CHAPTER II

WOMEN'S RIGHTS AS HUMAN RIGHTS: INTERNATIONAL AND NATIONAL INSTRUMENTS

The struggle for establishing women's rights as human rights has a long history. The guarantee of women's rights is an important means of eradicating gender discrimination and to protect women from gender based violence. As a concept women's rights imply freedom and entitlement of women for their socio-economic, political and other upliftment irrespective of any kind of gender discrimination. Thus, the notion of women's rights include various issues viz., the right to bodily integrity and autonomy; right to vote (suffrage); right to hold public office; right to work; right to have equal pay; right to own property; right to education; right to enter into legal contracts and to have marital, parental and religious rights etc. Understanding the state of women's rights is an important precondition for understanding women's socio-economic, political and legal status in society. The need to equate women's rights with human rights is expressed many a time by people who are concerned about the deteriorating status of women.

The idea of women's rights has many historical sources that come from enlightenment era, various feminist philosophies and 19th century reform movements etc. During 18th century the question of women's rights became prominent. In 1791, Olympe de Gouges, a political activist and playwright published the "Declaration of the Rights of Woman and the Female Citizen", which was modeled on the "Declaration of the Rights of Man and of the Citizen" of 1789. This publication states that the revolution (French) will take effect only when all women become fully aware of their deplorable condition and rights that they have lost in society. Mary Wollstonecraft, a British writer and philosopher, in her work "A Vindication of the Rights of Women" in 1792 focused on the social status of women. In this book she argued for the extension of citizenship rights to women; women as parties to the social contract should be treated at par with men.
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— they should be educated; their reason developed and respected, they should be judged according to the same conception of virtue and vice. She denied the 18th century educational and political theorists who denied education to women. She believed that women's exclusion from political and social institutions or lack of political and legal rights are not the mere reason for which they are oppressed rather she held denial of education to women as responsible for this situation. Women were essential to the nation because they educate its children and because they could be “companions” to their husbands, rather than mere wives. Wollstonecraft believed that instead of viewing women as ornaments of society, they should be given those deserving fundamental rights as men have. The 19th century also witnessed a great urge for the development of women's rights. J. S. Mill, English philosopher and political theorist, expressed a great concern for the rights of women. In ‘Subjection of Women’ (1861) Mill opposed gender discrimination and viewed that differences in sex should not be the basis for excluding women from certain rights that they deserve. He was of the opinion that everyone should have the right to vote, with the only exceptions of barbarians and uneducated people. In fact, Mill was the first who pleaded for the cause of women in the parliament. All these writings influenced subsequent scholars, activists and others who advocated for women's rights.

The 19th century women’s rights movement focused on achieving equal political, social and economic status between the sexes as also with establishing legislative safeguards against discrimination on the basis of sex. During that period women in the United States took part in different movements especially to improve education, to initiate prison reform, to ban alcoholic drinks and most importantly for their right to vote. In 1848 the women's rights convention held in Seneca Falls, New York produced Declaration of Sentiments with a plea for the end of discrimination against women in every field of society and also for ensuring the right to vote.

86 Ibid.
87 Ibid.
88 Ibid.
In 1850 the National Women's Rights Convention was held in Worcester, Massachusetts, under the leadership of Lucy Stone, a social activist. Since then it had been taking place every year till 1860 except in 1857. In 1869 Susan B. Anthony and Elizabeth Cady Stanton formed the National Woman Suffrage Association (NWSA) and Lucy Stone, Henry Blackwell and others formed the American Woman Suffrage Association (AWSA). NWSA and AWSA were concerned with the voting rights for women by means of a Congressional amendment to the Constitution and amendments to individual state constitutions respectively. In the same year the state of Wyoming passed the first women's suffrage law. In 1890 the National Women Suffrage Association and the American Women Suffrage Association merged to form the National American Woman Suffrage Association (NAWSA) under the leadership of Elizabeth Stanton. NAWSA waged many campaigns to secure voting rights for women. Thus, with the emergence of various organisations such as, the National Association of Colored Women (NACW), the National Women's Trade Union League (NWTUL), Women's Christian Temperence Union (WCTU) and the National Council of Jewish Women (NCJW) the women's movement gained momentum during the 1890's and early 1900's. In 1919, the Nineteenth Amendment granting women the right to vote was passed by both Houses of Congress and in 1920 it became ratified under the presidency of Woodrow Wilson. It was ratified that "the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex". With time women's movement focused on diverse issues including reproductive rights, sexual harassment and others.

During 19th century Great Britain also experienced a number of significant social reforms movements. There was slow but steady advancement of women's rights. Earlier British women had no property rights rather all their properties were


transferred to their husbands. Women gained the property rights in 1882 under the Married Women's Property Act. The struggle for voting rights in Britain ultimately gave women voting rights. The right to vote was granted in 1918 and was confined to women of thirty and above. In 1928 the voting age was lowered to 21.¹ All these events show that the struggle for women's rights is not a new one rather has passed through many phases of difficulties. And the struggle has been continuing till the present time especially in the third world countries.

**Women's Rights and United Nations: Post War Era**

The concept of women's rights received a great attention with the establishment of the United Nations (UN) in 1945. The Organisation addresses exclusively various issues of women including their social, economic, political, cultural and civil rights. It has developed various mechanisms to look at the gender issues and gender equality and thereby tried to make women's issues central to all its activities including policy development, research and program implementation etc. The UN has been working in the process of advancement of women with all its efforts and calls for the protection and promotion of the rights of women globally. In the following paragraphs we shall focus on different important events that developed for the protection and advancement of women in different spheres of life.

**Commission on the Status of Women and the Branch for the Advancement of Women (1946)**

The United Nations Sub-Commission on the Status of Women was constituted by the United Nations Economic and Social Council (ECOSOC) Resolution 11(II) of 21 June 1946 with the aim to ensure gender equality and improvement of women's human rights. It is the principal global policy-making body related to advancement of women's political, economic, civil, social and educational rights. The Commission assumed the status of a full commission and known as UN

Commission on the Status of Women (CSW). The full commission is dedicated to ensure women’s equality and promotion of women’s rights. Its mandate is to “prepare recommendations and report to the Economic and social Council on promoting women’s rights in political, economic, civil, social and educational fields” and to make recommendations “on urgent problems requiring immediate attention in the field of women’s rights.” Thus the Commission urges its recommendations to be followed by governments, intergovernmental bodies, civil society actors and others institutions. Further, it also adopts various resolutions pertaining to women’s issues worldwide. Apart from dealing with progress, obstacles, exchanging ideas and making policies the Commission also takes into consideration the environmental degradation and climate change as a threat towards the advancement of women’s status. Thus, through the efforts of the CSW, the UN adopts a number of declarations and conventions and organises world conferences.

The United Nations Divisions for the Advancement of Women (UNDAW) promotes women as equal participants and beneficiaries of sustainable development, peace and security, governance and human rights. It facilitates the participation of civil society representatives in the Commission’s annual session. The main responsibilities of UNDAW are as follows:

- To support formulation of policy, global standards and norms on gender equality and women’s empowerment at global level, including through analysis and research;

- To promote, support and monitor the implementation of international agreements on gender equality and empowerment of women, including the Beijing Platform for Action, at international and national levels;

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94 Ibid.
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- To support the implementation of the Convention on the Elimination of all Forms of Discrimination against Women and its Optional Protocol;

- To promote the mainstreaming of gender perspectives across all sectors, both within and outside the United Nations system.

Universal Declaration of Human Rights (1948)

Adoption of Universal Declaration of Human Rights (UDHR) in 1948 by the UN General Assembly Resolution 217A (III) of 10 December 1948 has further boosted the concern for the development of women’s status. As a first human rights document the UDHR protects all basic rights of human beings without making any discrimination based on sex and understands that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The adoption of UDHR is an important milestone in the development of women’s social, economic political and cultural rights.

Convention on the Political Rights of Women (1952)

Convention on the Political Rights of Women ensures equal rights of women with men in the field of politics. This Convention was brought in 1952 and entered into force on 7 July 1954. The Convention expresses its concern for the implementation of the principle of equality of rights for men and women that is enshrined in the Charter of the United Nations. It also realises that everyone has the right to take part in the government of his country directly or indirectly through freely chosen representatives and has the right to equal access to public service in his country also. Political rights of women are contained in different articles of the convention. According to Article 1, women have the right to vote in all elections without any sex based discrimination. Article 2 of the Convention emphasises that women are eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any

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discrimination. The Convention also provides for the right of women to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination under its Article 3. Thus the Convention intends to generate a status of women as equal with men in the exercise and enjoyment of political rights.

Convention on the Nationality of Married Women (1957)

Convention on the Nationality of Married Women was adopted by the General Assembly of the United Nations on 29 January 1957 and came into force on 11 August 1958. Reaffirming the principles of the United Nations, the Convention in its Article 1 emphasises that 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 marriage, shall automatically affect the nationality of the wife. According to Article 3 (1), an alien wife may acquire the nationality of her husband through specially privileged naturalisation procedures which may be subjected to such limitations as may be imposed in the interests of national security or public policy. Hence, the Convention is an important step to protect the nationality of married women.

Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)

This Convention was opened for signature and ratification by General Assembly Resolution 1763 A (XVII) of 7 November 1962 and it entered into force on 9 December 1964. It ensures women the freedom to choose their partner in marriage and also gives importance to the consent of women along with men in marriage. The Convention in its Article 1 (1) expresses that no marriage shall be

97 Ibid.
99 Ibid.
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legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law.100 Beside this it is also stated that a particular minimum age for marriage should be specified and no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses. (Article 2)101 According to Article 3, official registration of all marriages by the competent authority is necessary.102 Thus having faith in UDHR the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages promotes the right of women in the field of marriage and thereby protect them from any premarital exploitation.

Declaration on the Elimination of Discrimination against Women (1967)

In 1967 the Declaration on the Elimination of Discrimination against Women was adopted by the General Assembly. It contains the spirit of UDHR in underlining the rights of women against discrimination. Article 1 of the Declaration emphasises that discrimination against women is fundamentally unjust and it is an offence against human dignity. The Convention also calls for the abolition of laws, customs, regulations and practices which discriminate against women under its Article 2. Article 4 and 5 provides for full electoral rights for women, including the right to vote and the right to seek and hold public office and to have the same rights as men to change their nationality respectively. Article 7 holds that all provisions of penal codes which constitute discrimination against women shall be repealed.103 Article 8 calls on states to combat the trafficking of women

101 Ibid.
102 Ibid.
and forced prostitution.\textsuperscript{104} Likewise, the Declaration calls for right to education of women, for their equal rights in the workplace, equal pay for equal work etc. without any gender discrimination. It establishes the foundation for the legally binding Convention on the Elimination of All Forms of Discrimination against Women.

\textbf{Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)}

This Declaration adopted by the General Assembly Resolution 3318 (XXIX) of 14 December 1974 in order to secure women and children in times of emergency or any conflict situation is a progressive step towards the security of weaker sections like, women and children. It considers all forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories as criminal. It further holds that shelter, food, medical aid or other inalienable rights should be granted to women and children who are in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories.

\textbf{International Women's Year, International Women's Day (8 March), World Conference of the International Women's Year (Mexico City) (1975):}

\textbf{International Women's Year (1975)}

The General Assembly in 1972 declared 1975 as International Women's Year with an objective to draw the attention of international community on women's issues. It encouraged the governments, non-governmental organisations and individuals to increase their efforts to promote equality between men and women and also to recognise women's contribution to development.\textsuperscript{105} During this period

\textsuperscript{104} Ibid.
\textsuperscript{105} United Nations, "Short History of the Commission on the Status of Women".
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the United Nations began celebrating 8th March as International Women’s Day. The General Assembly points out two reasons behind the observance of International Women’s Day: first, to recognize the fact that securing peace and social progress and full enjoyment of human rights and fundamental freedoms require the active participation, equality, and development of women; second, to acknowledge the contribution of women to the strengthening of international peace and security. The first World Conference to address women's issues was held in Mexico City.

World Conference of the International Women’s Year in Mexico City (1975)

In 1975 the world conference on the status of women also known as the First World Conference on Women, was convened in Mexico City during International Women’s Year. The Conference specifies many developmental programs for women. It recommends the U.N. Decade for Women (1976–1985) to focus on the need to develop effective strategies and plans of action for the advancement of women. And three key objectives have been identified in relation to equality, peace and development for the Decade. These are:

- Full gender equality and the elimination of gender discrimination;
- The integration and full participation of women in development;
- An increased contribution by women towards strengthening world peace.

The Conference also adopted World Plan of Action to provide guidelines to governments and international community in pursuing three key objectives set by the General Assembly. The Plan of Action intended to secure equal access for women to resources such as, education, employment opportunities, political participation, health services, housing, nutrition and family planning and also for

the implementation of the objectives of the women’s year. The Conference also expresses its concern that the governments should formulate national strategies, targets and priorities to promote the equal participation of women. Moreover, it contributes to the establishment of institutions such as, International Research and Training Institute for the Advancement of Women (INSTRAW) and the United Nations Development Fund for Women (UNIFEM) for women’s development. These institutions are to focus on research, training and operational activities in the area of women and development. Another outcome of the Conference is the adoption of the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, 1975.

Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace (1975)

The First World Conference of International Women’s Year produced a declaration known as Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace in 1975. It provides certain principles to be followed in order to reach equality between men and women and to recognise their contribution in the field of peace and development. It holds that equality between women and men stands for equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. Further it emphasises that any obstacles in the way of enjoyment of women should be removed in order to ensure women’s full integration into national development and their participation in securing and in maintaining international peace. The Declaration also reaffirms the right of women to work; to achieve similar conditions and opportunities in work and to have equal pay for any work of equal value together with their male counterparts. Thus, the Declaration expresses its concern for equalising the status of women with men and thereby to find effective methods to give women more opportunities for their participation in world peace and development.
United Nations Decade for Women (1976–85)

At the recommendation of the World Conference held in Mexico City the General Assembly declared the years 1976-1985 as the UN Decade for Women which aimed at eradicating gender inequities. The Decade focused on its theme - equality, development and peace - and sub-themes - education, health and employment and called for a number of activities to give women social justice and equity. During this period the National Women's Conference of Houston (1977), the World Conference of Copenhagen (1980) and Nairobi (1985) are prominent. The period is marked by various activities, passage of many declarations and conventions aimed at the promotion of women's rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the landmark events for the advancement of women's rights that took place during this Decade.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

The Convention on the Elimination of all forms of Discrimination against Women was adopted in 1979 by the UN General Assembly and is also known as an International Bill of Rights for Women. The preamble of CEDAW acknowledges the existence of extensive discrimination against women and emphasises that such discrimination “violates the principles of equality of rights and respect for human dignity.” The Convention focuses on the concept of discrimination against women and setup programs to be follow by states to end such discrimination. Discrimination against women, according to this Convention is, “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic,

social, cultural, civil or any other field.” (Article 1)\(^{109}\) In fact, it is the first international instrument to define the concept of discrimination against women. All appropriate measures are to be taken by States parties to suppress all forms of traffic in women and exploitation of prostitution of women (Article 6) and to eliminate discrimination against women in political and public life, including in relation to the representation of their countries at the international level and in international organisations (Articles 7 and 8).\(^{110}\) It also provides for the statehood of women, irrespective of their marital status (Article 9). Women’s right to non-discrimination in education, employment and economic and social activities are also affirmed under Article 10, 11, and 13 respectively. These rights are given special emphasis with regard to the situation of rural women. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal capacity “shall be deemed null and void”.\(^{111}\) Article 16 asserts the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.\(^{112}\) CEDAW also focuses on reproductive rights of women targeting culture and tradition as influencing forces to shape gender roles and family relations. Article 5 asserts a proper understanding of maternity as a social function and demands a shared responsibility for child-rearing by both sexes.\(^{113}\) Moreover, the Convention also establishes the Committee on the Elimination of Discrimination against Women (CEDAW) for the purpose of considering progress made in its implementation.

**Optional Protocol to the CEDAW**

An optional protocol to the CEDAW was adopted on 6 October, 1999 in order to improve the existing enforcement mechanisms for women’s human rights and also to create greater public awareness of human rights standards relating to discrimination against women. The preamble of the Optional Protocol put forward

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\(^{109}\) Ibid.

\(^{110}\) Ibid.

\(^{111}\) Ibid.

\(^{112}\) Ibid.

\(^{113}\) Ibid.
the object and purpose of the Protocol and refers to the principles of equality and non-discrimination as embodied in UDHR, CEDAW and other international human rights instruments. The Optional Protocol includes the communications procedure and the inquiry procedure. The communication procedure gives individuals and groups of women the right to complain to the Committee on the Elimination of Discrimination against Women about violations of the Convention. The Inquiry procedure enables the committee to conduct inquiries into grave or systematic abuses of women’s human rights in countries that becomes party to the Optional Protocol. However, the Protocol includes an “opt-out clause”, allowing states upon ratification as accession to declare that they do not accept the inquiry procedure. This Protocol can be recognised as an important step in respect of the development of women’s human rights instrument of the UN.

The Second World Conference on Women (Copenhagen) (1980)

In 1980, during the UN Decade for women, another world conference on women was held in Copenhagen. The World Conference of Copenhagen was held not only to review the achievements of the Decade but to adopt an action plan for the further advancement of women. The main intention was to review and appraise the progress made in the World Conference of the International Women’s Year i.e., of 1975. Three areas of women’s issues - employment, health and education - were the concern of the Conference. It was held that equality, development and peace of the World Conference of the International Women’s Year could not be realised unless these are refined into specific sector. The Conference also ensured women the ownership and control of property and improvement in their rights to inheritance, child custody and loss of nationality by means of stronger national action.

114 Ibid.
115 Ibid.

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World Conference to Review and Appraise the Achievements of the United Nations Decade for Women (Nairobi) (1985)

In 1985 the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women was organised in Nairobi. Its mandate was to formulate concrete measures to remove the obstacles in the way of achieving the Decade's goals. Thus the Conference helped to prepare the "Forward-looking Strategies" a document which include comprehensive measures for implementing gender equality at the national level and for promoting women's participation in peace efforts. Further, it called for the regular monitoring of their implementation and for considering on a regular basis reports on the progress made by the Commission on the Status of Women and concrete measures implemented at national, regional and international level to advance the status of women in relation to equality, development, peace, employment, health and education.

Fourth World Conference on Women (Beijing) (1995)

The Fourth World Conference also known as "The Fourth World Conference on Women: Action for Equality, Development and Peace" was convened by United Nations during September 4-15, 1995 in Beijing, China. It was concerned with the advancement and empowerment of women in relation to women’s human rights and other aspects such as, women and poverty, women and decision-making, the girl-child, violence against women etc. The most important output of the Conference was the Beijing Declaration and the Platform for Action. The Declaration observed the progress in the status of women during the last decade and it found the progress as uneven and the existence of inequalities between men and women in practice. The Declaration emphasised on further advancement of the status of women and specifically called for recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own
fertility, as basic to their empowerment (Paragraph 17). It also emphasised on equal access to and equal treatment of women and men in education and health care and enhances women's sexual and reproductive health as well as education (Paragraph 30). The Platform for Action identified twelve critical areas of concern which should be addressed in order to achieve social, political, economic, cultural and environmental security among all people. These areas include poverty, education, health, violence, armed conflict, the economy, power and decision making, mechanisms for women's advancement, women's human rights, mass media, the environment and the girl child. Further the Platform forwarded measures both for international and national action related to the advancement of women over the next five years.


In 2000, the UN General Assembly called for a special session known as “Women 2000: Gender Equality, Development and Peace for the Twenty-first Century” and often referred as “Beijing Plus 5” to evaluate the progress towards achieving the objectives of the Beijing Platform for Action five years after its inception. The document “Further Actions and Initiatives to implement the Beijing Declaration and Platform for Action” was adopted as the outcome of the session. The document stated that the objectives and commitments of the Beijing Platform for Action was not achieved and implemented fully. Hence, it emphasised further actions and initiatives at the local, national, regional and international levels to ensure the goals of Beijing Platform for Action for gender equality, development and peace. The World Summit on the Information Society (2003) was held in Geneva in which the UN Commission on the Status of Women emphasised women’s participation and access to the media and information and communication technologies and their impact on and use as an instrument for the advancement and empowerment of women. In 2004, the Commission was also

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120 Ibid.
concerned with equal participation of women in conflict prevention, management and conflict resolution and in post-conflict peace-building. In 2005 a ten year review and reappraisal of the Beijing Platform (1995) was attempted and the UN Decade for women was also given periodical extension.

**Women’s Rights in India**

**Constitutional Perspectives**

In keeping with international standards of human rights the Indian Constitution also holds the principle of gender equality. It embodies all those rights which are enshrined in the UDHR. The Preamble, Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) reflect the foundation of equality between sexes from the very beginning and provided various other provisions in favour of women.\(^{122}\) We shall highlight here those rights enshrined in the Indian Constitution which refer to the protection of women in different areas.

Article 14 of the Indian constitution says that the government shall not deny to any person equality before law or the equal protection of laws.

Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, recognising the vulnerable and disadvantaged position of the women and children in our society. Further, Clause 3 of Article 15 makes a special provision enabling the State to make affirmative discriminations in favour of women. Moreover, the government can pass special laws in favour of women. Thus Article 15 (3) allows the State to make any special provision for women and children.

Indian constitution also guarantees that no citizen shall be discriminated against in matters of public employment on the grounds of religion, race, caste and sex (Article 16).

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Article 21 imbibes the principle of natural justice and fairness and confers on every person the fundamental right to life and liberty.

Article 23 embodies two declarations. First, traffic in human beings; beggar and other similar forms of forced labour are prohibited. The prohibition applies not only to state but also to private persons, bodies and organisations. Secondly, any contravention of the prohibition shall be an offence punishable in accordance with law. Considering that mostly women fall victim of trafficking, this provision in the Article is expected to grant security to Indian women.

According to Article 39 (a) of the Constitution, the state shall direct its policy towards securing – that the citizens, men and women equally have the right to an adequate means of livelihood;

Article 39 (d) provides that there is equal pay for equal work for both men and women;

Article 39 (e) includes that the health and strength of workers, men and women and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and other provisions also.

Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. The constitution also imposes a fundamental duty on every citizen through Article 51 (A) (e) to renounce practices derogatory to the dignity of women.

Beside these 73rd and 74th amendments of Indian Constitution provide for the promotion of political rights of women with the introduction of reservations of seats for women in Panchayats and Municipalities. Under Article 243-D of the Constitution, not less than one third of the total number of seats to be filled in through direct election in every Panchayats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat and not
less than one third of total number of offices of chairperson with the Panchayat at each level shall be reserved for women. Notwithstanding this provision of the Act some states viz., Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tripura and Uttarakhand have provided reservation of 50 per cent seats for women. Similarly, Article 243-T provides 33 per cent of seat reservation for women in municipal bodies. Not only this, recently in 2010 the Indian parliament has taken a step to ensure significant representation of the women of India in the parliament. In this year the Women’s Reservation Bill has been placed in the Indian Parliament. The Bill includes reservation of 33 per cent of seats in Lok Sabha and State Assemblies for women. However, the Bill is yet to achieve the status of an Act.

Legislations Supporting Women’s Rights in India

Following the Constitutional approach to women’s rights the Indian legislature has passed various laws from time to time to protect and promote the cause of women. Many of these laws were government’s social reform or labour welfare which were enacted in the earlier decades. However, in post independent era a number of important laws have been passed by the Indian legislature which has a bearing on the lives and status of women. Some of these women specific legislations have been highlighted here.

The Child Marriage Restraint Act, 1929

The Act prohibits child marriage (of both girl and boy) by prescribing marriageable age for both sexes. It prescribes marriageable age 18 for bride and 21 for groom. It prescribes punishments for an adult male contracting a child marriage, any one who performs, conducts or directs the child marriage and a male parent/guardian who promotes, permits or solemnises a child marriage.

123 Basu, Introduction to the Constitution, 275.
The Factories Act, 1948

The objective of this Act is to regulate conditions of labour regarding health, safety and welfare facilities. It prescribes the nature of work that must not be given to women worker or employees. It prohibits working of women on or near machinery in motion. No female worker can be compelled by the employer to lift excessive weight and they must not be employed during the night shift. It mandates separate urinals, latrines and washing facilities for the use of women employees. Further, it says that in factories where more than thirty female employees are working, the employer must maintain adequate number of suitable creches for taking care of children (under the age of six years) of such female employees.

The Hindu Marriage Act, 1955

The Act protects the rights of Hindu women to divorce their husbands and thus provides for various grounds on which divorce can be obtained. Under this Act when a wife is physically or mentally abused by a husband who is of incurably unsound mind or suffering from episodic fits of mental disorder, then this provides a clear-cut ground of divorce.

The Immoral Traffic (Prevention) Act, 1956

The Act prescribes punishments for keeping a brothel, for trafficking in women for prostitution, for living on the earnings of a prostitute, etc. With a view to safeguard public morals and society the Act aims at prohibiting prostitution in public places. Further, it prescribes stringent action against commission of offences against a child or a minor. The Special Police Officer has power to enter premises and, if directed by the court, even to search the premises and to rescue persons from there. The Special Police Officer is also empowered to arrest the offender without warrant. Every offence punishable under the Act is cognisable.
The Hindu Succession Act, 1956

The Act recognises the rights of women to inherit property equally with men. The most important part of this Act is that a daughter has full right over the property of her parents along with a son. In the self acquired property of a Hindu male, all the members of the family have equal rights, including the women as his daughter(s), wife, mother, daughter’s daughter, widowed daughter-in-law.

The Dowry Prohibition Act, 1961

The Act aims to eradicate the evil practice of dowry from society. It prohibits giving, taking or demanding dowry in connection with marriage. But the Act permits presents to be given to the bride or bridegroom. This Act was further amended in 1984 and 1986. For the offence of giving and taking dowry a minimum imprisonment for five years and a fine of rupees fifteen thousand or the amount of the value of dowry, whichever is more, has been imposed. For the demand of dowry, whether direct or indirect, the minimum punishment for period of six months and fine is prescribed which may extend to five thousand rupees. The offences relating to dowry are cognisable, non-bailable and non-compoundable. For making arrests, a warrant or order of a magistrate is necessary.

The Maternity Benefit Act, 1961

The Act aims to provide social justice to women workers. It is a protection to the dignity of motherhood as it provides healthy maintenance of woman worker and her child during the period of her confinement. Under this Act, maternity benefits are paid to women for a certain period before and after confinement. The Act also prescribes the period during which the employer is prohibited from giving to a pregnant woman employee any arduous work, or work which involves long hours of standing, or work which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage, or otherwise adversely affect her health.
The Medical Termination of Pregnancy Act, 1971

The Act intends to protect both mental and physical health of pregnant women. It includes provisions such as, time, place and circumstances under which a pregnancy may be terminated by a registered medical practitioner. Abortion is legalised under this Act in cases where there is failure of contraceptives or if the pregnancy adversely affects the physical or mental well-being of the prospective mother. It also prescribes for the consent of the pregnant woman in case of medical termination of her pregnancy.

The Equal Remuneration Act, 1976

The Act protects those women who are working in any establishment along with men from being economically exploited by the employers. Under this Act there shall be no discrimination regarding remuneration paid by employer to employee on the basis of sex for the work of similar nature. No discrimination shall also be made while recruiting men and women for the work of a similar nature and in any condition of services subsequent to recruitment such as, promotions, training, or transfer.

The Indecent Representation of Women (Prohibition) Act, 1986

The Act prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. It also prohibits sale, distribution and circulation of material containing indecent representation of women. Offences under the Act are cognisable and bailable. Contravention of the provisions by any person/company is punishable with imprisonment and fine.

The Muslim Women (Protection of Rights on Divorce) Act, 1986

The Act aims to protect the rights of Muslim women who have been divorced or have obtained divorce from their husbands. Under this Act a divorced woman shall be entitled to all the properties that were given to her before or at the time or after the marriage by her relatives or friends or the husband or any relatives of the
husband or his friends. Further, it also deals with order for payment of maintenance.

**The Commission of Sati (Prevention) Act, 1987**

The Act intends to prevent the commission of *Sati* and its glorification. It prescribes punishment for those who attempt to commit *Sati* or abet the commission of *Sati*, directly or indirectly. It denies glorification of *Sati* and makes it punishable. Under this Act, the abettor is disqualified from inheriting the property of the person in respect of whom such *Sati* is committed. Further, the Act ordains removal of temples/structures where worship or ceremonies are performed with a view to perpetuating the honour of or to preserving the memory of any person in respect of whom *Sati* has been committed. It also mandates establishment of special courts to take cognisance of offences committed under the Act.

**The National Commission for Women Act, 1990**

The Act provides for the constitution of the National Commission for Women to review the constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women. Chapter III of the Act deals with the functions of the National Commission for Women such as, investigating and examining all matters relating to the safeguard provided for women under the Constitution and other laws; to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations; to take up the cases of violation of the provisions of the constitution and of other laws relating to women with the appropriate authorities, etc.
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The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

This Act provides for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female feticide. The techniques are to be used only under certain conditions. The Act regulates genetic counseling centres, genetic laboratories and genetic clinics by making registration of such centres, laboratories and clinics compulsory. But such centres are prohibited from issuing advertisements relating to pre-natal diagnostic techniques for detection or determination of sex of the foetus. The Act prohibits determination and disclosure of the sex of foetus to the woman or her relatives. Any contravention of the provisions of this Act is punishable with imprisonment and fine and offence under this Act is cognisable, non-bailable and non-compoundable.

The Protection of Women from Domestic Violence Act, 2005

The Act provides for an effective and efficacious relief against domestic violence to women living in a household. Under the Act women, who may be mother, sister, wife and widow, children under 18 years of age or partners living in the shared household are protected from physical, sexual, verbal and emotional and economic abuse within the household. Thus the Act is designed to protect both mental and physical health of women. This Act is based on postulates of human rights.

Apart from these legislations there are some other laws which are related to the rights of women. Some of these include the Family Courts Act, 1984; the Special Marriage Act, 1954; and the Hindu Adoptions and Maintenance Act, 1956 etc.

In order to protect sexual harassments of women at work places the Supreme Court gave guidelines. The guideline is the result of Supreme Court’s judgment in case of “Visakha vs. State of Rajasthan” (13th August 1997). It is also known as Visakha guidelines. Recognising sexual harassments at work places as violation of human rights the Supreme Court urged the guidelines to be followed by all institutions until a law is enacted. According to this, sexual harassment is defined as any unwelcome sexually determined behaviour, such as, physical contact, demand or request for sexual favours, sexually coloured remarks, showing pornography and any other physical, verbal or non-verbal conduct of a sexual nature. The guideline emphasised adoption of preventive measures for sexual harassments at the work places. The sexual harassment policy is one important preventive measure that provides for grievance procedure. Moreover, the guideline also prescribed the complaint mechanism and the need for creating awareness of the rights of female employees.

The Indian Penal Code and the Code of Criminal Procedure and Women

With regard to the protection of women’s rights in India both the Indian Penal Code (IPC) and the Code of Criminal Procedure (Cr.P.C) contain some sections which specifically provide protection to women. Some of the important sections are highlighted here:

**Section 304 B**, inserted in IPC by the Dowry Prohibition (Amendment) Act 1986, provides for situations under which the death of a woman can be called as dowry death and also punishment related to the offence. Under this section if a woman dies an unnatural death due to burns or bodily injury or otherwise within seven years of her marriage and if it is seen that just before her death she was subjected to cruelty and harassment in connection with dowry by her husband or any relative of her husband then they will be held responsible for her death unless
proven otherwise. The offence is punishable with minimum of seven years and maximum of life imprisonment.\textsuperscript{125}

Section 498 A of IPC deals with the offence of cruelty by husband or his relative against a married woman. In this section if the husband or the relative of the husband of a woman subjects such woman to cruelty (both mental, physical threat, harassment, torture) then they shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is non-bailable and cognisable.\textsuperscript{126}

Section 313 deals with the fact of causing miscarriage without woman's consent. Under this section if anyone commits the offence of causing miscarriage to a woman without her consent then the person shall be punished with imprisonment for life or with imprisonment up to ten years and also with fine.\textsuperscript{127}

Section 314 of IPC provides punishment for death caused by act done with intent to cause miscarriage if without women's consent. The punishment is either imprisonment for life or up to ten years and also fine.\textsuperscript{128}

Under Section 354 of IPC whoever assaults or uses criminal force to any woman with the intention to outrage her modesty shall be punished with imprisonment up to two years or with fine or both.\textsuperscript{129}

Section 366 deals with kidnapping, abducting or inducing woman to compel her marriage. Under this, whoever kidnaps or abducts any woman with the intention to compel her to marry any person against her will or in order that she may be forced or seduced to illicit intercourse shall be punished with imprisonment of ten years and shall also be liable to fine. Similar punishment is prescribed for the


\textsuperscript{126} Ibid., 247.

\textsuperscript{127} Ibid., 167.

\textsuperscript{128} Ibid.

\textsuperscript{129} Ibid., 182.
offence of inducing any woman to go from any place with the intent that she may be forced or seduced to illicit intercourse with another person.\textsuperscript{130}

\textbf{Section 366 A} states that whoever, by any means induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be forced or seduced to illicit intercourse with another person shall be punished with imprisonment of ten years and also fine.\textsuperscript{131}

\textbf{Section 366 B} deals with importation of girl from foreign country. Under this section, whoever imports any girl under the age of twenty-one years from any foreign country or from the State of Jammu and Kashmir into India with the intent that she may be forced or seduced to illicit intercourse with another person shall be punished with imprisonment of ten years and fine.\textsuperscript{132}

\textbf{Section 375} of IPC describes grounds under which sexual offence can be considered as rape. It says that a man is said to have committed rape who has sexual intercourse with a woman under circumstances such as, against her will; without her consent; with her consent but the consent is obtained by putting her or any person in whom she is interested the fear of death or of hurt; with her consent under the situation that when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; with her consent which is given by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance and she is unable to understand the nature and consequences of that to which she gives consent; with or without the consent of any woman under the age of sixteen.\textsuperscript{133}

\textbf{Section 376} of IPC prescribes punishment for rape. The amended Section 376 of IPC provides for a minimum sentence of seven years imprisonment for the

\textsuperscript{130} Ibid., 187.
\textsuperscript{131} Ibid
\textsuperscript{133} Childline India Foundation, “\textit{The Indian Penal Code\textsuperscript{190}}, 190.
offence of rape and for combating the vice of custodial rape, rape on pregnant woman, rape on girls below twelve years of age and gang rape a minimum punishment of ten years has been prescribed.\textsuperscript{134}

Section 376 A punishes sexual intercourse with wife without her consent by a judicially separated husband. The punishment for the offence is imprisonment of two years and also fine.\textsuperscript{135}

Section 376 B punishes for sexual intercourse by a public servant with a woman in custody. The punishment for the offence is imprisonment of five years and also fine.\textsuperscript{136}

Section 376 C punishes sexual intercourse by superintendent of jail, remand house, etc. with any female inmate of such jail, remand home, place or institution. The punishment for the offence is imprisonment of five years and also fine.\textsuperscript{137}

Section 376 D punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.\textsuperscript{138}

Section 493 of IPC states that every man who by deceit causes any woman to believe that she is lawfully married to him although she is not and in that belief to have sexual intercourse with him, shall be punished with imprisonment of ten years and also with fine.\textsuperscript{139}

Section 498 of IPC provides punishment for the offence of enticing or taking away or detaining with criminal intent a married woman for the purpose of having illicit intercourse with any person. The punishment is imprisonment of two years, or with fine, or with both.\textsuperscript{140}

\textsuperscript{134} Ibid., 191.
\textsuperscript{135} Ibid., 193.
\textsuperscript{136} Ibid.
\textsuperscript{137} Ibid., 193-194.
\textsuperscript{138} Ibid., 194.
\textsuperscript{139} Ibid., 244.
\textsuperscript{140} Ibid., 246-247.
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Section 509 of IPC punishes for the offence of intending to insult the modesty of any woman by means of uttering any word, making any sound or gesture or exhibiting any object with the intention that such word or sound shall be heard or such gesture or object shall be seen by such woman. The offence is punishable with simple imprisonment of one year or with fine or with both.\(^{141}\)

Section 228A of IPC deals with the offence of disclosure of identity of the victim of offences under section 376, section 376A, section 376B, section 376C, or section 376D. The punishment is imprisonment of two years and also fine.\(^{142}\)

Section 125 of Cr.P.C specified maintenance by man for his wife, children and parents.\(^{143}\)

Beside these, there are some other IPC sections, though not specifically meant for women, but help to protect women from any kind of cruel and inhuman behavior and violence. These are Sections 109, 306, 307, 323, 325, 341, 342, 494, 495, 496, 497, and 506.

**Space for Women in Five Year Plans**

The planning process of India also gives focus on the issues relating to all round development and empowerment of women. The First Five Year Plan (1951-1956) dealt with the subject of women's development under the chapter on Social Welfare. In this context, establishment of the Central Social Welfare Board (CSWB) and organisation of *Mahila Mandals* were prominent. Various Community Development Programmes were also adopted. The Second Five-Year Plan (1956-61) continued the welfare approach. It again stated that a comprehensive social welfare programme would include social legislation, welfare of women and children, family welfare, youth welfare, physical and mental fitness, crime and correctional administration and welfare of the physically

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\(^{141}\) Ibid., 256.


and mentally handicapped. The Social Welfare Board took up welfare extension projects providing maternal and child health services, social education for women and like this. The Third and Fourth Five Year Plans (1961-1966 and 1969-74) continued the same welfare approach to women and women's education was given much emphasis in this regard. The Fifth Five Year Plan (1974-1979) integrated welfare schemes along with development services. It emphasised economic benefit and employment of women. In 1976, Women's Welfare and Development Bureau was set up under the Ministry of Social Welfare. The Sixth Five Year Plan (1980-85) for the first time recognised women's development as one of the development sectors and social welfare of women as one of the sub-sectors. The most important part of this Plan was the economic uplift of women through greater opportunities for salaried, self and wage employment. The Seventh Five Year Plan (1985-90) aimed at women's economic and social status for the purpose of bringing them in the mainstream of national development. Many schemes were identified for monitoring by the Department of Women and Child Development under the Ministry of Human Resource Development. The objective was to ensure that women should be the beneficiaries of all development programs. The Eighth Five Year Plan (1992-97) again focused on women's development along with their social welfare. Under this, women's employment, education and nutrition etc. were given importance. It emphasised on the mainstreaming of gender perspective in development to give women fair share of the benefits of development in all socio-economic sectors. The Ninth Five Year Plan (1997-2002) emphasised empowerment of women as one of its important objectives. This plan focused on both women specific and women related sectors. It adopted a special strategy of "women's component plan" to ensure that not less than thirty per cent of funds/benefits flow to women from other developmental sectors. Emphasis was also given to organise women into Self Help Groups to mark the beginning of the process of women's empowerment. The Tenth Five Year Plan (2002 -2007) focused on women's empowerment through the translation of National Policy for Empowerment of Women (2001) into action and ensuring development and protection of women. Under the Eleventh Five Year Plan (2007-2012) women are recognised not only as equal citizens but as agents...
of economic and social growth. Thus the gender perspective is included in this plan. The approach to gender equity is based on the recognition that interventions in favour of women must be multi-pronged and they must: (i) provide women with basic entitlements, (ii) address the reality of globalisation and its impact on women by prioritising economic empowerment, (iii) ensure an environment free from all forms of violence against women (VAW) – physical, economic, social, psychological etc., (iv) ensure the participation and adequate representation of women at the highest policy levels, particularly in Parliament and State Assemblies, and (v) strengthen existing institutional mechanisms and create new ones for gender main-streaming and effective policy implementation.

India a number of schemes, action plans, policies, committees and institutions related to the development and empowerment of women came up from time to time. Some of these are mentioned below:

Schemes:

- Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG)
- Swayamsiddha
- Swadhar
- Stree Shakti
- Swashakti
- Balika Samrudhi Yojana
- Rashtriya Mahila Kosh
- Maternity Benefits Scheme
- Kishori Shakti Yojana (KSY)

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Action Plans & Policies:

- The National Plan of Action (For Women) (1976)
- National Policy for Empowerment of Women (2001)

Committees:

- National Committee on Women's Education (1958-59)
- The Committee on Status of Women in India (CSWI) (1974)
- The National Committee on Role and Participation of women in Agriculture and Rural Development (1977-78)
- The National Committee on Women Prisoners (1986)
- The National Committee on Self-Employed Women and Women in the Informal Sector (1988)

Institutions:

- Department of Women and Child Development (WCD)
- The National Commission for Women (NCW)
- State Commissions for Women (SCW)

The above discussion shows that women's rights have achieved tremendous growth in the post world war period. It acquired a unique status both at the international and national level. Constitutionally and legally women in India enjoy a status of equality with men and have been ensured protection in almost every arena of life.

This chapter tries to examine the concept of women's rights as human rights. The term 'women's rights' does not indicate that women should have some special rights just because they are women. The only urge is that women, as much as men, should be entitled to full protection of their rights and freedoms because they are human beings. It developed due to the lesser recognition of rights of
women. In such situation the only need is to transform the existing laws into practice so as to give women a life with human dignity and freedom.

In the next chapter (Chapter III) we shall focus on the socio-economic profile of the study area; i.e., the Cachar district of Assam and of respondents. This will serve as a prelude to our understanding of the nature of the domestic violence in the district of Cachar. We have tried to analyse the problem from the human rights perspective.