CHAPTER V

Gender Justice, Right to Health and Human Rights
- An analytical Survey
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5.1 A Historical Overview of Position of Women in India;

In pre-Vedic and Vedic period, women enjoyed equal status with men and independence in action. They had place of honour in the society and were entitled to participate freely in social activities. They had right to education and pursued academic attainments and shared the family life with full vigour. Through "Svayamvar" they used to choose their conjugal partner. In Rg Vedic period (1500-1000 BC) women enjoyed a high position in society and there are references in Vedic literature about many renowned scholarly women, "Brahmavadinis" who contributed suktas in the Rigveda. There were no child marriages and polygamy was rare.

However in post-vedic period, the position of women steadily declined. The injunctions of manu merged the wife's individuality with that of her husband and recommended strict seclusion for women and rigorous discipline for women. While glorifying motherhood in the management of the household, child marriages and polygamy were permitted. Later in Dharma-shastras, women were equated with sudras.

In puranic period women lost the past glory and honour. Due to child marriages she lost the right to education and her role was confined to kitchen and producing of son. The daughters became unwelcome in the society. Many unjust and immoral customs like sati, purda, polygamy, dowry were practiced. Women lived in total subjugation to men. The position of women further deteriorated during the foreign invasions in India. During British period some social reformers worked for enhancing social position of women. The father of Indian Renaissance Raja ram Mohan Roy, Iswar chandra Vidyasagar, Keshav Chandra Sen, Ravindranath Tagore, swami Vivekanand and many other social reformers throughout the country took great efforts in transforming the social system responsible for the misery of women.

After independence, the constitution of India promised equality of status and opportunity and guaranteed equality before law. But mere political equality, unaccompanied by social and economic equality however was of not of any substantial use to Indian Women. In fact after independence also, all those laws especially personal laws dealing with marriage, divorce, succession, adoption, custody of children, etc, which were responsible for inferiority of women were allowed to continue.

Thus a dichotomy is evident throughout the history, where women were worshipped in theory but not in practice. This position more or less continues even today. This so called inferiority is reflected even in the health status of women.

5.2 Gender discrimination:

One dimension of men's pivotal role is that of the sustainer, the breadwinners, regardless of how much contribution women make to the productive process. Another dimension is that of the reproducer. This may sound strange, since it is women who bear
children. But simply producing children is biological reproduction. Social reproduction requires that children be given an identity as members of an organized social structure. In a patrilineal society, it is the males who form the framework of the social structure. Thus the reproduction of the family, the household and of the society takes place through the male line; it is men who reproduce themselves. This is what underlies the symbolism of the masculine seed and the feminine earth: the women, like the earth, is merely a necessary accessory for the seed to reproduce itself. It is easy to see how these structure undervalue women. Their contribution to the household becomes easy to ignore in patriarchal societies, and are more visible at those points of the life-cycle when they are biologically and socially more vulnerable.  

Thus, Gender discrimination has its roots deep in the social and cultural milieu. One of the fundamental obstacles in promoting gender equality in development remains at the community level where attitudinal biases often prevent women from realizing their rights. The Government has done little to take on board these obstacles, apart from occasional and irregular campaigns around single issues like dowry, girl child education, amniocentesis and so on. Police education campaigns are restricted to occasional posters and TV spots, but are not consistent or backed up by strong and clear action by the State. Their impact remains less than effective, particularly, since there is little action taken against advertising or campaigns that are gender discriminatory.

**Gender inequities: Some persistent issues**

The terms “sex” and “gender” are often used interchangeably in everyday life, but in sociological literature they are frequently differentiated. The term “sex” is applied to biological and physical differences between men and women that are based on female or male attributes. The term “gender” is applied to the cultural aspects of male and female roles. In other words, the behaviour, personality and other social attributes that are expected of males and females become the basis of masculine and feminine roles. Sexuality and the different capacities of men and women in the reproductive process are particularly likely to be thought of as giving “natural” reasons for gender divisions in society.

The principles of gender equality and gender equity have been basic to Indian thinking. The 19th and early 20th centuries saw a succession of women’s movements, first, around social issues and later around the freedom struggle itself. The Constitution of India adopted in 1950 not only grants equality to women, but also empowers the State to adopt measures of affirmative discrimination in favour of women.

Twenty years ago in Mexico the First World Conference on Women inspired a movement that has helped to reduce gender inequality worldwide. Illiteracy among women is declining, maternity mortality and total fertility rates are beginning to fall, and more women are participating in the labour force than ever before. However, much remains to be done. Persistent inequity between women and men constraints a society’s productivity and, ultimately, slows its rate of economic growth. Although this problem has been generally recognised, evidence on the need for corrective action is more compelling today than ever.

**5.3 Constitutional mandate and rights of women**

By the time the Constitution of India was drafted the demand for equality between men and women was fully recognised. Human rights were being conceptualised by the United
Nations. The UN Charter is the first ever international agreement to proclaim gender equality a fundamental human right.

The Constitution makes specific mention of equality between the sexes in Articles 14, 15(1) & (2) and 6(1) & (2) which prohibit discrimination against women and also make room for affirmative action which is so eloquently spoken of in CEDAW and subsequent declarations aimed at implementation of CEDAW.

The Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Dowry Prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956 are some of the enactments which owe their existence to those provisions of the Indian Constitution. Even without CEDAW and other conventions, the State was under obligation to bring about gender justice. And yet the importance of the international covenants cannot be lost sight of.

Parliament itself has been endowed with the power to make laws in order to give effect to international covenants. **Article 253 of the Constitution provides**: “Art.253. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

The Government of India at the time of ratification of the Covenant had made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. Still the Supreme Court taking advantage of the Covenant and a line of judicial decisions starting from *Nilabati Behera v. State of Orissa* has gone on to award compensation to a victim of unlawful arrest.

By far the most important judgment giving effect to CEDAW is that of *Vishaka v. State of Rajasthan*. In this judgment the Court has traced the provisions in the Constitution which prohibited discrimination on the ground of sex, as also the provisions dealing with the requirement to give effect to international treaties. The Court makes a special reference to CEDAW by quoting the general recommendations of CEDAW in respect of sexual harassment.

5.4 New dimensions: Gender equality and human rights perspective

In spite of series of actions, singular policies, new programmes and some achievements, certain critical areas call for immediate attention. Some of them could be highlighted as follows keeping in mind the regional factors and perspectives: such as, (i) Inadequacy of institutional mechanisms for the advancement of women. (ii) Persistent and institutionalised discrimination against the girl child. (iii) Feminisation of poverty. (iv) Gender blindness in macro-economic policies. (v) Invisibility of women’s contribution to the economy and environmental sustenance. (vi) Poor participation by women in decision-making structures and processes. (vii) Gender gaps in literacy, education and health. (viii) Growing trend of violence against women. (ix) Barriers encountered by women in accessing legal entitlements. (x) Gender-biased social norms. (xi) Negative portrayals and perpetuation of gender stereotypes by mass media. (xii) Regional adverse perspectives and problems affecting the goal of gender equality and equity.  

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For centuries, women in this country have been socially and economically handicapped. They have been deprived of equal participation in the socio-economic activities of the nation. The Constitution of India recognises women as a class by itself and permits enactment of laws and reservations favouring them. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation. Article 51 of the Constitution obligates the State to honour international law and treaty obligations. Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51-A.

5.5 Social perspectives on gender justice:

The Constitution of India recognises equality of the sexes and in fact provides for Fundamental Rights more favourable to women but in actual practice they are observed more in breach than in compliance. When reforms were introduced in regard to the local self-governments, it was thought that if women are empowered compulsorily to perform certain functions and exercise powers in local self-governments, that would create an atmosphere where women can progress resulting in betterment of the society itself. For example, Article 243-D provides that not less than 1/3rd of the total number of seats be reserved for women belonging to Scheduled Castes or Scheduled Tribes. It is also provided that the office of the chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes and the Scheduled Tribes and women in such manner as the legislature of the State may by law provide. But even such empowerment did not result in effective implementation of these laws because when women were elected to the seats that were reserved in their favour, they were not allowed to occupy such offices or even discharge functions effectively. Many of them were humiliated in a degrading manner and some of them were ousted from the office by moving no-confidence resolutions.

The Constitutional Rights of Women in India

More than six decades have rolled by leaving Manu by the wayside but women are not yet very sure that we have honoured the national commitment to the progress of women. A case which is not much noticed in India emphasises the guarantee of equality of sexes under Article 15(1). It is Bombay Labour Union v. franchises (P)Ltd. A.I.R. 1966 S.C.942. The appellant-Union, responding to a demand raised for the deletion of a service condition of the company which barred married women from continuing in employment. The Industrial Tribunal Maharashtra upheld the appeal. But the Supreme Court struck down the rule as un-constitutional and Justice Wanchoo observed that he was not impressed by the reasons given for making a rule which provided that women workers should resign on marriage.

The reasoning of the learned judge is worth quoting:

"It is the married working women's intermittent preoccupation with the House that is at the root of the belief that employment and marriage are mutually exclusive. It is a pity that this is being made out to be a conflict between basic human rights, the right of the child to the mother and the right of the woman to work. In reality it is a question of reconciling..."
certain basic facts. The married woman who works because of necessity or because she has a strong sense of social purpose or a desire to participate in the economic activity of the nation must be considered as making two kinds of contribution to society and to the nation. One directly in the sense of productive work done in an office or factory or laboratory or school room and the other indirectly and without payment to society as a mother. The latter must of course remain the first charge upon a woman, if withheld it would make society extinct. But just because mother-hood is taken for granted as the natural functions of women and because from it she often derives the deepest psychological satisfaction, it does not make any less, "labour." Women themselves have accepted both these rules gladly. They have only to be helped to harmonise the two through the creation of certain facilities like nurseries, community kitchens, part-time employment opportunities, maternity leave benefits, flexi-time job opportunities etc.

Women and children require special treatment on account of their very nature, according to widely held belief. The state is empowered under Article 15, Clause 3 to make special provisions for them.10a

5.6 Contemporary role of women in Indian society:

In our society, the responsibility to run the home and take care of the children is that of women. Even where they are employed outside the home, not only have they to work in offices — both before going to and after returning from the office — but will have to carry out the household chores apart from attending to children and taking care of visitors. As long as there is no understanding and sharing of household work between men and women and the family is solely dependent on the women of the house, it is a kind of deprivation to the women, of leisure or time for pursuit of other interests in addition to reducing the burden of the family cares.

In effecting reforms to Hindu law, daughters have been provided equal rights along with sons in the joint family property of Hindus. After the amendment of the Hindu Succession Act giving equal right to daughters in the father's property and thereafter the provision for right to daughters in the joint family property has given rise to a kind of acrimony thereby having a hostile attitude towards the daughter and she is no longer treated as an affectionate daughter or sister coming home for a few days but as a rival claimant to property.11

The laws must also provide for appropriate measures to make the life of women easy, particularly when they are employed, by making provisions such as paternity leave and a culture must develop in our society whereby the burden is shared by both parents equally.

Needless to say, women's work at home can be back-breaking, but it is rarely honoured or even recognised and certainly not remunerated, and the denial of the right to work outside the home is rather a monstrous violation of women's liberty. The directive principles of State policy provide for maternity relief as part of just and humane conditions of work as also assure "equal pay for equal work" vis-a-vis men. Differential ages of retirement between foreign and Indian Air Hostesses in the case of Lena Khan v. Union of India was removed. In 1982 in Air India v. Nergesh Meerza, the Supreme Court refused to fix different ages of retirement and in preventing them from having children. In 1990, the Supreme Court provided machinery for prevention of girls being taken into the flesh market. Detailed guidelines are set out to be complied with by Governments in the case of Vishal Jeet v.
Union of India.

With more women coming out to work, suffering harassment at the hands of male colleagues at the work place endured by women due to their inherent modesty, fear of loss of job, absence of redressal machinery, the Supreme Court formulated guidelines in Vishaka v. State of Rajasthan in the absence of any legislation in addition to rights available under the Protection of Human Rights Act, 1993. In Nari Niketan v. Delhi Admn. and Upendra Baxi v. State of U.P., the Supreme Court ensured minimal hygiene, shelter, providing nutritional and medical facilities to women under State protection. The courts’ approach to defence of “morally loose woman” in rape cases has undergone a radical change. Guardianship rights of a woman has undergone changes as is evident in Githa Hariharan case (1992) 2 SCC 228. In Daniel Latifi v. Union of India, the Supreme Court has given an expansive interpretation to the provision of the enactment so that a divorced Muslim woman is entitled to a reasonable and fair provision and maintenance to be made and paid to her. The Muslim husband is saddled with the responsibility of taking care of his wife even after iddat period.12

In the male-dominated society, the attitude that the girl child be denied the right to be born, has to undergo a fundamental change. While law can be remodelled from anti-woman stance, society has to move to sincere action beyond mere tokenism of reservation of seats for women in panchayats, municipalities and even in Parliament. The hard task is social transformation by which a girl is given an equal opportunity of survival and development so that she becomes an adult partner in the country’s development. Courts can only show the way but ultimately it is public opinion that must uphold the rights of women.13

5.7 Women’s Health In India

Indian women’s levels of education are amongst the lowest in the world, and the levels of material mortality are amongst the highest in the world. Whether in socio-economic indicators such as education, health and work, or in more subtle process of power, decision-making and self-esteem, the inferior position of Indian women has been consistently documented. This gender basis is not confined to India alone, it is shared by much of South Asia and is also manifested in some ways in East Asia. Nor is this a recent phenomenon. For well over a century, the low position of Indian women has been of concern to both colonial and indigenous social reformers.

Even before the first Indian Census of 1872 and the initiation of vital registration systems, the British were aware of the problem. British government banned, the highly visible practice of sati, female infanticide, and child marriages.14

5.7 Health of women at different age levels

1. Early childhood

Even a little lack of care in infancy can cause far more havoc in this age-group than at older ages. Despite strong son preference, the biological advantage of girls keeps their mortality levels lower than that of boys during the first month of life, a phenomenon found in most populations. After the first month, parental preferences and behavior become more important in child health and survival. As a consequence, the neglect of girls in comparison to boys is manifested in excess female mortality. Poorer

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nutritional intake, the difference between boys and girls health care is likely to be the main mechanism whereby sex differentials in child mortality are brought about. Excess female child mortality is concentrated almost families which already have a daughter. The available evidence in India does not suggest that socio-economic development helps reduce excess female mortality. Even urbanization does not appear to have this effect; indeed, gender equity may even be worsened through greater discrimination in the use of urban medical care facilities.

2. The reproductive years

The peak childbearing years, a highly vulnerable part of her life-cycle are associated with excess female mortality. The physical drain of pregnancy and lactation increases women's vulnerability to poor health status. This makes them ill-equipped to protect their health when they are most burdened by the reproductive health risks of pregnancy, contraception, abortion and childbirth. Early marriages, early pregnancy while physically immature, heavy workloads relative to nutritional intake are common amongst the poor and rural women, and this nutritional lack is aggravated by the stresses associated with reproduction and they suffer the most from maternal depletion.

Another major source of complications is the fact that a high proportion of birth are still attended by poorly trained women. As a result, complications of delivery are widespread. The overwhelming majority of women suffering from reproductive health problems do not seek treatment. Being socially trained to be reticent about sexual matters, lack of interest amongst other members of the household, creates a situation in which a women feels alone with her affliction, and feels that is must be borne silently as a 'women’s problem'.

Childhood malnutrition predisposes women to reproductive health problems in adulthood; that adolescent childbearing increases health risks to both mother and child; the poor coverage of antenatal care services; poor diets and heavy workloads during pregnancy; and deliveries under unhygienic conditions unattended by skilled people. Apart from direct childbearing, certain contraceptive services such as sterilization and IUD insertion as well as included abortion can lead to debilitating and sometimes even fatal health complications if service conditions are poor and follow-up limited. A clinical study by Dr Abhay Bang in 1989, in Maharashtra, found that 92 percent of women had one or more gynaecological diseases, and only 8 percent of these women had ever had treatment.

Maternal mortality is just the tip of the iceberg of reproductive health problems. The World Health Organisation estimates that for every maternal death, there are 16 women who suffer morbidities that can last a lifetime.15

3. Old Age

Women who have successfully reared children, especially sons, gain in strength in the household as they and their children grow older. This is the only point in their lives when the majority of women are able to wield real power within the household. Their greater freedom and autonomy enables them to care better for their own health. This is the only period in the life-cycle when women’s natural biological advantage over

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men manifests itself in lower death rates. However, this situation can be altered by widowhood, in particular if the woman does not have grown sons to support her. The diversity in the situation of widows, depends on their age, parental status and the stage of their life-cycle at which they become widowed.¹⁶

5.8 The Basis for Gender Differences in Mortality:
The basis for gender differences in health can be attributed to following factors.

I Food and Nutrition. The male dominated attitude secures more food and nutrition to boys than girls even though in reality, the girls, future mothers require proper growth, are usually severely anemic and malnourished.

II allocation of medicine Fewer females than males had medical care during severe illness, and that males had a higher quality of care.

III The Cultural Bases of Gender Discrimination, and the Role of Poverty. The more patriarchal and male-centred the kinship structure, the more that sons are seen to be the major source of social and political power and the relative worth of female is less than male children. To that extent scarce life-sustaining resources are likely to be disproportionately allocated to male rather than female children.

IV The economic dimension of child worth
Marriage costs especially dowry payments, increase the economic burden of having a daughter. Ethnographic evidence shows a strong correlation between regions of high dowry payments and very adverse juvenile sex ratios; where marriage costs are low, juvenile sex ratios are not so adverse.

V The impact of social status Thus the economic and cultural value of women is likely to decline by caste; women of lower castes having greater economic and cultural value since there are fewer restrictions placed on their autonomy, their mobility, and their activities in the productive sphere. Among the propertyed there is a greater pressure to have sons to inherit land and a lesser need for women to enter the labour force. Research on gender differences in malnutrition does not find richer households to be necessarily less discriminatory.

As such, there is little evidence that higher socio-economic status actually increases the survival chances of females relative to males. Specially, literacy of women, marriage patterns, female labour force participation and fertility are all related to one another and to female autonomy; the more literate a woman, the higher the age at marriage and, in general, the lower the required dowry and associated marriage costs. Most of these variables in turn, have reciprocal relationships with female autonomy. Nonetheless, the empirical evidence even for a positive association between literacy and greater survival of females is mixed. Complications of pregnancy and childbirth are believed to be the leading cause of death among women is most parts of South Asia.¹⁷ Thus we see that the socio-economic status of the household, whether measured in terms of caste, land-holdings or education, is in general, not found to increase the survival chance of female children compared to those of male children.

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VI Age at Marriage and Infant Survival

In most societies, marriage and particularly the age at marriage, becomes an important intervening variable in the educational and occupational choices open to women. In societies with virtually no contraception, early marriages also increase the probability of early childbearing, and childbearing by women is then likely to continue longer than would be the case if marriages were delayed. While these events may restrict a woman's options to study further, or pursue her vocational interests, it also increases the risks of infant death which are known to be high among very young mothers.

(Shireen J. Jejeebhoy And Saumya Rama Rao, Unsafe Motherhood : A Review of Reproductive Health.)

5.9 Levels of Maternal, Prenatal and Neonatal Mortality

Currently the main indicator of women's health, material mortality, is recognized as the tip of the iceberg of the problems caused by sexually and reproduction. Unfortunately, maternal deaths are notoriously under-reported even in the more developed world, since often when the cause of death is a non-obstetric condition, precipitated by an obstetric condition, the latter is not reported, underestimates in the range of 33-50 per cent have thus been observed even in the U.S.A.

India's maternal mortality ratio is estimated at 400-500 per 100,000 live births – about fifty times higher than that of many industrialized nations and six times as high as that of neighbouring Sri Lanka. UNICEF 1991; Acsadi and Johnson – Acsadi 1990).

Causes of Maternal, Perintal and Neonatal Deaths

Maternal deaths - India is typical of a high mortality setting as seen in Sepsis, abortions, hemorrhage, toxemia and anemia account for the large majority of all maternal deaths.

This cause of death distribution suggests that a large number of maternal deaths are preventable, if attention is paid to three principal underlying conditions among women in India; poor health care, poor nutrition and high and closely spaced fertility stretching from adolescence to menopause. A number of medical studies report on preventable maternal deaths; by and large, well over two-thirds of all maternal deaths are held to be preventable.

Nutrition and health care - The poor nutritional and growth status of the mother is a reflection of her own growth as a fetus, newborn, child and adolescent. Nutritional status is recognized as a major risk factor for maternal and peri/neonatal mortality as well as the incidence of low birth weight and pre-term infants.

Boys are fed better and are much more likely to receive early access to health care in case of illness. Studies which have monitored growth and nutritional status among children confirm gender disparities in growth and severe malnutrition from an early age.

Early marriage and adolescent childbearing - The early onset of childbearing has disturbing consequences for reproductive health.

Following marriage, there are socio-cultural pressures on the young woman to conceive as soon as possible - this is one means whereby she can attain both prestige and security in her new home. Hence, adolescent marriage is synonymous with adolescent childbearing. It is estimated that as many as 10-15 percent of all births annually occur to women in their early teens, before they are physically fully developed. The extra nutritional...
demands of pregnancy come at the heels of the adolescent growth spurt, which itself requires additional nutritional inputs, and results in the poor nutritional status of the pregnant adolescent. As a result of the combined effects of shorter average maternal height, competition for nutrients between the mother’s growth needs and the growth needs of her foetus, and also due to poorer placental functions of adolescent mothers, the risks of maternal mortality and peri- and neonatal mortality are exceptionally high among adolescents.

**Pregnancy and Antenatal Factors** - Pregnancy is associated with a number of cultural practices, ranging from those concerning diet to special rites. By and large however, existing traditional practices concerning diet, combined with traditional omissions, notably the reluctance to seek antenatal care, do little to enhance reproductive health.

**Antenatal care (ANC) - registration, visits** - Under this programme, all pregnant women are to be routinely followed up either in the health centre or at home, and provided immunization, iron supplementation and regular check-ups to monitor the pregnancy. The available evidence on this programme however suggests that while antenatal care undoubtedly improves maternal and infant well-being, this service reaches few pregnant women. Few women are even aware of these services. On the national level, it is estimated that no more than 40-50 percent of all pregnant women in India receive any antenatal care at all. (UNICEF 1991 quoting NSS 1986-87) The reasons for this poor utilization of services are cultural and socio-economic on the one hand but also a result of poor quality of services on the other.

Thus, not only is anaemia a leading direct cause of maternal deaths, but it also contributes indirectly by aggravating other complications of pregnancy such as eclampsia, antepartum hemorrhage, sepsis and genito-urinary tract infections.

**Food and iron supplementation** - Food and iron supplementation have been found to improve such maternal health attributes as weight gain, incidence of anaemia, complications during pregnancy and childbirth and birth weight.

In India, the average rural woman neither increases her nutritional intake nor reduces her physical activity through her pregnancy. The combination of poor pre-existing nutritional levels, inadequate diet during pregnancy, heavy physical activity and frequent childbearing results in further deterioration of maternal nutritional status and poor growth of the foetus.

**During the Birth** - Contact with the health care network at the intra natal stage is even poorer than at the antenatal stage. At the time of delivery, no more than twenty percent of all women have some contact with medical or paramedical personnel. Deliveries are largely conducted by untrained personnel and in unhygienic conditions, both of which contribute significantly to poor maternal health.

In these circumstances, the role of the estimated 500,000 traditional birth attendants in India – about one per 1000 population – becomes especially important.

**Other Factors Affecting Reproductive Health** - Other factors concerning reproductive health range from conditions in the immediate postnatal period. (morbidity, breastfeeding and nutrition, and birth spacing) to more general concerns such as contraception and abortion on the one hand, and infertility and exposure to sexually transmitted diseases

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Rather than simply a medical problem, poor reproductive health is, of course, ultimately a reflection of the series of social, cultural and economic circumstances, which are not responsive to short-term strategies and go beyond the health sector. The most basic long-term solutions are of course poverty- and gender-related and here changes in female status in general are the key, and the expansion of educational and economic opportunities for women, improvement in nutrition and prevention of adolescent marriage are of particular importance. (Shireen J. Jejeebhoy And Saumya Rama Rao, Unsafe Motherhood : A Review of Reproductive Health.)

The spread of HIV in India touches some of the innermost spaces in Indian society in ways that no other infectious disease has done so far. If other areas of health and morbidity have linkages with wider social, economic and environmental dimensions that defy target driven, wholly vertical approaches, HIV lends itself even less to blinkered perspective.

HIV in its heterosexual transmission mode, with pre-existing STDs and RTIs as risk factors, calls into question the cultural construction of female sexuality, one of the bulwarks of the patriarchal family structure which provides the framework for the prevailing gender relations in Indian society.(235)

(Martha Alter Chen And Jean Dreze, Widowhood and Well -Being in Rural North India)

The marginalization of widows in North India is consistent with the traditional perception of Hindu widows as inauspicious and potentially suspect women who, ideally, should lead a life of austerity devoted to the memory of their husband. This ideological influence, however, may be less crucial than the simple fact that widows are often seen as an economic burden. The most effective way of ensuring the social protection of Indian widows is perhaps to help them to be recognized as persons who have something important to contribute to the household economy, e.g. by protecting their property rights or by promoting their economic activities. (283)

Gender bias is not the principal issue demanding attention with reference to the health status of middle-aged and other women. Rather issues of poverty, of class and caste inequalities, maldistribution of medical care, and rapid social change may be of greater significance for helping us to understand why certain categories of women in these particular life stages are at greater risk than others of their peers of suffering from inadequate nutrition, disease, premature death and general distress.

Women's health Rights : Gender perspectives

Since the Vienna Conference on Human Rights in 1993, the slogan 'women's rights are human right's has come to be formally acknowledged and adopted at the intergovernmental level. The increasing ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (referred to as CEDAW) following Vienna and Beijing' has created the illusion that the state parties have indeed recognised that gender based violations constitute human rights violations and need serious intervention on their part to address it. (Madhu Mehra And Miles To Go..., Challenges Facing Women's Human Rights)

Although India is a ratifying party to both general and special human rights standards
set out in the ICCPR, ICESCR, and CEDAW, women's rights continue to be marginalised from the normative framework of the human rights regime by the state.

Gender based human rights abuse would refer to denial or violation of rights on the ground of being female. Sex has been the basis for differentially attributing to men and women certain roles, relations and identities. The socialised roles thus attributed are based on assumptions about men and women, which are variously drawn from culture, tradition and religion. These underlying assumptions have been the justification for delineating different rights, responsibilities and resources to men and women in the family, the society, the market and the state. Although these roles are not static but vary over time and cultures, they have historically disadvantaged women in terms of fixing greater degree of responsibilities on them while allowing them lesser choices, lesser rights and subordinate status. (Madhu Mehra And Miles To Go..., Challenges Facing Women's Human Rights)

The gendered reality for women determines the nature and circumstances of the human rights violations specific to women, as well as the availability and accessibility of remedies for them. It therefore is important to draw into the human rights framework the impact of a gendered social reality on the women's rights.

5.10 Barriers Within the General Human Rights Framework

There exist serious limitations in 'extending' human rights guarantees to women despite being framed as available without discrimination on the basis of sex. The debate on human rights thereafter has been ridden with dilemmas on prioritisation of one set of rights over the other - the civil political over the socio economic and cultural. That most persons exercising civil political rights in the public sphere are male, given their unhindered access to the public/political sphere in contrast to the socio cultural barriers that hinder women's participation in the public sphere was not considered. This prioritisation of the civil and political has impaired the recognition of women's rights given that often the attainment of right to life for women is conditional upon and mediated through the realm of socio cultural and economic rights. For example, the lack of full reproductive rights has been known to be life threatening to women in many parts of the world, as reflected in the high maternal mortality and deaths from unsafe abortion services. Although reproductive rights may be of significance to men, they by no means have a direct impact on their life and survival. Domestic violence is a case in point. This constitutes one of the most universal and systemic forms of gender based discrimination. While there may be instances of violence against individual men this does not constitute a pattern of violence experienced by men in any given society. This position continues to invisibilise the immutable power and control exercised by the family and the community over women, which is parallel only to that of the state in case of men. When socio cultural norms deny women both spaces and capacity of existing independently of marriage or family, their situation in domestic violence is similar to that of a victim of custodial violence. The reality that legal redress, however flawed, does exist is obscured by the social conditioning that once married a woman belongs to her marital home and must exit it only upon death. It is therefore not surprising that a high number of cases of domestic violence come to fatal conclusions. The state through the law has clearly enabled the social norms and the family to regulate women's rights. (Madhu
5.11 CEDAW: Transforming Human Rights for Women

The Convention expressly states that discrimination against women is socially and culturally constructed, and encompasses both the public and the private spheres. Thereby bringing within its fold the family, the community, the workplace, the state laws and policies, and the interconnectedness of discrimination in all these areas. In clubbing together the public and the private, CEDAW has broken through the categories of civil/political and socio-economic/cultural, which have been embedded, so strongly into the international human rights order through the two international covenants on the subject. That right to life for a large number of women, encompasses education, sexual rights, reproductive health, freedom from forced marriages and gender-based violence, is reflective of how unfounded the segregation of different types of rights are and the implication of such segregation for achieving women's human rights.

In the context of women, this refers to actions ranging from domestic violence, sexual assault to more subtle forms of discrimination, such as unequal career advancement opportunities in the workplace, or unequal representation in political structures, all of which are symbolic of and contribute to the subordination of women. The state's disinclination to effectively intervene in such patterns of violence and discrimination amount to a condonation of the violations.

India, like many other state parties, has ratified CEDAW with a declaration that limits its obligations relating to changing the discriminatory cultural practices within the community and the family. Hence in relation to Articles 5 (a) and 16 (1), 16 the Indian state declares that "it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent". Thus in India discriminatory provisions for women within marriage and family continue to be asserted and defended as a cultural and religious right. In a similar vein, many other state parties to CEDAW have either in general terms or in relation to specific provisions limited their obligation on the ground of conformity with the Shariat laws which govern rights in relation to the family and/or the criminal justice system.

This position continues to sustain and re-construct the false dichotomies of public/private, civil political/socio-economic and individual/collective that women's rights movement and more recently, the international human rights law has tried hard to erode. Given that women as a social group have suffered the maximum human rights violation in the name of culture, it is important to begin investigating and exposing the primary beneficiaries of such claims and their politics.

Social Justice for Women and Law

In the last two decades there has been a growing recognition of women's rights as an integral and indivisible part of universal human rights. The promotion and protection of the human rights of women. However, still remain a challenge to all countries, in the 21st century. The need is to establish a just and equitable social order, where no one can treat or exploit women as unequal or find any excuse to discriminate against them.

The word conference on Human Rights (1993) at Vienna, recognized gender-based violence against women in public and private life as a human rights concern for the first
The conference concluded that.

"The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community ......... The world conference on human rights urges governments, institutions, inter-governments and non-government organizations to intensify their efforts for the protection and promotion of human rights of women and girls child." HALEBURY'S Law monthly, Vol. 02 Issue 07 April 2008

De Jure to De Facto: Will Indian Women Realize Their Dreams in a Global India?

In 1991, India witnessed a metamorphosis in its economy. The journey leading to a radical liberalization of the economy had just begun.

India stood at the crossroads. During the last 17 years, ever since liberalization laid its imprints firmly on the Indian economy and Foreign Direct Investment (FDI) became a meaningful reality for the country, one of the most critical questions has been the status of Indian women and, in particular, the status of the Indian female workforce.

The Indian economy, on an average, has grown at a rate of more than 8 percent during the last three financial years, making it one of the fastest growing economies in the world. Indian has 39.7 core workers. Out of these, 12.39 crore are women. 10.6 crore are in rural areas while 1.8 crore are in urban areas. Only 7 percent of India's labour force is in the organized sector, 93 percent is in the unorganized informal sector. 96 percent of women workers are in the unorganized sector. It was observed that while globalization has generated opportunities for local producers and entrepreneurs to reach international markets, it has at time, intensified existing inequalities and insecurities for many poor women, who already represent two-thirds of the world's poorest people. "With the growing globalization and liberalization of the economy as well as increased privatization of services, women as a whole have been left behind and not been able to partake of the fruits of success........ Another face of globalization is related to the fact that many persons, especially women will be severely affected with the advent of setting up of industrial parts, national highways, SEZ, etc., as huge tracts of farmland are likely to be acquired for this purpose. This would require massive resettlement policy and strategy is formulated and put in place immediately which clearly reflects the needs of women impacted by globalization / displacement."

In a significant judgment delivered by the Supreme Court of India in Bodhisattwa Gautam v. Sabhara Chakraborty, the Court has expressed its thoughts on the status of women in India in an almost emotive fashion. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They must have the liberty, the freedom and of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world."

The emotional eloquence of the words of the Supreme Court needs to be translated into reality. The highest court in India has recognized, rather feelingly, the special place
occupied by women in India.

Despite this de jure legal position, the de facto position of women in India under Indian law levels a great deal to be desired. There is a yawning gap between the legally sagacious and positive affirmation of women's rights and stark reality.

The women of India continue the struggle, both at the workplace and also in the domestic scenario.

A recent decision (29 January 2008) of the Supreme Court of India in Som Mittal vs. State of Karnataka, has dismissed the appeal filled by Som Mittal, Managing Director of Hewlett Packard Global Soft Limited seeking a quashing under Section 482 of the Code of Criminal Procedure, 1973 of the complaint filed against him under Sections 25 and 30(3) of the Karnataka Shops and Establishments Act, 1961, by the State of Karnataka. In this case, a woman employee of the Company was murdered on her way to work from her residence. In a subsequent decision in Som Mittal vs. State of Karnataka passed on 21 February 2008 y a Bench of three judges of the Supreme Court presided over by the Chief Justice, the Court has confirmed the dismissal of the appeal and has clarified certain other legal issues.

The impact of these decisions in terms of the liability of the Managing Director of a Company with respect to the safety of women at the workplace is obviously quite far-reaching and, at the same time. May provide working women in India some solace in terms of the fact that the highest court in the country has expressed its caution towards the quashing of criminal complaints, especially when the complaint involves the case of a murder of a woman on her way to work from her home.

**Women And Institution of Marriage**

IMPORTANCE OF the institution of marriage in India is undeniable, as society views marriage as according woman respectability, personal and financial security, social acceptance, permanency of relationship and the legality of union. A woman is not considered settled in her life till she gets married. Thus parents in India raise their daughters with marriage as the primary goal in her life. Laws of marriages can be broadly classified in two categories, first are the religion specific, available to persons belonging to a specific religious community and the other are the secular enactments which enable every Indian to avail of their provisions irrespective of the religion. In the former category are the Hindu Marriage Act, 1955; The J&K Hindu Marriage Act 1980; Goa, Damak and Diu laws; Quranic laws of Muslims; Parsi Marriage and Divorce Act, 1936; The Indian Christian Marriage Act, 1872; The Indian Divorce Act, 1869 and in the latter category are the Special Marriages Act, 1954 and the Foreign Marriages Act, 1969.

Subsequently in *Priya Bala v. Suresh Chandra* the Supreme Court held that even an admission made by the accused that he contracted a second marriage was not enough and that the prosecution must establish that the second marriage was performed.

In Sarla Mudgal v. Union of India and later in Lily Thomas v Union of India, the court ruled that second marriages of convert Muslim (originally a Hindu) men solemnized under Muslim law would be counted as a second marriage for the purposes of the offence of bigamy and such men will be liable to be punished. In both the cases the husband had
contracted a nikah with the second wife and while in the first he was officially known by the Muslim name, in the second case both the husband and the alleged second wife were using their pre converted Hindu names for all official purposes and specifying their religion as Hindu in the official records also. It was a clear case of misuse of the constitutional right of conversion and the religion for selfish purpose with the sole objective of escaping the prosecution for bigamy and exploiting the facility available under a different religion for practicing limited polygamy. The accused unsuccessfully tried to argue that they being Muslims were entitled, as of right, to practice limited polygamy legally and a judgement to the contrary would be against the basic provisions of Quran as Muslim law does not make any distinction between the rights of a born Muslim and a convert Muslim. The court held that polygamy would be permissible for Muslim men only if both the marriages were contracted under Muslim law, but if a married man gets married a second time under Muslim law when his first marriage that was subsisting was solemnized under any other law, he cannot as of right claim protection under permissibility of practicing polygamy under the Quran only on the ground that he is on paper a Muslim man though for all practical purposes he continues to adhere to his former religion.

The present position is that if a married Hindu man gets married to another woman after observing the requisite ceremonies required as essential for solemnization of a Hindu marriage he is guilty of committing bigamy under the penal laws, but if he, though gets married, the ceremonies fall short of the required ceremonies, or are the one not recognized as valid under Hindu law he is not guilty. So if a Hindu married man remains a Hindu and gets married to another Hindu woman in the nikah form he is not guilty of bigamy as the second marriage is not validly solemnized under the Hindu law but if he converts to Muslim faith along with the second woman and then contracts a nikah he would be guilty of bigamy and liable to punishment. Both the marriages will be valid in that case but each under a different law and interestingly if the validity of a Hindu marriage is tested in light of Muslim law it will be void and similarly the Muslim marriage will not be valid if tested under Hindu law. However, this academic discrepancy can be ignored.

Child marriages have more serious effect on girls than boys more so on their physical and psychological health and on educational and other opportunities and on their personality development. The failure to take full account of devastating effect of child marriages on women shows the legislative apathy towards the interests of young girls. To pass it off in the name of customary practices is to choose an easy option without calling at all for the tender victims of this socio-cultural and political system that transgresses on the essence of humanness. Equal contribution to this abhorrent practice is of the judiciary as well. The law on paper as has been passed by the legislature appears to be balanced and at some places it clearly goes in favour of women. However, almost as a matter of principle, the judicial tilt is against a woman and, therefore, the apparent gender-neutral provisions when interpreted and implemented by the judiciary go against her. The proper forum for the redressal of grievances for a man or a woman is the judiciary, where the judges are to dispense justice. The judiciary, an instrument of social change, has to play an active role to achieve it and be fair, impartial and above the level of ordinary persons and sensitive to people’s problems. Unfortunately, the Indian judiciary has shown little sensitivity to the cause
of women, but has time and again protected the rights and causes of men. Our judiciary is critical of a woman who wants to work outside the home without her husband’s permission or show reluctance in serving the husband, his family members, or even his friends. Marriage is viewed, by majority of judges, as an implied surrender of the right of a woman over her freedom; a sacrifice of her aspirations and desires and an acceptance of her role as a home-maker working to earn the much eluded satisfaction of her in-laws. It is time they wake up from their deep slumber; realize the changing times and the need to move forward and take positive steps to initiate appropriate changes. As of now the picture that emerges after an analysis of the case law and the judicial attitude is full of despondency and an acknowledgment with a heavy heart is inevitable that unfortunately the constitutional guarantees of equality still evades an Indian woman and she has to wait for a very long time period when she will be recognized as an individual having access to basic human rights to live a life of dignity, respect and self sufficiency. (Poonam Pradhan Saxena, Matrimonial Laws And Gender Justice)*

The Law commission of India this submitted its 211th Report on " Laws on Registration of Marriage and Divorce – a Proposal for consolidation and Reform."

The subject has been taken up suo motu in the light of the directions of the Supreme Court dated 14-2-2006 in Seema v. Ashwani Kumar, (2006) 2 SCC 578 that all marriages shall be compulsorily registered and that the State Government shall be initiate action for rule-making in this regard. There is a great diversity in respect of laws for registration of marriages.

The Law Commission recommends enactment of a "Marriage and Divorce Registration Act" to be made applicable in the whole of India and to all citizens irrespective of their religion and personal law and without any exceptions or exemptions.

The Proposed Law should deal only with registration of marriages and divorces and not with any substantive aspect now governed by various matrimonial laws – general and community – specific. Accordingly, the Births, Deaths and Marriages Registration act, 1986 be repealed and Births and Deaths and registration Act, 1969 be re-named as "Births, Deaths Marriages Registration Act" with a provision that official working and records maintained the former Act shall be deemed to be working and maintained under the latter Act.

The Law Commission of this has submitted its 212th Report on "Laws of Civil Marriages in India - A Proposal to resolve certain Conflicts.”

The subject has been taken up suo motu for a pressing need to amend the special Marriage Act, 1954 and the Foreign Marriage Act, 1969. Numerous marriages take place within India and in foreign countries which are outside the ambit of various personal laws as well as they cannot be governed by the general and common law of civil marriages for the reason of not having been formally solemnized or registered under it. Thought these enactments are meant equally for all communities of India, yet they contain few provisions which greatly inhibit people of certain communities to avail them. In view of the conflicts of various personal laws, all equally recognized in India, it will be in the fitness of things that all inter-religious marriages (except those within the Hindu, Buddhist, Sikh and Jain communities) be required to be held only under the Special Marriage Act, 1954. Even if such a marriage has been solemnized under any other law, for the purpose of matrimonial
causes and remedies the Special Marriage Act, 1954 can be made applicable to them. Such a move will bring all inter-religious marriages in the country under uniform law. This will be in accordance with the underlying principle of Article 44 of the Constitution of India relating to uniform civil code. 26

ALTHOUGH a woman in India is awarded with the fundamental right of 'gender equality' and 'right to life and liberty', ensuring dignified and equal status to that of a man under the Constitution of India, the men oriented conspiracy has prevented the significant contributions of women from receiving due recognition. The women's liberation and progress certainly does not mean hatred for the men. Nevertheless, in an era of emancipation, the struggle for perfect equality of sexes continues. With the rise in awareness and emphasis upon the gender justice there is an increasing endeavor to guard against the violation of these fundamental rights and strong resentment towards harassment of women. If women are neglected, humanity is deprived of half of its energy and creativity. The biological weakness of a woman particularly makes her an easily vulnerable victim of tyranny at the hands of man, in addition to socioeconomic and educational factors. The women, whose inferior status is established at the birth itself in view of female infanticide and sex determination, are confronted with multi-dimensional problems at all stages of life. Hence an integrated search of means and methods is essential to prevent crimes, violence and atrocities against women.

Constitution of India, which bestow legal rights upon women are:

- Article 14, which confers the equality before the law or the equal protection of the laws to every person. It not only prohibits discrimination but also makes various provisions for the protection of women.

- Article 15(1), which prohibits any discrimination on grounds of religion, race, caste, sex or place of birth. However, article 15(3) empowers the state to make any special provision for women and children.

- Article 16, which guarantees equality of opportunity for all citizens in matters relating to employment or opportunity to any office under the state and forbids discrimination on the grounds only of inter alia sex.

- Article 19, which guarantees the two important freedoms: (1) Freedom of speech and expression [article 19(l)(a)], (2) Freedom to practice any profession or to carry out any occupation, trade or business [article 19(l)(g)].

- Article 21 ensures; "No person shall be deprived of his life or personal liberty except according to the procedure established by law". Women have a right to lead a dignified, honorable and peaceful life with liberty.

With the object of focusing attention on the societal aberrations, there is a strong-felt need to investigate the multifarious situations wherein the torture is gravely inflicted upon the woman at all stages of life-childhood, youth, pregnancy, motherhood; outside and inside house, by strangers and their own persons. It is extremely unfortunate that the respect and honour for womanhood is on the great decline and the cases of molestation and rape are on the steady growth in India. Such cases, wherein the very soul of the helpless woman is degraded and injured, must be handled by the courts with utmost sensitivity, high responsibility and strictness towards the rapist to protect decency and morality in
A woman, who suffers from tremendous sense of shame for no fault of hers and the endless fear of being shunned or ostracized by society as well as her relatives throughout her life, must be treated with appropriate understanding, and realization that ordinarily a woman would not risk her reputation by leveling a false charge against her own chastity. On the contrary, the tendency usually is to suppress such incident. In addition to the trauma of rape itself, the victim has to undergo further agony during legal proceedings which invariably is a traumatic experience, shaking the foundations of the life of the victim.

The infamous case subject to striking criticism, namely, the Mathura case, Tukaram v. State of Maharashtra,27 was sought to be covered under the third clause of section 375. The unfortunate girl was alleged to have been raped by the police constable in the police station by putting her in fear of death or hurt. Even the apex court declined to believe that the woman did not consent, stating that unless the fear was shown to be that of death or hurt, it would not vitiate consent; and, reduce the sentence of the rapist.

This was also a case of the custodial rape under section 376(2)(a). This was a very unwelcome decision of the Supreme Court, which led to public agitation. Consequently, the law had to be changed.

As a result of public agitation, the Criminal Law (Amendment) Act, 1983, (Act 43 of 1983) was enacted whereby certain amendments were made in IPC. Sections 375 and 376 were amended and new sections 376A, 376B, and 376D were added. Section 327 of the Code of Criminal Procedure, 1973 (Cr PC), was also amended, and a new section 114A was introduced in the Indian Evidence Act, 1872.

Sections 376-A to 376-D envisage within their ambit the cases wherein the woman with whom sexual intercourse is committed has been in custody or influence of the man. These sections prescribe the punishment for such custodians who molest a woman under their custody or care. The text of these new sections runs as stated hereunder:

Cruelty may be subtle or brutal; by words, gestures or by mere silence. It may also be physical or mental. Under all the Indian matrimonial statutes, cruelty can be interpreted with the same meaning. The formulation of cruelty can be made thus: "Cruelty is a conduct of such a character as to have caused danger to life or health, bodily or mental, give rise to reasonable apprehension of such danger"18. "It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is ... cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances, would consider that the conduct complained of is such that this spouse should not be called to endure it"

IV Menace of dowry

Although every single atrocity against women is bad, nonetheless the worst and serious maltreatment of women is when they are victimized, not outside, but within their own matrimonial home, not by strangers, but by their own persons, on whom they repose their faith and to whom they entrust their entire well being including their physical safety. When these very persons turn inimical to the extent of even attacking a woman physically, often killing her inhumanly, what can be more agonizing for an isolated helpless woman? The crime of cruelty caused due to the dowry has been perpetrated on women without any
reason or fault on their part. The gender inequality is rooted from the beginning of the marital life which continues further perennially.

Thus, a deep-rooted social evil of dowry has widely spread like cancer. Dowry has grown into such menacing, depressed and degenerated proportions with multiple dimensions that it cannot be eradicated, or even curbed, despite vehement legislative efforts to enact the stringent law, the Dowry Prohibition Act, 1961.

Dowry, as a deep-rooted social evil, shocked the legislative conscience to such an extent that the legislature deemed it necessary to enact additional provisions of law, substantive as well as procedural, to combat the growing menace of this brutal and barbarous offence. A new offence with the nomenclature of 'dowry death' was created by introducing section 304-B in IPC through the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). Other newly introduced provisions with the same object were, section 498A in the IPC, and sections 113 A and 113B in the Indian Evidence Act.

Newly inserted sections 304B and 498A in IPC have, of course, improved, but not cured the disease; mainly because, social conditioning is a strong resistant to legal changes.

Ignorance of law and submissiveness of women are the vital contributory factors. A perceptible change in the society must be visible in order to curb and combat this crime in addition to the legislative measures.

The inferior status of Indian women in the society has contributed towards widespread prostitution. The women who are raped, deserted by their husbands, or widowed at an early age, are often forced to become prostitutes. The female children are undesirable; therefore, the parents often sell their daughters to the traders of brothels; or, force them into prostitution to support and save the family from extreme poverty. In many areas, women are forced to prostitute themselves to earn their own dowries. Meena Rao

VI Exploitation of working women

Sexual harassment of working women at the place of employment

There is a rise in social consciousness of the status of women on account of education and employment, raising intellectual and economic independence, self-confidence and self-sufficiency in women. Nevertheless, at different levels in employment, the working women are more exposed to the two-dimensional problem. On the one hand they have to face adverse publicity and problem of adjustment in the family due to lack of time; on the other hand, they are exposed to economic exploitation and sexual harassment at the workplace.

A revolutionary and effective judicial activism to fulfill this urgent social need may be witnessed in the landmark judgment of the Supreme Court, delivered by Verma, CJ. (as he then was), which culminated in the formulation of guidelines and norms to govern the behavior of the employers and all others at the workplace to curb this social evil. In the case of Vishaka and other v. State of Rajasthan and others, the writ petition was filed under article 32 of the Constitution for enforcement of the fundamental rights of women, guaranteed under articles 14, 15, 19 and 21 of the Constitution. (CEDAW) was referred for the purpose of construing the nature and ambit of constitutional guarantee of 'gender equality' in India. Hence, the absence of the enacted law to
provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, the court laid down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. 29

Feminism is a range of committed inquiry and activity dedicated to (i) understand the extent of women’s subordination, (ii) know the reasons therefore, and (iii) plan and implement means of change for their better life. Constitutional feminism means employing the constitutional powers and provisions for ameliorating the conditions of women. All the wings and layers of government - legislature, executive and judiciary at central, state and local levels - have the responsibility towards empowerment of women in the light of Article 15(3) read with Article 12 of the Constitution. Although Article 15(3) is an enabling provision that authorises the state to make special provision for women, the discretion conferred there under shall be exercised without fail, and be exercised reasonably. It is also fundamental duty of every citizen to renounce the practices derogatory to the dignity of women. Thus social and individual responsibilities for feminist cause are contemplated in addition to democratic solutions.

Women as free citizens, and constituting almost half of the population, are theoretically able to redress their grievances through democratic means. But due to socio-economic reasons and cultural patterns they are not effective players of the game of democracy. The disadvantages of democratic process and risks of parliamentary majoritarianism make it imperative that a pro-woman and anti-subordination interpretation of Constitution and laws shall be made. In a patriarchal social construction, where power dictates freedom, lack of power on the part of women because of their position as incomplete agents in democratic participation is likely to marginalise their freedom. To counteract this lacuna and make freedom worthwhile to women, empowerment emerges as the true method of freeing women.

The term "protection" in the clause 'equal protection of the laws' under Article 14 as viewed by Granville Austin, "seems to place upon government the positive responsibility to give the have-less access to those rights they previously have been powerless to exercise. With an array of Directive Principles of State Policy which have great relevance in women's welfare, purposive interpretation is a seminal tool for the cause of constitutional feminism. It is appropriate to see how the Indian constitutional experience evinces the working of constitutional feminism.

Article 21 of the Constitution which does not use the term "state" allows scrutiny of private actions that violate right to life and personal liberty. The mandate of Article 21 which prohibits deprivation of life and personal liberty except according to the procedure established by law is applicable against all entities whether state or private. It is because, from the perspective of the victim, deprivation of the right by private person is also deprivation, and is to be justified strictly in accordance with law.

Constitutional feminism requires an unconventional approach towards the law relating to rape, prostitution, pornography and dowry-related crimes. For example, in articulating the law relating to rape the Supreme Court in Bodhisattwa Gautam 29 proceeded with a
dominance analysis thus:

"Unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantageous position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status". The court logically looked to the personal and social side of the crime and observed: "It (rape) is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21... The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many ways".

In four important dimensions the feminist vision has helped in infusing human rights values into rape law. Firstly, consent based on deception, promise of marriage and fake marital ritual were considered as no consent and rigours of earlier law on consent are avoided by a feminist perception in Bodhisattwa. Similarly, it was held, absence of bodily injury and the fact of submission do not imply consent. Secondly, the requirement of corroborating the circumstantial evidence, a rule which was unjustifiably applied in this sphere for a long time, is dispensed by the judiciary. The view of Ahmedi J. in C.K. Jain reflects the feminist vision. The learned judge observed: "To insist on corroboration except in rarest of rare cases is to equate a woman who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated." Thirdly, in ultimately evolving a rule that the character, reputation or status of a rape victim is not a relevant factor for consideration by the court while awarding the sentence to a rapist, the court was keeping in mind decency and dignity of womanhood. Fourthly, award of compensation to the rape victim - which is a discretionary power of sentencing judge in criminal cases in general - is made obligatory by application of Article 21. In Delhi Domestic Working Women's Forum* and Bodhisattwa the court was reasoning that the effect of rape was a long-term one, impairing the capacity of personal relationship, altering behavioural values and putting her into deep emotional crisis. The court based the compensatory remedy on right to life and personal liberty. The statutory changes relating to law of rape about presumption, in-camera trial, secrecy of rape victim's identity and custodial rape add to the different aspects of constitutional feminism

Dominance analysis is used in constructing the privacy law for women. The Supreme Court in Nergesh Mirza, *Air India v. Nergesh Mirza, (1981) 4 SCC 335 while invalidating a service regulation that required air hostesses to retire upon their first pregnancy, considered that the regulation was obstructing the ordinary course of human nature and a cruel insult on Indian womanhood by interference with her personal choice. In Neera Mathur, *Neera Mathur v. LIC, (1992) 1 SCC 286, LIC's roving collection of information about its women employees' unnecessary personal details were found to be invasion of right to privacy. The Supreme Court in Madhukar Narayan *State of Maharashtra v. Madhukar Narayan, (1991) 1 SCC 57 upheld the right to privacy of women of easy virtue against compulsions for sexual acts against her will. Anti-subordination vision in this approach infused aspects of human dignity into right to privacy in this case.

Concerning constitutionality of restitution of conjugal rights dominance analysis was
P.A. Choudhury J. for the Andhra Pradesh High Court viewed that there was substantive inequality between husband and wife in the matter of restitution of conjugal rights, that the remedy was instrument of oppression by male and had potentiality for unwanted pregnancy against wife's will. Although the Delhi High Court in *Harvinder Kaur* Harvinder Kaur v. Harmandil Singh, AIR 1984 Del 66 and the Supreme Court in Saroj Rani (1984) 4 SCC 90, upheld the statutory provision, overturning Saritha it is a matter of satisfaction that at least to this limited extent dominance analysis was made in these cases.

An instance of devising a tactful remedy based on dominance-analysis can be seen in Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125. In this case the constitutionality of Chota Nagpur Tenancy Act, 1908 which conferred right of intestate succession over tenancy exclusively to the male heirs of the deceased tribal was questioned. The Hindu Succession Act, 1956 which provides for gender equality in the matter of intestate succession is not applicable to the tribals. This position was challenged as discriminatory depriving right to life. The Supreme Court abstained from declaring the impugned law as violative of right to equality since the tribal law and customs were based on cultural diversity and intimate community desires and that non-uniformity is not always discriminatory. The court feared about 'a bee-line of similar claims' from various fields of personal laws and found the legislative remedy as more appropriate for reform. The majority judges, Kuldip Singh and Punchhi J.J. declined to read down the expression 'male descendant' to include 'female descendant' as resorted to by K. Ramaswamy J. who rendered the minority judgment. However, they held that right of the male descendant in the tribal tenancy shall be subject to the right of female dependants of the deceased to maintenance. Punchhi J. for the court observed,

"It is in protection of the right to livelihood, that the immediate female relatives of the last male tenant have the constitutional remedy to stay on holding the land so long as they remain dependant upon it for earning their livelihood, for otherwise it would render them destitute... It is in this way only that the constitutional right to livelihood of a female can interject in the provisions to be read as a burden to the statutory right of male succession".

It is interesting to note that instead of pleading incompetence to declare the personal law as bad in view of gender discrimination the Court resorted to superimposition of constitutional right to dignified life - including right to means of livelihood - upon statutory provision. This should be appreciated as a clever and rewarding strategy with potential for future application. It is pertinent to note that in adopting this strategy the court appreciated the fact that the tribals were not agreeing for reform of their personal law and that, without a general acceptance of social legislation, reformatory effort becomes futile.

The provisions in Directive Principles about equal entitlement to livelihood, equal pay for equal work, protection against moral and material abandonment, maternity leave, nutrition, equitable distribution of material resources of production and respect for international conventions have significant value in building the corpus of constitutional feminism. The provisions for making reservations for women in Panchayat Raj institutions and other local bodies are aimed at enhancement of the extent of women's participation in democratic process. This is likely to be widened by constitutional amendment for women's represen-
In the sphere of right to equality there has been no uniform judicial approach in the analysis of legal position in relation to the woman question.*3

The international feminist campaign for reproductive health is premised on the principle that "women, both as individuals and in their collective organizational forms and community identities, must be able] to determine their own reproductive and sexual lives in conditions of optimum health and economic and social well-being."

Although numerous factors affect the reproductive health of women, one of the core causes of poor reproductive health is a severe lack of affordable, accessible, quality reproductive health care.

World Health Organization (WHO) estimates that, annually, more than 500,000 women die from complications related to pregnancy, including unsafe abortion.

Against this backdrop of significant but inadequate governmental expenditures and women's poor reproductive health status, can governments be held responsible for violating or failing to fulfill a human right to reproductive health care?

Although health was first articulated as a human right in the Universal Declaration of Human Rights, a more detailed articulation of this right is set forth in Article 12 of the Covenant on Economic, Social and Cultural Rights.

1. The States' Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States' Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   • the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child; ...
   • the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The Convention on the Elimination of All Forms of Discrimination Against Women also addresses aspects of women's right to health.

Article 10(h) requires States parties to provide equal access to "educational information to help to ensure the health and well-being of families, including information and advice on family planning." In addition, Article 12 prohibits discrimination "in the field of health care," ensures equal "access to health care services including family planning" and requires states to: ...ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as inadequate nutrition during pregnancy and lactation.

The International Convention on the Elimination of All Forms of Racial Discrimination establishes a principle of racial equality regarding the right to "public health."

The Convention on the Rights of the Child also guarantees a right to health of minors. Specific measures include ensuring the health of children by requiring that states provide pregnant women with the health services necessary for safe delivery, and by implicitly recognizing that adolescents also have reproductive health care needs.

Thus, the right to health is an explicit human right. The Economic Covenant states a broad right to health, while other treaties focus on the rights of specific groups-women,
racial minorities and children. Together, these provisions form the international legal basis for women's right to reproductive health care. Moreover, human rights principles of non-discrimination require the application of all treaty obligations regarding health care to ensure equally the reproductive health care services especially needed by women. But the articulations of a right to health and reproductive health leave us a long way from implementation of this international human right.

The right to health, though drafted to ensure the "highest attainable" standard of health, must be considered to have a "minimum core content." But each right also has a broader scope that is subject to progressive realization.

Reproductive health care in the context of primary health care should, inter alia, include: family-planning counselling, information, education, communication and services; education and services for prenatal care, safe delivery care, and post-natal care, especially breast-feeding and infant and women's health care; prevention and appropriate treatment of infertility; abortion as specified in paragraph 8.25, including prevention of abortion and management of the consequences of abortion; treatment of reproductive tract infections, sexually transmitted diseases and other reproductive health conditions; and information, education and counselling, as appropriate, on human sexuality, reproductive health and responsible parenthood. reproductive health services seeking to achieve these objectives should include "education on safe motherhood, prenatal care that is focused and effective, maternal nutrition programmes, adequate delivery assistance that...provides for obstetric emergencies; referral services for pregnancy, childbirth and abortion complications; post-natal care and family planning."

WHO's basic minimum reproductive health package has three clear elements: family planning; STD and safe motherhood services together with information and counselling; and education on all aspects of reproductive health.

Reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health.

Governments should also establish gender-sensitive, rights-protective mechanisms for enhancing women's general status and for providing consumers of the minimum package of reproductive health care with meaningful redress for abuses or misinformation.

The failure of governments to ensure reproductive health care is often attributed to economic limitations and to a lack of political will concerning women's status.

**Monitoring Women's Right To Health Under The International Covenant On Economic, Social And Cultural Rights** In establishing normative standards for human rights, the promotion and protection of the enumerated rights require mechanisms to monitor the performance of governments and evaluate their compliance. Governments rarely voluntarily admit to violations of human rights. Therefore, the integrity and vitality of any human rights review process depends on alternative sources of information. the Committee generally confines its review to data provided in current reports under the Economic Covenant, without reference to past performance or to information in reports to other treaty monitoring bodies.

While there is considerable collection of data at local, national, and international levels
concerning health status and access to health care, there is currently little, if any, monitoring of the right to health. Not only is little effective monitoring of the right to health taking place, virtually none of this effort focuses on women.

The right to health as defined in the Covenant is broad and inclusive. Aspects of public health, industrial and environmental hygiene, as well as access to medical services and medical attention in the event of sickness, are included in the Covenant. As such, the right to health is interrelated with several other rights enumerated in the Covenant—for example, the right to safe working conditions. Because health status depends on a wide range of socio-economic conditions, such as nutritional status, the right to health is also linked to the right to food and the right to education. Moreover, women's health status is affected by implementation of Article's 10 protections for the family and mothers before and after childbirth. In monitoring violations of women's right to health, it is important to distinguish between three types of violations: (1) violations resulting from government actions and policies; (2) violations related to patterns of discrimination; and (3) violations related to a State's failure to fulfill the minimum core obligations of enumerated rights. These violations may affect women's enjoyment of their rights as members of the society or more specifically as women.

State or government's policies, actions, and laws which endanger the health and life of women can be labeled a violation of the right to health. Many women die or are chronically disabled by their lack of access to reproductive health services. WHO estimates that 500,000 women die each year from pregnancy-related causes, twenty-five to fifty percent of which result from the absence of family planning services or access to safe procedures or humane treatment for the complications of abortion. Under international human rights law, "when continuation of pregnancy would imminently endanger women's lives, a right exists to take advantage of available means of contraception, sterilization and abortion." Therefore, a State Party to the Economic Covenant which has laws or policies that make contraception, sterilization, or abortion illegal has violated its obligations to promote the right to health laws and regulations that require that a married woman have the authorization of her spouse before obtaining reproductive services obstruct a woman's access to such services.

To date, health research has tended to be discriminatory on two levels. First, many health problems specifically or particularly affecting women have not received sufficient attention. This bias, whether by commission or omission, doubtlessly reflects women's relative exclusion from significant health public policy decision making positions. Thus, setting a just research agenda may require substantial changes in the way priorities are established, as well as a reordering of the priorities themselves.

Second, women are rarely included in research trials.

The training of female health care workers is another area of likely discrimination. In many cultures, women can only be treated by female doctors and nurses. A dearth of trained women therefore leaves much of the female population without access to medical care.

The lack of female professionals deprives women of a voice in shaping professional practices and priorities.

CH. V - Gender Justice, Right to Health and Human Rights - An analytical Survey
Articles 1, 2, 3 and 5(a) of the Convention on Elimination of Discrimination Against Women (CEDAW) to which India is a signatory are as follows: Article 1. For the purposes of the present Convention, the term "discrimination against women" shall mean 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 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- To repeal all national penal provisions which constitute discrimination against women.

Article 3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 5. States Parties shall take all appropriate measures:

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

Articles 14, 15(1) and (3) of the Indian Constitution are as follows:

14. **Equality before law**: - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. **Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(3) Nothing in this article shall prevent the State from making any special provision for
women and children.

5.12 Legal Developments in the area of women's rights:
Laws relating to women can broadly be classified under the following categories:

Crimes Against Women
Gender specific crimes identified under the Indian Penal Code, 1860.

Specific legislations on gender based issues
- Dowry Prohibition Act, 1961 (28 of 1961)
- Prohibition of Child Marriage Act, 2006
- Protection of Women from Domestic Violence Act, 2005
- Protection of Women from Domestic Violence Rules 2006
- Commission of Sati Prevention Act, 1987 (3 of 1988)
- Indecent Representation of Women (Prohibition) Act, 1986
- Immoral Traffic (Prevention) Act, 1956
- Pre-conception and Pre-natal Diagnostic Technique Act, 1994
- The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996
- Medical Termination of Pregnancies Act, 1971
  (Amended by The Delegated Legislation Provisions (Amendment) Act, 2004 (4 of 2005))
- The Medical Termination of Pregnancy Rules, 2003
- The Medical Termination of Pregnancy Regulations, 2003
- Supreme Court guidelines on the prevention of sexual harassment at the workplace. (1997)
- Sexual Harassment Bill proposed by LCWRI
- Equal Remuneration Act, 1976
- Maternity Benefit Act, 1961
- National Commission for Women's Act, 1990
- 73 rd and 74 th Amendments to the Constitution on reservations for women in Panchayats. 38

Other laws impacting on women's rights
- Contract Labour (Regulation and Abolition) Act 1970
- Minimum Wages Act 1948, Factories Act 1948
- Workmen's Compensation Act, 1923
- Code of Criminal Procedure (1973),
- Code of Civil Procedure (1908),
- Indian Evidence Act (1872).
- Personal laws on marriage, property rights, guardianship and custody rights, maintenance.
- Supreme Court guidelines on the compulsory registration of marriages. 39

PDHRE has worked very closely with community-based women organizations. At the Beijing Women's Conference, PDHRE held a nine-day Training Institution and has since then developed and facilitated numerous training sessions about the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW.

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5.13 Women, Human Rights & Health

Every woman, man, youth and child has the human right to the highest attainable standard of physical and mental health. Enjoyment of the human right to health is vital to all aspects of a person's life and well-being. Many women and girls face serious obstacles to realization of their human right to health, including inequality of access to health care, food and nutrition, and customary practices detrimental to their health and well-being. All inequalities relating to health and practices harmful to women violate their fundamental human rights.

The Human Rights at Issue - Human rights relating to health are set out in basic human rights treaties and include:

- The human right to the highest attainable standard of physical and mental health, including reproductive and sexual health.
- The human right to equal access to adequate health care and health related services, regardless of sex, race, or other status.
- The human right to equitable distribution of food.
- The human right to access to safe drinking water and sanitation.
- The human right to an adequate standard of living and adequate housing.
- The human right to a safe and healthy environment.
- The human right to a safe and healthy workplace, and to adequate protection for pregnant women in work proven to be harmful to them.
- The human right to freedom from discrimination and discriminatory social practices, including female genital mutilation, prenatal gender selection, and female infanticide.
- The human right to access to information relating to health, including reproductive health and family planning to enable couples and individuals to decide freely and responsibly all matters of reproduction and sexuality.
- The human right to equality in marriage, including the equal right of women and men to decide on the number and spacing of children.
- The human right to access to adequate social services, including access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth.
- The human right to privacy.
- The human right to full respect for the inherent dignity of the person.
- The human right to freedom from coercion and violence, sexual exploitation and forced prostitution.
- The human right of the child to an environment appropriate for physical and mental development.

5.14 Human Rights and Women's Reproductive Health

The issues raised in Beijing and Cairo regarding women's reproductive health and sexuality are human rights issues. Reinforcing them are universal human rights standards defined in the Universal Declaration of Human Rights, CEDAW, the International Covenant on Economic, Social and Cultural Rights, and other widely adhered to international human rights treaties.
rights treaties and Declarations — powerful tools that must be put to use to enhance efforts for the advancement of women’s reproductive and sexual health.

The Rights at Issue -

- The human right to equality between men and women and to full and equal partnership in the family and society.
- The human right to an adequate standard of living.

These human rights are inextricably linked to other fundamental human rights guaranteed to all women, rights that are universal, indivisible, interconnected and interdependent.

5.15 Governments’ Obligations to Ensuring the Human Right to Reproductive Health

Following provisions from various International Human Rights documents clearly lay down the government obligation.

Convention on the Elimination of All Forms of Discrimination Against Women

"States Parties shall take all appropriate measures ... to modify the social and cultural patterns of conduct of men and women, ... to achieve... the elimination of prejudices and customary ... practices which are based on the idea of ... inferiority or ... superiority of either of the sexes or on stereotyped roles for men and women; to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.... States Parties shall ... suppress all forms of traffic in women and exploitation of prostitution of women...."

"States Parties shall ... ensure to [women] ... access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.... States Parties shall take appropriate measures ... to introduce maternity leave with pay or ... comparable social benefits without loss of former employment, seniority or social allowances.... States Parties shall ... eliminate discrimination against women in the field of health care in order to ensure ... access to health care services, including those related to family planning....; ensure ... appropriate services in connection with pregnancy ... granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.... States Parties shall ... ensure ... that [women in rural areas] ... have access to adequate health care facilities, including information counselling and services in family planning...." 40

Universal Declaration of Human Rights

"Men and women ... are entitled to equal rights as to marriage, during marriage and at its dissolution.... Everyone has the right to a standard of living adequate for health and well-being.... Motherhood and childhood are entitled to special care and assistance...." 42

International Covenant on Economic, Social and Cultural Rights

"The States Parties ... recognize that ... the widest possible protection and assistance should be accorded to the family.... Marriage must be entered into with the free consent of the intending spouses. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.... The States Parties ... recognize the right of everyone ... to the highest attainable standard of physical and
mental health." - 43

**International Covenant on Civil and Political Rights**

"... States Parties ... undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights.... No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.... No one shall be held in slavery.... No one shall be subjected to ... interference with his privacy.... The family ... is entitled to protection by society and the State.... No marriage shall be entered into without the free and full consent of the intending spouses. States Parties ... shall ... ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution...." - 44

**Convention on the Rights of the Child.**

"States Parties shall take measures to combat the illicit transfer and non-return of children abroad.... States Parties shall take all appropriate ... measures to protect the child from all forms of physical or mental violence, injury or abuse, ... maltreatment or exploitation including sexual abuse.... States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health .... shall take ... measures ... to ensure appropriate pre-and post-natal health care for expectant mothers.... States Parties shall take all ... measures with a view to abolishing traditional practices prejudicial to the health of children.... States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.... shall take all appropriate ... measures to prevent the abduction, the sale of or traffic in children...." 46

Includes commitments made at the International Conference on Population and Development in Cairo, and the World Conference on Human Rights in Vienna.

"The explicit recognition ... of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment.... We are determined to ... ensure equal access to and equal treatment of women and men in ... health care and enhance women's sexual and reproductive health as well as education." 47

"Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health ... implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility ... and the right of access to appropriate health-care services...." 47

**Vienna Declaration**

"The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.... Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice ... are incompatible with the dignity and worth of the human person, and must be eliminated." 48

(-Vienna Declaration, Part I, para. 18)

Cairo Programme of Action, Principle 8
"Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should ... ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion. All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so."

5.16 Women’s Human Right To Equality And Non-discrimination, Rights And Freedoms Of The Udhr

Universality - The first principle of the UDHR proclaims that “all human beings are born free and equal in dignity and rights” (ARTICLE 1). This means that all human rights are universal and belong to each and every person regardless of sex, race, colour, religion, language, political or other opinion, national or social origin, property, birth or any other status.

Equality - The notion that human rights are universal and belong to all people is centrally connected to principles of equality and non-discrimination.

Non-Discrimination - The UDHR also states, in Article 7, that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” In other words no one should be denied the protection of their human rights simply because of their sex, the colour of their skin, their political opinion or other factors.

5.17 The Case of Female Genital Mutilation

The practice of female genital mutilation (FGM) affects an estimated 130 million girls and women and is mostly prevalent in Africa.

“We will have time to reach the Millennium Development Goals – worldwide and in most, or even all, individual countries – but only if we break with business as usual. We cannot win overnight. Success will require sustained action across the entire decade between now and the deadline. It takes time to train the teachers, nurses and engineers; to build the roads, schools and hospitals; to grow the small and large businesses able to create the jobs and income needed. So we must start now. And we must more than double global development assistance over the next few years. Nothing less will help to achieve the Goals.” United Nations Secretary-General Kofi A. Annan

5.18 Status of Women-

Women have not achieved equality with men in any country.

Of the world’s 1.3 billion poor people, it is estimated that nearly 70 per cent are women. Between 75 and 80 per cent of the world’s 27 million refugees are women and children. Women’s life expectancy, educational attainment and income are highest in Sweden, Canada, Norway, USA and Finland.

The Fourth World Conference on Women, held in Beijing, China from 4-15 September 1995, resulted in agreement by 189 delegations on a five-year plan to enhance the social, economic and political empowerment of women, improve their health, advance their education and promote their reproductive rights.
1. Over 100 countries have announced new initiatives to further the advancement of women as a result of the Beijing Women's Conference.

2. The 1979 UN Convention on the Elimination of All Forms of Discrimination against Women, often described as a Bill of Rights for Women, has now been ratified by 160 countries.

Political Participation

1. The first country to grant women the right to vote was New Zealand in 1893.
2. Only 28 women have been elected heads of state or government in this century.
3. Women hold 11.7 per cent of the seats in the world's parliaments.
4. In early 1995, Sweden formed the world's first cabinet to have equal numbers of men and women.
5. Of the 185 highest-ranking diplomats to the United Nations, seven are women. The percentage of female cabinet ministers worldwide has risen from 3.4 in 1987 to 6.8 per cent in 1996.

Women and Education

1. Of the world's nearly one billion illiterate adults, two-thirds are women.
2. Two-thirds of the 130 million children worldwide who are not in school are girls.
3. During the past two decades the combined primary and secondary enrollment ratio for girls in developing countries increased from 38 per cent to 78 per cent.

Women and Labour

1. The majority of women earn on average about three-fourths of the pay of males for the same work, outside of the agricultural sector, in both developed and developing countries.
2. In most countries, women work approximately twice the unpaid time men do.
3. Women make up 31 per cent of the official labour force in developing countries and 46.7 per cent worldwide.
4. Rural women produce more than 55 per cent of all food grown in developing countries.
5. The value of women's unpaid housework and community work is estimated at between 10-35 per cent of GDP worldwide, amounting to $11 trillion in 1993.
6. Women hold 35.5 per cent of professional posts in the United Nations Secretariat including 18.5 per cent in senior management.

By the year 2000, there will be as many women employees as men in many industrialized nations.

Women and Population

1. Women outlive men in almost every country.
2. There are slightly fewer women than men in the world — 98.6 women for every 100 men.
3. Out-of-marriage births have increased more than 50 per cent in the last 20 years in developed countries.
4. One in every four households in the world is now headed by a woman.
5. The life expectancy of women has gone up. In 1992, the average woman lived to be...
62.9 years in developing countries compared to 53.7 years in 1970. In industrialized countries, women’s average life expectancy in 1992 was 79.4 years, up from 74.2 in 1970.

6. By 2025, the proportion of women aged 60 or older will almost double in East and South-East Asia, Latin America and the Caribbean, and North Africa.

Women and Health
1. Women are becoming increasingly affected by HIV. Today about 42 per cent of estimated cases are women, and the number of infected women is expected to reach 15 million by the year 2000.
2. An estimated 20 million unsafe abortions are performed worldwide every year, resulting in the deaths of 70,000 women.
3. Approximately 585,000 women die every year, over 1,600 every day, from causes related to pregnancy and childbirth. In sub-Saharan Africa, 1 in 13 women will die from pregnancy or childbirth related causes, compared to 1 in 3,300 women in the United States.
4. Globally, 43 per cent of all women and 51 per cent of pregnant women suffer from iron-deficiency anemia.

Women and Violence
1. Each year an estimated two million girls suffer the practice of female genital mutilation.
2. Worldwide, 20 to 50 per cent of women experience some degree of domestic violence during marriage.
3. The primary victims of today’s wars are civilian women and their children, not soldiers.
4. The use of rape as a weapon of war has become more evident. In Rwanda from April 1994 to April 1995, estimates of the number of women and girls raped range from 15,700 to over 250,000.
5. Rapes in the former Yugoslavia and Rwanda are being investigated with a view to prosecution by International Tribunals established by the United Nations.

Statistics are culled from a variety of sources and are valid as of May 1997.

5.19 The United Nations and the Status of Women

UN Actions for Women - UN actions for the advancement of women began with the signing of the UN’s founding Charter. In its Preamble, the members of the UN declared their 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....”

This happened 50 years ago, in October 1945, when the Charter entered into force and the UN was formally set up. Since then, the UN has been at the centre of a growing global movement for women's rights. By adopting international laws and treaties on women's rights, the UN has helped set a common standard for measuring how societies advance equality between men and women.

The Conventions, or international treaties, that the UN has adopted are legally binding for countries that recognize them. Among such treaties are:
- The Convention on the Political Rights of Women (1952)
• The Convention on the Nationality of Married Women (1957)
• The Convention on Recovery Abroad of Maintenance (1956)
• The Convention on the Consent to Marriage (1962)
• The Convention on the Elimination of all forms of Discrimination against Women (1979)

The UN observed 1975 as International Women's Year and held the first world conference on women in Mexico City. Subsequently, two other UN conferences were held: Copenhagen (1980) and Nairobi (1985). The Fourth World Conference on Women will be held in Beijing, China in September 1995.

The Forward-looking Strategies for the Advancement of Women to the year 2000, adopted at the Nairobi Conference, is a blueprint for women's advancement. Its 372 paragraphs deal with the entire spectrum of women's role in society. In Beijing, the countries of the world will review the advancement of women in light of these guidelines. They will also adopt a Platform for Action, addressing the challenges and demands of the next century.

In December 1993, the UN adopted the Declaration on the Elimination of Violence against Women, which defined what constitutes violence against women and outlined actions Governments and communities should take to prevent such acts. Earlier, in June 1993, the World Conference on Human Rights in Vienna, Austria, reaffirmed that women's rights are also human rights. One of the outcomes of the Conference was the appointment of a Special Rapporteur on Violence against Women. The Rapporteur, who seeks and receives information on violence against women, its causes and consequences, and recommends means and ways to eliminate them, reports to the UN Commission on Human Rights.

The Convention on the Elimination of all forms of Discrimination against Women, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

According to the Convention, discrimination against women 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."

By recognizing the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all its forms, including:

• To incorporate the principle of equality of men and women in their legal systems, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
• To establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
• To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between men and women through ensuring women's equal access to, and equal opportunities in, political and public...
life including the right to vote and to stand for election as well as education and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's right to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put into practice its provisions. They are also committed to submit national reports, at least once every four years, on measures they have taken to comply with their treaty obligations.

The Committee on the Elimination of Discrimination against Women (CEDAW) was set up in 1982 to monitor the implementation of the Convention on the Elimination of Discrimination against Women.

The Committee is composed of 23 experts, who are elected by those countries that have ratified the Convention. Members of the Committee, who are persons "of high moral standing and competence in the field covered by the Convention", serve for a term of four years and may be re-elected. Though nominated by their Governments, the experts serve in their individual capacities and not as delegates or representatives of their countries of origin. Since its inception, and with only one exception, the Committee has always been composed entirely of women.

The Committee, which convenes once a year for a three-week period, reviews the reports of States parties on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and evaluates the progress made. It can suggest specific measures as well as make general recommendations to the States parties on eliminating discrimination against women. It may also invite UN specialized agencies to submit reports for consideration and may receive information from non-governmental organizations.

The Committee reports annually on its activities to the General Assembly through the Economic and Social Council, and the Council transmits these reports to the Commission on the Status of Women for information.

The Commission on the Status of Women

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

In other words, CSW is the global advocate for equality between women and men. The Commission, an intergovernmental body, has 45 members, each elected for four years. The membership of the Commission reflects the following geographical composi-
tion: 13 States from Africa, 11 from Asia, 4 from Eastern Europe, 9 from Latin America and the Caribbean and 8 from Western Europe and other States. The Commission meets annually for a period of at least eight days.

The central part of CSW's work involves setting universal standards regarding equality between women and men. It has also assumed a leading role in bringing women's concerns to the attention of the UN specialized agencies. Various UN Conventions, including the Convention on the Elimination of All Forms of Discrimination against Women, have set new standards in the area of human rights. Over the years, the Commission has dealt with issues such as women's participation in political life and in decision-making, and women's role in and contribution to development. It has put forward policy recommendations regarding women's rights in employment and in education, and their role in the economy and the environment. It has made recommendations on how to support women in their fight against poverty. Its work with regard to violence against women led to the adoption of the Declaration on the Elimination of Violence against Women by the General Assembly in 1993.

CSW initiated the observance of International Women's Year 1975 and the world conferences on women. Following the adoption of the Forward-looking Strategies in Nairobi at the third UN conference on women in 1985, the Commission has also been responsible for monitoring the implementation of these strategies.

The Division carries out policy research and monitors implementation of programmes of action taken at world conferences on women. It maintains regular outreach with NGOs and academic and national institutions working for women's advancement. It is also the focal point for coordination of activities for women in the UN system as a whole.

Women in Development

The need for integrating women in the development process was placed on the international agenda in 1975, when the UN observed International Women's Year. Among the many concrete steps taken in this regard after the 1975 world conference on women was the creation of two UN bodies, UNIFEM and INSTRAW.

A result of the energetic advocacy of women at the first world conference on women, the United Nations Development Fund for Women (UNIFEM) was established by the United Nations General Assembly in 1976 to provide direct support to development projects for women. Originally set up as the Voluntary Fund for the Decade for Women, the Fund was asked to help improve the living standards of women in developing countries by addressing their concerns through providing direct technical and financial support and by promoting the inclusion of women in the decision-making process of mainstream development programmes. In 1985, the Fund became an autonomous body in association with the UN Development Programme (UNDP) and was renamed UNIFEM.

Sometimes described as a bridge between international organizations, policy makers and disadvantaged women, UNIFEM is an aid to and advocate for women of the developing world. Currently, UNIFEM works at the country level through its 10 regional offices. Among its priority areas are trade and industry, credit, science and technology, agriculture and food security, and policy-making and national planning. It also targets critical issues on the global agenda to ensure that gender is included in international policies such as those
related to refugees and displaced persons, violence against women, human rights, global governance and environment. UNIFEM has recently established a woman's human rights programme aimed at strengthening the capacity of women's organizations that work on human rights.

The United Nations International Research and Training Institute for the Advancement of Women (INSTRAW), established in 1975 by the General Assembly on the recommendation of the first world conference on women, is an autonomous body within the UN system with a mandate to carry out research, training and information activities worldwide to promote women as key agents for sustainable development.

Operating from its headquarters in Santo Domingo, Dominican Republic, the Institute performs research projects to identify barriers that impede women's equality in the process of social, economic and political development. INSTRAW analyzes existing research material by interacting and working with Governments, UN agencies and academic institutions, as well as non-governmental organizations and other entities.

INSTRAW's experience has proved that the greatest problem affecting women is invisibility. With this purpose, INSTRAW develops new ways of understanding, new methodologies and statistics for training programmes and methods linked to issues such as:

- Economic empowerment;
- Collection of statistics and indicators on women's work in the formal and informal sectors;
- Availability of statistics on elderly women;
- Women and time-use;
- Statistics on women in the informal sector in industry, trade and services;
- Migration of women and the methodological issues involved in the measurement and analysis of internal and international migration;
- Women, water and sanitation and women and water management;
- New and renewable sources of energy;
- Women and environmental management;
- The role of women in environmentally sound and sustainable development;
- The image and participation of women in alternative and mass media;
- Gender and development studies, including training material.

The UN System and Women's Status

General Assembly: Highest intergovernmental body for the formulation and appraisal of policy, including rights of women and related issues.

Economic and Social Council: Principal UN organ for coordinating the economic and social work of the UN and its specialized agencies, including the role of women in development.

Commission on Human Rights: Main UN body on human rights; develops and codifies new international norms and monitors the observance of human rights around the world. A Special Rapporteur on Violence against Women, appointed by the Commission, seeks and receives information on violence against women and recommends ways and means to eliminate it.

Commission on the Status of Women: Main UN body dealing with policy decisions on
women’s status; monitors women’s situation and prepares recommendations for the UN and its Member States.

CEDAW: A committee of 23 international experts set up to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

DAW: A division within the UN Secretariat: services CEDAW and CSW and acts as secretariat for UN conferences on women

Specialized agencies and programmes: Members of the UN system; play key role in stimulating and aiding technical cooperation for development, the key beneficiaries of which are women.

UNIFEM: Autonomous body in association with UNDP; provides direct support to women’s development projects.

INSTRAW: Autonomous body within UN system; undertakes research and training activities for the advancement of women.

5.20 Meaning of “sex” and “gender” as given by WHO

Sometimes it is hard to understand exactly what is meant by the term “gender”, and how it differs from the closely related term “sex”. “Sex” refers to the biological and physiological characteristics that define men and women. “Gender” refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women. To put it another way: “Male” and “female” are sex categories, while “masculine” and “feminine” are gender categories. Aspects of sex will not vary substantially between different human societies, while aspects of gender may vary greatly.

Some examples of sex characteristics:
• Women can menstruate while men cannot
• Men generally have more massive bones than women

Some examples of gender characteristics:
• In the United States (and most other countries), women earn significantly less money than men for similar work
• In most of the world, women do more housework than men

Gender and Health

The distinct roles and behaviors of men and women in a given culture, dictated by that culture’s gender norms and values, give rise to gender differences. Not all such differences between men and women imply inequity - for example, the fact that in many western societies, men generally wear trousers while women often wear skirts and dresses is a gender difference which does not, in itself, favor either group.

Gender norms and values, however, also give rise to gender inequalities - that is, differences between men and women which systematically empower one group to the detriment of the other. The fact that, throughout the world, women on average have lower cash incomes than men is an example of a gender inequality.

Both gender differences and gender inequalities can give rise to inequities between men and women in health status and access to health care. For example:
• A woman cannot receive needed health services because norms in her community prevent her from travelling alone to a clinic.

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• A teenage boy dies in an accident because of trying to live up to peers' expectations that young men should be "bold" risk-takers.
• A married woman contracts HIV because societal standards encourage her husband's promiscuity while simultaneously preventing her from insisting on condom use.
• A country's lung cancer mortality rate for men far outstrips the corresponding rate for women because smoking is considered an attractive marker of masculinity, while it is frowned upon as unfeminine in women.

In each of these cases, gender norms and values, and resulting behaviors, are negatively affecting health. In fact, the gender picture in a given time and place can be one of the major obstacles - sometimes the single most important obstacle - standing between men and women and the achievement of well-being.

The good news is that gender norms and values are not fixed. They evolve over time, vary substantially from place to place, and are subject to change. Thus, the poor health consequences resulting from gender differences and gender inequalities are not fixed, either. They can be changed.

The goals of the Gender and Women's Health Department are to increase health professionals' awareness of the role of gender norms, values, and inequality in perpetuating disease, disability, and death, and to promote societal change with a view to eliminating gender as a barrier to good health.

5.21 Gender and women's health

The term "gender" includes both masculinity and femininity, not just one or the other. Why, then, is it the Gender, Women and Health Department?

Across continents and cultures, established gender norms and values mean that women typically control less power and fewer resources than men. Not surprisingly, this often gives men an advantage - in the economic, political, and educational arenas, but also with regard to health and health care.

Certainly, there are instances where gender differences hurt men's health - as, for example, when greater risk-taking among young men leads to higher accident rates, or higher levels of violence between men leads to greater death and disability. But, by and large, many health professionals believe that gender inequalities have led to a systematic devaluing and neglect of women's health.

Two consequences result:
1) Women's health is often in need of advocates to bring it up to par with men's, and
2) Any organization devoted to examining and correcting gender inequalities in health will, in practice, find itself acting as just such an advocate.

For these reasons, even though gender has as much to do with men as it does with women, the WHO department devoted to gender and health also has a special role as an advocate for women's health.

Gender-based violence, or violence against women (VAW), is a major public health and human rights problem throughout the world.

Violence against women has profound implications for health but is often ignored. WHO's World Report on Violence and Health notes that "one of the most common forms of violence against women is that performed by a husband or male partner." This type of
violence is frequently invisible since it happens behind closed doors, and effectively, when legal systems and cultural norms do not treat as a crime, but rather as a "private" family matter, or a normal part of life.

Sexual violence is a pervasive global problem with significant health consequences for victims, yet in many places around the world, available services do not meet the needs of survivors.

India has one-fifth of the world's children. About 34 per cent of the total population of India are children of 0 to 14 years age group. They need more focused attention as the future of the country depends on our children. When we talk about issues pertaining to the rights of the girl child, I believe, the first and foremost right we must ensure is her right to be born and then the right to live with dignity in an environment permeated by gender equality and sensitivity.

Yet another issue that confronts girls is violence against them which may happen in many ways, including sexual exploitation and abuse, prostitution, child pornography and trafficking. This calls for effective measures so that all forms of violence against the girl child can be eliminated. Perhaps a greater emphasis on strictly enforcing the existing legislations is urgently warranted. We need to forcefully implement the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, the Compulsory Registration of Birth and Death Act, and many other existing women and girl child related legislations so as to prevent violence against the girl child. During the last Winter Session, our Parliament passed the Commission for Protection of Child Rights Bill providing for a National Commission and State Commissions for the protection of child rights. It can also monitor the implementation of laws and programmes relating to the survival, welfare and development of children.

Members of Parliament, as the representatives of the people, can also play the role of opinion leaders in their respective constituencies. Because of the exalted position they enjoy by virtue of being people's representatives, they can influence and shape the thinking and attitude of the people towards the girl child.

In the context of a declining sex ratio, the Supreme Court directive to the Central and State governments to implement strictly the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act assumes significance. Taking cognizance of the link between pre-natal sex determination tests and the declining sex ratio among children, the Supreme Court, in a recent judgment, came down heavily on the Central and State governments for having failed to implement the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The Act, which came into effect in January 1996, provided 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 misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide."

The judgment was delivered on May 4 on a petition filed by two non-governmental organisations (NGOs) - the Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai, and the Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune - and Sabu M. George, . The petitioners contended that techniques such as pre-natal genetic diagnosis (PGD)
violated the Act and sought from the court directions to the Central and State governments to implement the Act in full by appointing appropriate authorities and advisory committees at the State and district levels in order to ensure that the Central Supervisory Board (CSB) that was set up under the Act met every six months. The Central and State supervisory boards had not met regularly and reviewed the implementation of the Act, they said. The petitioners sought a ban on advertisements relating to all sex selection techniques before or during pregnancy. The Supreme Court issued notices to the Central and State governments. Government stated that the CSB had met only four times since its constitution on February 5, 1997.

Shocking as it may sound, the age-old social evil of female infanticide, which spreads across several parts of rural India, seems to be showing no signs of a let-up. A number of factors, including neglect of female infants and better healthcare to males might be one reason accounting for the decline in sex ratio, experts said.

There are other factors responsible, too, for the lopsided ratio. Experts feel that the most important of these are female infanticide and foeticide, which are, unlike other countries, very closely linked in our country. "This is due to the mentality that looks down upon the female child as a burden. The fear of dowry on one hand, and losing property in inheritance, on the other, are the major irritants in acceptance of a girl child." The popular perception draws the girl child as a losing proposition - only to be married to another family. That leads to a natural dislike for girls.

*Haryana has the lowest sex ratio in the country at 875 females per 1,000 males.*

Neighbouring Punjab stands closer at 882.

The heinous practice of sex discrimination is not a secret business now. And newspapers often carry advertisements by private clinics offering sperm separation and sex selection before conception.

Any strategy to address and eliminate female infanticide, and its latest form - foeticide - must, therefore, address the larger issues of patriarchy and unequal development.

Female foeticide continues to exist in various garbs and have sought the intervention of the court to interpret the Act in such a way that it takes into account new techniques such as Pre-implantational Genetic Diagnosis (PGD). Taking prima facie notice of the petition, filed in February, the court issued notice to the respondents - the Ministry of Health and Family Welfare, the Department of Women and Child in the Human Resource Development Ministry, and the departments concerned of the various State governments.

**The Feminist Health Centre**

In recent years, local men have been contracting HIV in the big cities and bringing the virus back to their villages, where they have sex with their wives and other partners. Few people in the area know that they are HIV-positive and even fewer have developed AIDS, but the virus has almost certainly penetrated into many communities already. It is now only a matter of time before HIV infection and AIDS emerge as major health and social problems.

The Feminist Health Centre The Centre was established in February 1994 by MASUM, the Mahila Sarvangeen Utkarsh Mandal (Rural Women's Association), which grew out of an action research project sponsored by the Indian Council of Medical Research. Founded...
in 1987 at the request of local women, MASUM aims to identify the various forms of exploitation and abuse faced by women, and to help them organise themselves to deal with these problems.

MASUM, a women's health centre in Saswad, Maharashtra, promotes women's sexual health in the widest sense. It teaches women to explore and learn about their own bodies, and educates them about STDs, AIDS, depression, contraception and sexual exploitation.

5.22 Law enforcement failures

In many cases where laws are equitable, women do not know their rights, nor have the economic means to secure these rights because mandatory court representation by lawyers and official fees restrict access to justice. Excessive delays within the judiciary also impinge on such access to justice. The attitudes of law enforcement officers and agencies, local council and court officials, police and prison service personnel, are influenced by perceptions that are often shaped by prevailing customary and traditional attitudes to gender issues.

5.23 Public policy matters to gender equality

Because gender inequalities exact high human costs and high costs to development—and because the factors that cause gender inequalities to persist are difficult for individuals alone to change—there is a strong case for public action to promote gender equality. In this context, Engendering Development outlines a three-part strategy to promote gender equality. Reform institutions to provide equal rights and equal opportunities for women and men. Foster economic development to strengthen incentives for more equal resources and participation. Take active measures to redress persistent disparities in command of resources and political voice.

The last half of the 20th century saw great improvement in the absolute status of women and in gender equality in many parts of the world—with respect to schooling, health status, labor force participation, and wages. Despite the progress, however, significant gender inequalities in rights, resources, and voice persist in all developing countries. For example:

1. In no region do women and men have equal rights. In a number of countries women still lack independent rights to own land, manage property, conduct business, or even travel without their husbands’ consent.
2. Women continue to have systematically poorer command over a range of productive resources, including land, information, and financial resources.
3. Despite considerable increases in women’s education relative to men, women continue to have limited opportunities and earn less than men in the labor market—even when they have the same education and work experience as men.
4. Women remain vastly underrepresented in politics and policymaking. They hold less than 10 percent of the seats in parliaments in most regions and less than 8 percent of government ministerial positions.

While women and girls bear the most direct and severe costs of these inequalities, the costs cut more broadly across societies, ultimately harming everyone. Among the poor,
these disparities contribute to significant risk and vulnerability in the face of personal or family crises and during economic shocks.

5.24 Gender inequalities tend to be greater among the poor

One of the striking patterns from data across countries is that gender disparities, especially in basic indicators of wellbeing and development, are greatest on average in poorer countries. And within countries, these disparities tend to be greatest among the poorest households.

Gender inequalities harm well-being, hinder development. Well-being.

Young children are disadvantaged directly by their mothers’ illiteracy and lack of schooling. Lack of schooling means poor quality of care, which means more illness, more malnutrition, and higher child mortality. Mothers with more education are more likely to adopt appropriate health-promoting behaviors, such as having young children immunized, which translates into better health and well-being for their children. Because women are more likely than men to spend the additional household income for schooling, health expenditures, and food.

5.25 Abortion Needs of Women in India

Most studies of abortion in India have been hospital-based and conducted mainly from the standpoint of providers, policy-makers and the states. Quantitative surveys have helped draw attention to the high prevalence of illegal abortion in India. Yet women’s abortion needs and what they feel and want with respect to abortion services, their knowledge of the law and their perceptions about women’s rights in relation to abortion have remained largely unexplored. Placing abortion in the overall context of a comprehensive public health infrastructure, and providing good quality services which are physically and financially accessible to all women, should be the priority of the Indian State, irrespective of women’s marital status and without precipitating guilt. Aborting a pregnancy is in itself a difficult and painful decision for most women; the law and the health services need not add insult to injury. (Manisha Gupte, Sunita Bandewar and Hemlata Pisal, Abortion Needs of Women in India: A Case Study of Rural Maharashtra.)

The women’s movement in India needs to debate the issue of abortion beyond the limited context of selective abortion of female fetuses. To make the State answerable to the needs of women, their collective and organized voices have to be heard, taking up advocacy, lobbying and campaigns to make safe abortion a women’s rights issue.

Advocacy for Reproductive Health and Women’s Empowerment in India. In a Ford Foundation Report prepared by Bishakha Datta, Consultant and Geetanjali Misra, Program Officer, Reproductive Health, Ford Foundation, New Delhi, following observations were made.

Emphasizing the cultural, social and economic factors that influence sexual and reproductive health, the Ford Foundation had directed its support to three general areas since 1990: strengthening social science research; enabling women and their partners to be more directly involved in the design and implementation of reproductive health programs and policies; and promoting discussion of religious and ethical values related to reproductive behavior.

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In India, the Foundation's reproductive health program aims to stimulate both the non-government and public health delivery systems to better address reproductive health needs. The program currently supports social science research; innovative community-level projects that can serve as replicable models for the public sector; HIV/AIDS prevention activities; and a wide range of media, documentation, networking, and training initiatives to advocate reproductive health and women's empowerment. The final component—Advocacy for Reproductive Health and Women's Empowerment—is the most recent addition to the reproductive health program. As such, it is also the least developed. (Advocacy for Reproductive Health and Women's Empowerment in India. A Ford Foundation Report, 1997)

Linking concepts of reproductive rights to human rights of women such as the right to livelihood, safety and mobility, health care, and food security. Practically all those consulted emphasized the need to link the concept of reproductive health with broader socio-economic conditions. For example, menstrual hygiene is often related to issues of water; nutrition is often related to food security; pelvic inflammatory disease is often associated with load bearing. These larger concerns need to shape understanding and inform programming in the area of reproductive health.

The following are essential to assure women's health care:

• Equal status in society with control over one's body
• Equitable distribution of work
• Assured and just income
• Safe working and living conditions
• Comprehensive health care including safe effective contraception
• Enough clean food and water
• Education and growth opportunities
• Freedom from violence

Empowerment means "enabling women to analyze their own situation, to decide their priorities, develop solutions to their problems and to take collective action to improve various aspects of their lives". Although the concept of empowerment is generally understood, it has not yet been adequately put into practice at the programmatic level. (Advocacy for Reproductive Health and Women's Empowerment in India. Ford Foundation Report prepared by Bishakha Datta, Consultant and Geetanjali Misra, Program Officer, Reproductive Health, Ford Foundation,

Violence As a Critical Health Issue—Although violence is not part of the conventional definition of reproductive health, several groups and individuals consulted identified this as a key health issue for the following reasons:

1. At the most basic level, violence affects women's bodies and psyches. Ill health is direct fallout of violence.
2. Violence is an issue of power relations between men and women. If reproductive health aims to empower women, Programs must address violence against women.
3. Violence takes away control of the body. If reproductive health, in its best sense, imbues the concept of reclaiming control over the body, then violence against women must be incorporated into its definition.

Although mental health is considered an important dimension of women's health, the
issue of mental health has rarely been addressed. Issues pertaining to mental ill health are often invisible to women, to the medical community, and to society and are usually trivialized and used opportunistically.

Panchayati Raj is one current window of opportunity; particularly since the enactment of the 73rd amendment [16] has both revitalized this institution and brought large numbers of women into the system of local self-government. However, if panchayats which are elected political bodies at village, block and district levels - need to work as genuine democratic institutions of governance, they need to be left free to set their own priorities for community action, rather than have external agendas and priorities imposed on them. Panchayats need to be solidly grounded in understanding and addressing community and women's health needs, which are among their responsibilities, before taking on the reproductive health agenda.

5.26 R191 Maternity Protection Recommendation, 2000


MATERNITY LEAVE
1. Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.
2. Provision should be made for an extension of the maternity leave in the event of multiple births.
3. To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth.

BENEFITS
2. Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during leave referred to in Articles 4 and 5 of the Convention should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.
3. To the extent possible, the medical benefits provided for in Article 6, paragraph 7, of the Convention should include: care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist; maternity care given by a qualified midwife or by another maternity service at home or in a hospital or other medical establishment maintenance in a hospital or other medical establishment; any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and dental and surgical care.

5.27 FINANCING OF BENEFITS
4. Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees or by the employer,
should be paid in respect of the total number of men and women employed, without
distinction of sex.

5.28 EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

A woman should be entitled to return to her former position or an equivalent position
paid at the same rate at the end of her leave referred to in Article 5 of the Convention. The
period of leave referred to in Articles 4 and 5 of the Convention should be considered as a
period of service for the determination of her rights.

Declaration for Women's Reproductive and Sexual Rights and Health Issued by
the Reproductive Rights caucus at the NGO Forum and the 39th Session of the Commissi­

The signatories to this Declaration demand that governments ensure access of all
women, regardless of age, marital status, race, ethnicity, religion, economic status, ability,
and sexual orientation, to: comprehensive factual information and non-directive confiden­
tial counseling regarding all aspects of reproductive and sexual health and services; com­
prehensive, unbiased sexual education; confidential, accessible and affordable quality re-
productive and sexual health services; the full range of safe and effective methods of
fertility regulation, including voluntary sterilization, prevention of and treatment for infertility,
emergency contraceptive methods and safe, legal abortion; comprehensive information
and education on STDs/HIV/AIDS prevention and quality, affordable condoms; compas­
sonate counselling and treatment for HIV/AIDS and other sexual and reproductive condi­
tions that incorporate dignity and respect for women's reproductive self determination;
funding for and gender balance in all aspects of biomedical, behavioral, epidemiological
and health research regarding women's health.

Governments must condemn and eradicate any and all coercive laws, policies and
practices regarding sexual and reproductive rights and health, including: forced steriliza­
tion; forced abortion; forced motherhood; forced pregnancy; female genital mutilation; forced
marriage; rape; sexual violence; virginity examinations; forced contraceptive use; and dis­
crimination on the basis of sexual orientation.

To ensure compliance with these demands, governments should mobilize resources
for women's health, which is defined by the World Health Organization as "a state of com­
plete physical, mental and social wellbeing, and not merely the absence of disease or
infirmitry." Women must be involved at all levels of the decision-making processes. There­
fore, governments must ensure women's involvement on a equal basis at all levels of
research and policy design, implementation, and evaluation. Evaluations must be based
on specific goals and time-frames."

C183 Maternity Protection Convention, 2000 Adopted by International Labour Or­
organization (ILO) at the 88th ILO Conference, Geneva, Switzerland, 15 June 2000
C183 Maternity Convention Concerning the revision of the Maternity Protection Convention
(Revised), 1952 (Note: This Convention has not yet come into force: 07/02/2002)

Noting the provisions of the Universal Declaration of Human Rights (1948), the United
Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979),
the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration
and Platform for Action (1995), the International Labour Organization's Declaration on Equality

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of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981, and Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society, and Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and Having determined that these proposals shall take the form of an international Convention; adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000. Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

5.29 MATERNITY LEAVE

Article 4 On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.

The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.

With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

5.30 LEAVE IN CASE OF ILLNESS OR COMPLICATIONS Article 5

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

BENEFITS Article 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.
2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

**Article 9**

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.

2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:

   a. prohibited or restricted for pregnant or nursing women under national laws or regulations; or
   b. where there is a recognized or significant risk to the health of the woman and child.

**Article 10 - BREASTFEEDING MOTHERS**

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

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The significant provisions include,

89. Women have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Women's health involves their emotional, social and physical well-being and is determined by the social, political and economic context of their lives, as well as by biology. However, health and well-being elude the majority of women. A major barrier for women to the achievement of the highest attainable standard of health is inequality, both between men and women and among women in different geographical regions, social classes and indigenous and ethnic groups. In national and international forums, women have emphasized that to attain
optimal health throughout the life cycle, equality, including the sharing of family responsibilities, development and peace are necessary conditions.

Discrimination against girls, often resulting from son preference, in access to nutrition and health-care services endangers their current and future health and well-being. Conditions that force girls into early marriage, pregnancy and child-bearing and subject them to harmful practices, such as female genital mutilation, pose grave health risks. Adolescent girls need, but too often do not have, access to necessary health and nutrition services as they mature. Counseling and access to sexual and reproductive health information and services for adolescents are still inadequate or lacking completely, and a young woman's right to privacy, confidentiality, respect and informed consent is often not considered. Adolescent girls are both biologically and psychosocially more vulnerable than boys to sexual abuse, violence and prostitution, and to the consequences of unprotected and premature sexual relations. The trend towards early sexual experience, combined with a lack of information and services, increases the risk of unwanted and too early pregnancy, HIV infection and other sexually transmitted diseases, as well as unsafe abortions. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world. Overall, for young women early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on the quality of their lives and the lives of their children. Young men are often not educated to respect women's self-determination and to share responsibility with women in matters of sexuality and reproduction.

112. Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. Knowledge about its causes and consequences, as well as its incidence and measures to combat it, have been greatly expanded since the Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

113. The term "violence against women" means 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 private life.

114. Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society. Violence against women is exacerbated by social pressures, notably the shame of denouncing certain acts that have been
perpetrated against women; women's lack of access to legal information, aid or protection; 
the lack of laws that effectively prohibit violence against women; failure to reform existing 
laws; inadequate efforts on the part of public authorities to promote awareness of and to 
enforce existing laws; and the absence of educational and other means to address the 
causes and consequences of violence. Images in the media of violence against women, in 
particular those that depict rape or sexual slavery as well as the use of women and girls as 
sex objects, including pornography, factors contributing to the continued prevalence of 
such violence, adversely influencing the community at large, in particular children and young 
people. *58

Towards Gender Equality and Health:
In order to enhance the health services to women, Strengthening health systems be­
comes indispensable.

A prerequisite for attaining the Millennium Development Goals relating to maternal 
health and child survival and HIV/AIDS, as well as the broader reproductive and Sexual 
health goals, is the existence of a functioning system of essential health care at the pri­
mary, secondary and tertiary levels. In some countries, basic health service capacity will 
have to be strengthened substantially in order to enable provision of a comprehensive 
range of essential reproductive and sexual health services. Planning at national level for 
reproductive and sexual health will have to cover sustainable financing mechanisms, hu­
man resources, quality in service, provision and use of services.

Necessary actions in this area are:

• to make reproductive and sexual health central to national planning and strategy de­
velopment processes, including poverty reduction strategy papers and WHO country 
cooperation strategies;
• to ensure that reproductive and sexual health is appropriately reflected in national 
health-sector plans, including those covering the "3 by 5" initiative, proposals 
• to the Global Fund to Fight AIDS, Tuberculosis and Malaria, and other relevant 
initiatives;
• to prioritize reproductive and sexual health in essential service packages under health­
sector reforms and sector-wide approaches; and where new financing mechanisms 
such as cost sharing are being introduced,
• to design ways to facilitate access to services by adolescents, poor people and other 
disadvantaged groups, to monitor the effects of such policies

• and to adapt them to local conditions.59

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