“In the chequered history of mankind, one finds disparate cultures. However distant they may be in time and space, they have have at least one thing in common i.e. contempt for women, which is not only offensive to human dignity but also violative of basic human rights”.

What is both tragic and alarming is that in an era of modernity and globalisation, when women are carving out their own niche in every field, the feudal and patriarchal mindset remains as strongly rooted as ever in our society. The National Girl Child Week was observed in India last September with the objective of promoting rights of the female child to ensure her survival, protection, development of potential and prevention of discrimination. Empowerment of the girl child has been the favourite topic of discussion in recent years, but nothing substantive has taken place at the ground level. Commissions, cells, welfare boards and ministerial meetings have been held to discuss the dismal state of the girl child. However, things cannot improve unless some discreet steps are taken to improve the lot of female children. The girl child needs our support against all odds from pre-natal existence to fully-blossomed adulthood. The SAARC Year of the Girl Child is over, yet there is no news of any national policy for the girl child.

All forms of discrimination on grounds of gender are thus violative of fundamental freedom and human rights. A girl child is a victim of this violation and she is denied her basic right – the right to life, even the right to take birth in this world. This gender injustice and denial of right to life is taking the shape of crime against women. Despite the fact that Indian mythology placed women
on a very high pedestal, deterioration in this glorious status suffered a socio-cultural setback resulting in loss of their freedom and decline in their personality. Despite the social reform movement in the 19th century arousing considerable awakening, constitutional and legal provisions aimed at preventing discrimination, positive judicial trends, welfare schemes and voluntary activism, women continue to suffer from increasing violence, both in and outside homes. As per the data compiled by the National Commission for Women, a rape is committed every 54 minutes, a dowry death takes place every 92 minutes, molestation every 26 minutes, an act of cruelty every 33 minutes, and an act of killing of an infant or the unborn every 10 minutes.¹ What can be more brutal than killing a girl child, who has not yet seen this world.

Realising this inequality, the United Nations passed various instruments with focus on women's emancipation, and maintaining and enhancing their dignity. Some of the important instruments are:

- Article 29(i) of the Universal Declaration of Human Rights, 1948, which speaks of the duties of the individual essential for the free and full development of personality.
- Convention Concerning Discrimination in Respect of employment and occupation, 1958. The conference of women in China recently was focussed on violation of dignity of women.

India being a signatory to the conventions and declarations of United Nations, incorporated various provisions relating to equality and dignity of women in the Constitution.

Table 4.1: Women on the international agenda:

<table>
<thead>
<tr>
<th>Years</th>
<th>International achievements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>United Nations resolution on assistance directed towards efforts of developing countries to advance the status of women.</td>
</tr>
<tr>
<td>1967</td>
<td>United Nations Declaration on the Elimination of Discrimination Against Women</td>
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<tr>
<td>1979</td>
<td>Convention on Elimination of all Forms of Discrimination Against Women.</td>
</tr>
<tr>
<td>1980</td>
<td>Copenhagen conference; programme of action for the second half of the decade.</td>
</tr>
<tr>
<td>1982</td>
<td>EEC Council on Development of Community Assistance for Development related to the status of Women in Developing Countries.</td>
</tr>
<tr>
<td>1983</td>
<td>OECD/DAC: Guiding principles to aid agencies of supporting the role of women in development.</td>
</tr>
<tr>
<td>1983</td>
<td>Norway and Canada adopt policy guidelines concerning women in development.</td>
</tr>
<tr>
<td>1984</td>
<td>Norway and Canada adopt policy guidelines concerning women in development.</td>
</tr>
<tr>
<td>1987</td>
<td>Denmark adopts policy guidelines concerning women in development aid.</td>
</tr>
<tr>
<td>1995</td>
<td>World conference on women's human rights, Beijing, China.</td>
</tr>
<tr>
<td>2004</td>
<td>International conference on globalisation and women, India (Haryana)-December 17-2004(^2)</td>
</tr>
</tbody>
</table>

\(^2\) The Tribune, Dec.17, 2004
Status and Rights of Women under International and National Law:

Human rights are those rights which should be available to every individual human being. Hence, human rights not only know no boundaries but are also non-discriminatory on the basis of sex. This conceptual equality in real life is hypothetical. The plain truth and stark facts are different. It may be noted at the outset that human rights are a matter of international law because human rights do not depend on an individual’s nationality. Therefore, protection of rights cannot be limited to the jurisdiction of any state. In other words human rights cannot be said to be a matter within the domestic jurisdiction of any state.

4.1 INTERNATIONAL FRAMEWORK FOR PROTECTION OF WOMEN

Sovereignty in the present times is not absolute like the earlier days. Now sovereignty of the state is subject to various limitations, and self-imposed limitation of international treaties and conventions is one of them. Once a state signs the treaty or convention on gender justice, it is supposed to follow it. States like India give weightage and importance to gender justice and try to achieve international standards. India has followed guidelines of CEDAW for improving the position of women.

International human rights law is a source of norms and standards for the practice of human rights. For the application of these norms at the local level, appropriate institutional arrangements have to be made and municipal law and court practice have to absorb the principles and standards established by international law. Human rights norms are dynamic and are constantly evolving according to the emerging understanding of the content of rights and violations. Women’s participation in this dynamic process in recent years has given new meaning to the concept and content of rights for women.

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3 Prof Dr. KC Joshi, Universalisation of Human Rights of Women, Supreme Court set the Pace, AIR 2001, Journal 59.
State responsibility is a fundamental principle of international law. It provides that a state is legally accountable for breaches of international obligations under customary international or treaty law that are attributable or imputable to the state. The international law of state responsibility for human rights violations has evolved significantly in recent times. It now requires governments to take preventive steps to protect the exercise and enjoyment of human rights, to investigate alleged violation, to punish proved violations, and to provide effective remedies, including provision of compensation to victims. Modern developments in international human rights law have widened the network of international obligations through state adherence to multilateral human rights conventions and have thereby enhanced prospects of enforcing state responsibility.

Since the Virginian Declaration of Rights of 1776, the American Declaration of Independence and the Bill of Rights in the form of the first 10 Amendments to the American Constitution and the Declaration of the Rights of Man and the Citizen adopted in 1789 by the French National Assembly, the express recognition and the special protection of fundamental rights of man became an established fact. Long ago, Lord Action declared that the single page of print that was the French Declaration, outweighed libraries and was stronger than all the armies of Napoleon. Many writers occasionally have expressed the view that international law guarantees to individuals both at home and aboard, and whether nationals of a state or stateless, certain fundamental rights usually referred to as rights of mankind. These comprise, among others, principally the right to life, liberty, freedom of religion and conscience. In 1928, the Institute of International Law at its session in New York declared that the judicial conscience of the civilized world demanded recognition of individual rights persevered from all infringements on the pattern of the state. It is probable that the character of the United Nations with its repeated recognition of human rights and fundamental freedom has

6 Ibit at 5
inaugurated a new and decisive departure with regard to this abiding problem of law and government.\textsuperscript{7}

4.1.1 UNITED NATIONS AND HUMAN RIGHTS OF WOMEN

The charter of the United Nations represents a significant advancement so far as faith in and respect for human rights is concerned.

The appalling atrocities committed during the Second World War led to a strong movement for the international protection of fundamental human rights, and the charter contains numerous references to them. Human rights are mentioned for the first time in any international treaty. The provisions concerning human rights run throughout the U.N. Charter “like a golden thread”. Much of the credit for this goes to the determined lobbying by non-government organisations at the San Francisco Conference.\textsuperscript{8}

4.1.2 PROVISIONS OF UNITED NATIONS CHARTER, 1945, CONCERNING HUMAN RIGHTS OF WOMEN

a) In the preamble it is stated: “We, the peoples of the United Nations, are determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.\textsuperscript{9}

b) The United Nations also strives “to achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character, and to promote, encourage and respect human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.\textsuperscript{10}

c) In the responsibilities of the General Assembly, it is stated that universal respect for and observance of human rights and

\textsuperscript{7} T.R. Subramanya, Human Rights in International Law (1986) at 25-27
\textsuperscript{8} Supra Note 4 at 745-46
\textsuperscript{9} Charter of the United Nations, 1945.
\textsuperscript{10} Id. Article 1.3.
fundamental freedoms for all without distinction as to race sex, language, or religion shall be ensured.\(^{11}\)

d) Among the functions of the Economic and Social Council, it is provided that it may make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all.\(^{12}\)

e) It is the responsibility of the Economic and Social Council to set up of a commission for the promotion of human rights.\(^{13}\)

f) Among the objectives of the trusteeship system, it is provided that in accordance with its purpose, the United Nations shall encourage respect for human rights and fundamental freedoms for all without distinction as to race sex, language, or religion, and shall encourage recognition of inter-dependence of peoples of the world.\(^{14}\)

Thus the provisions of the U.N. Charter concerning human rights of women provide the foundation and give an impetus for further improvement in the protection of human rights.

4.1.3 ACHIEVEMENTS OF UNITED NATIONS (U.N)

The following are the achievements of the U.N in the field of human rights of women since 1945.\(^{15}\)

1. Establishment of the Commission on Status of Women in 1946 to promote women’s political, economic and social rights.

2. Adoption of the convention for suppression of traffic in persons and the exploitation of others by the General Assembly in 1949.

\(^{11}\) Id. Article 55 *
\(^{12}\) Id. Art. 62 (2)
\(^{13}\) Id. Article 68.
\(^{14}\) Id. Article 76.
\(^{15}\) Supra Note 4 at 82-83
3. Adoption of the Convention concerning equal remuneration for men and women workers for work of equal value by the International Labour Organisation (ILO) in 1951.

4. Adoption of the convention on political rights of women, including the right to vote by the General Assembly, in 1952.

5. Adoption of the convention on the nationality of married women in 1957 granting women the right to retain or change their nationalities regardless of their husband's actions.

6. Adoption of the convention concerning discrimination in respect to employment and occupation in 1960.

7. Adoption by the General Assembly in 1952 the convention on consent to marriage, minimum age for marriage and registration of marriages.

8. Adoption of the declaration on the elimination of discrimination against women in 1967.

9. Adoption of the first World Plan of Action and proclamation of the first World Decade for Women with the themes of equality, development and peace by the world conference of women in Mexico City in 1975.

10. Establishment of a voluntary fund for the UN Decade on Women (UNIFEM) and the UN International Research Institute for the Advancement of Women (UNIRIAW) by the General Assembly in 1976.

11. Adoption of the convention on the elimination of all forms of discrimination against women by the General Assembly in 1979.


13. Third world conference on women at Nairobi in 1985. Adoption of forward-looking strategies for the advancement of women to the year 2000 and voluntary fund for UN Decade for Women became UNIFEM, an autonomous organisation within the UN development programme.

14. In 1986 first world survey on the role of women in development was published.

16. Key role of women in sustainable development was recognised at the 1992 UN Conference on Environment and Development held at Rio de Janeiro.

17. In 1993, the Declaration on Elimination of Violence against Women was adopted by the General Assembly.

18. Empowerment of women was seen as an integral part of development for the first time in an international conference on population and development (Cairo) in 1994.

19. Finally, the fourth World Conference on Women held at Beijing reviewed and debated critical areas of concern and adopted a proposed platform for action.

4.1.4 COMMISSION ON THE STATUS OF WOMEN

The Commission on the Status of Women is a functional commission of the Economic and Social Council (ECOSOC) established by the Council in 1946. In the beginning the commission consisted of nine members, appointed by the ECOSOC for a three-year term. Then it was increased to 18 members and at present it consists of 45 members. It meets biennially for a session of three weeks. As in the case of the Commission on Human Rights, the Commission on the Status of Women adopts its own resolutions and recommends draft resolutions and declarations for adoption by the ECOSOC. The commission submits a report on each session to the council. The Commission on the Status of Women has done valuable work, promoting the rights of women in political, economic, civil, social and educational fields and in achieving the goal of women having rights equal to those of men.\(^\text{16}\)

The commission has requested the International Labour Organisation (ILO) to promote the principle of equal work and to complete a convention on this subject. Following this, the ILO adopted special instruments to carry on

\(^{\text{16}}\) Supra Note 4 at 750-751.
these measures. It has also requested UNESCO to provide equal opportunities for women in education. The Commission on the Status of Women initiated (1) Declaration and Convention on the Elimination of all Forms of Discrimination against Women, (2) Convention on the Political Rights of Women, (3) Convention on the Nationality of Married Women, (4) Convention on the Consent of Marriage and (5) Convention on the Protection of Women and Children during an emergency and armed conflicts. All these contributed much to development of the status of women. 17

4.1.5 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) 1948

The United Nations, since the drafting of the Universal Declaration of Human Rights, has guided the organisation in its activities for the promotion and protection of human rights. This is most evident in the work of the United Nations programme of advisory services and technical cooperation in the field of human rights. This programme, as described below, has been engaged since 1955 in assisting states, at their request, in the building and strengthening of national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. The programme was further strengthened when the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, subsequently renamed Voluntary Fund for Technical Cooperation in the Field of Human Rights, was established by the Secretary-General in November 1987, pursuant to the Commission on Human Rights. 18

The Universal Declaration of Human Rights 19 was adopted by the General Assembly by a vote of 48 to nil with eight abstentions. The UDHR has been hailed as a historic event and counted among the greatest achievements of the United Nations. The declaration is a mine from which other conventions as well as national constitutions protecting women’s rights have been and are being quarried. 20 The human rights of women are not

17 N. Jayapalan, Women and Human Rights (2001) at 145-146
18 Rahul Rai, Human Rights UN Initiatives (2000) at 20-21
19 General Assembly Resolution 217 A (iii) of December 10, 1948.
20 Supra Note 4

103
different from human rights in general. It is necessary to mention all the rights contemplated in the UDHR. There are 30 Articles in all, in the declaration. They are as follows:

1. All human beings are born free and are equal in dignity and rights.
2. All human being are endowed with reason and conscience.
3. Right to life, liberty and security of person.
4. Prohibition of slavery and slavery trade.
5. Prohibition of torture, cruel, inhuman or degrading treatment or punishment.
6. Right to be recognised as a person before law.
7. Equality before law and equal protection of law against any discrimination in violation of the declaration.
8. Right to effective remedy by the competent national tribunals.
9. Prohibition of arbitrary arrest, detention or exile.
10. Right to full equality to a fair and public hearing by an independent and impartial tribunal.
11. Right to education.
12. Right to be presumed innocent until proved guilty according to law in a public trial.
13. Freedom from ex post facto laws.
14. Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honour or reputation and right to protection by law against such interference.
15. Right to freedom of movement and residence within the borders of state.
16. Right to leave any country, including his own, and to return to his country.
17. Right to seek and enjoy in other country asylum from prosecution in respect of political crimes.

18. Freedom from arbitrary deprival of nationality and to change nationality.

19. Right to marry and to found a family with equal rights as to marriage, during marriage and at its dissolution.

20. Right to own property and freedom from arbitrary deprival of property.

21. Right to freedom of thought, conscience and religion.

22. Right to freedom of opinion and expression.

23. Right to freedom of peaceful assembly and association.

24. Right to take part in the government of one’s country.

25. Right to equal access to public service in one’s country.

26. Right to social security and the right to realisation of the economic, social and cultural rights.

27. Right to work, and favourable conditions of work.

28. Right to equal pay for equal work.

29. Right to just and favourable remuneration.

30. Right to form and join trade unions.

31. Right to rest and leisure.

32. Right of living wages adequate for the health and well-being of oneself and one’s family.

33. Right of all children to enjoy same social protection.

4.1.6 INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TRAFFIC IN PERSONS AND EXPLOITATION OF THE PROTECTION OF OTHERS 1949

This convention was adopted by the General Assembly of the UN in 1949.
It includes 28 Articles besides the Preamble.\textsuperscript{21}

The main provisions of the convention are as under\textsuperscript{22}

1. The parties to the present convention agree to punish any person who, to gratify the passion of another: (i) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (ii) exploits the prostitution of another person, even with the consent of that person.

2. The parties to the present convention further agree to punish any person who: (i) keeps or manages or knowingly finances or takes part in the financing of a brothel; (ii) knowingly lets or rents a building or other place or any part thereof for the prostitution of others.

3. In cases where injured persons are entitled under domestic law to be parties to the proceedings in respect of any of the offences referred to in the present convention, aliens shall be so entitled upon the same terms as nationals.

4. Each party to the convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in and are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirement for supervision or notification.

5. The offences referred to in Articles 1 and 2 of the present convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the parties to the convention. The parties to the present convention which do not make extradition conditional on the existence of a treaty shall henceforth recognise the offences referred to in Articles 1 and 2 of the present convention as cases for extradition between themselves.

\textsuperscript{21} General Assembly Resolution, 317 (iv) of December 2, 1949.

\textsuperscript{22} Supra Note 4
Extradition shall be granted in accordance with the law of the state to which the request is made.

6. In states where extradition of a national is not permitted by law, nationals who have returned to their own state after committing abroad any of the offences referred to in Articles 1 and 2 of the present convention shall be prosecuted in and punished by the courts of their own state. This provision shall not apply, if in a similar case between the parties to the present convention, the extradition of an alien cannot be granted.

7. The parties to the present convention agree to take or encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred in the present convention.

8. If any dispute arises between parties to the present convention relating to its interpretation and application and if such a dispute cannot be settled by other means, the dispute shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice.

9. Each party to the present convention undertakes to adopt, in accordance with its constitution, legislative or other measures necessary to ensure the application of the convention.

4.1.7 CONVENTION ON THE POLITICAL RIGHTS OF WOMEN 1952

The convention consists of 12 Articles and Preamble.23

The Preamble of the convention expresses the desire to implement the principle of equality of rights for men and women contained in the charter of the United Nations. It recognises that everyone has the right to take part in the government of his or her country directly or indirectly through freely chosen representatives, and has the right to equal access to public service of his or her country, and desiring to equalise the status of men and women in the

23 Ibid
enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights. The main provisions of the convention are as follows:

1. Women shall be entitled to vote in all elections on equal terms with men without any discrimination.

2. Women shall be entitled to hold public office and exercise all public functions, established by national law, on equal terms with men, without any discrimination.

3. Any dispute which may arise between two or more contracting states concerning the interpretation of application of this convention, which is not settled by negotiation, shall at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

4. Women shall be entitled to hold public office established by national law on equal terms with men, without any discrimination. The convention came into force on July 7, 1954, in accordance with Article VI.24

4.1.8 CONVENTION ON THE NATIONALITY OF MARRIED WOMEN 1957

The convention consists of 12 Articles and Preamble. In 1949, the Commission on Status of Women expressed the view that a convention on the nationality of married women should be prepared and conducted as soon as possible for it would assure women, equality with men, especially with respect to the right to a nationality, and prevent them from becoming stateless upon marriage or at its dissolution. Subsequently the draft of the convention was prepared by the commission and in 1957, the General Assembly adopted the Convention on the Nationality of Married Women. The contracting state parties of the convention have undertaken to abide by the following commitment:

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24 Convention on the Political Rights of Women, 1952, Article III
1. Neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during the marriage, shall automatically affect the nationality of the wife.

2. Neither the voluntary acquisition of 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.

3. The alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially-privileged naturalisation procedures. However, the grant of such nationality may be subject to such limitations as may be imposed in the interest of national security or public policy.

4. Further, 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. According to Article 6 of the convention, it shall come into force on the nineteenth day following the date of deposit of the sixth instrument of ratification or accession.25

4.1.9 DECLARATION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 1967

The General Assembly adopted this convention in 196726 considering that the Universal Declaration on Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and are equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, including any distinction as to sex. It includes 11 Articles and the Preamble. The following are the main protections to women under the convention.27

25 Supra Note 4 at 134-35
27 Ibid
1. Denying or limiting equality of rights with men is unjust and constitutes an offence against human dignity.
2. To establish adequate legal protection for equal rights by abolishing discriminatory laws, customs, regulations and practices etc.
3. Appropriate measures shall be taken to educate public and build opinion towards eradication of prejudice against women.
4. Child marriage and brothels of young girls before puberty shall be prohibited.
5. Appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in matters of property, marriage, children etc.
6. Equal rights in the field of education.
7. Equal protection in employment and professional advancement.
8. Women shall have the same rights as of men to acquire, change or retain their nationality in case of marriage.
9. To ensure to women the right to vote, to be eligible for election, to hold public office etc.
10. Discriminatory penal laws shall be repealed.
11. Combat all forms of traffic in women.

4.1.10 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979

The General Assembly adopted this convention on December 18, 1979. It was finally enforced on September 3, 1981, in accordance with Article 27 (1). This convention has 30 Articles and the Preamble. The state parties to the present convention, determined to implement the principles set forth in the declaration and for the purpose of adopting the measures, demanded elimination of such discrimination in all its forms and manifestations. The term ‘discrimination against women’ means any distinction, exclusion, or restriction made on the basis of sex which has the effect of impairing enjoyment by
women, irrespective of their marital status, of human rights in the political, social, cultural, civil or any other field.

The main obligations of state parties under the convention are as under:

1. The state 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 effect, undertake: (i) To embody the principle of 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 realisation of this principle; (ii) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (iii) 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, effective protection of women against any act of discrimination; (iv) 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; (v) to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise; (vi) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (vii) to repeal all national penal provisions which constitute discrimination against women.

2. State parties have also undertaken to take in all fields, in particular 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 the basis of equality with men.
3. State parties have undertaken to take all appropriate measures: (i) To modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of inferiority or superiority of either of the sexes or stereotyped roles of men and women; (ii) to ensure that family education includes a proper understanding of men and women in the upbringing and development of their children, it being understood that the interests of children is the primary consideration in all cases.

4. State parties have undertaken to take all appropriate measures, including legislation, to suppress all form of traffic in women and exploitation of prostitution of women.

5. State parties have undertaken to take appropriate measures to eliminate discrimination against women in the political and public life of the country. They shall ensure to women, on equal terms with men, the right: (i) to vote in all elections and public referendum and to be eligible for election to all publicly-elected bodies; (ii) 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; (iii) to participate in non-government organisations and associations concerned with the public and political life of the country.

6. States parties also agreed to take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their government at the international level and to participate in the work of international organisations.

7. With regard to nationality also, state parties agreed to grant women equal rights with men to acquire, change or retain their nationality. They also undertook to ensure in particular that neither marriage to an alien nor change of nationality of the wife, would render her stateless or force upon her the nationality of the husband. State parties shall also grant women equal rights with respect to nationality of their children.
8. State parties have undertaken to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the fields of education, employment, health care, and in other areas of economic and social life.

9. The convention also deals with the problems faced by rural women and seeks to ensure that all appropriate measures are taken to apply the provisions of the convention to women in rural areas and to eliminate discrimination against women in rural areas on the basis of equality of men and women.

10. State parties shall accord to women equality with men before the law.

11. As regards marriage and family relations, the convention obligates the state parties to take all appropriate measures to eliminate discrimination against women and in particular to ensure on the basis of equality of men and women: (i) the same right to enter marriage; (ii) the same right to freely choose a spouse and to enter into marriage only with their free and full consent; (iii) the same rights and responsibilities during marriage and its dissolution; (iv) 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; (v) the same rights to decide freely and responsibly on the number and spacing of their children and to have free access to the information, education and means to enable them exercise these rights; (vi) the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar instruments where these concepts exist in national legislation. In all cases, the interests of the children shall be paramount. (vii) the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (viii) 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. Further, the betrothal and 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 marriage in an official registry compulsory.

12. State parties have also undertaken to adopt all measures at the national level aimed at achieving the full realisation of all the rights recognised in the convention.

4.1.11 THE COMMITTEE ON CEDAW

The committee on the elimination of all forms of discrimination against women was established under Article 22 of the 1979 convention on the Elimination of all Forms of Discrimination Against Women. This convention is implemented by means of states’ reports. It is composed of 23 experts serving in individual capacities for four-year terms. It held its first regular session in October 1982 and at its second session examined the reports of seven state parties regarding measures taken to comply with the terms of the convention. It reports annually to the UN General Assembly through ECOSOC. The committee in addition to hearing states’ reports may make suggestions and general recommendations, which are included in the report. For example, general recommendation No. 5 called upon state parties to 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; while general recommendation No. 8 provided that state parties should take further measures to ensure to women on equal terms with men and without discrimination the opportunity to represent their government at the international level. General recommendation No. 12 called upon state parties to include in their reports information on measures taken to deal with violence against women, while another general recommendation called for measures to be taken to eradicate the practice of female circumcision. General recommendation No. 19 (1992) dealt at some length with the problem of violence against women in general and specific terms and general
recommendation No. 21 is concerned with equality in marriage and family relations. The committee, however, meets only for two weeks in a year, which is clearly inadequate. There is no right of individual petition or inter-state complaint under this convention, although these issues are under consideration. There is no doubt that much remains to be done in order to support and develop the work of this committee.28

4.1.12 DECLARATION ON ELIMINATION OF VIOLENCE AGAINST WOMEN 1993

This declaration was adopted by the General Assembly in the year 1994.29

The nations of the world have become so disturbed at the prevalence of violence against women that a number of important steps have been taken to combat it. The committee of CEDAW lays emphasis on examining the reports of the state dealing with the level of violence against women, whether condoned or perpetrated by the state, and measures in place to combat it. The United Nations has appointed a Special Rapporteur on violence against women and itself has developed a Declaration on the Elimination of Violence against Women. In that declaration the General Assembly adopted the stance in the Preamble that: “Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and is concerned about the long-standing failure to protect and promote those rights and freedom in relation to violence against women.” Violence against women is defined in the declaration as: “Any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Under Article 2, violence against women shall be understood to encompass, but not be limited to, the following: (i) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household,

29 General Assembly Resolution 48/104,1994
dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (ii) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (iii) physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

It is now widely acknowledged that violence against women prevents them from participating fully in the affairs of the family, workplace and community. As with those who have a low-level of literacy, those whose health is poor, those who earn inadequate income, this reduced ability to participate in community life is a waste of the talent and education of one half of the world's population. The inference to be drawn is that where women are not treated equally, not only they and their families suffer, but the community itself loses access to an extremely valuable human resource.30

Violence affects the lives of millions of women worldwide in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to interact fully in society. In view of the alarming growth in the number of cases of violence against women throughout the world, the Commission on Human Rights adopted a resolution in March 1994, in which it decided to appoint the Special Rapporteur on violence against women, including its causes and consequences. It has a mandate to collect and analyse comprehensive data and to recommend measures aimed at eliminating violence at the international, national and regional level. A preliminary report in 1994 by the Special Rapporteur, Ms Radhika Coomaraswamy, focussed on three areas of concern where women were particularly vulnerable - in the family (including domestic violence, traditional practices, infanticide), in the community (including rape, sexual assault, commercialised violence such as trafficking in women, labour

exploitation, female migrant workers etc.) and acts of the state, including violence against women during detention as well as violence against women in a situation of armed conflict and against refugee women. Governments agreed to adopt and implement national legislation to end violence against women and to work actively to ratify all international agreements relating to violence against women. They agreed that there should be shelters, legal aid and other services for girls and women at risk, and counselling and rehabilitation for perpetrators. Governments also pledged to adopt appropriate measures in the field of education to modify the social and cultural patterns of conduct of men and women.\textsuperscript{31} The General Assembly at its meeting on December 17, 1999, adopted a resolution to designate November 25 as the International Day for the elimination of violence against women and invites all appropriate governments, relevant agencies, bodies, funds and programmes of the United Nations system, and other international organisations and non-governmental organisations, to organize on that day activities designated to raise public awareness on the problem of violence against women.\textsuperscript{32}

4.1.13 VIENNA DECLARATION AND HUMAN RIGHTS OF WOMEN 1993

This declaration was adopted by the World Conference on Human Rights on June 25, 1993. The relevant paras 36-44 of the declaration run as under.\textsuperscript{33}

(36) The World Conference on Human Rights urges full and equal enjoyment by women of all human rights and that this be a priority for governments and the United Nations. The World Conference on Human Rights also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women towards sustainable and equitable development set forth in the Rio de Janeiro Declaration on Environment and Development and

\textsuperscript{31} Supra Note 18 at 254-257
\textsuperscript{32} Department of Public Information, News Coverage and Accreditation Service, New York-Press Release, GA 9699, (March 7, 2000) at 355-56
\textsuperscript{33} Supra Note 50 at 257-59

(37) The equal status of women and human rights of women should be integrated into the mainstream of the United Nations’ system-wide activity. These issues should be regularly and systematically addressed through relevant United Nations’ bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations agencies. In this context, cooperation and coordination should be strengthened between the Centre for Human Rights and the division for advancement of women.

(38) In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges states to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular, murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

(39) The World Conference on Human Rights urges eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all states of the Convention on the Elimination of All Forms of Discrimination Against Women.
by the year 2000. Ways and means of addressing the particularly large number of reservations to the convention should be encouraged. Inter alia, the Committee on the Elimination of Discrimination Against Women should continue its review of reservations to the convention. States are urged to withdraw reservations that are contrary to the object and purpose of the convention or which are otherwise incompatible with international treaty law.

(40) Treaty-monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuit of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of all forms of Discrimination Against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a Special Rapporteur on violence against women at its fifth session.

(41) The World Conference on Human Rights recognises the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life-span. In the context of the World Conference on Women and the Convention on the Elimination of all forms of Discrimination Against Women, as well as the Proclamation of Teheran of 1968, the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate healthcare and the widest range of family planning services, as well as equal access to education at all levels.

(42) Treaty-monitoring bodies should include the status of women and human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on
the situation of women de jure and de facto in their reports to treaty-monitoring bodies. The World Conference on Human Rights notes with satisfaction that the Commission on Human Rights adopted at its 49th session Resolution 1993/46 of March 8, 1993, stating that rapporteurs and working groups in the field of human rights should also be encouraged to do so. Steps should also be taken by the Division for the Advancement of Women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses. Training for United Nations’ human rights and humanitarian relief personnel to assist them to recognise and deal with human rights abuses particular to women and to carry out their work without gender bias should be encouraged.

(43) The World Conference on Human Rights urges governments and regional and international organisations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to guarantee the participation of women under conditions of equality.

(44) The World Conference on Human Rights welcomes the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with priority themes of the World Conference on Women of equality, development and peace.

4.1.14 WORLD CONFERENCES ON WOMEN'S HUMAN RIGHTS

The First International Conference on Women took place in Mexico in 1975, under the banner "Equality, Development and Peace". One of the conclusions of this conference was that women should and could contribute to the progress of their country as well as any man. In one word, women were...
recognised as a factor of development. Later on, a new step was taken, after the decision of the member states of the United Nations to recognise the necessity not only of the full participation of women in the development process but also to guarantee them the enjoyment of this development. They were, from now on, the factor and the beneficiary of that development. The 1976-1985 phase coincided with the United Nations Decade for Women. During the decade, the focus shifted from women's development needs to the recognition that women were essential contributors to the development process. Statistics collected by the United Nations proved that women's equality and rights were key to the well-being of societies. And in 1980, the Second World Conference for Women held in Copenhagen, adopted a programme of action for the second half of the UN Decade for Women which emphasized education, employment and health. In 1985, the Third World Conference on Women in Nairobi reviewed achievements made and obstacles encountered during the decade. The Nairobi Forward-Looking Strategies for the Advancement of Women to the Year 2000, adopted by consensus, provided a framework for action at the national, regional and international levels to promote the empowerment and advancement of women. From 1986 to 1995 support for women was woven into the development efforts of all the organisations, agencies and bodies. Women's issues were well reflected in the outcome of the continuum of United Nations conferences on education, children, environment, human rights, population and social development during this period. In September 1995 the Fourth World Conference on Women was held in Beijing, China. This was an epoch-making event involving participation of 20,000 government delegates and over 30,000 representatives of non-governmental organisations and civil societies in the conference itself and the parallel NGOs' event. The outcome of this conference was a Platform for Action that emphasised the human rights of women and the need to mainstream a gender perspective in all sectors and at all levels of policy-making and planning to achieve gender equality. The Commission on the Status of Women was entrusted the responsibility of monitoring the implementation of the platform. In June 2000, a special session
of the United Nations General Assembly will assess the follow-up and propose further actions and initiatives.34

4.1.15 BEIJING DECLARATION 1995

The following declaration has been adopted at the conference:35

1. Take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women;

2. Encourage men to participate fully in all actions towards equality;

3. Promote women's economic independence, including employment and eradicate the persistent and increasing burden of poverty on women.

4. Promote people-centered sustainable development, including sustained economic growth, through the provision of basic education, life-long education, literacy and training, and primary health care for girls and women;

5. Prevent and eliminate all forms of violence against women and girls;

6. Ensure equal access to and equal treatment of women and men in education and healthcare and enhance women's sexual and reproductive health as well as education;

7. Promote and protect all human rights of women and girls;

8. Ensure respect for international law, including humanitarian law, in order to protect women and girls in particular;

9. Ensure equal access to women to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, as a means to further the advancement and empowerment of women and girls to enjoy the benefits of these resources.

10. Ensure the success of the Platform for Action, which will require a

34 Supra Note 30 at 114-120
35 The Fourth World Conference on Women, Beijing (China) (Sept 4-15, 1995).
strong commitment on the part of governments, international organisations and institutions at all levels.

4.1.16 UNITED NATIONS DEVELOPMENT FUND FOR WOMEN'S (UNIFEM) WORK ON GENDER JUSTICE

Working towards gender justice necessarily entails a women's empowerment framework, a framework within which the United Nations Development Fund for Women (UNIFEM) functions. It was established as the Voluntary Fund for the UN Decade for Women in 1976 in response to the demand for a fund for women within the UN system to work towards gender equality and gender justice. Empowerment, as UNIFEM sees it, is about changing or transforming power relations in favour of those who previously exercised little power over their own lives. If power means access and control, then empowerment is the process of gaining access to and control over resources, knowledge, belief systems, values and self. Power also means to enable or to facilitate. In this sense, empowerment entails creating enabling conditions for human well-being, building of human capacity and the process of inner transformation of the self. It is a framework that can tap powerful reservoirs of hope and enthusiasm among people who have been subjected to viewing themselves and their worlds in negative, fragmented or broken terms. UNIFEM is an aid to and advocate for the cause of women in the developing world, striving to give women voice and visibility in their search for gender justice. Recognising that women are critical actors in families, communities, and economic systems, and that they need access to resources as well as to social services, UNIFEM believes that the best way to help women in developing countries is to strengthen the organisations they create and control, while fostering links and partnerships at every level. The Platform for Action can only become a reality when the partnership between the government and civil society extends into the implementation stage. This partnership has to be mobilised at all levels -- the family, the local community, and the state. One of the ways of doing this is to help ensure participation of women at all levels of development planning and practice, and to recognize
In order to change this present scheme of things, a new development ethics and morality need to be placed at the core of development, thinking and practice, based on the perspectives and realities of women's lives. A world is envisioned where women and men have parity in living conditions, opportunities, options and incomes, and where gender equality is an intrinsic dimension of true people-centred development. Towards this end, there is a move now towards a new dynamic paradigm that identifies the well-being of people rather than the current level of per capita national income as the essence of development. Concepts such as sustainability, human development, social development, gender-responsive development, women's rights as human rights, equity and social justice are increasingly central to the development debate. The present approach of 'gender and development' recognises the fact that women and men have different life courses and that development policies affect them differently. Today, there is a search to address these differences by mainstreaming gender into development planning at all levels and all sectors, in order to ensure equal outcomes. There is recognition of the fact that improving the status of women cannot be understood as a separate, isolated issue and can only be achieved by taking into account the status of both women and men. There is a recognition that alternate models of masculinity need to be explored, encouraging gender-sensitive men to raise the awareness of other men about women in untraditional fields like socio-economic and political fields, and their cultural and legal status. There is equally a need to acknowledge that women's empowerment does not mean the disempowerment of men but the enrichment and the inclusion of each and every member of the human family. The goal of gender justice is enabled by adopting a holistic approach, which blends women's empowerment and gender planning perspectives, decentralised approaches, and treats women not just as objects of policy and programmes but as part of a process of transformation of social attitudes. UNIFEM undertook a unique exercise to include women's voices in the Ninth

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36 Supra Note 30 at 192-93
National Development Plan of India, which has lead to the empowerment of women as one of the Plan's objectives. It facilitated a process in which some of the most distinguished and representative leaders of the women's movement came together as a think tank. The think tank helped to raise the voices of hundreds of women mobilised from different walks of life to influence the national planning process. This was accomplished at various stages of the planning process through research and study, including a review and evaluation of past plans. This was followed by hosting five regional meetings and a national consultation where the outcome of the regional meetings was presented to the policy makers and planners. The objective was to set in motion a participatory planning process by the women themselves. This resulted in women sharing their concerns with policy planners at different stages with the official planning process. By these efforts UNIFEM created space for women at every stage, assisted and built their capacity to understand the macro-planning process and demonstrated a new model of gender mainstream-lining of the plan through the agency of women themselves. UNIFEM has discussed and held negotiations with other South-Asian governments and representatives of the women's movement, on trying this methodology and process in their particular countries. Within India itself, the participatory process of engendering the national development plan is now being replicated at the state level. A process such as this, additionally lends itself to yielding both gender-sensitive public as well as data and statistics.37

UNIFEM's mainstreaming activities on human rights have been a logical follow-up to the extraordinary impact women made at the World Conference on Human Rights in Vienna, where they emerged as one of the most dynamic forces demanding the inclusion of issues related to the human rights of women, particularly in the area of violence against women. In India, UNIFEM has provided technical support to the Government of India to finalise the first periodic report required after the ratification of CEDAW through a convulsive process. In Asia, UNIFEM's office collaborated with UNIFEF to produce and launch the joint publication, widely known as the 'CEDAW KIT',

37 Id. At 195-97.
an advocacy tool for both advocates and government representatives, which examines the roles of CEDAW as the Bill of Rights for Women. In 1997, the Trust Fund for Action to Eliminate Violence Against Women was established within UNIFEM. It supports innovative initiatives in the areas of awareness-raising and advocacy, capacity building, legal literacy training, prevention and deterrence of violence and action-related research. For example, UNIFEM is pioneering an intervention to train Afghan women-led NGOs based in Pakistan. In collaboration with a Lohore-based NGO, it is also working on a novel pilot programme with three Lahore schools to introduce a human rights education curriculum. And in India, in collaboration with a specialised NGO, and through the agency of high-level judges, an exercise is being undertaken to identify bottlenecks and obstacles in the justice system, advocating for the institutionalisation of gender training of all female and male judges in the region. A vehicle for change, UNIFEM facilitates the challenge for leadership and mainstreaming, through participating in women’s development agenda, exemplified in the interventions mentioned in this paper that cross divisions between issues. There exists a close inter-relationship between development, democracy, human rights, human security, and sustainable livelihoods, and there is a need for all to be addressed, for the creation of a healthy and sustainable planet for the 21st century.38

4.1.17 UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION’S (UNESCO) STATEMENT ON WOMEN’S CONTRIBUTION TO THE CULTURE OF PEACE

The United Nations Educational, Scientific and Cultural Organisation presented this paper at the Beijing conference.39

“On the eve of the 21st century, a dynamic movement towards a culture of peace derives inspiration and hope from women’s visions and actions. It is important to draw strength from cultural diversity and redefine the concept of security so that it encompasses ecological, economic, social,
cultural and personal security. To replace unequal gender relations with authentic and practical equality between women and men is imperative in order to allow for true participatory democracies. Ours is still an armed and warring planet. In the first half of this decade alone, more than 90 conflagrations of various kinds have taken a vast toll of human life, impeded social and economic development and depleted the world's resources. Women continue to experience systematic violations of their human rights and are largely excluded from decision-making. In situations of war and military occupation, women are to an alarming degree, victims and targets of atrocities and aggression. To combat war as the ultimate expression of the culture of violence, we must address issues such as violence against women in the home, acts and reflexes of aggression and intolerance in everyday life, penalisation of violence in the media, implicit glorification of war in the teaching of history, trafficking in arms and in drugs, recourse to terrorism and the denial of fundamental human rights and democratic freedoms. A culture of peace requires that we confront the violence of economic and social deprivation. Poverty and social injustices such as exclusion and discrimination weigh particularly heavily on women. Redressing the flagrant asymmetry of wealth and opportunity within and between countries is indispensable to addressing the root causes of violence in the world. Equality, development and peace are inextricably linked. There can be no lasting peace without development, and no sustainable development without full equality between men and women.

The new millennium must mark a new beginning. We must dedicate ourselves to averting violence at all levels, to exploring alternatives to violent conflict and to forging attitudes of tolerance and active concern towards others. Human society has the capacity to manage conflict so that it becomes part of a dynamic of positive change. Always provided, it involves the full participation of women. Action to remedy a pervasive culture of violence is not beyond the capacity of the people and governments of the world. Efforts to move towards a culture of peace must be founded in education, as stated in UNESCO's constitution: "Since wars begin in the minds of men, it is in the
minds of men that the defences of peace must be constructed.” Girls and women constitute a large majority of the world’s educationally excluded and unreached. Ensuring equality of educational access and opportunity between the sexes is a prerequisite for achieving the changes of attitudes and mindsets on which a culture of peace depends. Equality in education is the key to meeting other requirements for a culture of peace. These include full respect for the human rights of women; release and utilisation of women’s creative potential in all aspects of life; power-sharing and equal participation in decision-making by women and men; reorientation of social and economic policies to equalise opportunities and new and more equitable patterns of gender relations pre-supposing a radical reform of social structures and process. Women’s capacity for leadership must be utilized to the full and to the benefit of all in order to progress towards a culture of peace. Their historically limited participation in governance has led to a distortion of concepts and a narrowing of processes. In such areas as conflict prevention, the promotion of cross-cultural dialogue and the redressing of socio-economic injustice, women can be the source of innovative and much-needed approaches to peace-building. Women bring to the cause of peace among people and nations distinctive experiences, competence, and perspectives. Women’s role in giving and sustaining life has provided them with skills and insights essential to peaceful human relations and social development. Women subscribe less readily than men to the myth of the efficacy of violence, and they can bring a new breadth, quality and balance of vision to a joint effort of moving from a culture of war towards a culture of peace.40

Today the world is coming closer and closer because of fast information, sports liberalisation and globalisation. So in this background, people have some respect for the international standard on gender-justice. People of a state do preach equality of sexes. And the purpose of law whether it is international or national is served when people do realise the need for change.

40 Id. At 266.
A series of agreements over human rights treaties and international conferences forged over several decades by governments of states have increasingly been influenced by a growing global awareness for women's rights. It has provided a legal foundation for ending gender discrimination and gender-based rights violation. These agreements affirm at the international level that women and men have equal rights and inspire states to take action against practices. The consensus decisions of international conferences express the world conscience and finally pave the way for adoption by state governments. States that have ratified human rights treaties are required to report regularly on action they have taken to ensure the exercise and enjoyment of the specified rights. Established international bodies and working committees of the conventions and conferences monitor the implementation of rights instruments. Because of this review the working committees make recommendations, which can assume many forms. No doubt international law is not legally enforceable but the national governments can take recommendations into account. For example, in setting standards and in making interpretations of the national law, state governments can take help from international law in the absence of national statutes. For example, in India, the Supreme Court on the issue of sexual harassment of women at the workplace, sought help from various international instruments, including CEDAW, to which the Indian government is a party, and finally gave exhaustive guidelines to protect women. It can thus be summed up that international law shows the path in respect of protection of human rights to states.

4.2 NATIONAL IMPERATIVES FOR PROTECTION OF WOMEN

The Constitution of India is the true champion of gender justice. It guarantees the right to equality to women, which is the foundation stone for all rights of women. Under the Constitution, women claim equal rights as compared to men and even enjoy special protection. After adoption of the Constitution, various other laws were passed to check discrimination against
women. Prominent legislations among these were the Dowry Prohibition Act 1961, Sati Prevention Act 1987, Immoral Traffic (Prevention) Act 1956, etc. Even personal laws of the Hindu community were codified and rationalised. The personal laws of the Muslim community pose a danger to gender justice in that community. It requires codification and rationalisation like Hindu personal laws. The Indian Constitution has kept its door open for the international laws if they are not in conflict with national laws. They can be adopted for the development of the nation. Due to this, India was able to adopt various international human rights Acts, National Commission for Women Act, Minorities Act etc. At present, the verdict is in favour of women. A strong legal protection is provided to women. All the three departments of the government - legislature, executive and judiciary -- are supporting the cause of women. In fact the judiciary has taken the lead in respect of safety of women. Inspite of legal protection, women in India are not free under the male-dominated society. Women in India face problems in matters of religion and customs. Most Indian customs are against women, which prevent them from enjoying freedom in the society and family. The law-enforcing agencies in India are not well-versed with the issue of human rights.

4.2.1 HUMAN RIGHTS OF WOMEN AND THE CONSTITUTION OF INDIA

Important developments along with adoption of the Universal Declaration of Human Rights (1948) and establishment of the Human Rights Commission in 1946 which had been assigned the function of preparing, inter-alia, an international Bill on human rights, started a movement for the promotion and protection of human rights all over the world. India being an original member of the UN and a member-state which voted for the adoption of the Universal Declaration of Human Rights on December 10, 1948, could not be oblivious to all these developments. However, the words ‘human rights’ are conspicuous by their absence in the Constitution. It is difficult to say whether this omission was deliberate or just incidental.\(^{41}\)

\(^{41}\) Supra Note 4 at 220
The Supreme Court in its recent decision in Sunil Batra v Delhi Administration\(^{42}\) has observed that today human rights jurisprudence in India has constitutional status. In Menaka Gandhi v Union of India\(^{43}\) the Supreme Court has held that provisions of Part III of the Constitution should be given widest possible interpretation. The court further observed that the procedure depriving a person of his life or personal liberty must be just, fair and reasonable. It must satisfy the requirement of natural justice which is an essential component of fair procedure under Article 21.

This is a welcome trend. It would certainly be able to inculcate a sense of accountability in public authorities discharging public duties towards the people and particularly towards the weaker sections of society. This new trend of interpreting the provisions of Part-III would go a long way in protecting Fundamental Rights of citizens whether in or outside a prison, and securing a social order where an individual will be free from inhuman and barbarous treatment.

The main provisions of the Constitution dealing with the rights of women:\(^{44}\)

Article 14: The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.

Article 15 (1): The state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

Article 15 (2): No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use

\(^{42}\) AIR, 1980 SC 1579

\(^{43}\) AIR, 1978 SC 597.

\(^{44}\) J.N. Pandey, Constitutional Law of India (2001) at 51-52
for the general public.

Article 15 (3): Nothing in this Article shall prevent the state from making any special provision for women and children.

Article 16 (2): No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against, in respect of any employment or office under the state.

Article 15 (3) enables the state to make provisions for women. This obviously intends to meet their special needs on account of their peculiar characteristics such as the need for maternity leave before or after child birth etc. The court while interpreting any law should keep in mind that women constitute a weaker section of the society. This classification cuts across social, economic and regional distinctions. However, the judicial predicament towards women has been quite wavering and this can be seen from some of the decided cases.45

Section 437 of the Code of Criminal Procedure, 1973, enables women and children to be released on bail for non-bailable offences in the circumstances under which a male cannot be released, has been held to be consistent with Article 15 (3).46

Directive Principles are also part and parcel of human rights and social justice. It is obligatory that the interest of the common man is safeguarded. It is implied that any law made to advance the objectives of the Directive Principles shall be deemed to have served the purpose of protecting the interests of the masses.47

The relevant provisions in Chapter IV of the Constitution concerning the rights of women are as under:

Article 39: The state shall in particular direct its policy towards ensuring - (a) that the citizens, men and women equally, have the right to an adequate

46 Mst. Choki v State, AIR 1957 Raj 10
47 Gokulesh Sharma, Human Rights and Social Justice (1997) at 485
means of livelihood; (b) that there is equal pay for equal work for both men and women; (c) that the health and strength of workers, both men and women, and tender-aged children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 42. The state shall make provisions for securing just and human conditions of work and for maternity relief.

Article 44. The state shall endeavour to secure for the citizen a uniform civil code throughout the territory of India.

Article 51. The state shall endeavour to foster respect for international law and treaty obligation in the dealing of organised people with one another.

**Fundamental duty to respect women**

Article 51 (e) provides that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.

Pursuant to Article 39 (d), the Parliament has enacted the Equal Remuneration Act, 1976. The directive contained in Article 39 (d) and the Act passed thereto can be judicially enforceable by the court. In Randhir Singh v. Union of India, the Supreme Court has held that the principle of "equal pay for equal work though not a Fundamental Right" is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under Article 32.

In India women are, by and large, economically backward. This economic backwardness of the women has been noticed by the judiciary in a number of its pronouncements. The Supreme Court in a number of cases held that the right to economic empowerment of women is a human right. In C. Masilmani Mudaliar v Idol of Sri Swaminathaswami Thirukoil the Supreme

48 AIR 1982 SC 879.
49 AIR 1996 SC 1692.
Court noted that as per the UN Report 1980 "women constitute half the world’s population, perform nearly two thirds of work, receive one-tenth of the world's income and own less than one hundredth per cent of the world's property." Half of the Indian population, too, comprises women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self sacrifice and self-denial are their nobility and yet they have been subjected to all indignities, inequality and discrimination.

The 73rd and 74th Constitutional Amendment Acts, 1993, are a watershed for the advancement of Indian women.

They are ensured 1/3 of the total elected seats and positions of chairpersons in rural and urban local elected bodies to women. About one million women are estimated to emerge as leaders at the grassroots in the areas alone. Of these 75,000 are to be chairpersons.50

Article 325: No person to be ineligible for inclusion in or to claim to be included in a special, electoral roll on grounds of religion race caste or sex.

In 1992 the Parliament amended the Constitution and inserted Part IX under the 73rd Amendment Act, 1992, which deals with panchayats and Articles 243 (d) (2) (3) and (4) which provide that seats shall be reserved for Scheduled Castes and Scheduled Tribes in a panchayat in the same proportion as the population and the office of chairperson shall be reserved for Scheduled Castes and Scheduled Tribes with same proportion to the population and not less than 1/3 of seats and offices of chairpersons shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes and provided further that not less than 1/3 of the total number of offices of chairpersons in the panchayats at each level, shall be reserved for women.

The 74th Amendment to the Constitution has also inserted Part IX-A comprising Article 243 P to 243 ZG which deal with municipalities and Article 243 T providing the same method of reservation as contemplated for panchayats in Article 243 D. The above mentioned amendments were made

to the Constitution and new parts were inserted in the Constitution providing reservation to Scheduled Castes and Scheduled Tribes and their women and women belonging to the general category only to give adequate representation and to ensure their participation in local self government in the country.\textsuperscript{51}

One of the major problems which the country faces is the area of personal laws -- an area which governs the entire family life starting from birth, guardianship, marriage and divorce, custody of children, maintenance, adoption, inheritance and succession. Personal laws are replete with instances of gender discrimination. Nevertheless, if we are to conform to international norms of gender justice, it is very necessary that these laws be changed to incorporate a sense of gender justice within them. In fact this is also the constitutional mandate under Article 44. The Hindus obtained the benefit of the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956. However, the task of total reform remained incomplete then and it remains so even now. In 1951, the very first year of the Constitution, two distinguished judges of the country, Chagala J. and Gajindragadkar J. held that personal laws were not within the ambit of Act 13 (1) of the Constitution under which all laws in force at the commencement of the Constitution in so far as they are inconsistent with Part-III of the Constitution, shall be void. This is not easy to say that courts have no role to play in developing equality-oriented jurisprudence. They have, in fact, played a very crucial role in doing so.\textsuperscript{52} Hopefully, Indian women shall get more in future as a Bill for giving 33 per cent reservation to them in the Parliament and state legislatures is pending before Parliament.

\textsuperscript{51} E. Dharma Rao, Prohibition of Discrimination on the ground of Sex, AIR 1999 Journal 245
4.2.2 SUPREME COURT OF INDIA ON INTERNATIONAL LAW CONCERNING THE HUMAN RIGHTS OF WOMEN

In *Madhu Viswas v State* the SC considered the permission for conversion on the elimination of all forms of discrimination against women in 1979 (CEDAW) and held the same to be an integral scheme of the Fundamental Rights and Article 2 (e) of CEDAW enjoins the state parties to breathe life into the dry bones of the Constitution, international conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate the right to life, including empowerment of economic, social and cultural rights. Article 2 (f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act.

India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On December 18, 1979, the United Nations adopted CEDAW. The principles of international law have to be read in the contract of service between Municipal Corporation of Delhi and women employees (muster-roll); and so read, these employees immediately become entitled to all the benefits conceived under the Maternity Relief Act 1961.

The international covenants and declarations as adopted by the United Nations have to be respected by all signatory states and meaning given to the above words in those declarations and covenants has to be such as would help in effective implementation of those rights. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence.

It is now an accepted rule of judicial construction that regard must be

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54 Chairman Railway Board v Chandrima Das, AIR 2000 SC 997
given to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.56

In *Grammophone Co. of India Ltd v. Birendra Bahadur Pandey*, the Supreme court held that the comity of Nations require that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with the domestic law.

To be poor, in this land of poverty is no crime and recover debt by the procedure of putting one in prison is too unreasonable. The International covenant on Civil and Political Rights 1965 bans imprisonment merely for not discharging the decree debt. Unless there be some other vice or mens-rea apart from failure to foot the decree, international law frowns upon holding the debtor's person in civil prison, as hostage by the court.58

The Indian Supreme Court never hesitates to adopt the international standards of gender-justice if the provisions of international law do not come in conflict with the national law. Human Rights Act, National Human Rights Commission and National Commission for Women were formed after considering instruments of international law. And as a matter fact all these commissions are working within the constitutional limits. And these recommendations are also taken into amount while making and implementing

57 AIR 1984 SC 667
the law concerning women. In India due regard is given to the international human rights organisations. These organisations have freedom to visit any place in India. Under such a large umbrella of international and national law a complete legal protection is given to Indian women.

4.2.3 THE PROTECTION OF HUMAN RIGHTS ACT, 1993

The Act\textsuperscript{59} defines human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India. The Act provides for the setting up of a National Human Rights Commission (NHRC) and human rights courts to meet the growing concern for human rights in the country. It would also be mandatory for the state governments to constitute state human rights commissions. The NHRC has started functioning since September 1993 when the ordinance was promulgated by the President. The provisions of the Act shall be applicable to armed forces and the state of Jammu and Kashmir. The Home Minister announced in Parliament that the legislation would thwart the designs of some countries who sought to malign India in the United Nations and other international forums.

The human rights commission will have powers to go into instances of negligence on the part of public service personnel in preventing violations. The commission will, if necessary, publish interim reports or annual reports along with details of the action taken by the government which will be presented in the Parliament.\textsuperscript{60} The commission in its annual report stated that it received 27 cases related to the indignity of women, although in the same year no case of custodial rape was reported to the commission.\textsuperscript{61}

In order to improve coordinated efforts, the commission constituted a core group on child prostitution under the co-chairmanship of Justice V.S. Malimath and Sri Virendra Dayal, members of the commission. The other members of the core group include the chairperson, National Commission for

\textsuperscript{59} The Protection of Human Rights Act 1993 ( Act 10 of 1994)
\textsuperscript{60} Supra Note 44 at 353
\textsuperscript{61} Human Rights Commission Report (1998-99) at 126
Women (NCW), the Secretary, Department of Women and Child Development, representatives of UNICEF and the Director General (Investigation) of the commission. To start with, the commission selected Delhi and Karnataka state (Belgaum and Dharwar districts) to launch a major media campaign on the subject.62

4.2.4 NATIONAL COMMISSION FOR WOMEN ACT, 1990

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 fulfil the surveillance functions as well as to facilitate redressal 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 commission shall monitor proper implementation of all legislations made to protect the rights of women so as to enable them to achieve equality in all spheres of life and equal participation in the development of the nation. The National Commission for Women Bill, 1990, was passed by both the Houses of Parliament and it received the assent of the President on August 30, 1990. It came into force on January 31, 1992.63

The Act64 provides for the constitution of the National Commission for Women by the Central Government. The commission shall consist of a chairman, five members and a member secretary. The term of the chairman and members is three years. The other officers and employees of the commission shall be appointed by the Central Government. The commission may appoint such committees as may be necessary for dealing with such special issues as may be taken up by the commission from time to time. The commission shall regulate its own procedure and the procedure of the committees. The commission shall perform all or any of the following functions (a) examine all matters relating to safeguards provided for women under the Constitution and other laws; (b) present reports to the Central Government on the working of safeguards; (c) make recommendations for the effective

62 Id. At 61
64 National Commission for Women Act (Act 2 of 1990)
implementation of safeguards; (d) suggest legislative measure to meet any lacuna; (e) take up the women-related issues with the appropriate authorities; (f) take the *suo-motu* notice of matters relating to deprivation of women's rights; (g) special studies of the women-related problems; (h) start education research to suggest ways of ensuring due representation of women in all spheres; (i) participate in the planning process of socio-economic development of women; (j) evaluate the progress of development of women under the union and any state; (k) inspect any jail, remand home, women's institution etc. to take up remedial actions; (l) fund litigation involving issues affecting a large body of women; (m) make periodical reports to the government on any women-related issue; (n) any other matter which may be referred to it by the Central Government. The funds and grants to the commission shall be provided by the Central Government. The commission shall keep financial record of its accounts for the purpose of audit. The annual report shall be discussed by the Parliament. The chairman, members and staff of the commission will be public servants. The Central Government shall consult the commission on all major policy matters affecting women. The Central Government shall make the rules.

### 4.3 HUMAN RIGHTS AND INTERNATIONAL ORGANISATIONS

#### 4.3.1 AMNESTY INTERNATIONAL

It is a worldwide human rights organisation. It was established on May 28, 1961, by British lawyer Peter Berenson. Now it has more than 11,00,000 centres in more than 150 countries. It has its headquarters in London. Amnesty International won the Nobel Prize for Peace in 1977. Its functions run as under:

(i) Seek the release of prisoners; (ii) press for early trial of political prisoners; (iii) condemn atrocities by the army against minorities; (iv) conduct international campaigns with its volunteer activists; (v) so far as India is concerned, it never hesitates to check violations of human rights. Many women prisoners in north-eastern states are often raped by security forces.
Such instances are brought to the notice of Amnesty International which severely condemns the same. Despite the challenges, it is committed to increasing awareness, knowledge and understanding of the concepts enshrined in international human rights works for the protection and promotion of human rights at the regional, national and international level. No doubt it can successfully mould international opinion.\(^5\)

4.3.2 HOT-LINE

Hot-line is nothing but a direct, secure telephone link officially commissioned between nations. It is helpful in the field of human rights too. Human rights violations are highlighted immediately by this method. Proper measures are taken to protect human rights. Already, ordinary hot-line facilities are in existence between nations. In India it was commissioned during the period of Mr Morarji Desai. For the first time, it was used between Russia's Kremlin Palace and America's White House to find out the dangers of war and prevent them. It is quite helpful for the NGOs which strive hard for the protection of human rights. No doubt it is a boon for human rights activists.\(^6\)

4.3.3 ASIA WATCH

The active role of NGOs in protecting human rights cannot be minimised or underestimated. Through a series of sincere steps taken by Amnesty International, International Court of Justice, Asia Watch, America Watch and Africa Watch, violation of human rights has been considerably reduced.

All these organisations suggest ways for protection of human rights. Asia Watch is allowed to come to India whenever it desires and conducts research on human rights. India had also made arrangements for its visit. As a result, its activities in India increased considerably since 1993. Since then it has made countries in the continent vigilant in the matter of implementing laws on human rights and safeguarding them. In Assam atrocities and abuse

\(^5\) Supra Note 15 at 259-61
\(^6\) Id. at 263
of human rights took place. 'Operation Rhino' was started in September 1991 and people were humiliated by the Army. Women and girls were raped by Army jawans. All these details were highlighted by the vigilant 'Asia Watch'.

No doubt, in India, international laws concerning human rights of women in the context of crime against them are followed. As a result, the National Human Rights Commission and the National Commission for Women were constituted. At present these commissions are working as statutory bodies. They are controlled by the government in the matters of finance, working staff, investigations etc. The staff in these commissions, including the investigative agency, is on deputation. They can hardly find any wrong in the functioning of their parent department and government.

But the issue of the girl child, already progressively missing from India and at risk in many other parts of the world, has been flagged by the UN Committee on the Rights of the Child as a major and critical violation of human rights of children. Indian NGOs spoke out at the committee's September 17 open hearing in Geneva and called for attention to the ominous decline in India's girl child population. They pleaded for wider attention to the grave issue of denial of birth and life to young girls.

NGOs representing India Alliance for Child Rights and the Centre for Women's Development Studies said India must be challenged on the issue of mounting gender imbalance. India Alliance has submitted a factfile of research findings and Census data to the UN committee on behalf of NGOs working on this issue. Information shows a steady decline in the number of females in the 0-6 age group thereby highlighting discrimination against the girl infant and the girl child.

The UN committee has, over the past four years, asked India to be more attentive in arresting the decline in the number of girls in the 0-6 age group. It has suggested compilation of data pertaining to cases of sex detection of the foetus, sex-selective abortions (foeticide), infanticide and instances of early neglect of the girl child.

67 Id. at 262.
The Government of India, through two reports submitted in 1997 and 2001, has not communicated to the UN that the challenge has been met. While focussing on the theme of early childhood, the UN committee elicited response from many NGOs during its hearing on September 17. The day-long international gathering of hundreds expressed shock over the girl-child issue.68

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