Chapter - I

Human Rights of Women: An Overview
HUMAN RIGHTS OF WOMEN'S: AN OVERVIEW

Human Rights are basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language or other status.

Human rights include civil and political rights such as right to life, liberty and freedom of expression, and social, cultural and economic right including the right to participate in culture, the right to food, and the rights to work and receive an education. Human rights are protected and upheld by international and national laws and treaties.¹

A human right is a universal moral right, something which all men, every where, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human.²

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on International conventions and their implication in order to ensure adherence to a universal standard of acceptability.

With the advent of globalization and the introduction of new technology these principles gain importance not only in protecting human beings from the ill effects of change but also in ensuring that all allowed a shore of the benefits.

The concept of human rights can be found as far back in time as the age of the Greek Philosophers Socrates, Plato and Aristotle. Their writings on the idea of natural rights contain many of the same principles that are associated with human rights.

On the national level, the conception of Human Rights got its breed to originate and develop in the form of religion in different countries and in different times. The conception may be felt to originate in the ideas of mercy, kindness and pity on human beings in various scriptures. Vedas are the most ancient or the first, religious book of mankind, revealed in Aaryaavarta the Great Land of Aryans. The following preaching in the Yajurveda throws a prism of light on friendly dealing and behaviors with all creatures of the world what to say of only human beings:

Oh Lord Let my eye view is firm in order that all creatures may look at me by friendly sight. In the same way I also may see all creatures with friendly sight and all of us creatures may see each other in friendly view.

In most references, leaving lust, anger etc. mental derelictions and narrowness, to deal with others with truth and liberality has been preached in the Vedas 'Vasudhaiva Kutumbakam' the whole world is certainly one family, has been preached and pressed in Vedic literature. And on the national level India is the first who have originated and respected the conception of International law. In the Babylonian Laws the seeds of International Law may be traced in the reign of Laigas Uruka of Laigas (3260 B.C.) Sergon of Akkar (2300 B.C.) and Hammubaric of Babylon (1792-1750 B.C.). Similarly, in the Assyrian Laws, in the reigns of Tighalat Pilashar 1st (1115-1077 BC) and in the Hittites Laws, in the reign of King Telpenus. Similarly, these laws may be found in the jurisprudence of Laoj and Confucius (550-478 B.C.). In the city states of Greece the right of equal freedom of speech-isogorie, equality before law-isonomia, the right of vote-jus subragie, the right to be elected to public office- jus honorum, the right to trade-jus commercial, the right of access to justice- jus actionis may be found to have been prevalent. The roots of protection of human rights may be found in the civil law -jus civil and the law of nations -jus gentium of the
Magna Carta,—Magna Carta was imposed upon King John by the Pretates, Earls and Barons, after having defeat at the hands of the King of France. This declaration of freedom dealt with the rights of different contemporary sections of the society; for instance, that the churches will be independent of the control of the King, London and other cities will be free to utilize or practice their freedoms and customs. Unjust taxes will not be imposed upon traders or businessmen and so on. A very important Article of this declaration was Article 39 which provided that no free person shall be made a prisoner, evicted by unjust means, exiled from the country, or will not be killed or murdered or executed in any way unless such action was permissible by some decisions of the House of Lords or the law of the land and neither anyone shall be deprived of justice.4

Human Rights are derived from the principle of Natural Law. They are neither derived from the social order nor conferred upon the individual by the society. They reside inherently in the individual human beings independent of and even prior to his participation in the society. Consequently, they are the result of recognition by the State but they are logically independent of the legal system for their existence. Their origin may be sought in the natural law and not in the positive law. They are based on their intrinsic justification and not on their enactment or recognition by certain individuals. They do not depend on any formulation or accepted authority. To conclude it may be said that a positive legal system which does not recognize human rights is not law.5

The idea that the individual has rights claims upon society, or against society: that these rights which society must recognize, on which it is obliged

to act, are intrinsic to human rights.  

The human rights are inalienable. "Human person possesses rights because of the very fact that it is a person, a whole, a master of itself and of its acts by natural law, the human person has the right to be respected, is the subject of rights, and possesses rights. These are things which are owed to a man because of the very fact that he is a man."  

Human Rights are the rights that a human being has in virtue of whatever characteristics he has those are both specifically and universally human. If the only relevant condition for enjoying certain rights is being human, and if this property does not admit of degrees, there cannot be differences of degree in the extent to which the rights in question are held; this is, all human beings have them to the same degree.  

Of late the Human Rights Movement has come to the fore. By his very nature and fact of birth the human being is said to have natural rights. Later, the American Revolution gave rise to a character of the Rights of Man; The Russian Revolution has retreated and enlarged it in certain spheres. The Indian Constitution has formulated Fundamental Rights. As time passed and centuries elapsed after the rumbling of dissent and protest on part of Women, they too have been given an equal status in the Constitution of the civilized words. Women, constituting half of humanity are coming into their own. The irrevocable link between human rights and women's demands is becoming, apparent and manifest day by day. Yet there is great disparity between theory and practice. Laws are not the only ones to be changed. Women's situation has to undergo a transformation. No doubt, the Constitution of India has given right to women to contest for legislature and executive

bodies, yet in reality women's are denied these rights.⁹

Women do not derive greater privileges nor higher status than men, what they demand is equality with men. Of course for her service to humanity in perpetuating the human race, she has to be respected and honoured. The rights of women irrespective of constitutional guarantees of equality before the laws and equal protection of the laws remain today by the large unrealized aspirations. As women became more and more conscious of discrimination against them in various forms they started asserting their right to equality. All over the globe to begin with women had no political rights.

Initially the right to vote was restricted to propertied men only.¹⁰

In the USA by the 19th amendment of the Constitution women acquired equal rights. In Canada until 1916 women were denied to participate in federal as well as provincial elections. From 1916 onwards various Dominion Acts were passed to enfranchise women.

In U.K universal adult franchise was granted only in 1949. Later on Switzerland granted equal political rights to women. India straight away took the plunge when its framed its Constitution and granted the right to vote to all its citizens who have had no meaning of a preponderant majority of its population had been dowed the right to vote on grounds of poverty, illiteracy and sex. Then it could not have provided a Government of the people and by the people.¹¹

Equality is the cornerstone of every democratic society which aspires to social justice and human rights. In virtually all societies and spheres of activity women are subjected to inequalities in law in fact. This situation is both caused and exacerbated by the existence of discrimination in the family, in the community and in the work place. While causes and

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consequences may vary from country to country, discrimination against women is widespread.

The concept of equality means more than treating all persons in the same way. Equal treatment of persons in unequal situations will operate to perpetuate rather than eradicate injustice. True equality can only emerge from efforts directed towards addressing and correcting these situational imbalances; it is this broader view of equality which has become the underlying principle and the final goal in the struggle for recognition and acceptance of the human rights of women.

The International Community has become aware of the need to achieve equality between the sexes and of the fact that an equitable society cannot be attained if fundamental human rights of half of human society, i.e., women, continue to be denied and violated. However, the bleak reality is that the harmful traditional practices focused on in this fact sheet have been performed for male benefits. Female sexual control by men, and the economic and political subordination of women, perpetuate the inferior status of women and inhibit structural and altitudinal changes necessary to eliminate gender inequality.12

UN and Human Rights of Women

The first time agreement was reached that women's rights and human rights were indivisible was the declaration and programme of Action in 1933 at Vienna, calling for integration of women's rights in United Nations human right initiative; it asserted that certain gender-specific attacks which violate human rights constitute violating of women's rights also. Declaring that the elimination of violence against women is an obligation upon state under the human right charter.

11. Ibid., 02.
The principle of equal protection and non-discrimination on the basis of sex is clearly enshrined in the United Nations Charter. The United Nations charter call for promoting respect for human rights for all without distinction on the basis of face, sex, language or religion.  

**Universal Declaration of Human Rights (UDHR)**

The Universal Declaration of Human Rights adopted in 1948 further elaborated the scope of human rights.

The Universal Declaration of Human Rights is the basic international statement of the inalienable and inviolable rights of all members of the humanity family, it is intended to serve as "the common standard of achievement for all people and all nations" in the effort to secure universal and effective recognition and observance of the rights and freedom it tests. The declaration is accepted almost universally as a gauge by which Government can measures their progress in the protection of human rights. In the United Nations organs, the declaration has an authority surpassed only by the charter.

Member states have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect and observance of human rights and fundamental freedoms.

Thus, Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping the declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the people of territories under their jurisdiction.

UDHR symbolized an incredible achievement and signaled humanity’s comprehensive attempt to deal with four freedoms: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear.\textsuperscript{14}

The hope of the UN that the UDHR would enshrine a new world order rooted in the dignity of the person and a commitment to eliminate material inequalities and enable freedom, peace and justice to flourish was commendable. Initially propose 1947, it was guided through the General Assembly procedure by first lady Eleanor Roosevelt and adopted without dissent on 10\textsuperscript{th} December 1948, when fourth eight member Nation of the UN General Assembly voted in favour, eight abstained and to were absent. Given the range of regimes, political philosophies, and cultural understanding among this group their agreement in defense of human rights was a bold move forward in the history of humanity and for the first time made human rights universal issue.\textsuperscript{15}

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should, act towards one another in a spirit of brotherhood.\textsuperscript{16}

Article 1 of UNIVERSAL DECLARATION OF HUMAN RIGHTS thus proclaims the inherent freedom and equality in dignity and rights of all human being.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

\textsuperscript{14} Elisabeth Relichart, (ed) \textit{Challenges in Human Right A social work perspective}, p.19 (2009).
\textsuperscript{15} \textit{Ibid.}, p. 20.
\textsuperscript{16} Article 1 of Universal Declaration of Human Rights 1948.
Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.\textsuperscript{17}

As noted above, a remarkable thing about the Universal Declaration is that it is neither addressed to nations nor member State of the U.N but to every individual.

**Civil and Political Rights**

Right to life, liberty and security of person.\textsuperscript{18}

Prohibition of slavery and slavery trade. \textsuperscript{19}

Prohibition of torture, cruel, inhuman or degrading treatment or punishment.\textsuperscript{20}

Right to be recognized as a person before law.\textsuperscript{21}

Equality before the law and equal protection of law against any discrimination in violation of the Declaration.\textsuperscript{22}

Right to effective remedy by the competent national tribunals.\textsuperscript{23}

Prohibition of arbitrary arrest, detention or exile.\textsuperscript{24}

Right to a full equality to a fair and public hearing by an independent and impartial tribunal.\textsuperscript{25}

Right to be presumed innocent until proved guilty according to law in public
trial.\(^{26}\)

Freedom from ex-post facto laws.\(^{27}\)

Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honour or reputation and right to protection by law against such interference.\(^{28}\)

Right to freedom of movement and residence within the borders of State.\(^{29}\)

Right to leave any country, including his own and to return to his country.\(^{30}\)

Rights to seek and enjoy in other countries asylum from prosecution respect or political crimes.\(^{31}\)

Right to nationality.\(^{32}\)

Freedom from arbitrary deprival of nationality and right change nationality.\(^{33}\)

Right to marry and to found a family and equal right as to marriage, during marriage and at its dissolution.\(^{34}\)

Right to own property and freedom form arbitrary deprival of property.\(^{35}\)

Right to freedom of thought, conscience and religion.\(^{36}\)

Right to freedom of opinion and expression.\(^{37}\)

Right to freedom of peaceful assembly and association.\(^{38}\)

\(^{26}\) Ibid., Article 11 para 1.
\(^{27}\) Ibid., Article 11 para 2.
\(^{28}\) Ibid., Article 12.
\(^{29}\) Ibid., Article 13 para 1.
\(^{30}\) Ibid., Article 13 para 2.
\(^{31}\) Ibid., Article 14.
\(^{32}\) Ibid., Article 15 para 1.
\(^{33}\) Ibid., Article 15 para 2.
\(^{34}\) Ibid., Article 16 para 1.
\(^{35}\) Ibid., Article 17.
\(^{36}\) Ibid., Article 18.
\(^{37}\) Ibid., Article 19.
Right to take part in the government of his country. 39

Right of equal access to public service in his country. 40

**Economic, Social and Cultural Rights**

Right to social security and the right to realization of the economic, social and cultural rights indispensable, for his dignity and the free development of his personality. 41

Right to work free choice of employment, just and favourable conditions of work and protection against unemployment. 42

Right to equal pay for equal work. 43

Right to just and favourable remuneration. 44

Right to form and to join trade Unions. 45

Right rest and leisure. 46

Right of living adequate for the health and well-being himself and his family. 47

Right of all children to enjoy same social protection. 48

Right education. 49

Right of parents to choose the kind of education for their children. 50

38. Ibid., Article 20.
39. Ibid., Article 21 para 1.
40. Ibid., Article 21 para 2.
41. Ibid., Article 22.
42. Ibid., Article 23 para 1.
43. Ibid., Article 23 para 2.
44. Ibid., Article 23 para 3.
45. Ibid., Article 23 para 4.
46. Ibid., Article 24.
47. Ibid., Article 25 para 1.
48. Ibid., Article 25 para 2.
49. Ibid., Article 26 para 1.
50. Ibid., Article 26 para 3.
Right to protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author.\textsuperscript{51}

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

   Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.\textsuperscript{52}

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms welfare may in no case be exercised contrary to the purposes and principles of the United Nations.\textsuperscript{53}

   Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.\textsuperscript{54}

\textsuperscript{51} Ibid., Article 27 para 2
\textsuperscript{52} Ibid., Article 28.
\textsuperscript{53} Ibid., Article 29.
\textsuperscript{54} Ibid., Article 30.
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It provides the basis for the formulation by the United Nations of covenants and conventions declarations and recommendations on specific aspects. The rights proclaimed in the Universal Declaration can be broadly divided into two kinds. The first refer to civil and political rights, which include the right to life Liberty and security for person, freedom from slavery and torture, equality before the Law: protection against arbitrary arrest, detention or exile, the right to a fair trial, the right to own property, political participation, the right to marriage, the fundamental freedoms to thought conscience and religion. Opinion and expression freedom of peaceful assembly association and the right to take part in the govt. of his/her country, directly or through freely chosen representative. The second, UDHR sets out 30 articles, Article 1 and of the declaration state that all human beings are born equal in dignity and a rights are entitled to all the rights and freedoms set forth in the declarations without distinction of any kind such as race, colour, sex, language, religion political or other opinion national or social origin, property birth or other statute.

Article 3 to 21 of the Declaration set forth the civil and political rights to which all human beings are cultural, including:

- The right of life liberty and security of person
- Freedom from slavery and servitude
- Freedom from torture or cruel, inhuman or degrading treatment or punishment
- The right to recognition every where as a person before the law, the right to an effective judicial, remedy, freedom from arbitrary arrest, detention or exile the right to a fair trial and public hearing by an independent and impartial tribunal, the right to be presumed innocent until proved guilty.
- Freedom from arbitrary interference with privacy, family, home or correspondence freedom from attacks upon honour and reputation; the right to protection of the law against such attacks.
- Freedom of movements, right of asylum; right to a nationality.

- The right to marry and to have a family, the right to own property.

- Freedom of opinion and expression.

- The right to peaceful assembly and association.\(^55\)

Although the Universal Declaration of Human Rights is not equally binding over the years, its main principles have acquired a status of standards, which should be respected by all states. When the Declaration was adopted, there were only 58 members States of the United Nations. Since that time this number has more than tripled. The continuing impact of the Declaration and the use made of it bears out its universal acceptance and it become a common reference in human rights for all nations.

Above all the declaration has realized that everyone is entitled to a social and international order in which the right and freedom set forth in the declaration can be fully realized.\(^56\) However the rights recognized in the Declaration are not absolute. Such limitation as determined by law may be impose for the purpose of securing due recognition and respect for the rights freedom of other and of meeting the just requirement of morality, public order and General welfare in a democratic society.\(^7\) These right and freedom may in no case be exercise by State, group of individual contrary to the purpose and principle of the United Nation.\(^58\)

The declaration is a common standard of achievements for all people and all nations it is a set of fundamental principles that applies to all people because it is rooted in the universal needs of the human conditions.

The declaration insists, however that this recognition and observance of human rights has to be universal and effective. It is not enough that the State sign

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58. *Ibid.*, Article 29 (3)
up to human rights treatise, if they continue to violate rights within their country. It is not enough for States to appraise other countries according to the standards of human rights, if they are not prepared to accept such standards themselves."

The provisions of the Universal Declaration on Human Rights are cited as justification for actions taken by the U.N. They have also inspired international conventions both within and outside the U.N. in a large number of instances, the Universal Declaration has been used as a conduit ad a yardstick to measure the degree of respect for and compliance with the international standard of human rights.

It has a great moral and political force behind it and serves as a general guide, code of conduct or yardstick from which the action of men and women and nations are judge so far as the respect for and observance of human rights are concerned.

The Universal Declaration which was originally conceived as a Statement of objectives to be achieved by Government and as such, no part of binding law, has now (53 years later) been accepted by so many States to be an international standard against which their behaviour is measured. Indeed the Universal Declaration has become legally binding constituting an authoritative interpretation of the Charter and as new rules of customary international law binding on all States. To some extent at least the Declaration has by custom recognized, as laying down rules binding upon States.

**Convention on The Elimination of All Forms of Discrimination Against Women, 1979 (Cedaw)**

The convention sets out in legally binding form, internationally accepted principles on the right of women which are applicable to all women in all fields. This milestone in the protection of women's human rights was adapted by

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United Nation General Assembly in December 1979.\(^{60}\)

The convention seeks to address pervasive social, cultural and economic discrimination against women, declaring that state should. Endeavour to modify social and cultural patterns of conduct that stereotype either sex or put women in an inferior position. It also declares that state should ensure that women have equal rights in education and equal access to information, eliminate discrimination against women in access to health care, and end discrimination against women in all matters relating to marriage and family relations. The convention declares that State must act to eliminate violations of women's rights whether by private person groups or organizations.

The convention set clearer definitions and standards than the earlier covenants with respect to gender equality and expands the protection against discrimination. In particular it recognizes that because socially defined gender roles differ, provisions against discrimination and abuse can not simply require equal treatment of men and women.\(^{61}\)

CEDAW seeks to advance women's human rights protection by applying a gender perspective to principles enunciated in the UDHR. CEDAW was the first human right treaty to define discrimination against women. Its first 16 Articles call on governments to ensure the eradication of such abuses in practically all walks of life.

In Articles 5, CEDAW also hold government's responsible taking steps to modify practices based on stereotypes about women's inferiority. The implication of this article is that discriminatory cultural, traditional, or religious practices may be harmful to women and girls and that government is responsible to take steps to modify or eliminate them.

For the purposes of the present convention, the term "discrimination against


\(^{61}\)
women" shall mean any distinction, exclusion or restriction made on the basis of
discrimination which has the effect or purpose of impairing or nullifying the recognition,
enjoyment or exercise by women, irrespective of their marital status, on a basis
of equality of men and women, of human rights and fundamental freedoms in
the political, economic, social, cultural, civil or any other field.62

Provides a comprehensive definition of discrimination which is then
applicable to all provisions of the convention. In contrast to the International
Bill of Human Rights, which simply refers to "distinction" or
"discrimination" on the basis of sex, Article 1 gives a detailed explanation
of the meaning of discrimination specifically against women. Such
discrimination encompasses any difference in treatment on the grounds of
gender which: Intentionally or unintentionally disadvantages women;
Prevents society as a whole from recognizing women's rights in both the
domestic and public spheres.

Prevents women from exercising the human rights and
fundamental freedoms to which they are entitled.

In a number of countries throughout the world, women are denied
their basic legal rights, including the right to vote and the right to own
property. Such instances of legally entrenched differentiation will be
easily identified as discriminatory. At the same time, not every
differentiation will constitute discrimination. The definition set out above
makes it clear that, in addition to establishing the criterion of
differentiation sex, it is also necessary to consider the outcome of the
differentiation. If the result is a nullification or impairment of equal rights in
any of the forms set out above then the differentiation is discriminatory
and therefore prohibited under the Convention.

Parties condemn discrimination against women in all its forms, agree to

pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national Constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

(g) To repeal all national penal provisions which constitute discrimination against women.60

Establishes, in a general way, the obligations of States under the Convention and the policy to be followed in eliminating discrimination against women. By becoming parties to the Convention, States accept the
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responsibility to take active steps to implement the principle of equality between men and women into their national Constitutions and other relevant legislation. States should also eliminate the legal bases for discrimination by revising existing laws and civil, penal and labour codes. It is not enough merely to insert anti-discrimination clauses into legislation. The Convention also requires States to protect women's rights effectively and provide women with opportunities for recourse and protection against discrimination. They should incorporate sanctions into legislation that deter discrimination against women, and establish a system for filing complaints within national tribunals and courts. States to the Convention must take steps to eliminate discrimination in both public and private spheres. It is not enough to strive for vertical gender equality of the individual woman vis-à-vis public authorities, States must also work to secure non-discrimination at the horizontal level, even within the family.

Article 2 recognizes that legislative changes are most effective when made within a supportive framework, i.e. when changes in the law are accompanied by a simultaneous change in the economic, social, political and cultural spheres. Under sub-paragraph (f) States not only requires to modify laws, but also to work towards the elimination of discriminatory customs and practices.

States shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Defines the appropriate measures in all fields which should be taken to implement the policies set out in Article 2. It also serves to demonstrate the

63. Ibid., Article 2.
64. Ibid., Article 3.
indivisibility and interdependence of the rights guaranteed by the Convention and the basic human rights to which all persons are entitled. Other United Nations instruments already guarantee equal dignity and rights for all human beings. Article 3 recognizes that, unless States take active steps to promote the advancement and development of women, they will not be able to enjoy fully the basic human rights guaranteed in the other instruments.

1. Adoption by States of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards, these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.\(^{65}\)

Recognizes that, even if women are given legal (de jure) equality, this does not automatically guarantee that they will in reality be treated equally (de facto). To accelerate women's actual equality in society and in the workplace, States are permitted to use special remedial measures for as long as inequalities continue to exist. The Convention thus reaches beyond the narrow concept of formal equality and sets its goals as equality of opportunity and equality of outcome. Positive measures are both lawful and necessary to achieve these goals.

At its seventh session, in 1988, the Committee on the Elimination of Discrimination against Women noted that significant progress had been made in guaranteeing women's legal equality, but that further steps needed to be taken to promote their de facto equality. In its general recommendation No. 5

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\(^{65}\) Ibid., Article 4.
States make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.

These special measures should be used simply to speed up the achievement of de facto equality for women, and should not create separate standards for women and men. In other words the appropriateness of any special measures should be evaluated with regard to the actual existence of discriminatory practices. Consequently, once the objectives of equality of opportunity and treatment are reached, these special measures are no longer needed and should be discontinued.

There will, however, always be exceptional cases where special treatment is the only way to guarantee true equality, the individual and community interests of children, for example, require continuous consideration of the health, income and earnings of mothers. Special measures to protect maternity are therefore always necessary and should never be abandoned.

States shall take all appropriate measures;

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the
primordial consideration in all cases.\textsuperscript{66}

The importance of the Convention on the Elimination of All Forms of Discrimination against Women lies in the fact that it adds new, substantive provisions to the other instruments which also deal with equality and non-discrimination. Article 5 recognizes that, even if women's legal equality is guaranteed and special measures are taken to promote their \textit{de facto} equality, another level of change is necessary for women's true equality. States should strive to remove the social, cultural and traditional patterns which perpetuate gender-role stereotypes and to create an overall framework in society that promotes the realization of women's full rights. The prevalence of gender-role stereotypes is seen most particularly in the traditional concept of women's role in the domestic sphere. Many women are denied an education because their role is considered primarily as one of caring for the family. Moreover, this role is often viewed as unimportant and not, in itself, worthy of an education. Sub-paragraph (b) of Article 5 calls on States to ensure that education includes a proper understanding of the important role of maternity as a social function. It also requires that States recognize the raising of children as a responsibility that should be shared by women and men, and not as a task that is borne by women alone. This may well require the development of social infrastructures (e.g. paternal leave schemes) which would make possible a sharing of parental duties.

States shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.\textsuperscript{67}

Urges States to take all appropriate measures to combat traffic in women and exploitative prostitution. In addressing these problems, it is essential for States to consider and act upon the conditions which are at the

\textsuperscript{66} \textit{Ibid.}, Article 5.
\textsuperscript{67} \textit{Ibid.}, Article 6.
root of female prostitution: underdevelopment, poverty, drug abuse, illiteracy, and lack of training, education and employment opportunities. States should also provide women with alternatives to prostitution by creating opportunities through rehabilitation, job-training and job-referral programmes.

States which tolerate the existence of exploitative prostitution, girl-child prostitution and pornography (which are always exploitative), and other slave-like practices are in clear violation of their obligations under this Article. It is not enough to enact laws against such injustices; in order adequately to discharge their responsibilities, States must ensure that measures are taken to implement penal sanctions fully and effectively.

States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.\(^{68}\)

States shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

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Requires States to undertake two levels of action to create equality for women in political and public life. First, States must broaden the rights guaranteed in Article 25 of the International Covenant on Civil and Political Rights and ensure to women the right to vote in all elections and public referenda of particular importance for women is the right to vote anonymously. Women who are not allowed to vote anonymously are often pressured to vote in the same way as their husbands and are thus prevented from expressing their own opinions.

Secondly, Article 7 recognizes that, while it is essential, the right to vote is not in itself sufficient to guarantee the real and effective participation of women in the political process. The article therefore requires States to ensure to women the right to be elected to public office and to hold other government posts and positions in non-governmental organizations. These obligations can be realized by including women on lists of governmental candidates, affirmative action and quotas, eliminating gender restrictions for certain posts, increasing promotion rates for women and developing government programmes to attract larger numbers of women into meaningful (as opposed to merely nominal) political leadership roles.

1. States shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States shall grant women equal rights with men with respect to the nationality of their children. States shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations. While many
of the decisions which directly affect the lives of women are made within their own countries, important political, legal and social trends are both forged and reinforced at the international level. For this reason it is essential that women are adequately represented in international fora as members of government delegations and as employees of international organizations.\textsuperscript{69}

The goal of equal representation of women at the international level is still far from being realized. In general recommendation No. 8 adopted at its seventh session, in 1988, the Committee on the Elimination of Discrimination against Women recommended that, in implementing Article 8 of the Convention, States make use of temporary special measures such as affirmative action and positive discrimination as envisaged by Article 4. States should also use their influence in international organizations to ensure adequate and equal representation of women.

States shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. States shall grant women equal rights with men with respect to the nationality of their children.\textsuperscript{70}

There are two basic obligations contained in Article 9. First, it requires States to guarantee women the same rights as men to acquire, change or retain their nationality. For example, many countries discriminate against female nationals who marry foreigners. Foreign wives of male nationals may be permitted to acquire their husband's nationality, but foreign husbands of female nationals are not granted the same right. The result in such cases is that men who marry foreigners are allowed to remain in their country of

\textsuperscript{69} Ibid., Article 8.
\textsuperscript{70} Ibid., Article 9.
origin, whereas women who marry foreigners may be forced to move to their husband's country of origin. Such a law would be considered discriminatory and should therefore be amended.

Secondly, Article 9 requires States to extend to women the same rights as men regarding the nationality of their children. In many countries, children automatically receive the nationality of the father. In implementing this article, States must establish formal legal equality between men and women with regard to acquiring, changing or retaining nationality and conferring it upon their spouse or children.

States shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women.

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.
(d) The same opportunities to benefit from scholarships and other study grants.

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.

(g) The same opportunities to participate actively in sports and physical education.

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. 71

Recognizes that equality in education forms the foundation for women's empowerment in all spheres, in the workplace, in the family and in wider society. It is through education that traditions and beliefs which reinforce inequality between the sexes can be challenged, thereby helping to break down the legacy of discrimination handed from one generation to the next. The obligations of States under Article 10 can be conveniently divided into three categories. The first obligation is equality of access. There are very few places in the world where women are denied a formal right to education. However, true equality in education requires the development of specific and effective guarantees to ensure that female students are provided with access to the same curricula and other educational and scholarship opportunities as male students. In many countries, parents do not expect their daughters to have careers outside the home. Consequently, girl-children are encouraged to leave school after completing only a basic or elementary

71. Ibid., Article 10.
education- Even at the elementary level; male students may be given a more rigorous and demanding curriculum than their female classmates- States should reform the education system so that it no longer creates or permits the existence of separate standards and, opportunities for females and males. In addition, States should, where necessary, create special programmes to encourage female students to further their education and to encourage parents to permit this. Such encouragement could take the form of scholarship funds designed for female students attending universities and technical and vocational schools.

1. States shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular.

(a) The right to work as an inalienable right of all human beings.

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

(e) The right to social security, particularly in cases retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

(f) The right to protection of health and to safety in working
Chapter I

conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States shall take appropriate measures.

(a) To prohibit subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

To provide special protection to women during pregnancy in types of work proved to be harmful to them.\textsuperscript{22}

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

States clearly that women shall enjoy the basic human right to work. It then sets out a comprehensive list of obligations of States in order to ensure that this right can be fully and effectively realized.

First, States must guarantee women the same employment rights and opportunities as men. It is not sufficient for a State to outlaw discriminatory hiring practices. Equal employment opportunities, for example, presume
equality in opportunities to prepare for employment through education and vocational training. In the recruitment process, women must be subject to the same hiring criteria as men.

Secondly, women must have the right to free choice in selecting a profession, and must not be automatically channelled into traditional "women's work". To discharge this obligation, States must grant women full equality in education and employment opportunities and must work towards the creation of social and cultural patterns which allow all members of society to accept and work towards the presence of women in many different types of career.

Thirdly, women in the workplace must have the right to equal remuneration and all work-related benefits. States must guarantee women equal pay for equal work, as well as equal treatment for work of equal value and equal treatment in evaluating the quality of work. Women are also to enjoy the protection of social security. Provision should be made for paid leave as well as retirement, unemployment, sickness and old-age benefits.

Fourthly, women in the workplace must be protected from discrimination based on marital status or maternity. The wording of this provision is very clear. States must prohibit employers from using pregnancy or marital status as a criterion in the hiring or dismissal of women employees. States must also take measures that allow parents to combine family obligations with work responsibilities, by giving them benefits such as paid maternity leave, child-care subsidies and special health protection during pregnancy.

Finally, true equality in employment requires the implementation of measures to protect women from all forms of violence in the workplace. One of the most prevalent forms of violence against women in the workplace is sexual harassment of women by male co-workers. Instead of being treated as equal co-workers, women are often treated as sexual objects. In response to this

72. Ibid., Article 11.
widespread problem, the Committee on the Elimination of Discrimination against Women, in general recommendation No. 12 adopted at its eighth session, in 1989, called on States to include in their reports to the Committee information on legislation against sexual harassment in the workplace. In 1992, the Committee recommended that States adopt effective legal measures, including penal sanctions, civil remedies and compensatory provisions, to protect women against all kinds of violence, including sexual assault and sexual harassment in the workplace.

1. States shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this Article, States shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Specifically requires States to ensure the equality of women and men in access to health care services. This requires the removal of any legal and social barriers which may operate to prevent or discourage women from making full use of available health care services. Steps should be taken to ensure access to health care services for all women, including those whose access may be impeded through poverty, illiteracy or physical isolation.

While not yet a universally recognized right in itself, the ability of a woman to control her own fertility is fundamental to her full enjoyment of the full range of human rights to which she is entitled, including the right to health. In recognition of this fact, Article 12 makes specific reference to the area of family planning. Both women and men must have a voluntary choice in planning their families, and States must accordingly make available information and education about medically approved and appropriate
methods of family planning. Any laws which operate to restrict a woman's access to family planning or any other medical services (e.g. by requiring prior permission of her husband or a near relative as a prerequisite for treatment or for the provision of information) would be contrary to this article and consequently should be amended. Where laws requiring the spouse's authorization for medical treatment or for the provision of family planning services have previously existed and subsequently been amended, States should ensure that medical workers as well as the community are informed that such authorization is not required and that the practice is contrary to the rights of women.

Paragraph 2 of Article 12 recognizes that women need extra care and attention during pregnancy and the post-natal period. States must recognize women's needs both as providers and receivers of health care during these times, and must ensure that they have access to adequate health care facilities and resources, including adequate nutrition during and after pregnancy.

It is estimated that, each year, at least half a million women die from causes related to pregnancy and childbirth, most of these deaths occurring in the developing countries of Asia and Africa. Implementation of the provisions of Article 12 is an essential first step in reducing the high rate of maternal deaths.

In its examination of the scope and application of Article 12, the Committee on the Elimination of Discrimination against Women has focused particularly on ending discrimination against women in national AIDS strategies. General recommendation No. 15, adopted by the Committee at its ninth session, in 1990, calls on States to enhance women's role as care providers, health workers and educators in the prevention of infection with HIV, and to give special attention to the subordinate position of women in some societies which makes them especially vulnerable to HIV infection.

1. States shall take all appropriate measures to eliminate discrimination
against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits.

(b) The right to bank loans, mortgages and other forms of financial credit.

(c) The right to participate in recreational activities, sports and all aspects of cultural life.  

Unless States guarantee women financial independence, they will not have true equality with men because they will not be able to head their own households, own their own homes, or start their own businesses. Many private businesses discriminate against women employees by not giving them the same access to family benefits and insurance as male employees; similarly, loan and mortgage companies often impose higher standards on women and require higher premiums or deposits for obtaining credit. Social security provisions may discriminate against single mothers by presuming dependence upon a man. States must take steps to ensure that women have equal access with men to credit and loans, and that they also have equal access to family benefits.

Equal rights of participation in sporting, recreational and other cultural activities, presumes the existence of real equality of access. To achieve this, States should ensure that all legal or social obstacles to the full participation of women in these areas are removed and that funding, grants or other forms of support are implemented under a principle of equality of opportunity.

1. States shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural
areas.

2. States shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right.

(a) To participate in the elaboration and implementation of development planning at all levels.

(b) To have access to adequate health care facilities, including information, counselling and services in family planning.

(c) To benefit directly from social security programmes.

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency.

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment.

(f) To participate in all community activities.

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.

(h) To enjoy to housing, sanitation, electricity and water supply, transport and communications. 74

1. States shall accord to women equality with men before the law.

2. States shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and, domicile. Recognizes that rural women are a group with special problems needing careful attention and consideration by States. In addition, by extending the Convention to women in rural areas, States are explicitly recognizing the importance of the work of rural women and their contribution to the well-being of their families and the economy of their countries. This emphasis on development is unique in a human rights treaty and represents clear acknowledgement of the fundamental link between achieving equality and involving women in the development process. Article 14 requires States to eliminate discrimination against women in rural areas, to implement their right to adequate living conditions; and to take special measures to ensure them, on a basis of equality with men, the same participation in and benefits of rural development. Special measures to achieve these goals could include ensuring the participation of women, especially rural women, in the elaboration and implementation of development planning in order that they may work to create a better environment for themselves encouraging and providing assistance for the establishment of self-help groups and cooperatives and providing rural women with access to adequate health care, family planning facilities and social security programmes to give
them greater financial and social control over their lives. States should also give women in rural areas the opportunity to break out of traditional roles and choose different lifestyles by ensuring them equal access to training and education programmes, as well as to agricultural credit, loans and marketing facilities.

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Confirms women's equality with men before the law, and additionally requires States to guarantee women equality with men in areas of civil law where women have traditionally been discriminated against. For example, in many countries, women do not have the same property rights as men: traditional property law often discriminates against women in that only male children are able to inherit the family land, and that husbands have automatic ownership over all of their wife's property upon marriage. Similarly, legislation in a number of countries establishes that the administration of family property is to be undertaken by the male head of the family—thereby excluding women. Many legal systems do not allow a woman to enter into contracts in her own right.

75. Ibid., Article 15.
but require the signature of her husband before a contract is considered legally binding, even in cases relating to her own property or earnings. Article 15 requires States to take positive steps to ensure women full equality in civil law. States must therefore repeal or amend any laws or instruments which have the effect of restricting women's legal capacity.

Paragraph 4 of Article 15 requires equality in the law regarding movement of persons and freedom to choose one's own residence and domicile. A law which makes a woman's domicile dependent upon her husband's would be considered discriminatory under this provision, as would a law which operated to restrict the right of a woman (including a married woman) to choose where she lives.

1. States shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.

(a) The same right to enter into marriage.

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.

(c) The same rights and responsibilities during marriage and at its dissolution.

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the interests of the children shall be paramount.

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

(f) The same rights and responsibilities with regard of
guardianship, warship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation, in all cases the interests of the children shall be paramount.

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. 76

Addresses the problem of discrimination against the women in the private sphere, including discrimination in the area of family law. Much discrimination against women takes place in their own homes by their husbands, their families and their communities. In some societies, young women or girls are forced into arranged marriages. In many areas of the world, married women are not permitted to participate equally in deciding how many children they will bear, how these children will be brought up, and when and whether or not they themselves should work. Even in countries where women enjoy a greater say in their family life, deeply ingrained stereotypes regarding the proper role of women as being that of housewife and homemaker may prevent them from pursuing outside careers or taking part in important decision-making with their husbands.

76. Ibid., Article 16.
This area of discrimination is usually based on long-standing cultural or religious practices, it is thus one of the most difficult areas to penetrate and one of the most resistant to change. Yet the drafters of the Convention realized that change in this area is essential in order for women to attain full equality. To bring about this change, States must first take all appropriate measures to eliminate or amend existing laws or instruments relating to marriage and the family which discriminate against women. Such laws would include, for example, those which do not give women the same legal rights to divorce and remarriage as men; laws which do not allow women full property-ownership rights; and laws which do not grant them equal rights regarding the care and custody of children, whether in marriage or following divorce. Secondly, States must take steps actively to ensure that women are able to exercise the same rights as men, including the right freely to enter into marriage and to choose a spouse. In keeping with the freedom of a woman to choose when and whom she should marry, a minimum age for marriage should be guaranteed by law.

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principle legal systems.

2. The members of the Committee shall be elected by secret ballot from a list
of persons nominated by States.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States which have nominated them, and shall submit it to the States.

4. Elections of the members of the Committee shall be held at a meeting of State convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3, and 4 of this Article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State whose expert has ceased
to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention. Addresses the problem of discrimination against women in the private sphere, including discrimination in the area of family law. Much discrimination against women takes place in their own homes by their husbands, their families and their communities. In some societies, young women or girls are forced into arranged marriages. In many areas of the world, married women are not permitted to participate equally in deciding how many children they will bear, how these children will be brought up, and when and whether or not they themselves should work. Even in countries where women enjoy a greater say in their family life, deeply ingrained stereotypes regarding the proper role of women as being that of housewife and homemaker may prevent them from pursuing outside careers or taking part in important decision-making with their husbands. This area of discrimination is usually based on long-standing cultural or religious practices; it is thus one of the most difficult areas to penetrate and one of the most resistant to change. Yet the drafters of the Convention realized that change in this area is essential in order for women to attain full equality. To bring about this change, States must first take all appropriate measures to eliminate or amend existing laws or instruments relating to marriage and the family which discriminate
against women. Such laws would include, for example, those which do not give women the same legal rights to divorce and remarriage as men; laws which do not allow women full property-ownership rights, and laws which do not grant them equal rights regarding the care and custody of children, whether in marriage or following divorce. Secondly, States must take steps actively to ensure that women are able to exercise the same rights as men, including the right freely to enter into marriage and to choose a spouse. In keeping with the freedom of a woman to choose when and whom she should marry, a minimum age for marriage should be guaranteed by law.

Consisting of a preamble and 30 articles, CEDAW defines what constituted discrimination against women and sets up an agenda for national action to end such discrimination.

The preamble to the convention stated the despite the affirmation of equal right of men and women in the UN charter, the UDHR and the international covenants, extensive discrimination against women continues to exist. Critics have highlighted that it is ironical that the international community decided that the solution to the problem of violations of women’s rights protected by human rights lay in creating another international instrument. However despite these criticisms, CEDAW was definitely a step forward in protection of women's right.

The convention is divided in 6 parts first part Article 1 defines discrimination and broadly outlines the nature of state obligation in terms of law, policy and programmes that the states need to undertake in order to eliminate discrimination Article 1 defines discrimination 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 the basis of equality of men and women, of human right and fundamental freedoms in the political,
economic, social cultural, civil, or any other fields.

The convention provides fundamental basis for eliminating discrimination provides state to the convention also commit themselves to adopting temporary special measures aimed at accelerating de facto equality between men and women. Provides that State should modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. CEDAW is based on the principles of State obligation. It recognizes that despite legal right being granted to women in many countries, discrimination persist, and women's access to legal right are curtailed by denial of women, right to economic and social development.

Part II of the convention deals with right of women in the political and public arena. It also grants to women equal right to their nationality and the nationality of their children Article 9 (1) (2).

Part III of the convention contain the right to education Article 10, employment Article 11, health care and family planning Article 12, economic and social benefits Article 13, it also focuses on the problems faced by rural women and calls on state to eliminate discrimination against women in rural areas Article 14.

Part IV of the convention deals with legal and civil regrets. Article 15, grants women equality before law. Article 16 (1) calls upon State to eliminate discrimination against women in all matter's relating to marriage and family relations. Article 16 (2) prohibits child marriage.

Part V of the convention establishes a committee on the elimination of discrimination against women (CEDAW) to monitor progress made in the implementation of the Convention. Article 17-22 details the establishment and function of the CEDAW committee.
Part VI  Article 23-30 deals largely with administrative and other procedural aspects of the connection.\(^{77}\)

CEDAW is a comprehensive bill of rights of women it has integrated various concerns hitherto expressed in an ad hoc manner. It provides a legal framework for women's right but it does not automatically confers these right.

However it legitimizes their struggle to realize their right by providing a set of internationally validated standards. In order to truly exploit the potential of the convention, women's group needs to build awareness about the provisions and the convention among national audiences and play an effective role in reporting and monitoring process.

**Convention on The Nationality of Married Women, 1958**

That conflicts law in practice with reference to nationality arises as a result of provisions concerning the loss or acquisition of nationality by women as a result of marriage.

In Article 15 of UDHR the General Assembly of the United Nations has proclaimed that everyone has the right to nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Desiring to co-operate with the United Nations in promoting universal respect for, and observance of human right and fundamental freedoms for all without distinction as to sex.

Each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, and the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.\(^{78}\)

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77. *Ibid* 5, p. 11-12.
78. Article 1 Convention of the Nationality of Married Women, 1958.
Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national. 79

a. Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

b. Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right. 80

4. The present Convention shall be open for signature and ratification on behalf of any State member of the United Nations and also on behalf of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations. 81

Forth World Conference on Women, Beijing, 1995

Republic of China, which, has hosted one of the largest global conference ever held, with June 17000 participants, including 6,000 delegates from 189 countries, over 4000 representative of accredited non governmental organization, a host of international civil servants and about 4,000 media representative more than 30,000 people participated in the non

79. Ibid., Article 2.
80. Ibid., Article 3.
81. Ibid., Article 4.
governmental organization.

The message of this conference is that women's issues are global and universal. Deeply entrenched attitudes and practices perpetuate inequality and discrimination against women, in public and private life, on a daily basis, in all parts of the world. At the same line, there has emerged a consensus that equality of opportunity for all people a essential to the construction of just and democratic society for the twenty first century. The fundamental linkage between the three objective of the conference equality, development and peace are now recognized by the fourth world conference on women held in Beijing in 1995 is notable. In that it finally put the U.N stamp on the concept that Women's right are human rights and also for the fact that it initiated gender mainstreaming which denoted the acceptance of gender as a holistic approach to humanity which includes both man and women. The Beijing Declaration and Platform for action identified 12 critical areas of concern which require urgent action to achieve the goal of gender equality.

Out of these 12 critical areas are women's human right. Violence against women constitutes one of the critical areas of concern, as does women and armed conflict.82

It was held in the Beijing declaration that the human rights of women and of the girl child are an inalienable, integral and indivisible part of Universal Human Right. The full and equal participation of women in political, civil and economic, social and cultural life, at the national, regional and international Levels, and the eradication of all forms of discrimination on ground of sex are priority objective of the international community. Human rights and fundamental freedom are the birthright of all human beings, their protection and promotion is the first responsibility of

Governments.

The world conference on Human rights reaffirmed the solemn commitment of all states to fulfill their obligation to promote universal respect for, and observance and protection of, all human right and fundamental freedoms for all, in accordance with the charter of the united nations other instruments relating to human rights and international law. Equal right of men and women are explicitly mentioned in the preamble to the charter of the United Nations are major international human right instrument include sex as one of the ground upon which states may not discriminate.

Governments must not only refrain from violating the human rights of all women, but must work actively to promote and protect these rights. Recognition of the importance of the human rights of women is reflected in the fact that three quarters of the state members of the United Nations have become parties to the CEDAW.

**Objectives of Beijing Declaration 1995**

Promote and protect the human right of women, through the full implementation of all human rights instruments, especially the Convention on the Elimination of all forms of Discrimination against Women action to be taken by Governments.

- Work actively towards ratification of or accession to and implement.
- Limit the extent of any reservation to the convention on the Elimination of all forms of Discrimination against Women.
- Consider drawing up national action plan identifying steps to improve the promotion and protection of human rights, inducting the human rights

of women, as recommended by the world conference on Human Rights.

- Create or strengthen independent national institutional for the protection and promotion of these right, including the human rights of women, as recommended by the world conference on Human Right

Develop a comprehensive human right education programme to raise awareness among women of their human rights and raise awareness among others of the human rights of women.

- Include gender aspects in reporting under all other human right conventions and instruments including ILO Conventions, to insure analysis and review of the human rights of women.

- Give full, equal and sustained attention to the human rights of women in the exercise of their respective mandates to promote universal respect for and protection of all human rights-civil, cultural, economic, political and social rights including the right to development

- Provide training in the human rights of women for all United Nations personal and officials, especially those in human rights and humanitarian relief activities, and promote their understanding of the human rights of women so that they recognize and deal with violation of the human rights of the women and can fully take into account the gender aspect of their as.

Declaration on The Elimination of Discrimination Against Women, 1967

Considering that the people of the United Nations have in the charter, reaffirmed their faith, in fundamental human rights, in the dignity and worth of the human person and in the equal right of men and women. Universal Declaration on Human Rights asserts the principle of non-discrimination and proclaim that all human beings are born free and equal indignity and rights and that everyone is entitled to all the rights and freedoms set forth their in without distinction of any kind, including any distinction as to sex,
Taking into account the resolution, declaration convention and recommendations of the United Nations and the specialized agencies designed to eliminate all forms of discrimination and to promote equal rights for men and women. Despite the charter of the United Nations the Universal Declaration of Human rights, the international covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, their countries to exist considerable discrimination against women.

The discrimination against women is incompatible with human dignity and the welfare of the family and of society presents their participation on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity.

Bearing in mind the great contribution made by women to social, political, economic and cultural life and the part they play in the family and particularly in the rearing of children. Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women as well as men in all fields. Considering that it is necessary to ensure the Universal recognition in law and in fact of the principles of equality of man and women solemnly affirms this declaration.84

Human being constitute the basic element of all organized societies with in the state and the international community in the present organization of the society state has the fundamental task to create conditions of life affording adequate protection of the individual and permitting reasonable opportunities for the full development of the individual's personality. In other words, the realization of human rights is and will remain the first and final goal and purpose of the state for all times to come.

Both nationality and internationally and almost all over the world, human rights have now become a live issue. The foundational norm governing the concept of human rights is that of the respect for human personality and its absolute worth, regardless of colour, race, sex and religion or other consideration. Human rights are widely considered to be those fundamental moral rights of the person that are necessary for a life with human dignity.  

The Commission on The Status of Women, 1996

The commission on the status of women recommends to the Economic and Social Council for the adoption of the following draft resolution. Recalling that the General Assembly in resolution 50/203 decided that the General Assembly, the economic and social council and the commission for the status of women, in accordance with their respective mandates and in accordance with Assembly resolution 48/162 of December 1993 and other relevant resolutions, should constitute a three-tiered intergovernmental mechanism that would play the primary role in the overall policy making and follow up, and in coordinating and implementing and monitoring of the platform for action, reaffirming the need for a coordinated follow up to and implementation of the results of major international conferences in the economic social and related fields.

That the follow-up to the fourth world conference on women should be undertaken on the basis of an integrated approach to the advancement of women within the frame work of a coordinated follow up to and implementation of the results of major international conferences in the economic, social and related fields, as well as the overall responsibilities of the General Assembly and the economic and social council. The conference affirms:

That the commission on the status of women shall have a catalytic role in mainstreaming a gender perspective in policies and programmes.

That the inter agency committee on the follow up to the fourth world conference on women, once established by the administrative committee on coordination, shall inform the commission and the economic council and social council of the progress of its work, for the purpose of system-wide coordination and that a gender perspective shall also be fully integrated in the work of all thematic task forces established by the Administrative Committee on coordination.

That the platform for action should be implemental through the work of all the bodies and organization of the United Nations system during the period 1995-2000, and notes that institution of the United Nations especially devoted to the advancement of women, including the international research and training institute for the advancement of women and the United Nations. Development fund for women, are in the process of reviewing their programmes of work in the light of the platform and its implementation process related to the conference to the maximum extent possible and request the secretary-General to make appropriate arrangement to assure full utilization of existing channels of communication with nongovernmental organization in order to facilitate board participation and dissemination of information.

Some specific comments on Human Rights of women by the Commission,

1. It should be emphasized that women's rights are human rights.

2. It should also be emphasized that the human rights of women and of the girl child are an inalienable, integral and indivisible part of all human rights and fundamental freedom,
3. It should be stressed that this is one of the priority objective of the United Nations,

4. The United Nations should develop a comprehensive policy programme for mainstreaming the human rights of women throughout the United Nation system,

Emphasizing the strengthening of the cooperation and coordination between different entities of the United Nations in the promotion and protection of the Human rights of women.

5. The centre for Human rights should take into account the programme of action of the international conference on population and development and the platform of Action of the fourth world conference in all aspects of the human rights of women.

6. Integration of the human right of women in all activities of the United Nation should be emphasized. 87

Commission on the Status of Women is one of the first bodies established by the UN Economic and Social Council. Set up in 1946 it monitors the situation of women and promotes their rights in all societies around the world. It prepares recommendations and report for the UN on any issue affecting women. In case of urgent problem, the commission can run for immediate international action to prevent all alleviate violations of women's right.

The commission on intergovernmental body has 45 members, each elected for four years. Membership reflects following geographical composition, 13 States from Africa, 11 from Asia, 4 from Eastern Europe, from Latin American and the Caribbean and 8 from Western Europe and after

86. D.B. Rao, Mrs. V.V. Laxmi, Mr. V.V. Rao, Mr. V.V. Krishna, Status and Advancement of Women, p.437 (2000).
87. Ibid., p. 474.
state. The commission meets annually for a period of at least 8 days.

Second World Conference on Human Rights Held In Vienna, (Austria) 1993

It declared that the human right of women and the girl child are an inalienable integral and indivisible part of universal human right and that the women's human rights should form an integral part of the United Nation human rights activities. Traditional human rights group that had long concentrated on human rights abrogation by government against their citizens begin to accept the fact that violations of rights by citizens against each other over equality valid human rights abrogation. The private and public sphere began to merge in human right theory and practice. Issue regarding women's human rights was the most dramatic agenda item at the 1993 world conference on human rights held in Vienna. (Austria). Virtually every garment at the conference felt compelled to give at least lip service to the violence issue and to women's woman rights. As a result, the Vienna Declaration and programme of Actions contained an extensive section on women human right with additional references throughout the document.88

The declaration was adopted by the General Assembly in 1993. The Declaration defines violence against women as any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of Liberty, whether accruing in public or private life. It outlines the steps stars and united Nations, its agencies and programme, should lake to address gender based council against women, and makes clear the states should not invoke any custom, tradition, or religious consideration to avoid their obligation with respect to its implementation, and should exercise due diligence to present, investigate and in accordance with national legislation, punish acts of violence against

women, whether those acts are perpetrated by the state or by private persons.\textsuperscript{89}

**The National Commission for Women, 1990**

Though there is no statute as yet in India that addresses itself directly to sexual harassment, two statutes may be of particular help to victims of sexual harassment. These are the National Commission for Women Act, 1990, and the Protection of Human Rights Act, 1993.

The Statement of Objects and Reasons of the National Commission for Women Act, 1990 states:

Successive Commissions on women had noted in their Reports the unequal status of women obtaining in every sphere of life and had suggested the setting up of an agency to fulfill the surveillance functions as well as to facilitate redressed of their grievances. Several women activists and voluntary action groups had also been making persistent demands for setting up of a Commission for women. The country cannot progress as long as the inequality persists with reference to half of its population. Having realized the importance of the issue, the Government decided to set up a Commission for women to be called the National Commission for Women, consisting of a Chairperson, five Members and a Member Secretary.

The main task of the Commission shall be to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislations and suggest amendments wherever necessary. It will also look into the complaints and take *suo moto* notice of the cases involving deprivation of the rights of women in order to provide support, legal or otherwise, to helpless women. The Commission shall monitor the proper implementation of all the legislations made to protect the rights of women so as to enable them to achieve equality in all spheres of life and equal

\textsuperscript{89} V.P. Srivastava, *Hand Book on Crime against Women*, p. 23(2005).
participation in the development of the nation.

The Preamble to the National Commission for Women Act, 1990 states that it is an Act to constitute a National Commission for Women and to provide for matters connected therewith or incidental thereto.

National Commission for Women

Section 3(1) of the National Commission for Women Act, 1990 requires the Central Government to constitute a body to be known as the National Commission for women to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. Section 3(2) of the Act provides for the composition of the Commission. It states that the Commission shall consist of a Chairperson, five Members and a Member Secretary. All of them have to be nominated by the Central Government. The Chairperson has to be a person committed to the cause of women. The five Members should be persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organizations (including women activists), administration, economic development, health, education or social welfare. At least one member each has to be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes, respectively. The Member Secretary should be an expert in the field of management, organizational structure or sociological movement, or an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

Functions of the Commission

Section 10 of the Act lays down the functions of the Commission. It states:

(1) The Commission shall perform all or any of the following functions, namely.
(a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.

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

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

(d) Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations.

(e) Take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities.

(f) Look into complaints and take *suo moto* 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) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.

(g) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.

(h) undertake promotional and educational research so as to suggest ways of
ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity.

(i) Participate and advise on the planning process of socio-economic development of women.

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

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

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

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

(n) Any other matter which may be referred to it by the Central Government.

(2) The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a
memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(4) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (b) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely—

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

(b) Requiring the discovery and production of any document.

(c) Receiving evidence on affidavits.

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

(e) Issuing commissions for the examination of witnesses and documents, and

(f) Any other matter which may be prescribed.

Section 16 of the Act requires the Central Government to consult the Commission on all major policy matters affecting women.

The Protection of Human Rights Act, 1993

The Protection of Human Rights Act, 1993 was enacted to provide for better protection of human rights and for matters connected therewith or incidental thereto. The statement of objects and reasons notes that the human rights embodied in International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16th December, 1966, stand substantially protected by the Constitution of India. However, there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and emerging trends in
the nature of crime and violence, the Government has been reviewing the existing laws, procedures and system of administration of justice, with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation. Taking into account the views of all concerned, the Act was enacted.  

The Preamble to the Protection of Human Rights Act states that it is an Act to provide for the Constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

The term Human Rights as used in this Act means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants enforceable by courts in India, International Covenants means the International Covenant on Civil and Political Rights and the International Covenant on economic, Social and Cultural right adopted by the General Assembly of the United Nations on the 16th December, 1966. The definition of human rights is wide enough to encompass the principles embodied in the Vienna Declaration on the elimination of all forms of discrimination against women (CEDAW).

As observed by the Supreme Court, Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated by the universal declaration of Human Right. Democracy, development and respect for human rights and fundamental freedoms are inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political social economic and cultural life are

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90. People’s Union for Civil Liberties v. Union of India (2005) 2 SCC 436, per Y.K. Sabarwal J.
91. Section 2 (1) (d).
92. Section 2 (1) (f).
concomitants for national development social and family stability and growth, culturally socially and economically. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights. 194

National Human Rights Commission

Chapter II of the Act provides for the National Human Rights Commission. Section 3(1) deals with the constitution of such Commission by the Central government to exercise the powers conferred upon, and to perform the function assigned to it under this Act. Section 3(2) deals with the composition of the Commission. It provides that the Commission shall consist of a Chairperson who has been the Chief Justice of the Supreme Court; one member who is, or has been, a Judge of the Supreme Court, one Member who is, or has been, the Chief Justice of a High Court, and two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. Section 3(3) provides that the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12. Sub-section (4) of Section 3 provides for a Secretary-General “who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him”.

Functions and Powers of the Commission

Chapter III of the Act deals with the functions and powers of the Commission. Section 12 deals specifically with the functions of the Commission and thus provides94:-

(a) Inquire, *suo moto* or on a petition presented to it by a victim or any person on his behalf, into complaint of :-

(i) Violation of human rights or abetment thereof; or

(ii) Negligence in the prevention of such violation, by a public servant;

(b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

Powers relating to inquiries.—(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely: 96

(a) Summoning and enforcing the attendance of witnesses and examining them on oath.

(b) Discovery and production of any document.

(c) Receiving evidence on affidavits.

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

(e) Issuing commissions for the examination of witnesses or documents.

(f) Any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sections 176 and Section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted

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95. Section 12.
96. Section 13.
Chapter-I

Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in Section 175, Section 178, Section 179, Section 380 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

The power to conduct any investigation pertaining to the inquiry has been provided for in Section 14 of the Act. It provides;

Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State
Government with the concurrence of the Central Government or the State Government, as the case may be.97

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilized under sub-section (1) may, subject to the direction and control of the Commission,—

(a) Summon and enforce the attendance of any person and examine him.

(b) Require the discovery and production of any document, and

(c) Requisition any public record or copy thereof from any office.

(3) The provisions of Section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilized under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Section 15 of the Act provides as under:

**Statement made by persons to the Commission.**—No statement made

97. Section 14.
by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement. Provided that the statement. 98

(a) Is made in reply to the question which he is required by the Commission to answer or

(b) Is relevant to the subject matter of the inquiry. Section 16 of the Act may also be noted. It provides:

Persons likely to be prejudicially affected to be heard.—If, at any Stage of the inquiry, the Commission. 99

(a) Considers it necessary to inquire into the conduct of any person; or

(b) Is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense.

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Inquiry into complaints.—The Commission while, inquiring into the complaints of violation of human rights may. 100

(i) Call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it provided that—

(a) If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its

98. Section 15.
99. Section 16.
own.

(b) If on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(ii) Without prejudice to anything contained in clause (i) if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Steps after inquiry.—The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely.101

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons.

(2) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary.

(3) Recommend to concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.

(4) Subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative.

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall within a period of one months

100. Section 17.
101. Section 18.
or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission.

(6) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.