CHAPTER – 2

HISTORICAL PERSPECTIVE OF CRIME AGAINST WOMAN

1. Introduction

It is true that crime is looked upon with greatest hatred by all sections of the people in society, but it is also true that the study and research of the law of crimes has always been one of the most attractive branches of the Jurisprudence since the early years of human civilization. In fact the law of crimes has been as old as civilization itself. Wherever people organized themselves into groups or association the need for some sort of rules to regulate the behavior of the members of that group inter se has been felt, and where there were rules of the society, its infraction was inevitable and there lies the necessity of devising some ways and means to curb such tendencies in the society that lead to violation of its rules. In every organized society certain acts are forbidden on the pain of punishment where one person injured another and the injury could adequately be compensated by money value, the wrongdoer was required to pay damages or the compensation to the wronged individual. But in certain cases in addition to the liabilities to pay compensation the State imposes certain penalties upon the wrong doer with the object of preserving peace in the society and promoting good behavior towards each other and towards the community at large.

However, the problem arises as to what acts should be forbidden, or what acts should be selected for punishment by the society of the State. In other words, what acts should be declared as crime. According to Terence Morris - “Crime is what society says in violation of the criminal law. Without law there can be no crime at all, although there may be moral indignation which results in law being enacted”.

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The concept of crime has always been dependant on public opinion. As we already know law reflects the public opinion, in order to know the nature and content of the crime we must first of all know what is law, because the two questions crime and law are so closely related with each other that it is very difficult to understand one without knowing the other. Law is the aggregate of rules set by man as politically superior, or sovereign, to men as politically subject. Law is a command enjoining a course of conduct to be observed by all the members of the society and is backed by a sanction. The command may be of a sovereign or the command of the political superior to political inferiors, or the command of a legally constituted or the legislation duly enacted by a legally constituted legislature and addressed to the members of the society in general.

Thus law prescribes certain standards of conduct to be observed by the people in society. These standards have the approval of the society in general. Any deviation from the standards of behavior fixed by the society is punished. Therefore such conduct as does not accord with the prescribed standard is loosely known as crime.

That being the definition of law, disobedience of law may be termed as a crime. To a common man crimes are those acts which people in the society “consider worthy of serious condemnation”\(^2\) Crime is said to be “an act which is forbidden by law and against the moral sentiments of the society”\(^3\) Murder, robbery, theft, rape and cheating etc are the acts which people in civilized society do not approve and therefore, they are termed crimes. Therefore an act to be crime, it must be done in violation of law and at the same time it should be opposed to the moral sentiments of the society. But morals are relative and morality, as we know is a varying concept for it goes on changing with the change in the necessities of the society of the times. Moral values vary from country to country from time to time, and from place to place in the same

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\(^2\) Huda, “The principles of law of crime”, p.19
\(^3\) Stephen General view of criminal law of England. p.3
country. This is evident from the fact that the same act is not declared as crime in different countries. For example adultery, polygamy etc... Adultery is a crime under the Indian Penal Code; whereas it is not so in some of the continental countries. Polygamy is prohibited among Hindus by the Hindu Marriage Act, 1955; but there is not such law for the Christians or the Muslims. They are governed by their own personal laws.

Thus due to the varying nature of the content of crime all efforts to define crime with perfection have failed. Russel has rightly observed that; “To define crime is a task which has so far not been satisfactorily accomplished by any writer. In fact criminal offences are basically the creation of the criminal policy adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing sovereign power in the State to repress conduct which they feel may endanger their position. Therefore it is very difficult to frame such a definition of crime which may be true in all countries at all times “Crime is not absolute like sin, that can be defined and have an existence beyond the limits of what men may say and do. It is essentially a relative definition of behavior that is constantly undergoing change.”

1.1 Definition of Crime:

Many attempts have been made to define crime but could not be successful because of what kind of human conduct could be regarded as crime is not certain. In other words what kind of an act or omission amounts to a crime. Perhaps this is because of the changing notions about crime from time to time and place to place. Some writers have defined the crime is perspective of immoral and anti social acts.

Garafalo says:

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“Crime is an immoral and harmful act that is regarded as public opinion because it is an injury to so much of the moral sense as is represented by one or the other, of the elementary altruistic sentiments of probity and pity (honesty) moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community - a measure which is indispensable for the adoption of the individual to society.”

John Gillin gives a sociological definition of crime in the following terms:

“Crime is an act that has been shown to be actually harmful to society, or that is believed to be socially harmful by a group of people that has the power to enforce its belief and that places such act under the ban of positive penalties”.

Southerland and Cressey defines crime as an act prohibited by laws. Whatever the degree of immorality or indecency of an act may be, it is not crime unless the behavior is against the existing laws of the society.

Crime is defined as “an act punishable by law as forbidden by statute or injurious to the public welfare”.

According to Bentham – “offences are whatever the legislature has prohibited for good or for bad reasons. If the question relates to a theoretical research for the discovery of the best possible laws according to the principles of utility, we give the name of offence to every act which we think ought to be prohibited by reasons of some evil which it produce or tends to produce”?

Blackstone in his “commentaries on the laws of England” has defined crime as “an act committed or omitted in violation of a public law either forbidding or commanding it”. Thus according to Blackstone crime is an act in violation of public law. But what is Public Law? It has several meaning.

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6 Criminology (Boston, Little Brown: 1914), p.59
7 Criminology and Penology (3rd edn; New York) In soviet Russia crime has been defined in terms of socially dangerous acts. Sec. 6 of R.S.F.S.R. Code of 1926.
8 Sutherland, Edwin - Principles of criminology (6th add. 1965) P.4
9 Oxford English Dictionary, Black Commentaries.
10 Black Commentary. 4.
In Austinian sense “public law is identical with constitutional law” that being so, the crime would then means an act done in violation of constitutional law. The definition would thus cover only political offences leaving aside a vast area of other criminal behavior.

Blackstone further defines crime as “violation of the public rights and duties to the whole community, considered as a community, in its social aggregate capacity”\(^1\) Stephen, the editor of Blackstone commentaries has slightly modified this definition and presents it in the following form “A Crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large.” Therefore to define crime as those branches of law which injure the community cannot give the whole truth. Hence “to speak of crimes as those forms of legal wrong which are regarded by law as being especially injurious to the public at large, may be an instructive general description of them, but it is not an accurate definition.”\(^12\)

Austin posits that “A wrong which is pursued at the discretions of the injured party and his representatives is a civil injury; a wrong which is pursued by the sovereign or his subordinates is a crime”\(^13\)

According to Kenny; “crime are wrong whose sanction is positive and is in no way remissible by any private person but is remissible by Crown, if remissible at all”\(^14\)

Miller defines crime “to be the commission or omission of an act which the law forbids or commands under pain of a punishment to be imposed by the State by a proceeding in its own name”\(^15\). One important feature of the crime is that it changes with the time and place. What is regarded as a crime by a particular society at a particular period of time may not be so at a different time and for different people.\(^16\) From the perspective rules laid down

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\(^1\) ibid
\(^12\) Kenny, outlines of criminal law. p.8
\(^13\) Austin, jurisprudence, Lecture XXVII
\(^14\) Kenny, outlines of criminal law (11th Eds.)
\(^15\) Miller, criminal law p.15
\(^16\) Manu (1.85) expressly declares that laws change with the age of human race.
by *Kautilya* it appears that he also accepts the principles of dynamic growth, flexibility and modifiability in accordance with the changing conditions and time. *Wickins* bears out this aspect of crime when he says that “most of the actions of mankind are not crime, as a particular act might be socially approved in some other locality or at some other time”.17

From the foregoing discussion it is clear that the definition of crime with exactness and precision is not possible. Even the Indian Penal Code is silent on this issue. Section 4018 of the code simply states.

“Except in the chapters and sections mentioned in clauses two and three of the section, the word “offence” denotes a thing made punishable by this code”.

This provision is nothing but a statement of fact and cannot be regarded as definition of law. But to understand as to what constitutes a crime, the following are three essentials.

(i) Crime is an act of commission or an act of omission on the part of a human being which is considered harmful by the State.

(ii) the transgression of such harmful acts is prevented by a threat or sanction of punishment administered by the State; and

(iii) The guilt of the accused is determined after the accusation against him has been investigated in legal proceedings of a special kind in accordance with the provision of law.19

1.2 Modern Approach to Crime:

The basis of criminal law is that there are certain standards of behaviour of moral principles which society requires to be observed; and the breach of them is an offence not merely against the person who is injured but against society as a whole20. Theoretically, a crime is a threat to every member

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17 Social Sciences. p.476.
18 The Indian Penal Code, 1860, s. 40
19 A treatise on the law of crime (Callaghan and Companies Chicago, 1958). p.79
20 Patrik Delvim The enforcement of morals (1965)
of the society, even though it may, in reality an offence against only one specific person\textsuperscript{21}

To know in true sense the socio-legal aspects of crimes against women it will be worthwhile to study the social profile of women in society.

In the words of \textbf{Sarah}\textsuperscript{22}

“All history asserts that man has subjugated woman to his will, used her as a means to promote his self gratification, to minister to his sensual pleasures, to be instrumental in promoting his conform; but never has he desired to elevate her to that rank she was created to fill. He has done all he could to debase and enslave her mind and now he looks triumphantly on the ruin he has wrought, and says, the being he has thus deeply injured in his inferior........ But I ask no favour for my sex........ All I ask our brethren in, that they will take their feet off from our necks and permit us to stand upright on that ground which God designed us to occupy”.

\textbf{Aristotle} deemed the demission of the male over the female in our organization of the family, to be natural and necessary, he believed that the head of the household is unmistakably man who rules it, women may be said to be inferior to man.\textsuperscript{23}

The Hindu saga, \textbf{Manu}, Condemned women to eternal bondage. The German Philosopher \textbf{Nietzsche} said, when you go to meet a woman, take your whip along under the common, women were treated as chattels. The Greeks in their period of highest culture imprisoned their women within their houses and denied them all rights\textsuperscript{24}. In Rome husbands had absolute control over their wives and treated them as slaves.\textsuperscript{25}

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\textsuperscript{21} Khare H.J. “Changing concept of crime and its enforcement” p.20
\textsuperscript{22} Sarah M. Grimke, letter on the equality of sexes and the conditions of women, Boston Iraac Kanapp. 1838.
\textsuperscript{23} Bodeuheimer Edgar, Jurisprudence
\textsuperscript{24} Devika Jain, Indian women. p.47
\textsuperscript{25} Cobbold Evelyn, Pilgrimage to Mecca p.193.
Aristotle and Roussillon branded qualities like modesty, feminist and weakness as womanly and natural for the female sex. Plato did concede them an equal status in his republic but that is a stray example.  

American Sociologist Lester Word, who opined that “Justice consists in the enforcement by society of an artificial equality in social conditions which are naturally unequal.”  

The unequal status of women being offensive to human dignity and human rights engaged as a fundamental crisis in human development, the world over. The full development of personality of fundamental freedom and equal participation by women in political, social, economic and cultural scenario are concomitants of natural development, social and family stability, all forms of discrimination on grounds of gender breed unrest.  

At the outset, it is necessary to define certain terms such as women’s right, women’s liberation and women’s movement. The term women’s right is used to describe that branch of the women’s movement which is primarily active in attempting to bring about legislative, economic and educational reforms to eradicate sex discrimination in social institutions. Women most often work through traditional political and legal channels women’s right groups are for the most part organized on a national basis, and are composed of moderated and conservative feminist. At some places the term women’s movement analysis the origin, nature and extent of women’s subservient role in the society with an emphasis on the psychology of oppression. The structure most common to this branch of the movement are the small locally based consciousness raising groups and lastly, the phrase, women’s movement is used to described the entire spectrum of women’s groups from moderate to radical.

26 Ramanatha; socio legal status of women, Mittal publication, New Delhi, 1985.  
27 Lester F. Ward, Applied sociology. p.22  
28 Mamta Rao “offence against women”; in Human rights in India, Issues and Challenges. p.76.  
29 Judeth Hole and Ellen Levine, Rebirth of feminism, 1975
The women’s movement emerged during the 1800’s. It was a time of geographic expansion, industrial development, growth of social reform movements and a general intellectual ferment with a philosophical emphasis on individual freedom, the “right of man” and universal education.

**Francis Wright** one of the first women or author viewed women as an oppressed group and argued, Until women assume the place in society which good sense and good feeling alike assign to them human improvement must advance but feebly.30

In 1840 a world Anti Slavery convention was held in London. The events at the world reinforced women’s growing awareness that the abolition of women’s slavery could never be won without a battle.

On July, 1848 women places a small notice in ‘Seneca’; New York announcing a “women’s right convention”. Five day later some three hundred women and men, approved a “declaration of sentiments” and twelve resolutions. The delineation of issues in the Declaration bear a startling resemblance to contemporary feminist writing some excerpts are -

“We hold these truths to be self-evident, that all men and women are created equal; that they are endowed by their creator with certain inalienable rights that among these are, life, liberty and pursuit of happiness; that to secure these rights government are instituted, depriving their guest powers from the consent of the governed. The history of mankind is a history of repeated injuries and usurpation on the part of man towards women, having a direct object the establishment of tyranny towards her.”31

To understand the spirit of civilization and to appreciate and realize its excellence and limitations is to study the history of its women folk development and changes in the status of women. In this respect, beginning is made by **Seneca Falls Declaration, 1848**. The World wide women’s

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30 Century of struggle; The women’s right movement in the United States 1959. p.27
31 Women’s right convention, Manifesto Seneca Falls, 1848.
movement and universal concern at the disadvantages status of women open the floodgates of feminist movement all over the world.

Feminism in Europe as well as in America had been following trend towards liberalization while politically, seactionary movements in the west tended to be anti feminism. In spite of this a decided trend towards women’s emancipation in the 20\textsuperscript{th} century was apparent. Indian women also began to voice their demands not as mothers, wives or daughters, but as individual claiming recognition as independent human being. This was a battle to free women throughout the world from the shackles of social and legal disabilities\textsuperscript{32}. As historian Romilla Thaper remarks:

“Within the Indian sub continental there have been infinite variations on the status of women diverging according to cultural milieu family structure, class, caste, property, right and moral.”\textsuperscript{33}

One important point is understanding the value structure in Indian society is the dual concept of female in Hindu philosophy. On one hand women is fertile benevolent of property; on the other hand she is considered aggressive, malevolent and destructive. This dual character manifests in the goddesses also, as there are dangerous aggressive, malevolent goddesses like Kali and Durga; there are equally important goddesses like Laxmi, Saraswati who are benevolent.

According to Susan Wadly there is logic in their concept. She says “the female is first of all Shakti (energy or power), the energizing principles of the universe. The female is also Prakriti (Nature), the undifferentiated matter of the universe” She further observes, “Uniting these two facts of femaleness, women are both energy/power and nature, and nature is uncultured …………… uncultured is dangerous”\textsuperscript{34}

\textsuperscript{32} Women and law in India (Introduction by Flavia Agnes. 2004 pp. 148-149
\textsuperscript{33} Romilla Thapar, Looking back in history, in Devika Jain, Indian women’s, Ministry of information and Broadcasting 1975. p.6
\textsuperscript{34} Susan Wadley, women and the Hindu tradition in women in India, 1977. p.114
Veena Das says that in Shakti form the goddess usually stands alone and is not encompared within a higher male principal. “The principle of power finds expression in the goddesses who represent ‘Shakti’ who come to the aid of man and the gods in the periods of cosmic darkness, by killing the demon who threatens the cosmic order”

2. Woman’s Struggle through the Ages

The position of women during the Vedic period was glorious on account of freedom and equality. During this period, the women participated in every walk of life. Women studies in Gurukula and enjoyed in every sphere. The great women like Apala, visvara, Yamini, Garge and Ghosa stole the lime light and become front runners in the society. They acquired efficiency in art, music and even welfare. In Aitereya Upanishad, the wife had been called companion of husband. In the Rig-Veda, the wife has been blessed to live as a queen in the house of her husband. The word ‘Dampati’ so often used in the Vedas, characteristic both wife and husband. This shows a high status of women. The wife has been called the root of prosperity, enjoyment and Dharma in Mahabharata. The man has not religiously competent to perform religious duties without his wife. There was absence of pardah system, right to select life partners. The system of polygamy and dowry was only prevalent in the ruling class. There was no prohibition in the remarriage of widow and also no discrimination between a boy and girl. As a result, girls were permitted to undergo thread ceremony (upnayana sanskar). These like the status of women in the contemporary western world; the status of women in India was based on liberty, equality and cooperation. What, however, made them different was the emphasis on spirituality and religious duty and co-operation in family life.

During the Post Vedic Period, the women had suffered drastic hardships and restrictions as propounded by Manu. He attempted to set up male dominated society by increasing the authority of man. The birth of a

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daughter which was not a source of anxiety during the Vedic period becomes the source of disaster for the father. Girls were deemed access to education. Girls were not allowed to undergo thread ceremony, during this period pre-puberty marriage system was originated thus the marriageable age of girls was lowered to 9 or 10 yrs. The girls belonging to ruling class were allowed to receive education, training in military science, administration and fine arts to some extent. The subservience of women is precisely summand up in the famous injunctions of Manu where it is stated that a women should never be independent. As a daughter she is under surveillance of her father, as a wife, of her husband and as a widow of her son. It was said that women should be “loved” but added “protected” surprisingly in post Vedic period, the women’s right to property was recognized and the concept of Stridhan prevailed. As Manu defined – Stridhan means “that which was given to her before the nuptial fire, in bridal procession, in taken of love and which she has received from father, mother, brother and husband.”

The Medieval period in India was dark period for women. India is conquered by many foreign invaders during that time, specially the Muslims. The Muslims bought their culture with them, and in their culture women doesn’t have any rights, they treat women as their property. The Indian society of Hindu’s was also affected by their culture and started to treat their women like this. The ‘purdah’ system was also adopted by the Indians as they were protecting their women from the Muslim invaders, because polygamy was prevalent in Muslims at that time and they can forcibly take any women they like and kept them in their harm. This changed the mindset of Indian People and they started to consider girls as burden, and have to be guarded or needs to be protected from the intruders, while a boy child in other hand does not need extra care and instead help them in earning livelihood. Due to these societal changes the new problems of Child Marriage, Sati, Jauhar and

restriction on girl education has crept in society in the medieval era. It is regarded as the darkest period in the history of woman empowerment. 38

These evils are only confined to Hindu society, the other religion such as Jainism, Buddhism and Christians are provided freedom to their women. They have provided education to the girls and were more open-minded. As per these religions gender was not the issue in attaining salvation. Every person is entitled to get the grace of god. 39

During British Period the Position of women has undergone drastic changes mainly due to western impact on the Indian socio cultural pattern. 40 The newly emerging middle class, the English language opens a door to the ideology of liberalism which has the values of liberty; equality etc. though in colonial India the application of these values was limited to the extent that it did not harm the interest of rulers.

Two major movements took place During the British regime two major movements to place namely:

(i) Socio reforms movement; and
(ii) Nationalist movement

During the 19th century socio reforms movement revised the question of equal status of women. Social reformers were generally concerned regarding problems of Sati, prohibition on re-marriage, denial of right to property, child marriage and education to women. Swami Vivekananda Dayanand Saraswati and Annie Basant were of the opinion that Vedic period should be revived which was ideal for women’s status. 41 Mahatma Gandhi strongly criticized the system of child marriage, Sati, prohibition of Widow’s re-marriage and Devdasi system. According to Gandhi, education for women was the need of the time that would ensure their moral development and make them capable of occupying the same platform as that of men. In Gandhi’s

38http://www.mapsofindia.com/culture/indian-women.html (Visited on January 01,2016)
39Ibid
40U.K. Deewan, ‘Offences against women’ p.33
41Neera Desai and M. Krishvaraj “Women and society in India” pp. 38-41
views, women can never be considered to be the weaker sex. In fact, women for Gandhi were embodiments of virtues like knowledge, humility, tolerance, sacrifice and faith. These qualities were essential prerequisites for imbibing the virtue of Satyagraha. The capability of enduring endless suffering can be witnessed only in the women, according to the Mahatma. The doctrine of ahimsa as preached by Gandhi incorporates the virtue of suffering as is evident in the women. Therefore, Gandhi envisaged a critical role for women in establishing non-violence. Gandhi invoked the instances of ancient role models who were epitomes of Indian womanhood, like Draupadi, Savitri, Sita and Damayanti, to show that Indian women could never be feeble. Women have equal mental abilities as that of men an equal right to freedom. To sum up in Gandhi’s words; “The wife is not the husband’s slave but his companion and his help-mate and an equal partner in all his joys and sorrows - as free as the husband to choose her own path.”

According to Gandhi, the role of women in the political, economic and social emancipation of the country was of overriding importance. Gandhi had immense faith in the capability of women to carry on a non-violent crusade. Under his guidance and leadership, women shouldered critical responsibilities in India’s struggle for freedom. Women held public meetings, organized picketing of shops selling foreign alcohol and articles, sold Khadi and actively participated in National Movements. They bravely faced the baton of the police and even went behind the bars. Gandhi’s urge to women to join India’s struggle for independence was instrumental in transforming the outlook of women. Swaraj uprooted age old taboos and restrictive customs. Through their participation in Indian struggle for freedom, women of India broke down the shackles of oppression that had relegated them to a secondary position from time immemorial.

As far as the economic emancipation of women was concerned, Gandhi felt that men and women had different spheres of work. In his opinion, women could take to economic activities to supplement the income of her
families like spinning, which he believed to be a good option available to the women. In the social realm, Gandhi envisaged a critical role for women in doing away with the forces of communalism, caste system and untouchability.

On the other hand, the nationalist movement not only drew a large number of women to political activity but also generated strength and confidence among women which helped them to organize and fight for their cause. The formation of All India Women’s Conference in 1927, was crucial event in women’s march towards equality during this period many laws were in to eradicate social evils. An act legalizing remarriage of widows, child marriage restraint Act, and Hindu women’s right to property are included towards this. Besides the social legislation, there were other laws affecting women’s work status, prohibition night work, restricting work in mines.

Thus in short, during the British period, awareness was created for removal of social evils, while education and organizing political participation increased women’s mobility.


The Preamble of constitution of India is having principle of gender equality, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution of India, 1950 has certain provisions relating to women. It makes special provisions for the treatment and development of women in every sphere of life.

The preamble is the key to the constitution of India. It does not discriminate men and women but it treats them alike. The framers of the constitution all aware of unequal treatment meted out the fair sex, from the time immemorial. In India the suppression of women is very old and long which is responsible for including general and special provision for upliftment and development of the status of women. They provided equality of status and of opportunities explicitly at some places and implicitly in all other places at par with men as citizen of India.
In view of Justice K. Ramaswaray in *Madhu Keshav V. State of Bihar*, Women have always been discriminated against men and suffered denial and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all kinds of inequities indignities, incongruities and discrimination.

The original Constitution of India did not reflect concerns of gender justice adequately. It provides against discrimination on the ground of sex but it did not take note of discrimination that is based on gender. Giving women certain rights in order to compensate them for their reproductive function, it is not charity but an obligation although clause (3) of Article 15 of the constitution of India says that the State may make special provisions for women, this is a protectionist strategy and not an equalization measure.

Though the Indian Constitution provides equality of status and of opportunity to women, discrimination is persisting in one form or the other. The root cause for the discrimination of women in the society is that most women are ignorant of their rights and the position of equality assured to them under Indian Constitution and legal system.

3.1 Fundamental Rights and Prohibition of Discrimination of Women:

Part III, consisting Articles 12 to 35, relating to fundamental rights is the heart of the Constitution. The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual or his full intellectual, moral and spiritual status. As per Justice Bhagwati “these fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”

Although the discrimination of women is explicitly prohibited in Articles 15 and 16 of the Constitution, this type of prohibition of

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42 *(1966) 5 SCC. 148*
43 *Art. 15 and 16 constitution of India.*
44 *Maneka Gandhi v. union of India AIR 1978 SC 597.*
discrimination of sex is mingled with the prohibition of other discriminations on the ground of religion, race, caste and place of birth. In all other fundamental rights the words ‘citizen’ or ‘person’ means both male person and female person. Hence women are equally entitled for the protection of all fundamental rights along with men. There is no discrimination of women relating to the fundamental rights guaranteed in Constitution.

In *Dimple Singh V. Union of India*, the Delhi High Court expressed its apprehension that unless attitudes change, elimination of discrimination against women cannot be achieved. There is still considerable gap between constitutional rights and their application in day to day lives of most women. At the same time it is true that women are working in jobs which were hitherto exclusively masculine domains. But there are still instances which exhibit lack of confidence in their capability and efficiency.

### 3.2 Denial of Seniority, Promotion on the Ground of Sex

In *C.B. Mutumma V. Union of India* a writ petition was filed by Ms Muthamma, a senior member of Indian Foreign Service, complaining that she had been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women.

The court through V.R. Krishna Iyer and P.N Singhal, J.J, held that “This writ petition by M.s. Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 of the constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of M.s. Muthamma that sex prejudice against Indian Women hood pervades the service rules even a third of a century after freedom………. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess”

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45(2002)2 AISLJ 161
46(1979) 4 SCC 260
Commenting further on the discriminatory rules the court observed.

“Discrimination against women in traumatic transparency is found in this rule. If a women member shall obtain the permission of government before she marries, the same is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties, a similar situation may arise in the case of a male member. In these days of nuclear family inter-continental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species.”

3.3 A Woman shall not be denied a job merely because she is a woman.

In its landmark judgement the apex court in Air India V. Nargesh Meerza\(^{47}\) upheld the requirement that “an air hostess should not marry before the completion of four years of service”, the court held that “It was a sound and salutary provision Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme”

The Supreme Court in this case struck down the Air India Regulations relating to retirement and the pregnancy bar on the services of Air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary.

Gender equality becomes elusive in the absence of right to live with dignity. In Neera Mathur V. LIC\(^{48}\) the court recognized that privacy was an important aspect of personal liberty. In this case, the Supreme Court was shocked to learn that an LIC questionnaire sought information about the dates of menstrual periods and past pregnancies, and the petitioner was terminated for not providing correct information to the LIC. The Supreme Court held that the questionnaire amounted to the invasion of privacy and that; therefore such

\(^{47}\) (1981) 4 SCC 335
probes could not be made. The right to personal liberty guaranteed under Article 21 included the right to privacy.

In Zahida Begum V. Mustaque Ahmad\textsuperscript{49} a suit was filed by the wife for dissolution of marriage on the ground of impotency of husband who was unable to perform marital obligation. On the contrary he requested the court that wife be directed to undergo medical check up so as to ascertain her virginity. Karnataka High Court held that the direction of the trial court to the wife to undergo virginity test was improper and invaded privacy of the wife and was violation of Article 21 of the constitution.

3.4 “Honour Killings”- Comes within rarest to rare category and conviction could be based on circumstantial evidence. -

The apex court in Bhagwan das v. State (NCT) of Delhi\textsuperscript{50} ruled that “the present case is a case of circumstantial evidence, but, it is settled law that a person can be convicted on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt. In cases of circumstantial evidence motive is very important, unlike cases of direct evidence where it is not so important. In the present case, the prosecution case was that the motive of the appellant in murdering his daughter was that she was living in adultery with one Srinivas, who was the son of the maternal aunt of the appellant. The appellant felt humiliated by this, and to avenge the family honour he murdered his own daughter.”

Undoubtedly “honour killings” have become commonplace in many parts of the country, particularly in Haryana, western U.P., and Rajasthan is a menace in the current period. However, serious concern of court towards this fast growing evil and menace in Indian society is reflected in the way which Hon’ble Justice Mr. Markandey Katju proceeded to write the unanimous Judgment, “Many people feel that they are dishonored by the behavior of the young man/woman, who is related to them or belonging to their caste because

\textsuperscript{49}AIR (2006) Kant 10
\textsuperscript{50}AIR 2011 SC 1863
he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities on them. There is nothing ‘honourable’ in ‘honour’ killings, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate ‘honour’ killings should know that the gallows await them.”

The Supreme Court held in *Lata Singh vs. State of U.P. & Anr*[^51^], that “this is wholly illegal, if someone is not happy with the behavior of his daughter or other person, who is his relation or of his caste, the maximum he can do is to cut off social relations with her/him, but he cannot take the law into his own hands by committing violence or giving threats of violence.”

Women’s Reservation (108th Constitutional Amendment) Bill[^52^] - The passage of the Women’s Reservation Bill in the Rajya Sabha on March 9, 2010 is a momentous, heartwarming step not only for India, but is likely to be an inspirational trendsetter for women’s empowerment in the entire region. Although it is only the first step, the ripples from the smashing of a glass barrier are bound to be felt in virtually all areas of traditional male dominance. Like its democracy, therefore, India will also be a beacon in the matter of women’s emancipation. The bill faces other barriers, of course, of which the securing of the Lok Sabah’s approval is the most crucial. But the expectation among its proponents is that the momentum it has acquired by clearing the roadblocks put up by its critics should make the subsequent passages much easier.

[^51^]: (2006) 5 SCC 475
The Bill seeks to reserve, as nearly as possible, one-third of all seats for women in the Lok Sabha and the state legislative assemblies (including Delhi). It means of the 543 seats of the current 15th Lok Sabha, 181 seats will be only for women. Currently of the 545 seats, only 59 seats are being chaired by women. The allocation of reserved seats shall be determined by such authority as prescribed by Parliament. As nearly as possible, one third of the total number of seats reserved for Scheduled Caste/ Scheduled Tribes (SC/ST) in the Lok Sabha and the legislative assemblies shall be reserved for SC/ST women. Reservation of seats for women shall cease to exist 15 years after the commencement of the Act. Reserved seats may be allotted by rotation to different constituencies in the state or union territory. If a state or union territory has only one seat in the Lok Sabha, that seat shall be reserved for women in the first general election of every cycle of three elections. If there are two seats, each shall be reserved once in a cycle of three elections. Similar rules apply for seats reserved for SC/STs. Of the two seats in the Lok Sabha reserved for Anglo Indians, one will be reserved for women in each of the two elections in a cycle of three elections.

4. Provision relating to women in Directive Principles of State Policy:

Fundamental rights and Directive Principles of State policy are the conscience of our Constitution. Fundamental rights are individualist as they protect the freedom of liberty of individuals. But, the Directive principles are related to the social needs. They guard and advance the interest of common man. They lay down the roots of state action, Directive principles though not justifiable, enjoy the sanction of public opinion and are fundamental to the governance of the country. The Directive Principles prescribed the goal to be attained. It should be the duty of the Union and State Government to implement the directive principles.

4.1 Uniform Civil Code and Equality –

Article 44 of the Directive Principles in India implements the Uniform Civil Code. According to this article, “The State shall endeavor to secure for
the citizens a uniform civil code throughout the territory of India”. But woman
still experience inequalities and injustice. In A landmark judgment in Sarla
Mudgal v. Union of India53, the apex court has passed direction to the central
government to take fresh look at Article 44 which enjoins the state to secure a
uniform civil code. According to the Court “The State shall endeavour to
secure for the citizens a uniform civil code through-out the territory of India, is
an unequivocal mandate under Article 44 of the Constitution of India which
seeks to introduce a uniform personal law - a decisive step towards national
consolidation.”

Pandit Nehru, while introduction of the Hindu Code Bill, in the
Parliament in 1954, has said that “I do not think that at the present moment the
time is ripe in India for me to try to push it through”. It is very said that even
after 66 years, the government is in no mood to retrieve Article 44 from the
cold storage where it is lying since 1949, when more than 80% of the citizens
have already been brought under the codified personal law. There is no
justification whatsoever to keep in abeyance, any more, the introduction of
“uniform civil code” for all citizens in the territory of India.

Dr. Tahir Mahmood54 has made a powerful plea for framing a uniform
Civil Code for all citizens of India. He says: “In pursuance of the goal of
secularism, the State must stop administering religion based personal laws”. He
wants the lead to come from the majority community but, we should have
thought that, lead or no lead, the State must act. It would be useful to quote the
appeal made by the author to the Muslim community.

It is unfortunate to mention that the state has not yet made any effort to
introduce Uniform civil code in India. The Judiciary has recognized the
necessity of the uniform application of the civil like adoption, marriage,
succession and maintenance etc. it is submitted that no gender justice can be

53 (1995) 3 SCC 635
54Dr. Tahir Mahmood ; “Muslim Personal Law”,(1977 Edition, pages 200-202)
achieved in its true and full sense unless a Uniform Civil Code containing the best provision from the religious is enacted.

It is to restate that in India, the Supreme Court has taken note of injustice faced by the woman particularly in matters of personal laws. In *Mohd. Ahmed khan v. Shah Bano Begum*, The Supreme Court observed in the matter that “if the divorced wife is able to maintain herself, the husband’s liability to provide maintenance for her ceases with the expiration of the period of ‘iddat’. If she is unable to maintain herself, she is entitled to take recourse to section 125 of the Code. Thus there is no conflict between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband’s obligation to provide maintenance for a divorced wife.”

The Apex Court further observed that “A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. It is the State which incharge with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because; it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.”

5. Women’s right as Human rights:-

Our Ex-Prime Minister Late Smt. Indira Gandhi once told “our women have more rights than women of other Countries, but there are large area wherein women are suffering, where may be they are not conscious of their rights.” The rights of women along with those of men have been recognized to major human rights instrument since the establishment of United

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55 AIR 1985 SC 945
National Organization. In fact the UN charter itself reaffirms its faith in fundamental human rights.

5.1 Universal Declaration of Human Rights: -

The preamble of United Nations charter (1945) begins by referring a “faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nation large and small”. The United Nations Charter states that the United Nations aspires to “achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion” [(Art. 1 (3)]

Article 2 of the declaration states that “everyone is entitled to all the rights and freedom set forth in this declaration, without distinction of any kind such as race colour, Sex, language, religion, political or other opinion, national or social origin, property or other status. No discrimination shall be made on the basis of the political jurisdictional or international status of the country or territory to which a person belongs”.

Under Article 16 of the declaration states that “men and women of full age without any limitation due to race, nationality or religion, have the right to marry and to form a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”

As per the declaration of Human rights, women along with men are entitled for the following civil and political rights as the terms ‘no one’ and ‘everyone’ consists both men and women.

- **Article 4** - “No one shall be held in slavery or servitude”.
- **Article 5** – “No one shall be subjected to torture or cruelty, inhuman or degrading treatment or punishment”.

• **Article 6** – “Everyone has the right of recognition everywhere as a person before the law”.

• **Article 8** – “Everyone has the right to an effective remedy by the competent National Tribunal far acts violating the fundamental rights of the constitution”.

• **Article 9** – “No one shall be subjected to arbitrary arrest, detention or exile”.

• **Article 10** – “Everyone charged with a penal offence has the right to be presumed innocent until proved according to law in a public trial”.

• **Article 11** – “Everyone is entitled in full equality to a fair and public hearing by an independent tribunal”.

• **Article 12** – “No one shall be subject to arbitrary interference with his /her privacy family, home or correspondence or to attacks upon his /her honour and reputation”.

• **Article 13** – “Everyone has the right to freedom of movement and residence within the borders of each States”.

• **Article 14** – “Everyone has the right to seek and to enjoy in other countries asylum from prosecution”.

• **Article 15** – “Everyone has the right to a Nationality”.

• **Article 17** - “Everyone has the right to own property alone a well as in association with others. No one shall be arbitrarily deprived of his property”.

• **Article 18** – “Everyone has the right to freedom of thought, conscience and religion”.

• **Article 19** – “Everyone has the right to freedom of opinion and expression”.

• **Article 20** – “Everyone has the right to freedom of peaceful assembly and association”.

• **Article 21** – “Everyone has the right to take part in the government of his country”.

In addition to these civil and political rights, every person has the following social and economic rights.

• **Article 22** – “Everyone has the right to social security”.

• **Article 23** – “Everyone has the right to work to free choice of employment, to just and favourable condition of work and to protect against unemployment. Everyone, without any discrimination has the right to equal pay for equal work”.

• **Article 24** – “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”.

• **Article 25** – “Everyone has the right to standard of living adequate for the health and well-being of himself and of his family”.

• **Article 26** – “Everyone has the right to education”.

• **Article 27** – “Everyone has the right to freely participate in the cultural life of the community”.

5.2 The United Nations Convention on the Elimination of Discrimination Against women 1967:-

The general assembly of the United Nations adopted the convention on the 7th Nov. 1967. **Article 10** of the convention directs that “all appropriate measures shall be taken to ensure to women married or unmarried, equal rights with men in the field of economic and social life. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage and maternity and to provide paid maternity leave to have with guarantee of returning to former employment, and to provide the necessary social service, including childcare facilities.” However, measures taken to protect women in certain types of work, for reasons inherent in their physical nature shall be regarded as discriminatory.
5.3 The United Nations convention for the elimination of all forms of discrimination against women (CEDAW) Vienna declaration.

As per Article 11 of this convention, “the state parties are required to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the rights on the basis of equality of men and women.” India is a signatory of CEDAW, 1979 having accepted and ratified it in June, 1993. The domestic courts are under an obligation to give due regard to international convention and norms for constructing domestic law when there is no consistency between them.

6. Special Initiatives for Women

6.1 National Commission for Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc. under the National Commission for Women Act, 1990 to

- review the Constitutional and Legal safeguards for women;
- recommend remedial legislative measures;
- facilitate redressal of grievances and
- Advise the Government on all policy matters affecting women.

In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment during the year under report. The Commission completed its visits to all the States/UTs except Lakshadweep and prepared Gender Profiles to assess the status of women and their empowerment. It received a large number of complaints and acted suo-moto in several cases to provide speedy justice. It took up the issue of child marriage, sponsored legal awareness programmes, Parivarik Mahila Lok Adalats and reviewed laws such as Dowry Prohibition Act, 1951, PNDT Act 1994, Indian Penal Code 1860 and the National Commission for Women Act, 1990 to make them more stringent and effective.
It organized workshops/consultations, constituted expert committees on economic empowerment of women, conducted workshops/seminars for gender awareness and took up publicity campaign against female feticide, violence against women, etc. in order to generate awareness in the society against these social evils.

Problem of violence against women is multifaceted. NCW has adopted a Multi Pronged strategy to tackle the problem:

- Generation of legal awareness among women, thus equipping them with the knowledge of their legal rights and with a capacity to use these rights.
- Assisting women in redressal of their grievances through Pre litigation services.
- Facilitating speedy delivery of justice to women by organizing Parivarik Mahila Lok Adalats in different parts of the country.
- Review of the existing provisions of the Constitution and other laws affecting women and recommending amendments thereto, any lacunae, inadequacies or short comings in such legislation’s.
- Organizing promotional activities to mobilize women and get information about their status and recommend paradigm shift in the empowerment of women.
- Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- Review, from time to time, the exiting provisions of the Constitution and other laws affecting women;
- take up cases of violation of the provisions of the Constitution and of other laws;
- look into complaints and take suo - motu notice of matters;

56 http://ncw.nic.in/frmAboutUs.aspx (Visited on 10 February 2016)
• deprivation of women’s rights;
• special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women;
• undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement;
• advice on the planning process of socio-economic development of women;
• evaluate the progress of the development of women under the Union and any State;
• inspect or cause to inspected a jail, remand home, women’s institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
• fund litigation involving issues affecting a large body of women;

6.2 Woman Reservation in Local Bodies

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

6.3 Initiative taken by Government for Girl Child

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child. The government has taken number of initiatives during the last decade and started scheme like “Beti Padhao Beti Bachao” to stop the killing of the girl child.

6.4 Government Policy for the Empowerment of Women
The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

6.5 Role of Non-Governmental organisation in the emancipation of women in India:

Non-Governmental organisations (NGOS) are non-governmental, organised collectives with some purpose ‘organised’ encompasses a wide range of structures from informal, unstructured associations and groups to highly structured and formalised collectives. Non-Governmental implies that the organization is not managed or directed by the officials of the State power and at the same time not accountable to or receive operational finances.

“NGOs have recently gained considerable attention as vehicles of change they are aimed at conscious raising a change of attitudes, organization and mobilization for social and political and economical participation, structural change and institutional and legal changes.”

The Indian NGOs sector is vibrant, diverse and growing. Not all NGOs target women specifically and very few target women exclusively. Women’s NGOs have role in changing women’s perceptions about their position and status.

Some NGOs are playing a great role in the emancipation of women in India. Emancipation of women means giving or obtaining all or some of the rights, opportunities etc, that men have. An emancipated women means one who has freed herself from the conventions or restrictions of the community to which she belong. These NGOs help the women in need of help, protection and assistance. An NGO would deal with a woman seeking assistance based

57 Dr. Archana Barashar “women and social Reform”.
on its organization policy, expertise, resources, infrastructure and the background of the woman and the stage of violence against her.