Commission for Women (hereinafter cited as NCW) in seeking redress for the women victims.

Highlighting their achievements and recommendations in many fields of law, the sixth chapter of the work shall make an attempt in bringing out the weaknesses in the working of the present system. The researcher is quite hopeful that by removing the defects and flaws these Commissions would be able to play a befitting role as a moral authority for promoting human rights in our country.

-Conclusion and Suggestions

The last chapter shall summarize the findings of the whole work and comes up with the suggestion to understand and improve the questions which the researcher attempts to raise as well as comprehend in the present thesis.
INTERNATIONAL COMMITMENTS AGAINST GENDER BIAS

The history of woman in India presents altogether a different picture when studied in comparison to the rest of the world. Contrary to the development of feminism in the west, the women in India treaded a different path. Celibacy and condemnation of woman was never propagated in the traditional scriptures. On the other hand, women were considered impertinent for any important rituals. Unmarried man was not to be trusted and neither a household became worth living in absence of a woman. All the much worshipped gods had their female consorts and the cult of shakti representing female power was wide spread.

One also encounters many female scholars contributing in the writings of Vedas. Gargi, lopmudra and Ghosha is some of the famous names of the ancient India. Even in the bhakti cult of the medieval India, woman participated considerably and equality of woman was rightly stressed by many saints. Interestingly, in India Kadambani Ganguly was addressing Indian National Congress when her counterparts in west were still fighting for their voting rights. Sarojini Naidu was made the president for Congress in 1925 and the participation and contribution of females in militant and other forms of national movement was immense.

The picture presented above easily gives the impression that Indian women were in a better position than anywhere else in other world. But the appearances are often deceptive. The researcher had found an interesting anomaly in the way Indian women were treated. There were various social and ritual norms which existed within the larger frame work that helped the suppression of the females. As Bertrand Russel stress in his essay “the Virtue of the Oppressed”, the women in India were suffering from this same dilemma and this is still prevalent in almost every part of India. The concept of virtuous and vice women is beset
deeply in Indian psyche and consciousness. This phenomenon also poses a problem in Indian women getting real empowerment or liberation.

Not going deep into the history of woman in India, the present chapter would deal with the development of feminism in India in relation to the formation of United Nations (herein after cited as UN) constituted with the purpose and object of achieving “equality and justice for all.” It is more comprehensible for this work to critically analyze the important declarations of UN and its allied agencies and its bearing on the feminist dialogue in India. It is also believed that this method would also make the understanding of different phases of legal dialogue and its feminist sensitivity more understandable.

2.2 United Nations and Women Empowerment

The role of women in development is most intimately related to the goal of comprehensive social-economic development. Any development strategy which neglects the need for enhancing the role of a woman cannot achieve meaningful development. There is a need to recognize woman as a valuable asset for overall process of development and not as a burden or cost or a mere humanitarian concession to a disadvantaged groups.

The issue of Gender equality is an outcome of the contemporary thinking about rights and empowerment of women. The issue has gained social, legal and political dimensions. In a 1980 UN Report, it was stated that, “ Women constitute half of world population, perform nearly two-thirds of its work hours, receive one-tenth of the world’s income and less than one-hundredth of the world’s property.”

Equality and justice irrespective of sex consideration is a recognized virtue of all cultures and societies world over. However, the movement for humanitarian commitments for woman has originated in the Christian States during the last century and it has spread to the rest of the States of the world through the United Nations.

The United Nations is committed to the principle of equality of men and women, meaning thereby, equality in their dignity and worth as human beings as
well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the Universal recognition, in terms of equality of rights between men and women and exploring ways and means to give women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms.

The request for equality for women received a considerable boost from two sources. **First**, in the struggle against colonialism and in national liberations wars where men and women joined hands on terms of equality. **Secondly**, as a result of Second World War, the movement for improved status of women gained momentum.

Taking cognizance of women repression all over, the United Nations passed various instruments with a focus on woman’s emancipation and with the object of enhancing the dignity of woman all over the world. The United Nations has come a long way from being a security agency to become an organization concerned with human rights, justice and equality. In the area of women’s issues, it has gathered enormous support whereby it has promoted and protected women’s rights and women’s empowerment. Throughout the world the United Nations has prescribed ‘**Common minimum standards**’ to be adopted by member countries for eradicating gender discrimination. The international women’s movement began many years before the inception of the United Nations. In 1775 *Mary Wollstonecraft* wrote “**A Vindication of the Rights of Women**.”¹ Then in 1848, there were the famous conventions on women’s rights at *Seneca Falls*. After its inception, the United Nations organization moved quickly to affirm that

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¹ *Wollstonecraft* states that currently many women are silly and superficial (she refers to them, for example, as "spaniels" and "toys", but argues that this is not because of an innate deficiency of mind but rather because men have denied them access to education. *Wollstonecraft* is intent on illustrating the limitations that women's deficient educations have placed on them; she writes: "Taught from their infancy that beauty is woman's scepter, the mind shapes itself to the body, and, roaming round its gilt cage, only seeks to adorn its prison." She implies that, without the encouragement young women receive from an early age to focus their attention on beauty and outward accomplishments, women could achieve much more.
the advancement of women was a major thrust area of its work. Four Progressive phases are discernible in the evaluation of these efforts.

In the **first** period, from 1945 to 1962, the United Nations worked to secure women’s legal equality. The United Nations was born at a time when there were a lot of obstacles for women both in terms of social backdrop and law. These included inequalities in laws and customs concerning marriage and family. In education they were denied the same opportunities as men and boys. Entering the workforce in rapidly growing numbers they found barriers in both employment and pay. In politics, women were often denied the right to vote, to hold office or otherwise participate in political activities. With the formation of the Commission on Human Rights and the Commission on the Status of Women (hereinafter cited as CSW) in 1946, and the adoption of the Universal Declaration of Human Rights in 1948, the organization began its work on behalf of women with a drive to establish the legal basis for the promotion of their equal rights. The Commission on Status of Women recognized that the process of codifying the legal rights of women had to begin with a factual study and information about the extent to which discrimination against women existed in law and practice. The United Nations undertook a massive research to assess the status of women worldwide. Subsequently, United Nations fact finding efforts produced a detailed country wise report of the political and legal status of women, enumerating the gains and obstacles. These formed the basis for global standards that were incorporated into International law through a series of treaties and conventions. In drafting these human rights instruments close working relationships began to develop between the CSW and other United Nations bodies such as the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). At the national level, the Governments were asked to deal with women’s political and legal rights, access to education and training, employment and violence.

During the **second** period from 1963 to 1975, more and more Governments responded to the United Nations by adopting laws and programmes to protect Women’s rights. Adoption of Declaration on the Elimination of Discrimination
against Woman in 1967 acted as a catalyst and the organization encompassed apart from codification of rights to economic and social realities of women. Matters such as policy formulation, attitude change, political commitment and institution building came to the forefront, particularly as they affected women in developing countries. The fact that development was essential if women were to achieve equality was recognized and the United Nations increasingly structured its development assistance programmes to meet this challenge. With the proclamation of 1975 as the International Women’s Year, the campaign for women’s rights gathered momentum. A major conference was held in Mexico on the status of women which developed a three pronged theme of equality, development and peace.

The third phase from 1976 to 1985, coincided with the United Nations Decade for Women. The United Nations projected the fact that women’s equality and rights, far from being isolated issues, were important factors for the well being of societies everywhere. The undervaluation of women was identified as both a cause and an effect of under-development and closely linked to global problems such as poverty, overpopulation, illiteracy, malnutrition and poor health conditions.

The findings immediately had global impact manifested in the Convention on Elimination of all forms of Discrimination against Women, 1979 which is an ‘International Bill of Human Rights for women.’ The decade also generated a series of action programmes that recognized the need to promote equality of men and women.

In the current fourth phase, from 1986 till date, the United Nations and its institutions have been strengthened and the support for the rights of women have been woven into the mainstreaming efforts of all the organization’s agencies and bodies. The World Summit for Children, Earth Summit 1992 and the World Conference on Human Rights, 1993, International Conference on Population and Development, 1994, World Summit for Social Development, 1995 synthesized
the achievements, recognizing the pivotal role of women in eradicating poverty and mending the social fabric.²

2.2.1 United Nations Charter 1945 and Concern for Women’s Rights

In the preamble it is stated, “We the people of the United Nations 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.”³

(b) Among purpose of United Nations it is provided, “to achieve International Co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁴

(c) In the responsibilities of General Assembly it is stated that universal respect for and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion.⁵

(d) Among the functions of 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 freedom for all.⁶

(e) It is the responsibility of economic and social council regarding setting up of a commission for the promotion of human rights.⁷


⁵ Charter of the United Nations, Article 55(c).

⁶ Ibid., Article 62(2).

⁷ Ibid., Article 68.
(f) Among the objectives of the Trusteeship system it is provided that according to the purpose of the United Nations to encourage respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion and to encourage recognition of the interdependence of the people of the world.\(^8\)

2.2.2 The following are the achievements of the U.N. in the field of human rights of women since 1945 \(^9\)

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


3. Adoption of Convention concerning Equal Remuneration for men and women workers for equal value by the International Labour Organization (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.


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


\(^8\) Ibid., Article 76.

9. Adoption of the First World Plan of Action and proclamation of First World Decade for women; with the themes of equality, development and peace by World Conference of women in Mexico city in 1975.

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


13. Third World Conference on women at Nairobi in 1985. Adoption of Forward Looking Strategies for the advancement of women in the year 2000 and voluntary fund for UN Decade for Women became UNIFEM, an autonomous organization within the UN Development Programme.

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

15. In 1991 World’s Women; Trends and Statistics, a compilation of data on the global situations of women was published.

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

17. In 1993 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 International Conference on Population and Development (Cairo) in 1994.

19. The Fourth World Conference on women held at Beijing 1995, reviewed and debated critical areas of concern and adopted a proposed platform for action.
20. *Copenhagen* declaration and platform for action of the Fourth World Conference on Women.

### 2.3 Universal Declaration of Human Rights (UDHR) 1948

The UN General Assembly on December 10, 1948 adopted the Universal Declaration of Human Rights a “Common standard of achievement for all the nations and States that all human beings are born free and equal in dignity and rights.” Since then over fifty international instruments have been adopted to protect human rights. This period has also seen some important developments in the recognition by the international community, that gender is an important category of analysis when it comes to examining the enjoyment of human rights by women.

The Universal Declaration of Human Rights is the first and overarching documents of human rights which makes explicit reference to equality for women not only in its preamble but also in several articles. They are as follows:

1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.\(^\text{10}\)

The privacy of family and home of all should be respected and these are not to be interfered with. As is known, the women have to have a life of dignity and appropriate privacy. These are more than often ignored in behaviour towards them by men. The UDHR recognizes this and specifically declares that:

(i) men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.

\(^\text{10}\) Article 1 of the Universal Declaration of Human Rights (UDHR).
They are entitled to equal rights as to marriage, during marriage and at its dissolution.\footnote{11}{Article 16 (1) of the Universal Declaration of Human Rights (UDHR).}

(ii) marriage is to be entered into only with the free and full consent of the intending spouses and\footnote{12}{Ibid.,Article 16(2).}

(iii) the family is the natural and fundamental group or unit of society and is entitled to protection by the State.\footnote{13}{Ibid.,Article 16(3).}

In this process \textbf{(1)} Everyone has the right to standard of living adequate for the health and well-being of the individual and of his or her family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his or her control.\footnote{14}{Ibid.,Article 25(1).} \textbf{(2)} Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock are to be given the same special protection.\footnote{15}{Ibid.,Article 25(2).}

Following the UDHR, the UN bodies were set in motion to provide a concrete international code for political, economic, social and cultural rights of the people. In the sequence, two codes emerged namely, International Covenants on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) both of them in 1966.

\textbf{2.4 International Covenants on Economic, Social and Cultural Rights (ICESCR)}

International Covenant on Economic, Social and Cultural Rights, 1966 takes special care of women, apart from gender equality, by recognizing
economic, social and cultural rights for them. Special reference has been made in the matters of fair wages for work of equal nature, allotment of work and matters related and consequential to motherhood. Family is recognized as natural and fundamental group unit of human society and man is to honour family commitments.\textsuperscript{16}

### 2.4.1 International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Civil and Political Rights 1966, undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights. The Convention prohibits slavery and the slave trade in all forms and requires that nobody should be forced to perform compulsory labour. All persons are equal before law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\textsuperscript{17}

### 2.4.2 International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others 1949

This convention was adopted by General Assembly of the U.N. in the year 1949. There are 28 Articles and Preamble in it.\textsuperscript{18} The main provisions are as under:\textsuperscript{19}

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

\textsuperscript{16} Article 3, 7 and 10 of the Convention on Civil and Political Rights 1966.

\textsuperscript{17} Article 3, 8 and 26 of the ICCPR.

\textsuperscript{18} General Assembly Resolution, 317 (iv) of 2 December. 1949.

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 effected 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 also 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 are found to be engaged or suspected of engaged in prostitution are subjected either to special registration 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 hence forward recognize the offences referred to in Articles 1 and 2 of the present convention as cases for extradition between themselves. Extradition shall be granted in accordance with the law of the State to which the request is made.

6. In States where the extradition of national is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to the Articles 1 and 2 of the present convention shall be prosecuted in and punished by the courts of their own State. These provisions 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, economics 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 shall arise between the parties to the present convention relating to its interpretation and application and if such 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 the legislative or other measures necessary to endure the application of the convention.

2.4.3 Convention on the Political Rights of Women 1952

The convention desires to implement the principle of equality of rights for men and women contained in the charter of the United Nations. It recognizes that everyone has the right to take part in the government of his country directly or indirectly through freely chosen representatives, and has the equal right of access to public service, and desiring to equalize the status of men and women in the enjoyment and exercise and political rights in accordance with the provisions of the charter of the United Nations and the Universal Declaration of Human Rights. According to Article I of the Convention, women shall be entitled to vote in all elections on equal terms with men. Women will also be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. They will also be entitled to hold public office and to exercise all public functions established by national law on equal terms with men without discrimination.

2.4.4 Convention on the Nationality of Married Women 1957


21 Ibid., Article III.
In 1949, the Commission on the Status of Women expressed the view that a convention on the nationality of married woman should be prepared and concluded as soon as possible for it would assure women of equality with men, especially with respect to the right to a nationality, and prevent them from becoming stateless upon marriage or at its dissolutions.

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 the following commitments:

1. Neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, and the change of nationality by the husband during the marriage, shall automatically affect the nationality of the wife.

2. Neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

3. The alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization 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. The present convention shall not be construed as affecting 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.22

2.5 The Declaration on the Elimination of Discrimination Against Woman (DEDAW) 1967

The Declaration is the first instrument which addressed the issue of violence exclusively and implicitly. It provides a definition of gender-based abuse, calling it “any act of gender-based violence that results in, or is likely to

result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.”

The General Assembly of the United Nations adopted the Declaration on Elimination of Discrimination against Women on 7 November, 1967. This Declaration was a precursor to the Convention on the Elimination of All Forms of Discrimination against Women, 1979. Following are the relevant Articles relating to the protection of women under the convention.23

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 right by abolishing discriminatory laws, customs, regulations and practices etc.
3. Appropriate measures shall be taken to educate public opinion towards the eradication of prejudice against women.
4. Child marriage and the brothel of young girls before puberty shall be prohibited.
5. Appropriate measures shall be taken to ensure 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 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 women trafficking.

2.5.1 Convention on the Elimination of All Forms of Discrimination Against Women (The Women’s Convention) 1979

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The United Nations General Assembly adopted the convention on 18 December 1979 and it came into force as an International Treaty on 3 September 1981. The Convention was the product of more than thirty years of work by the United Nations Commissions on the Status of Women, a body that was established in 1946 to monitor the situation of women and to promote women’s right. The convention has been instrumental in highlighting a universal perspective in almost all areas in which women are denied equality with men. In its spirit the convention is based on the promise of the United Nations, i.e. to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. The convention spelled out both the meaning of equality in the context of and how it can be achieved in the field of gender discrimination. The explicit goal of the Women’s Convention, which was drafted by the Commission on the Status of Women, is to achieve equality for women based on the recognition that full global development, the welfare of the world, the establishment of just new international economic order and the cause of international peace and security require the maximum participation of women on equal terms with men in all fields. This goal explicitly links the protection and promotion of women’s rights to other fundamental objectives of the international community.

The Women’s Convention is more specific than the general assertions of sexual equality in other conventions. It identifies areas where gender-based discrimination is most marked and includes provisions on such matters as suppression of prostitution and trafficking in women (Article 6), the participation of women in the public life of States (Articles 7 and 8), equality in nationality laws (Articles 9), equality in access to and in all other aspects of education (Article 19), equality in employment (Article 11), equality in access to health services (Article 12), equality in other areas of economic and social life (Article 13), the specific needs of rural woman (Article 14), equality before the law (Article 15) and equal right with in the family (Article 16).

These rights are amplified by the opening provisions of the Women’s Convention. Article 1 defines discrimination against women. Article 2 condemn