate of deaths of married women in Hamirpur, Mandi and Bilaspur districts in the state of Himachal Pradesh.

2. Female Infanticide/Son Preference

According to a recent report by the United Nations Children’s Fund (UNICEF) upto 50 million girls and women are missing from India’s population as a result of systematic gender discrimination. They were either never born or died of chronic malnutrition or because of lack of medical attention.\(^\text{16}\) In most countries in the world, there are approximately 105 female births for every 100 males. In India, there are less than 93 women for every 100 men in the population. The accepted reason for such a disparity is the practice of female infanticide prompted by the existence of a dowry system.

3. Rape

As in other countries throughout the world, rape is extremely common in India. Hardly a day passes without a case of rape being reported in the newspapers. In 2000 the number of rapes reported were 447, in comparison to
A case study which has received a great deal of media attention recently regarding a woman social activist from Rajasthan powerfully illustrates the difficulties of women who have been raped, and gives an insight into the status of women in India.

43 year-old Bhanwari Devi, a backward-caste voluntary worker from Bhateri Village in Rajasthan filed a complaint with the police in 1992 alleging that she had been gang-raped. She had allegedly been raped on September 22, 1992, by members of a rich, high-caste family, whom she had attempted to report for organizing a child marriage as part of her job in the state sponsored Rajasthan’s Women’s Development Project.

Following its transfer from the local police to the State Criminal Investigation Department, and then under pressure from women’s groups, to the Central Bureau of Investigation (CBI), the district and sessions court in Jaipur dismissed her case and acquitted all the five accused: Ram Sukh Gujjar, Ram Karan Gujjar, Gyarsa Gujjar, Badri Gujjar, and Shravan Sharma. The judgement emphasized that her First Information Report (FIR) was not immediately filed and that she did not tell anyone else in the village about her ordeal.

4. Custodial Rape

Custodial Rape is a particularly important category of rape since it represents a flagrant abuse of the authority of the Indian government, the very same institution which is bound to promote and protect the rights of women. Women’s rights are held in the society as a whole. Hundreds of cases of police rape have been reported in India in recent years, but convictions of police officers for raping women in their custody remain rare. According to a recent report by the People’s Union for Democratic Rights (PUDR) – an Indian human
rights organization – police officers were charged in 10 cases of rape in New Delhi between 1989-1993. They reported that the courts tended to ignore the victim’s vulnerability, and often subject the victim to so much emotional strain that the case is dropped completely.

Unlimited humiliation and violence against women may extend to for example, wife beating, stripping of women in public, economic exploitation of women, exploitation of women labour by less payments, discrimination etc.

5. Domestic Violence

Domestic Violence comprises any act of cruelty that causes trauma or agony. One can take recourse to civil or criminal law against domestic violence. A civil case may lead to judicial separation, divorce, obtaining maintenance, compensation for damages, custody of children etc. A criminal case may mean punishment and jail for the offender.18

The Domestic violence (Prevention) Bill prepared by the Lawyers Collective, a non-governmental organization, is before a group of ministers to give a final shape to this legislation. The Bill define that such violence could be physical, sexual, (without her consent), verbal, mental, or economic.19

4.5 Injustice Specific To Women: Role of PIL

With unsatisfactory investigations into crimes against women, biased laws and an unsympathetic judiciary, the writ jurisdiction of the court in PIL has been mobilized for some of the worst instances of injustice. These cases were filed in tandem with the growth of the women’s movement and investigative journalism and with the support of some legal successes20, and an increasing tendency of looking towards the court. There have been in recent years a number
of progressive pronouncements on women’s issues by the law courts. PIL procedures have enabled enlightened citizens to take up various issues affecting the interest of women from disadvantaged sections of the society. These have all served to bring women’s problems up front in the judicial process.

1. Sexual Harassment

Sexual harassment is a legitimate issue as it affects working conditions, health, and safety at work and the rights of men and women to equal treatment. There is no hard and fast definition of sexual harassment but it is essentially unacceptable behaviour which is based on one’s sex, and which is unreasonable, unwelcome, and offensive. In the European Commission code of practice sexual harassment is described as unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This can include unwelcome physical, verbal or nonverbal contact. Examples of sexual harassment include:

- Unwelcome sexual harassment;
- Suggestions that sexual favours may further your career or their refusal may hinder it;
- Lewd, suggestive and over familiar behaviour;
- Insults or ridicule of a sexual nature; and
- Sexual jokes or comments.

Sexual harassment comes in two forms quid pro quo and “hostile working environment”. The former is pretty straightforward and fortunately quite rare in this day and age. Essentially, quid pro quo harassment involves
making conditions of employment (hiring, promotion, retention) contingent on the victim's providing sexual favours.

**Sexual Harassment Guidelines**

In view of the increase of cases reported on sexual harassment of women, the Supreme Court of India, on a writ petition filed by women’s NGOs, has laid down guidelines to obviate such harassment at places of work, and at other institutions including universities, hospitals and other professional bodies. In the absence of any legislation, the court has held that these guidelines shall be legally binding and enforceable. With respect to employment, the guidelines are applicable to the government, public and private sector, and cover women drawing a salary or an honorarium or working as volunteers. The court has directed all employers and other responsible persons in workplaces and other institutions to ensure the prevention of sexual harassment of women and to provide procedures for resolution, settlement, and prosecution of acts of sexual harassment. Most significant, the Supreme Court has brought sexual harassment within the purview of human rights violations.

In 1997, an open court judgment in the gang rape of a *gram sevak* laid down guidelines for all public and private organizations to constitute complaint cells and display the list of behaviours that could be constructed as sexual harassment. The Supreme Court had said that any behaviour that threatened the dignity of a woman at the work place should be construed as an act of harassment.

In order to prevent the occurrence of sexual harassment, the court has directed employers and persons in charge of the workplace to take the following steps: -
• Express prohibition of sexual harassment at the work place should be notified, published and circulated in appropriate ways.

• The rules/regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

• As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (standing orders) Act, 1946.

• Appropriate work conditions should be provided in respect of work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at work places and no employee women should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Despite Supreme Court guidelines, a staggering 80 percent of the companies in the government and private sectors do not have complaint mechanism to record sexual harassment at work place, says a leading women’s organization.21

• Nearly 50 percent of women polled in a survey from both the organized and unorganized sectors had experienced gender discrimination or physical and mental harassment at work.

• 85 percent had never heard of the Supreme Court ruling on sexual harassment laws at work.

• Only 11 percent were aware that sexual harassment is an offence punishable by law and that they could seek legal redressal.22
PIL seeks prevention of women staff's harassment in hospitals.

Sexual harassment in medical institutions for long has been an issue simmering beneath the surface. A group of Bangalore women employees of hospital and nursing homes along with the city's leading women's rights group, Vimochana, moved the Karnataka High Court to expose the sexual assaults heaped on them at their work place every other day. In the PIL some of them have alleged, that they have suffered at the hands of the institute's medical director. The petition has cited examples. A nursing student was admitted to the hospital after she developed a heart problem. The medical director, while on his morning rounds slipped into her room on the pretext of examining her. But what followed could not be termed any medical examination. He literally misbehaved with the ailing student even as other doctors looked on, the PIL claims.

The petition has further cited an incident of a woman doctor, who works as the head of the department of physiology in another leading city hospital. The doctor refused to alter the internal assessment marks of some students, a demand made by the management. Subsequently, she was asked to hand over her chair to a junior doctor, the PIL says. These are just two of many incidents where in women employees in hospitals and nursing homes and medical students are frequently subjected to sexual harassment. Most quiet fearing a career impediment and social stigma attached to a victim of sexual harassment.23

Vishaka V. State of Rajasthan24. This class action case deals with sexual harassment of women at the work place and was filed by social activists arising out of the alleged gang rape of a social worker in a village in Rajasthan. Since a separate criminal action addressed the rape incident, the Supreme Court addressed the need for, and its power to issue guidelines through judicial process
to prevent sexual harassment of women at work place, specifically in the absence of enacted legislation. The Court relied on constitutional provisions, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), commitments made by the Indian Government at the Fourth World Conference on Women in Beijing and the Beijing Statement of Principles on the Independence of the Judiciary to hold the Court had both the power and the duty to issue guidelines to prevent sexual harassment of women at work place. The guidelines would function as law until suitable legislation was enacted.

**The Constitutional Provisions Protecting the Rights of Women at Workplace.** The Court found sexual harassment at work place violated constitutional guarantees of equality before the law (Art. 14), the right to life and liberty (Art. 21) and the right to practice any profession or to carry out any occupation, trade or business (Art. 19(1)(g). The Court held the right to carry on any occupation, trade or profession depended on the availability of a “safe” working environment. Art.15 further prohibits discrimination, *inter alia*, on grounds of sex and permits the state to make special provisions for women and children. Art.42 enjoins the state to make provision for just and humane conditions of work and maternity relief and Art.51-A makes it the duty of every citizen, *inter alia*, to renounce practices derogatory to the dignity of women. Regarding the relevance of International Conventions to interpret domestic laws, the Court highlighted Constitutional provisions that encourage such reliance. Art.51 of the Indian Constitution require the state to foster respect for international law and treaty obligations.

*Nilabati Behera V. State of Orissa* and *Minister for Immigration and Ethnic Affairs V. Teoh* Enforcing the Convention on the Elimination of All Forms of Discrimination against Women and commitments made at
international meetings, the Indian government ratified the Convention (CEDAW), adopted by the UN General Assembly resolution 34/180 of 18 December 1979, in June 1993. Art.11 of CEDAW requires state parties to eliminate discrimination against women in employment and to ensure equality between man and women particularly at the work place as an inalienable right. Art.24 mandate state parties to adopt necessary measures at the national level to realise rights recognized in CEDAW.

The court also relied on commitments made by the Indian government at the Fourth World Conference on Women in Beijing, to set up a national policy on women, a Commission for Women’s Rights and a national level mechanism to monitor the implementation of these commitments, to emphasize national intent to protect the rights of women. The court also discussed its role and responsibility in enforcing human rights. The Beijing statement of principles on the independence of the judiciary emphasizes the need “to promote, within the proper limits of the judicial function, the observance and the attainment of human rights.” The court felt in this case it was necessary for it, acting under Art.32 of the Constitution and the executive power of the union acting under Art.73, to jointly take action and issue guidelines to protect the rights of women at work place, in the absence of existing legislation.

2. The Plight of Women Prisoners

Women Prisoners Need Help\textsuperscript{27}, A first of its kind study on women in the country has revealed that they desperately need counseling for their physical as well as their mental well being. A study, “Mental health and care of women and children in prison in Andhra Pradesh,” conducted by the Penal Reform and Justice Association (\textit{PRAJA}) and Penal Reform International with cooperation
from the Andhra Pradesh prisons department, has shown that almost all women prisoners need such assistance.

(PRAJA) studied cases of 330 prisoners from the city and the Rajahmundry prisons. The study, however, makes it clear that the aim of the work was to look at the prisoners as persons with problems and finds methods to address these, and do away with the “animals in a zoo approach” attitude towards the prisoners. The various problems that found by women prisoners were identified the biggest among the worry for many was the fate of their children.

Sheela Barse V. State of Maharashtra, The plight of women prisoners was brought to the notice of the Supreme Court by Sheela Barse about horrible conditions in police lock-up in Bombay. She wrote that she had interviewed 15 women prisoners in Bombay Central Jail with the permission of the Inspector General of Prisons between 11 and 17 May 1982 and 5 out of them told her that they had been assaulted by the police, while in custody.

Of these 5, two were alleged to have been subjected to assault and torture by the police while they were in police lock-up. The court treated the letter as a writ petition and directed Miss A.R. Desai, Director of the college of Social work, Nirmala Niketan, Bombay to visit the Bombay Central Jail and interview women prisoners lodged there in including, the two named in the letter to ascertain the truth. Miss Desai visited the jail and submitted a detailed report after interviewing women prisoners lodged therein. The report was an insight into the problems and difficulties facing women prisoners. The court strongly recommended to the Inspector General of Prisons, Maharashtra to have a look at this report and consider what further steps are necessary to be taken to improve conditions in Bombay Central Jail and other jails in the state to make life for the
women prisoners more easily bearable by them. The court showed considerable concern about the conditions of women prisoners languishing in jails and observed as under:

"Imagine the helpless condition of a prisoner who is lodged in a jail, who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible, for him or the members of his family to obtain legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be undertrials or convicted prisoners".

Further guidelines for having separate female lock-ups in reasonably good localities: women constables to guard them; interrogation of women should be done only before female police officers; whenever a women is taken to police lock-up the nearest legal aid committee should be informed; and a sessions judge should make periodic surprise visits to the lock-ups to meet the prisoners.

3. Dowry Killings

Joint Women's Programme V. State of Rajasthan\textsuperscript{29}, In this case a petition was filed concerning dowry killings under Article 32 of the Constitution asking for an investigation into the unnatural deaths of Mrs. Kantha and Mrs. Prasani Devi. The Supreme Court entertained the writ petition and ordered that an officer not below the rank of Superintendent of Police should conduct investigation. In this interim order the court directed the states of Rajasthan and
Haryana to constitute Special Dowry Cell associating one or two leading social activists.

4. Glorifying Sati

*All India Democratic Women’s Association V. Union of India.* The Supreme Court dealt with an incident relating to the evil practice of committing and glorifying *Sati*. In a PIL the Courts, while dealing with the after development of *Sati*, alleged to be committed by *Roop Kanwar in Rajasthan*, held that the restraint imposed on holding *Chunry* Ceremony, should continue, without any variation to prevent glorification of *Sati*.

5. Protective Homes

*In Dr. Upendra Baxi V. State of U.P.* On a PIL filed by the eminent law professor, the Supreme Court issued a series of administrative orders to improve the Conditions in Agra and Delhi protective homes for women. Directions were issued by P.N. Bhagwati and O.Chinnapa Reddy to provide sufficient number of bathrooms and toilets. Draw up a scheme for vocational training and rehabilitation. Minor girls were kept in the company of hardened prostitutes who have been rescued from brothels and also women suffering from diseases. Panels of Doctors to visit the home and check the state of health of the women lodged there.

References:

1. Excerpt from India’s country paper at the Fourth United Nations Conference on Women in Beijing, stating the governments intended action to improve the status of women.


4. Ibid.

5. AIR 1996 SC 1697.

6. Art. 23.

7. Art. 29.


11. Article 30 of the Covenant.

12. Article 54 of the Convention.


15. Ibid.


25. 1993 (2) SCC 746.

26. 128 ALR 353 (Australia).


30. AIR 1989 SC 1280.