

**INTERNATIONAL NORMS OF WOMENS' RIGHTS
AND THEIR APPLICATION IN INDIA**

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FOR MY PARENTS

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INTRODUCTION

The evolutionary transformation of the human species, from the primitive existence to a more organised and civilised world, witnessed radical changes in all aspects of life except one - the subordinate position of woman to man in the economic, political, social and legal milieu. No doubt, there have been instances when some women have acquired positions of power and influence; these, however, have been exceptions rather than the rule. In general women have been denied their rights as human beings; for even at the tail end of the twentieth century women continue to be victims of discrimination in all societies, whether developed or developing, though in varying degrees.

Women's rights are in no way different from what is traditionally referred to as rights of man and lately as human rights.¹ They are a part of human rights. Just as the concept of human rights has its inception since the dawn of civilization, the question of women's rights too has been perennial since times immemorial. In primitive societies women may have had equal status with men, but with the change in the mode of production and a change in the socio-cultural, political milieu, development of private property, advent of slavery and feudalism women's position declined. Religious rituals and norms as they evolved, further deteriorated the status of women.

¹It is reported that President F.D. Roosevelt first used the term in his "Four Freedoms" speech to Congress in January 1941, and later that year the term was reiterated by him and Churchill in the Atlantic Charter, which finally led to the doctrine of fundamental human rights in the United Nations.

The genesis of the term human rights is discussed in detail in Chapter One.

It is common knowledge that the movement for realization of the rights of man gained momentum by the turn of the nineteenth century. Although it was implied that the rights of man include women, in practice no specific changes with regard to the status of women were effected. Indeed in advanced countries as Britain, United States, Switzerland, even such simple rights as the right to vote was granted only in the twentieth century.²

The right to be human, is of course, the leitmotif of all human rights thought and action. A human right, by definition is something that no one, anywhere, may be deprived of without a great affront to justice.³ They are rights, which all persons have simply in so far as they are human, hence they are universal. Non discrimination based on sex, race, colour, is the central principle of human rights; thus they follow a generic rather than gender specific approach. But of all the violations of human rights the most widespread and entrenched one has been the denial of equality to women, making them the most vulnerable segment of society, thus necessitating gender specific legislations.

True, issues relating to women's rights have been the focus of attention at international forums for quite sometime. As early as 1902 international conventions had been adopted at the Hague dealing with conflicts of national laws concerning marriage, divorce and the guardianship of minors, and in 1904 and 1910 international conventions had

²For instance women were granted the vote in England in 1918, U.S. in 1920 France 1944 and Switzerland 1971. For a tabulated form of political rights of other countries see Appendix I.

³Maurice Cranston, "Are There Any Human Rights ?", Daedalus, vol. 112, no. 4, Fall 1983, p.12.

been adopted dealing with suppression of the traffic on women and children. The Covenant of the League of Nations (1919) further reiterated concern in regard to women's welfare. It included articles calling for humane working conditions for all, irrespective of sex; for the suppression of traffic of women; and it opened the Secretariat of the League to women. In 1935, the League of Nations decided to consider the question of the status of women in the political and civil aspects and in 1937 the Assembly set up an Expert Committee to study the legal status of women. But we find that although conferences were convened and legislations drafted, women's issue were taken up only to a limited extent.

The concern for human rights gained unprecedented momentum after Second World War. The movement for women's rights also gained increasing recognition. Over the last four decades a number of international instruments have been adopted against their discrimination in the social, political, economic and legal spheres.

It was the United Nations Charter (1945), the Universal Declaration of Human Rights and several other international instruments which proclaimed equality of rights of all human beings - irrespective of sex.

The Charter of the United Nations in the Preamble expresses "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ..." It firmly declares the determination to eliminate all forms of discrimination "in order to promote social progress and better standards of life..."

The faith thus expressed in the Charter was reaffirmed by the General Assembly in the Universal Declaration of Human Rights adopted on 10 December 1948. The Declaration states in Article 2 that "Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, sex, colour..." The rights and freedoms to which every man and every woman is entitled include economic, social and cultural rights.

In its work for the advancement of women, the United Nations activities have been directed towards ensuring not only legal equality, elimination of de facto discrimination, but also equality of rights, responsibilities and opportunities for the participation of women in the developmental process of their countries.

Since 1945, more than twenty international instruments have been adopted by the United Nations dealing with women, reflecting an international consensus on the problem of gender discrimination and sex inequality in society. However, it must be remembered that making human rights meaningful is an important task of governments concerned.

While women in India share many of the disabilities with women in the developed and other developing countries, their experience of discrimination and dependent status is more extensive because of the sex segregation character of the society, the socio-economic, religious environment and the traditional value system.

In the Indian Constitution also the equality of men and women (Articles 14, 15, 16) has been proclaimed as a pre-condition for ushering in a society where there will be justice - social, political and economic - for all. The Preamble, Fundamental Rights and Directive Principles of State Policy proclaim that there shall be no discrimination inter alia on the grounds of sex and that there shall be equality of status and opportunity for all. Indian women are beneficiaries of these rights in the same manner as Indian men. A large number of other legislative measures have also been enacted to raise the position of women.

At the international level, the United Nations system has spelt out specific norms relating to women which member states have agreed to observe. With the setting of these international standards and the Government of India's commitment for equality of persons, it is pertinent to examine the extent to which international instruments have been successful in the upliftment of women in general. To what extent the Indian legal system and practice reflect the observance of the international norms of women's rights? What measures have been taken in India to eliminate discrimination against women and the measures for granting them equal rights in the political, economic, social and legal spheres? What are the constraints and impediments experienced in India with regard to implementation of international norms of women's rights? Do we see any appreciable change in the status of women since the adoption of the Constitution?

These and related questions are the subject of this study.

Chapter One discusses how the concept of human rights developed over the ages and the forces and factors that led to the movement for women's rights. ✓

The Second Chapter attempts to study the international standards, set by the United Nations and related international organizations for ameliorating women's status.

Chapter Three provides a survey of the socio-economic situation which affected the status of women in India before independence. ✓

The Fourth Chapter examines the measures taken by the Government of India in the elimination of discrimination against women since the adoption of the Constitution. ✓

And the Concluding Chapter attempts an overall assessment regarding the status of women. ✓

The question of women's rights in international norms is so vast that no single study or set of studies can do justice to the problem, much less an M.Phil dissertation. The objective of this tract is not to arrive somewhere new, but, in the words of T.S.Eliot "to arrive where we started and know the place for the first time." This study is a modest attempt to focus attention on the question of international norms, and the socio-economic constraints for the attainment of the desired goals. The study is based on an analytical survey of United Nations Documents, International Legislations and National Legislations.

CHAPTER ONE

**THE CONCEPT OF HUMAN RIGHTS AND RIGHTS OF WOMEN :
A HISTORICAL PERSPECTIVE**

The term 'human rights' is the equivalent for the 18th century concept of natural rights or the rights of man, which initially was no more than a derivative element of the idea of natural law.¹ The struggle to preserve, promote and protect basic human rights, continue in every generation and in each society.

Human rights are intrinsically bound with the social environment and the relationship existing between man and institution at a given time. Nature has bestowed man with two related characteristics: first he is an individual, second, he is a social being. In all eras, even as early as the days when man first started living in groups, they agreed on certain norms of social behaviour, defining the rights and obligations of the individual, in the maintenance of a just social order.²

From time immemorial the rights of man, derived from religion and human experiences, were brought together in different forms in various parts of the world. The idea of inalienable rights of human beings can be found to exist in ancient civilisations. The number of cultures that have made their contribution to the elaboration and dissemination of the rights of man is legion e.g., in the Middle East - the Babylonian laws (code of Hammurabi), Assyrian laws, Hittite laws and the code of Cyrus. In India, the "Panchayat" system; in China, the Confucian system provided for the protection of the rights of man.

¹Louis Henkin, The Rights of Man Today (Boulder: Westview Press, 1978), p.5.

²K. P. Saksena, A Manual for Adult Education on Civil and Political Rights : With Special Reference to Asia (New Delhi : Jawaharlal Nehru University, 1988), p.1.

Through the centuries, there has been a close connection and interdependence between the idea of natural law and the idea of natural rights of man. The ideas may be found in the works of Stoics, both Roman and Greek, e.g. Cicero, and in the teachings of early Christianity, Saint Thomas Aquinas and the medieval English schools of law.

Human rights as a modern concept emerged at a time when the roots of medieval society were badly shaken by the challenge posed by the Renaissance. Under its impact, radical socio-economic transformations took place resulting in the destabilization of the existing political equation.³ The medieval despotism and the industrial revolution were important factors that shaped the concept of human rights as it evolved through this period. Firstly, there was a demand for some sort of freedom from the suffering encountered under despotic rules; a system of rights was required which could curb the unlimited political authority of the rulers. In this period, human rights were identified as more individual freedom and less governmental interference, hence, they were looked upon as something against the state authority. Secondly, the newly emerging industrial middle class suffering under restrictions imposed by the monarchial political systems, demanded political rights and access to the political arena in the name of democracy. Political rights were necessary to ensure the natural rights to freedom. Therefore, civil and political rights emerged as a theme for human rights philosophy in the West⁴. Landmarks in

³Adamantia Pollis and Peter Schwab, Human Rights : Cultural and Ideological Perspectives (New York : Praeger Publishers, 1979), p.3.

⁴K.P. Saksena, n.2, p.12.

the struggle for human equality were the Magna Carta (1215), the Petition of Rights (1628), the Bill of Rights (1689). Human rights concept was encountered in the writings of Spanish theologian-lawyers of the 16th and 17th centuries, in the works of the Dutch Hugo Grotius, Pufendorf, Vattel, Rousseau, John Locke, John-Milton, Thomas Paine, Montesquieu etc. During the age of Enlightenment in the last quarter of the 18th century we come across a new manifestation of the concept of natural law, where the attention is directed to the rights of the individual rather than the objective norms of the preceding centuries, as manifested in the "theory of rights". They were in the language of the 18th century the "inalienable rights" of the individual under natural law.⁵

Currents of natural law and natural rights run deep in human rights even today. Politically as well as intellectually, human rights today trace their origins to seventeenth and eighteenth century concepts. One might see human rights today as a kind of twentieth century synthesis of an eighteenth century thesis and nineteenth century anti-thesis.⁶

The American and French Revolutions, and the Declarations that expressed the principles that inspired them, took "natural rights" and made them secular, rational, universal, individual, democratic and radical. The American Declaration of Independence (1776) embodied the concept of

⁵F. Castberg, "Natural Law and Human Rights : An Idea Historical Survey," in August Schou and Asbjorn Eide, eds., International Protection of Human Rights (Uppsala : Almqvist and Wiksell, 1968), p.18.

⁶Louis Henkin, n. 1, p.5.

equality - "that all men are created equal; that they are endowed by their creator with certain inalienable rights..." The Virginia Declaration of Rights (1776) and the American Bill of Rights (1791) reiterated the above concept. American revolutionaries were also influenced by the French philosophers of the Enlightenment. The French Declaration of the Rights of Man and the Citizen (1789) which stated that "men are born and remain free and equal in rights ... these rights are liberty, property, security..." was inspired by the English and American Revolutions. These and numerous other constitutional provisions and legislative acts secured the basic rights of citizens throughout Western Europe, North America, British Dominions and in varying degrees in different parts of the world.

Each of these declarations, related developments and emerging institutional framework, referred to above made important contributions in advancing the concept of human rights. However, being products of their own period and specific circumstances they lacked totality of the concept and were narrow in their scope and application,⁷ e.g. in the Greek political system rights existed only for the "citizens" and not for "aliens" and "slaves" who were in majority. The Magna Carta yielded certain concessions only for the feudal lords (not the common man). However, it had limitations for arbitrary rule and laid the foundation for the Rule of Law. The rights proclaimed in the American Declaration were confined to those who constituted the WASP (White Anglo-Saxon Protestant). The French

⁷K.P. Saksena, n.2, pp.10-11.

Declaration proclaimed liberty, equality and fraternity for all but these proved to be empty slogans for factory workers and poor peasants.

To the concept of natural rights, rationalised by the eighteenth century in "social contract", the nineteenth century added ethical and utilitarian support : "rights and freedoms are necessary for the good life in a good society."

Nineteenth century champions of the doctrines of the rights of the nation, with their scorn for the rights of the individual were in effect in accord with the theorists of rival camps - positivist, empiricist, utilitarian - who regarded natural law and natural rights as nonsense. Bentham wrote, "Rights is the child of law; from real law come real rights; but from imaginary laws, from law of nature, come imaginary rights..."⁸ Others who shared Bentham's views were David Hume and Edmund Burke.

However, the nineteenth century and early decades of the twentieth century witnessed continued, even renewed, resistance to human rights. The 19th century began with Napoleon, and the Congress of Vienna and later great power concerts were dedicated to "legitimacy" not to the sovereignty of the people and individual rights.

The nineteenth century also saw the rise of Nationalism as well as Imperialism. The rise and expansion of Imperialism marked another phase of human rights. Imperialism was a policy of political and economic

⁸ Maurice Cranston, "Are There Any Human Rights?", Daedalus, vol. 112, no. 4, Fall 1983, p.12.

expansion which was pursued by newly industrialised nations during the latter half of the 19th century. This led to the exploitation of the masses who were deprived of their rightful share in the fruits of industrial progress which further deteriorated their already trying situation. Therefore, the socialist movement of the 19th century made demands for economic security and social justice in addition to civil and political rights. The Bolshevik Revolution of 1917 in Russia was a step further in this direction. Socialist theory rejects the natural law origin of citizens' rights and does not deduce them from either the nature of man or from the human mind. We see, therefore, a quite different approach to human rights from that of the liberal democracies; rejecting the view that they are "natural" to human personality and inalienable but asserting that they are the emanation of the state.⁹

The socialist approach of human rights stands on the basic assumption that the rights and freedoms of individuals in any state are materially stipulated and depend on socio-economic, political and other conditions of the development of society, its achievements and progress. For the realisation of political and civil rights, economic equality and social security must be ensured first, thus the emphasis on economic and social rights. The socialist doctrine emphasised the society, the group, subordinating the individual or seeing his salvation eventually in the salvation of the group.¹⁰ This socialist anti-thesis to individual rights

⁹ Louis Henkin, n.1, p. 17.

¹⁰ Ibid.

implied more than a subordination of individual to group, of rights to duties. It put economic advance before political-civil rights, welfare before and above liberty.

By the end of the First World War the idea that workers needed special safeguards was beginning to take hold of many industrial countries. As in the case of civil rights, however, the problem of economic and social rights was regarded as one primarily of national and not international concern.

The nineteenth century also saw a break-through in "human freedom" in the abolition of slavery in many countries and the international prohibition of the slave trade. In 1862, 1885 and 1890 treaties were signed. Gradually the movement undertook to combat and suppress slavery and slave trade. In 1926 the Assembly of the League of Nations approved and opened for signature the International Slavery Convention by which the contracting parties undertook to prevent and suppress the slave trade and to completely abolish slavery in all forms. The International Labour Organisation (ILO) in 1930 outlawed "force labour".

The beginning of the twentieth century saw the establishment of the League of Nations which concerned itself with human rights in limited areas. The Covenant and the Constitution of the ILO (1919) provided machinery for co-operation in the economic and social fields. This machinery marked a significant departure in international relations and laid the ground work for the more elaborate agencies and broader functions of the United Nations system. Since the creation of the ILO in 1919 the

principle of equal treatment for women workers, has been embodied in its Constitution. The principle has been reaffirmed by the Declaration of Philadelphia (1944), annexed to the Constitution, which proclaimed that all human beings, irrespective of... sex, have the right to prove their material well being and spiritual development in conditions of freedom and dignity, economic security and equal opportunity.¹¹

The League of Nations and the ILO touched some aspects in the field of human rights as the elimination of forced labour, traffic in narcotics, traffic in women and children. In general however, the traditional concepts that civil, political, economic and social rights of the individual were strictly a concern of the national state was respected. The major work of the League and the ILO was to provide an efficient system for developing and co-ordinating new international machinery for economic and social co-operation rather than to define rights and to devise measures for promoting them.

During this period too, political philosophers had been adumbrating a doctrine of rights for all, e.g. del Vecchio, Heinrich Rommen, the Institute of International Law had sketched out an International Declaration of the Rights of Man (1929). It required the Second World War and the rise of totalitarianism to expand the concern of the international community for the rights of the individual.

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Standards and Policy Statements of Special Interest to Women Workers
(Geneva : International Labour Office, 1980),p.1.

The nightmare experience of Nazi rule for half a decade over most of occupied Europe created a new sensitivity to the human predicament in an age of institutionalised cruelty; the great power rivalry in the thermonuclear age, created unparalleled hazards to the survival of the race itself; all contributed to making human rights a subject of universal concern.

The ineluctable drive against Colonialism brought a mass of new states and governments that looked to the idea of human rights to achieve "self determination" and elimination of racism. The Third World also moved to establish "economic self-determination" through the "New International Economic Order" and place them high in the human rights ideology, with important implications in principle and practice for other, older rights.

The human rights provisions of the Charter reflect the reaction of the international community to the horrors of the Second World War and of the vagaries which unleashed it. The Second World War proved to many the close relationship between outrageous behaviour by a Government towards its own citizens and aggression against other nations, between respect for human rights and the maintenance of peace. It resulted in the widespread conviction that the effective international protection of human rights was an essential pre-requisite of international peace and progress.¹² This belief, was expressed, in a number of statements, proposals and declarations made while the war was still being fought, e.g., in the

¹²United Nations Action in the Field of Human Rights (United Nations publications, Sales No. E.83. XIV.2.), p.5.

Atlantic Charter of 14 August 1941, hope was expressed "to see established a peace ... which will afford assurance that all men in all the lands may live out their lives in freedom from fear and want". Also in the Declaration by United Nations signed on 1 January 1942, the signatory Governments expressed their conviction "that complete victory over their enemies is essential to defend life... and to preserve human rights and justice..." In 1944, the Dumbarton Oaks Proposals contained a brief reference to the promotion of human rights as one of the activities to be performed by the proposed General Assembly, and, under its authority, the Economic and Social Council - "to facilitate solutions of international economic, social and other humanitarian problems and to promote respect for human rights and fundamental freedoms."¹³

At the San Francisco Conference, 25 April 1945, the Conference added several basic human rights to the Proposals. The amendments to the Dumbarton Oaks Proposals had the common purpose of making more specific the responsibilities and powers of the Organisation, with respect to human rights and fundamental freedoms, and for providing the necessary machinery for discharging these responsibilities.

It was a period when, as a result of the convergence of several historical factors, a concept of human rights, universal in its approach and comprehensive in content emerged. The United Nations Charter was the first international instrument which, in unequivocal terms, proclaimed

¹³ Ibid.

"universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Also, the most characteristic feature of the middle of the 20th century is what John P. Humphrey calls "the revolutionary developments in international law of human rights". Before 1945 any human rights question was thought to be a matter between a national state and persons within its territory.¹⁴ As issues of domestic jurisdiction, these questions were beyond the reach of international law. For the first time in the history of mankind, human rights were being universalised and internationalised - rights which every individual whatever ones origin could claim as a member of human society.¹⁵

The factors that helped in the conceptualisation of human rights generated an awareness among women for their rights. However, even with the development of human rights over the ages one finds that women were not given the opportunity to enjoy such rights. The rights of women emanating from human rights, as a specific agenda for gender equality, at the international level, gained momentum and attempts to eliminate various kinds of discrimination became the focus of United Nations activities.

It would thus be imperative to study how the movement for women's rights evolved. Early attempts to improve the status of women is to a

¹⁴K.P. Saksena, "Asian Human Rights Machinery : An Approach", in M.C. Gabriel and Girdhar Rathi, eds., Incacerated Anywhere, (New Delhi : Amnesty International Indian Section, 1981), p.25.

¹⁵K.P. Saksena, n.2, p.14.

considerable extent the product of an idea that had its birth in the West. For a proper assessment of the position of women in contemporary society, it would be pertinent to begin from the early times.

Status of Women : A Historical Perspective

In primitive hunting-gathering societies, the first division of labour was along sexual lines¹⁶ - men did the hunting while the women gathered fruits, grains, vegetables. There was little private property except ones immediate tools or weapons and people worked as a collective unit. In this period the status of women was roughly equal to that of men.

Two different discoveries occurred in the Neolithic Revolution. One was agriculture, the domestication of plants; the other was herding, the domestication of animals.¹⁷ The men probably cleared the land, built the houses, herded the animals, hunted and manufactured weapons and tools whereas women did all the agricultural work on the land, made the clothing, pottery, ground grains and cooked food.

Just as high status of women is strongly correlated with primitive agriculture, so is the existence of matrilineal clans, where descent, kinship and property was usually calculated from the female.¹⁸ Where

¹⁶Barbara Sinclair Deckard, The Women's Movement : Political Socio-economic and Psychological Issues, (New York: Harper and Row, 1975), p.184.

¹⁷Ibid. p. 186.

¹⁸Evidence of matrilineaty is given through archeological evidence of the existence of matrilineal long houses in Malaysia, Indonesia, Malabar Coast of India, Japan and in the American Northwest.

society was primarily based on animal herding, descent and kinship were usually calculated from the male, i.e. patrilineal. Although matrilineal clans¹⁹ existed, there are instances of societies with matrilineal kinship that are male dominated.

In the preceding centuries, the clans had a collective economy and slavery did not exist. With the invention of the plough, agriculture became a male domain; most societies, therefore, became patriarchal. Yet male economic dominance did not necessarily entail female subordination. But the coming of slavery and/or serfdom ended collective ownership and the matrilineal clan system. Individual families based on private property developed, beginning with the cattle owned by males. The new inventions utilizing animal power greatly increased human productivity. When in addition, bronze was substituted for wood and stone, production increased.²⁰ This meant that a surplus of food and other wealth could be accumulated. It meant, above all that it became profitable to keep slaves and serfs.

The ancient commune system was poisoned by class division and private property became the rule. Internal government and armed forces were formed to support the rule of the wealthy owners over the slaves and serfs. In

¹⁹This is quite different from the system in which women have been purported to rule i.e. matriarchy (kinship system in which women exercise power and authority). But history testifies a female monarch succeeds to the crown only when the requisite male heir was under age or when there was none.

²⁰Barbara Sinclair Deckard, n. 16, p. 190.

such societies, even ruling class women came to be treated as property,²¹ the same as slaves and serfs. Women's value further declined because slaves could now do the productive work.

In the Greek city states there was enormous variability in the freedom and opportunities allowed to women from state to state. Women were generally excluded from citizenship; however, educational institutions were more flexible e.g., in Ionia, Teos, Chios and Sparta they went to school with boys; in Sparta women enjoyed near equality with men, in Macedonia queens led armies. But in Athens, from the free and dignified position described in Homeric Odes, women's position degenerated to child bearing slaves and they were to stay in the gynaecium.²²

It has been said that man's vision of the gods reflects his own vision of himself and his activities. Going by this, the elevation of women to the heights occupied by gods was a reflection of their high status in the beginning of human civilization.²³ The most ancient of gods were female e.g., in Babylonia Ishtar; in Egypt Isis, Maet; in Phoenicia Asharte; in Phrygia Cybele. In Babylonia the code of Hammurabi granted women a great deal of freedom. Under the Egyptian dynasties, women's status was high, only to fall and remain low for a period of over a thousand years beginning

²¹Vern L. Bullough, The Subordinate Sex : A History of Attitudes Toward Women (Chicago : Univ. of Illinois Press, 1973), p. 83.

²²Euripides in his tragedies shows an almost feminine sympathy for women; the satires of Aristophanes illustrate the currency of certain "progressive" ideas such as women's suffrage satirized in the 'Eclesiazusac' (Women in Parliament).

²³Vern L. Bullough, n. 21, p.19.

with the Greek and Roman influence, intensified by Muslim beliefs and then especially degraded under Ottoman rule.

In ancient Rome, the virtues extolled for women were decorum, chastity, gracefulness and the ability to bear children. From the beginning of the second century B.C. misogynist attitudes began to grow and spread and in comparison to the earlier mythological period (where women had a high status) radical changes occurred in the position of women. Although some women did engage in business and a few were physicians, their position was relative. Roman women did not play any particularly important part in religious life nor did they have much authority in their own homes. Roman culture emphasised the family, where the head was the 'pater familias', the father of the family, with absolute and uncontrolled powers. In effect, women were a little more than a piece of property.²⁴



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In China, the ancient Confucian value system prized women's ignorance and inferiority though it also provided minor safeguards. The most prominent example of women's perceived status in society is illustrated in Yin and Yang symbolism.²⁵ These stood for the male and female cosmic forces. Yin (female) always preceding Yang (male) and occupying the upper position; each possessing within itself a little of the others power. But Yin and Yang also expressed the male female inequality - Yin was dark, weak and passive; Yang was bright, strong and active.

²⁴ Ibid, pp. 82-83.

²⁵ K.P. Gupta, "Emancipation of Enslavement - The Confucian and Communist Variation," in Urmila Phadnis and Indira Malani, eds., Women of the World (New Delhi : Vikas Publishing House, 1976), p.91.

Still secondary value systems like Taoism favoured equality between the sexes. Woman was considered symbolically closer to the forces of nature and as such became an object of reversion.²⁶

In Western Europe, slavery was followed by feudalism. The change from tribal law to state law under feudalism was a gradual process, but by the 13th century feudalism was firmly established with its hierarchy of land holdings and personal loyalty based on military service. With the break up of the family as the basic social, economic and political unit of society, women's position changed dramatically. Because men's power stemmed from land holding and inheritance, women were important only for the provision of legitimate heirs.²⁷

The emergence and spread of Christianity contributed to the subordinate position of women. Generally speaking the arguments were based on old misogynist themes; woman is cursed by the sin of Eve, crooked because made from a rib, bestial by nature, greedy and crafty.²⁸ Saint Paul based the subordination of woman to man upon both the Old and the New Testament.

The Church, however, did perform a very useful social and economic function for women in the later Middle Ages, by providing shelter,

²⁶ Ibid, p.98.

²⁷ Susan Atkins and Brenda Hogget, Women and the Law (Oxford : Blackwell, 1984), p. 10.

²⁸ Margaret Gallagher, Unequal Opportunities : The Case of Women and the Media, (France : UNESCO Press, 1981), p. 11.

occupation and a dignified existence in nunneries for them. But throughout women were "at risk" to be burnt at the stake as witches.²⁹

The problem of a religious vocation for women proved a troublesome question in the early middle ages. In spite of the revival to limit women's independence in convents, the religious revival associated with the 12th century led to numerous women attempting to take orders or to follow the life of a dedicated chaste bride of god, e.g., Premonstratensians. The Cistercian reform movement also attracted a large number of women³⁰.

It was upon this background that the movement known as the Beguine appeared, a women's religious movement independent of any male impetus or direction.³¹ The movement which began in the 13th century had no organisation or constitution, promised no benefits, sought no patrons and insisted its adherents continue their ordinary work in the world. As the Beguines grew in numbers, the church attempted to bring them into organised religious life and finally they were forced to integrate into orders approved by the Pope.

Thus neither feudalism nor the church freed women. It was rather in emerging from serfdom that the passage from the patriarchal to the conjugal family was accomplished.

²⁹Encyclopedia Britannica, vol.19, p.909.

³⁰Vern L. Bullough, n. 21, p.160.

³¹Ibid, p.161.

When serfdom was abolished poverty remained; men and women lived on a footing of equality in small rural communities and among the workers; in free labour women found real autonomy because she played an economic and social part of real importance. Also, with the growth of towns, middle class women played an increasing part in trade and were admitted to membership, in guilds thus enhancing their social and economic position.³²

Under the impact of Puritanism and Calvinism the position of women declined once more. "Calvin's affirmation of radical equality of men and women from the perspective 'coquituder' (knowledge of god) shows that he helped launch a spiritual reformation for women; but in light of his confirmation of Christianities views of the innate inferiority of women to men from the perspective of 'cognito hominus' (knowledge of humankind) it appears that Calvin contributed only to a carefully limited reformation for women; to a spiritual reformation which had little effect on social and political reality."³³

The Renaissance and Reformation brought major shifts in view points and values. One major strain of the Renaissance was the humanist ideas expressed by scholars like Erasmus. 'The Dispute about Women' became a long running debate of women's capabilities. The humanists particularly emphasised that the widest possible education leads to the greatest virtue³⁴. Christine de Pisan, an early advocate of education for women

³²Encyclopedia Britannica, vol.19, p.910.

³³Mary Potter, "Gender Equality and Gender Hierarchy in Calvin's Theology," Signs, vol. 11, no.4, Summer 1986, p.725.

³⁴Barbara Sinclair Deckard, n.16, p. 199.

claimed that with equal educational opportunities women could attain intellectual equality with men.

The humanist ideas were actually put into effect for most upper class Western European women and this education and new appreciation for women's mind resulted in a large number of famous women scholars in this age, e.g., Beatrice d' Este, Isabella, Catherine de Medici etc.

Unfortunately, this early rise of the status of women was cut short by the increasing religious bigotry during the wars accompanying the Protestant Reformation. The Protestant preachers gave sermons against sinful wives. The Protestant sects particularly saw the husband as the secular ruler and religious head of his household charged with making sure that the whole household was obedient to the desires of King and Church.³⁵ Women could not own any property, were expected to be silent, and were required to obey their husbands and god.

Yet simultaneously, Reformation led to greater political participation by some women - those who participated in the most radical religious sects - e.g. the Brownists, the Baptists, the Quakers. They did strive for socio-economic as well as religious change. All argued that women should have spiritual equality though none agreed for social equality.³⁶

Saint Paul had prohibited women from preaching. Yet by 1630s and 1640s, women were preachers in the radical sects in Holland, England and

³⁵ Ibid, p. 200.

³⁶ Ibid, p. 201.

Massachusetts. There were so many women among the Quakers that it was first thought that the sect was limited to women. Women did play an important role in the Revolution of 1640 and 1666 that ended feudalism in England.³⁷

During the 16th and 17th centuries, capitalism was spreading throughout Western Europe. Many bourgeois women became involved in business but there was still plenty of resistance to the education of women.

From the late 17th to the late 18th centuries, the intellectual climate of Western Europe came to be dominated by a mood of optimism; about the potential of individual human reason and the possibility of understanding the natural environment of humanity; this mood of optimism came to be known as Enlightenment.

Numerous eminent philosophers, men like Hobbes, Rousseau, Hegel, John Locke, Diderot, Voltaire and d'Alembert, challenged the almost sacrosanct ideas of an earlier age. However, most political theories have an ontology which is male, all exclude women from their theoretical models and assign them a "different" (and often disadvantaged) social status based on their reproductive role.³⁸ Hobbes asserts that the patriarchal family is the

³⁷ Ibid.

³⁸ As early as the 4th and 3rd century B.C. divergent views were expressed on the 'woman question'. While Plato's egalitarian arguments for the common education of women and men, for joint military, intellectual and political leadership were radical and exceptional Aristotle placed women firmly in the household and took for granted the exclusion of women from any political and public function. The Aristotelian private public polarization in which certain roles and functions are judged 'natural' and appropriate to women and men, has prevailed, it is a polarization which underlies the entire historical problem of the differentiated social status of the two sexes.

basic social and political unit stating that the "Father of the Family by the Law of Nature is Absolute Lord of his wife and children". John Locke was equivocal on the question of women. While he gives parents "equal title" to power over the children, Locke resorts to arguments about "nature" to show that there is a legal customary subjection of women to their husbands. Where there is a disagreement in the family "the Rule... naturally falls to the man's share as the abler and stronger". Even Rousseau despite all his enlightenment on political and social issues excludes women from the "social contract" or the "general will". According to him, only man (who is the head of the patriarchal family) was rational and capable of thinking rationally and abstractly, therefore, women lacking these qualities, could not be given freedom and equality.³⁹

The real feminist debate by women arose in the 18th and 19th centuries in the most developed countries of Europe, namely Britain and France. The ideas of women's emancipation, their claims to the "rights of women" as natural human rights, first voiced by women during the French Revolution saw another and this time more radical renaissance during the 19th century. This was a period of geographic expansion, of general intellectual ferment with emphasis on individual freedom, the rights of man and universal education, of technological social upheavals generally known as the industrial revolution.

³⁹ Maria Mies and Kumari Jayawardena, Feminism in Europe: Liberal and Socialist Strategies 1784-1919 (The Hague : Institute of Social Studies, 1983), pp. 6-9.

The French Revolution kindled the torch of liberty, equality and fraternity in 1789. The ideals set forth, the forces let loose did not exclude women.⁴⁰ The question of women's rights had been discussed by Montesquieu who had shown awareness of the need to extend the concepts of liberty and equality to women. The more notable was Condorcet who championed equal rights for women and criticised philosophers and legislators for having violated the principle of equality of rights; intangibly depriving one half of the human race of the rights of taking part in the formation of laws by exclusion of women from the rights of citizenship.⁴¹ But such ideas as the above were very few.

The best known amongst revolutionary women was Olympe de Gouges who proclaimed Declaration of the Rights of Women (1789), on the lines of the Declaration of the Rights of Man. It was intended to defend the rights of all humans and to protect women from male domination; the underlying principle being equality and justice for all.

Mary Wollstonecraft too challenged all the prevailing notions about woman's nature, rationality and intellect, and woman's place in society. She wrote at a time when the issue of rights of man was bringing revolution to the United States, to France and even threatening to shake the English Parliament. While being profoundly influenced by the enlightenment she was

⁴⁰ During the Revolution, working class women were leaders in the bread riots which formed the background for the Revolution. Upper class women held 'salons' where religious, philosophical and political discussions were held.

⁴¹ Gisbert H. Flanz, Comparative Women's Rights and Political Participation in Europe (New York : Transnational Pub., 1983), p. xii.

the first to expose the inconsistencies of the philosophers arguments in respect to women. Thus, ironically it was a woman considered by the philosophers to be lacking in reason, who exposed the philosophers own lack of reason in their writings on women⁴².

The liberal wave which set in around 1830 in most parts of Europe did very little for the cause of women's emancipation and women's rights.

The political ideology of reform in all the spheres was expressed by the utilitarians: Jeremy Bentham advocated political and legal reforms on the principle of "the greatest happiness of the greatest numbers". However, this "greatest number" either excluded women or was based on the view that the submission of women was their "greatest happiness". Thus Bentham limited his liberalism to men and continued to advocate the subordination of women.⁴³

Bentham was typical of many of the political thinkers of the 19th century period when there was a strong current of thought, both liberal and conservative, which sought to keep bourgeois women confined to the home. Thinkers like Proudhon, Joseph de Maistre, Professor Clark all claimed women's intellectual capacity to be less than men's and held that formal education was dangerous for women.

However, one important exception was John Stuart Mill who did not hesitate to apply his liberal philosophy to the question of the rights of

⁴² Maria Mies and Kumari Jayawardena, n.39, p.13.

⁴³ Ibid, p.82.

women. His views represented perhaps, the first open stand by a 19th century liberal philosopher on the rights of women, but his primary concern was the women of the bourgeoisie. Moreover, though he advocated the cause of women's emancipation, he was not able to visualise a role for women which was not limited to family responsibilities.⁴⁴

To the Utopian Socialists of the 19th century, e.g., Robert Owen, Charles Fourier, Saint Simone, Flora Tristan etc., the ideas of women's emancipation formed an important part of their thinking. They attacked the bourgeois marriage system which they saw as a means only to use women for the accumulation of wealth.⁴⁵

Some of their expressed ideas seemed to anticipate those of Karl Marx. After 1848 women increasingly became instruments of production. They became part of the proletariat which Marx and his followers sought to organise into a class conscious movement to do away with capitalism and the exploitation of "man by man". However, they did not specifically address or analyse the exploitation of women. The theories of Marx and Engels, based on dialectical and historical materialism held that the abolition of private property and the capitalist mode of production would necessarily lead to an end of the patriarchal relationship between men and women.⁴⁶ They were not interested in protective legislation for women because they

⁴⁴ Ibid, p.85.

⁴⁵ Ibid, p.34.

⁴⁶ Barbara Sinclair Deckard, n.16, p.220.

were committed to a radical revolutionary change in the entire order - economic, social, political.

An important theorist of the socialist movement advocating women's liberation was August Bebel. According to him "the struggle for women's emancipation should not be separated from class struggle but should be subordinated to it. (Women were exploited firstly by patriarchal norms and values and secondly the exploitation was economic)." Bebel saw the class struggle as the expression of the Darwinist struggle for the survival of the fittest and socialism as a natural historical process thus he did not see the need to fight for equal rights of women. In fact Bebel expected women's emancipation not from a revolution of the sexual division of labour, but from technological progress and from the development of productive forces.⁴⁷

Another important theorist and activist of the socialist women's movement was Clara Zetkin. She was not concerned with feminism as such but with the conditions of women labourers. Her views were important because she established some links between socialists and communists. These ideological contests were significant in the development of women's rights movements but were not particularly useful to the formulation of a concrete action programme.

In Europe, the period immediately following the French Revolution was very unfavourable for the development of women's rights. With the defeat of

⁴⁷ Maria Mies and Kumari Jayawardena, n. 39, pp. 132-133.

Napoleonic and the restoration of the Bourbon Monarchy political reaction was re-established. This resulted in a general interest of radical opinion in France and Britain and a repudiation of the feminist views that had burst forth during the revolution. The patriarchal principle, a fundamental part of the order found its way into the codification of the French Civil Law and the Austrian Civil Code of 1811.⁴⁸ However, in France, in spite of the backlash and reaction, women revolutionaries and socialists were active during later revolutionary upheavals of 1830 and 1848 and the Paris Commune of 1871. Middle class women were active in their criticisms of the constraints of bourgeois marriages and in their campaign for rights of education, property and suffrage. Women writers as Georges Sand, Maria Deraismes etc., launched a campaign for legal rights for women and in 1878 Maria Deraismes organised the first international congress for women's rights. Some advance was also made in the field of education. By 1880 secondary education was made available to women. In 1907 French women acquired the right to dispose of their own salaries. However, it was a slow uphill task to achieve even basic rights. It was only in 1938 that married women were considered to be legal majors and they obtained the vote as late as 1944.⁴⁹

The intellectual ferment in Europe and the ideas of Enlightenment had no frontiers spreading to America. The American Revolution of 1776 ended colonial control, spread revolutionary ideas of liberty and encouraged some

⁴⁸Gisbert H. Flanz, n. 41, p.xiii.

⁴⁹Barbara Sinclair Deckard, n.16, p.207.

people to raise the question of women's rights, e.g., Abigail Adams, Emma Willard etc.

It was in America that the 'woman question' first developed into a movement rather than a subject of discussion in literary circles.⁵⁰ It was primarily a fight for democratic rights - for legal and not economic rights. The anti-slavery movement acted as a catalyst in helping women realise their own oppression and from the abolitionist movement arose the women's rights movement on a political footing. Sarah and Angelina Grimke, Lucretia Mott, Elizabeth Cady Stanton, Chances Wright, Susan Anthony, Alice Paul were some of the women who fought for women's rights. In 1840 the Equal Rights Association was founded for the emancipation of slaves and women, and in 1848 a Women's Right Convention at Seneca Falls was organised which called for equality and equity for women.

During the Civil War there was little activity in the women's movement. All the women were devoted either to the abolitionist cause or were busy with war work. However, a large number of women became involved in the temperance cause, as their legal status as married women offered them no protection under the law, against either physical abuse or abandonment by a drunken husband.

After the Civil War and the 13th Amendment (1861) abolishing slavery, a formal split occurred between the Negro movement and the women's

⁵⁰R.B.Jain, "Women in the United States - The Quest for Equality" in Urmila Phadnis and Indira Malani, eds., n. 25, p. 214.

movement. The history of women's movement from this point is divorced from other reform struggles for which the women originally fought. Now the women were exclusively concerned with civic rights. Suffrage Associations were begun in 1869 and by 1890 the National Women Suffrage Association (NAWSA) was formed. Alice Paul formed a woman's party to work exclusively for female suffrage. In 1920 the United States Congress finally recognised the women's suffrage movement.⁵¹

The 19th century Britain was an age of reform. It was also a period when British women were beginning to react against severe disabilities and discriminatory laws which oppressed them. Women under English law had few political and economic rights; they were excluded from suffrage and therefore, Parliament. Married women could not sue, be sued or be called as witnesses and had no property rights. Economically too, the results of the Industrial Revolution worked to the disadvantage of women. The effect of capitalist development and the enclosure movement in agriculture was to bring poor women out of their homes and fields into the factories, mines and sweated industries as cheap labour and to install bourgeois women within the four walls of their houses as ladies of leisure, excluded from work outside the home and kept occupied with household work.

Education in this period was given priority, for the middle class women were conscious of the need for equal educational opportunities if women were to make a breakthrough in other fields. Several women made their work as outstanding commentators and writers - Jane Austen, Catherine

⁵¹ Joyce Cowley, "Pioneers of Women's Liberation" in Mary Lou Thompson, ed., Voices of the New Feminism (Boston : Beacon Press, 1971), p.25.

Macauley, Hannah More etc. They came to be known as "blue stockings" for they did not challenge the system of oppression nor did they make general universal claims on behalf of all women.

The struggle against repressive legislation governing the legal status of women was a continuous one. Right over children, property rights, prostitution and birth control were some areas in which women in Britain fought for their rights.

However, it was on the question of suffrage that the agitation of women became particularly militant.⁵² The first British women's political group was formed in the 1830s to combat slavery around the world. In the 1840s middle class women organised the first women's rights groups in the industrial towns of Sheffield and Manchester and the first permanent women's group was the Manchester Women's Suffrage Committee founded in 1867 by Lydia Becker.

In the 1880s and 1890s, the women's movement grew as Lydia Becker gathered all the local groups into a National Union of women's suffrage societies. It picked up steam, when militant Emmeline Pankhurst joined the fight for suffrage and in 1903 formed the women's social and political union. From here on till the outbreak of the first world war moderate and militant tactics were adhered to for women's suffrage but these did not lead to any legislations being formed in their favour.⁵³

⁵²Barbara Sinclair Deckard, n.16, p.210.

⁵³Ibid, p.213.

In 1914, the outbreak of the war suddenly ended almost all suffrage activity; but it had an effect on the position of women. Hundreds and thousands went into munition factories; in government agencies; as nurses at the front, drove army trucks and manned army communications.

In 1918, partly as a reward for helping win the war and partly under the continued pressure of socialist militants, the government granted universal suffrage to men and women - men were eligible to vote at 21, while women could not vote till 30. The leaders of the movements continued to argue for legal rights to property and political equality which was finally granted in 1928.

Raising the cultural, political and theoretical level of women, has been in a nutshell, the ideology of women's movement the world over. The historical perspective of women's movement and concern for women's rights reveals that it started off as a movement for education, for suffrage - to obtain civil and political rights, to have access to work and satisfactory working conditions. While the fight for women's rights started and continues at the national level, the twentieth century witnesses an increasing involvement of international organisations in the protection of women's rights. The United Nations has made significant contributions, by setting international norms and standards for women's rights and making them integral to the question of human rights.

UNITED NATIONS SYSTEM AND RIGHTS OF WOMEN

CHAPTER TWO

The theoretical foundations for United Nations action in the furtherance of the status of women all over the world could be said to have been established with the adoption of the United Nations Charter at San Francisco. Although there is no final or complete agreement in the United Nations system as regards the definition and scope of the rights of women, the United Nations has contributed to the advancement of women.

The General Assembly, the Economic and Social Council, the Commission on the Status of Women, the Commission on Human Rights and other competent bodies of the United Nations have worked to promote full equality between men and women and to eliminate discrimination against women; which includes enjoyment of political rights, of social and economic rights, of civil and family rights and rights in other areas. International instruments and standards have also dealt with special measures for the protection of women in certain circumstances.

Charter of the United Nations

The Charter of the United Nations is the first international instrument which specifically mentioned equality of men and women. It was the first multilateral treaty which clearly enunciated a norm of non-discrimination on the basis of sex. The Charter of the United Nations refers to human rights in its Preamble and in Articles 1, 13, 55, 56, 62, 76.

The Charter provisions also made possible the creation of the Commission on the Status of Women.

The Commission on the Status of Women

Within the United Nations system, most measures designed to make the aforesaid principle a reality, have originated in the Commission on the Status of Women, a functional Commission of the Economic and Social Council.

The creation in 1946, of a functional sub-commission of the Economic and Social Council, which was subsequently converted into a Commission¹ for dealing with the situation of women marked the beginning of the process through which the examination of women's issues began to acquire specificity and relevance within the system. The Commission has as its purpose the elimination of discrimination against women and the promotion of equality of women with men in all fields.

The specific mandates of the Commission were designed to improve the social and legal conditions of women and to place them at a level of equality with men in all fields of human endeavour; eliminating all discrimination in the legislation of the Member States, in respect of political, civil, labour, education, social and economic rights.

The Commission's major thrust was in the setting of standards, and to that end it began work on the adoption of legal instruments.

¹Economic and Social Council Resolution (ECOSOC Res.), 11 (II) of 21 June, 1946.

Commission on Human Rights

The United Nations Commission on Human Rights as early as 1946 with Mrs. Eleanor Roosevelt as its chairperson, was broadly committed to a programme which included as its chief aims equal educational opportunities for women at all levels and equal employment opportunities for women the world over.

Universal Declaration of Human Rights

The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights.²

The faith expressed in the Charter of the United Nations is reaffirmed in the Universal Declaration of Human Rights, which proclaims a common standard of achievement for all peoples and all nations.

The Declaration was prepared by the Commission on Human Rights as a first step in the process of establishing a set of internationally defined human rights.

The Universal Declaration of Human Rights consists of a Preamble and Thirty Articles setting forth basic human rights and fundamental freedoms to which all men and women everywhere in the world are entitled, without discrimination. The Articles deal with civil and political rights (Articles 3-21) as well as economic, social and cultural rights (Articles

²General Assembly Resolution (G.A. Res.), 217 A (III) of 10 December, 1948.

22-27). The concluding Articles (Articles 28-30) recognize that everyone is entitled to a social and international order in which all human rights and fundamental freedoms can be fully realised and stress the duties and responsibilities which each individual owes to this community.

International Covenants on Human Rights

These treaties were drafted by the Commission on Human Rights as a necessary part in the process of developing the international bill of rights. The International Covenant on Civil and Political Rights was to be immediately binding and the International Covenant on Economic Social and Cultural Rights, was to obligate states to take steps to progressively achieve the rights set forth therein. The Covenants were submitted by the Commission, to the Third Committee (Social, Cultural and Humanitarian) in 1954, and were adopted unanimously by the General Assembly.³ The Civil and Political Covenant came into force on March 23, 1976, and the Economic Social and Cultural Rights Covenant came into force on January 3, 1976.

Declaration on the Elimination of Discrimination Against Women

The Declaration on the Elimination of Discrimination Against Women was adopted unanimously by the General Assembly in Resolution 2263(XXII) on 7 November 1967.

To codify the principles of the Declaration a comprehensive legally binding treaty was drafted by the Commission on the Status of Women in the

³C.A. Res., 2200 (XXI) of 16 December, 1966.

form of the Convention on the Elimination of All Forms of Discrimination Against Women.

Convention on the Elimination of All Forms of Discrimination Against Women

From 1974 to 1979, the competent bodies of the United Nations worked together in the elaboration of an international convention which would forbid all forms of discrimination against women. Although the work on this treaty began in 1974, it was officially authorised by the General Assembly in Resolution 3521(XXX) on December 15, 1975, and was completed and adopted by the Commission on December 17, 1976. After the Third Committee and the Economic and Social Council had considered it, it was adopted and opened to signature, ratification and accession by the General Assembly⁴. The Convention came into force on September 3, 1981.

The Convention reiterates the norm of non-discrimination on the basis of sex and reaffirms the goal of equality between men and women. The subjects covered are numerous, including many which were the basis for earlier more specific instruments e.g., slave trade, traffic in women, education, employment, nationality; new areas as special problems of rural women are also covered.

The Convention consists of 36 Articles, and is divided into a Preamble and Six Parts. Part I (Articles 1-6) contains a number of general provisions - condemning discrimination against women in all its forms and

⁴G.A. Res., 34/180 of 18 December, 1979.

bringing about appropriate measures to ensure the full development and advancement of women; Part II (Articles 7-9) contains provisions relating to political rights; Part III (Articles 10-14) contains provisions relating to social and economic rights; Part IV (Articles 15 and 16) contains provisions relating to civil and family rights; Part V (Articles 17-22) contains provisions relating to implementation; and Part VI (Articles 23-30) contains a number of final clauses.

In accordance with Article 17 the Committee on the Elimination of Discrimination Against Women was established in 1982. The basic task of the Committee, is the consideration of progress made in the implementation of the Convention.

Declaration on the Participation of Women in Promoting International Peace and Cooperation

Both the international instruments mentioned above which are primarily concerned with discrimination against women express concern that discrimination hampers their active participation in the service of their countries and humanity.

The General Assembly⁵ noted in 1982 that considerable discrimination against women continued to exist, thereby impeding the active participation of women in promoting international peace and cooperation and adopted the Declaration on the Participation of Women in Promoting International Peace and Cooperation.

⁵C.A. Res., 37/63 of 3 December, 1982.

The Declaration inter alia sets out principles, in that women and men have an equal and vital interest in contributing to international peace and cooperation. The full participation of women in the economic, social, cultural, civil and political affairs will contribute to international peace and cooperation.

In recent years a number of bodies within the United Nations system, including several specialised agencies have taken necessary steps to advance the implementation of equality of men and women in areas within their competence, such as education, training, employment and health care and nutrition.

Improvement of the Status and Role of Women in Education

In 1948 the Economic and Social Council on the recommendation of the Commission on the Status of Women, called upon the Member States of the United Nations "to grant women equal educational rights with men and to ensure that they are offered genuine educational opportunities, irrespective of nationality race or religion." Simultaneously, the Council suggested that the United Nations Educational Scientific and Cultural Organisation [UNESCO] in its reports should include information on progress achieved and plans for improving the educational opportunities for women.

In 1958 UNESCO decided to draft an international convention on a number of issues related to discrimination in education. A draft was circulated amongst Member States for suggestions and revisions. The revised draft was adopted by the UNESCO on December 14, 1960. The Economic

and Social Council noted the Convention and Recommendation with approval⁶ and the Convention against Discrimination in Education came into force on May 22, 1967.

The Convention prohibits educational discrimination on a number of basis and calls on State Parties to eliminate discrimination of education - in administration of schools, financial aid, admission of students, etc. The objective is equality of opportunity as well as equality of treatment.

A development of considerable importance in UNESCO's activities to improve the access of girls and women to education is its elaboration of a long-term programme for the advancement of women through access to education, science and culture. The programme was approved by the General Conference of UNESCO at its fourteenth session in 1966.

In recent years UNESCO's action - while still comprising an important educational element - has increasingly broadened to include other concerns, notably the promotion of the role of women in decision making processes and in the promotion of peace; the teaching of women's studies as an integral part of human rights teaching; the improvement of the access of women to science and technology; the study of the structure of the mass media in society; and their relationship to the status of women.

In its two Medium - Term Plans⁷, covering the periods 1977-1982 and 1984-89, respectively, UNESCO has attributed special importance to research

⁶ECOSOC Res., 821 VB (XXXII) of 18 July, 1961.

⁷United Nations Action in the Field of Human Rights (United Nations publication, Sales No. E.83.XIV.2), p. 91.

and action projects for improving the status of women and promoting their participation in economic, social and political life in the fields of education, natural sciences, social and human sciences, culture and communication. In the First Medium-Term Plan (1977-1982) a specific Medium-Term Plan Objective was addressed to women's advancement, and the Second Medium Term Plan (1984-1989) includes a Major Programme for improvement of the status of women. The Second Medium-Term Plan reiterates the importance of the use of the social and human sciences in examining the contribution of women to their societies and in elucidating structural factors and mechanisms of discrimination and exclusion based on sex.

Other instruments that take up the issue of education are: The International Covenant on Economic, Social and Cultural Rights (Article 13) and the Convention on the Elimination of All Forms of Discrimination (Article 10).

The General Assembly in the resolution⁸ "on the programme of concerted international action for the advancement of women" listed inter alia eradication of illiteracy; equal access for boys and girls to education etc. The World Conference of the International Women's Year (1975) adopted Resolution 24 on Education and Training, and referred the subject also to the World Plan of Action for the Implementation of the Objectives of the Interational Women's Year (Section C is devoted to the access of Education and Training).

⁸C.A. Res., 2716 (XXV) of 15 December, 1970.

The World Conference of the United Nations Decade for Women: Equality, Development and Peace (1976-1985), noted in a resolution entitled "Promotion of Equality in Education and Training" that in many countries the level of education of girls and women is much lower than that of boys and men, particularly in the technical field, whereas the training of girls and women in new technologies is particularly important.

Improvement of Employment and Economic Status of Women

United Nations bodies have been endeavouring over time to achieve equality of opportunity and treatment for women workers and their integration into the labour force in accordance with accepted international standards, which recognise the right to work, to equal pay for equal work, to equal conditions of work and to advancement. Article 23 of the Universal Declaration of Human Rights and Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, recognise the right of everyone to work, to a free choice of employment, to just and favourable conditions of work and to protection. 1 By Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women, States Parties undertake to eliminate discrimination against women in employment and to ensure their effective right to work.

In addition to these are, the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957), the Convention and Recommendation on the Consent of Marriage, Minimum Age for Marriage and Registration of Marriages (1962 and 1965), the UNESCO

Convention against Discrimination in Education (1960), the Declaration of Mexico on the Equality of Women and their Contribution to Peace and Development (1975) and the Programme of Action for the Second Half of the United Nations Decade for Women (1980-1985).

United Nations bodies in these fields have also borne in mind a number of conventions relating to women's economic rights adopted by the Interantional Labour Organization (ILO).

Convention Concerning Night Work of Women Employed in Industry. Convention (Revised, 1948) (No. 89).

The original Night Work Convention was adopted by the ILO in 1919. It came into force on June 13, 1921. In 1934, revisions of the Convention were proposed; the first proposed revision considered the exemption from the Convention's terms of women in higher posts. Finally, a new provision to exempt such women was adopted by the Committee.

The second revision involved a redefinition of "right" to facilitate further changes by broadening the possible work hours to allow the running of a two shift workday. The revised convention reflecting these two alterations came into force on November 2, 1936. The need for a second revision of the Convention arose because of a desire by State Parties for an even more flexible definition of "right" than that established by the 1934 Convention.

In 1948 the revised Convention was adopted in June and came into force on February 27, 1951.

Equal Remuneration Convention 1951 (No. 100)

The question of "equal pay for equal work" was drawn to the attention of the Economic and Social Council and the Commission on the Status of Women by the World Federation of Trade Unions in 1948. At that time, Member States were called upon by the Council to implement the principle of equal remuneration for work of equal value of men and women workers, irrespective of nationality, race, language or religion.

The Universal Declaration of Human Rights in Article 23, paragraph 2, provided an early formulation of this right, and Article 7, paragraph a(i), of the International Covenant on Economic, Social and Cultural Rights codifies it. In 1949, the Commission on the Status of Women elaborated the principle in a series of guidelines, which were formulated to assist ILO in its discussion of the question.

Although the ILO had included the principle in the Preamble to both its 1919 and 1948 Constitutions, the General Conference decided to draft a special Convention to codify it. The Equal Remuneration Convention (No. 100) was adopted by the General Conference on June 29, 1951 and came into force on May 23, 1953.

The Discrimination (Employment and Occupation) Convention 1958, No.111.

In the Universal Declaration of Human Rights Article 23 clearly states the right to work. Since the Declaration also prohibits discrimination on the basis of sex, this formulation can be seen as an early foundation of this later Convention. This provision is also codified in Article 6 of

the Interantional Covenant on Economic, Social and Cultural Rights.

On 25 June 1958 the General Conference of the ILO adopted the Discrimination (Employment and Occupation) Convention (No. 111). The Convention came into force on June 15, 1960.

By this Convention States Parties obligate themselves to enact national measures to promote equality in employment and occupation and agree to try and eliminate discrimination on a number of grounds including sex. They also agree to provide educational programmes to promote this policy ; to consult with workers' organisations to eliminate discrimination and to bring laws and administrative practices into compliance with this objective.

Provision Concerning Women Under the ILO Employment Policy Convention, 1964
(No. 122).

The ILO under the terms of the Declaration of Philadelphia, is responsible to examine and consider the bearing of economic and financial policies upon employment policies; in light of the fundamental objective that "all human beings irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditons of freedom and dignity, of economic security and equal opportunity."

Keeping this in mind, the General Conference of the ILO adopted the Employment Policy Convention, (No. 122) on 9 July 1964.

Convention Concerning Maternity Protection (Revised) 1952, (No. 103).

The Convention concerning Maternity Protection was first adopted by the ILO in 1919. A revised Convention was adopted in June 1952 and came into force on September 7, 1955.

Agricultural and non-industrial undertakings as well as women wage earners working at home are covered by the Convention. The provisions on cash and medical benefits are clarified and the principle is added that the employer is not to be held individually liable for the costs of benefits. It extends the period of maternity leave to twelve weeks, from six, and increases the flexibility with which it can be taken.

Convention Concerning Condition of Employment of Plantation Workers, 1958 (No. 110) (Part VII: Maternity Protection).

The ILO established a Tripartite Committee to consider work on Plantations and in 1957 established a Conference Committee to draft international regulations addressing the conditions of Plantation Workers. Although the needs of Plantation Workers were met under general regulations which had already been established, the need was felt for special regulations on the subject so as to expedite the application of the already existing regulations. The Convention was adopted on June 24, 1958.

The Convention addresses a wide range of subjects drawing together regulations from a variety of other ILO agreements and focusing them specifically on Plantation Workers. The Maternity Protection section is

similar to the earlier Maternity Protection Convention. States can ratify selective operative parts of the Convention.

With regard to Maternity Benefits and Protection Part VIII (Maternity Benefit) of the ILO Social Security (Minimum Standards) Convention 1952 (No. 102) women are required to be protected against contingencies including pregnancy and confinement and their consequences and suspension of earnings.

Working Women with Family Responsibilities

The ILO Conference in 1965 unanimously adopted the Employment (Women with Family Responsibilities), 1965 Recommendation (No. 123). The major problem which working women face is the dual responsibilities of a family and of employment. Attitudes and practices in many parts of the world has marked the home, husband and children as the sole responsibility of women. These ideas are slow to change and even in areas where women work in paid employment outside the home, they face the double burden of house and employment.

The Commission on the Status of Women has recognised that the problems faced by working women with family responsibilities, have to be solved to attain their full participation in community life. The family responsibilities of women have also been used to justify discrimination against them.

In 1975 a Declaration of Equality of Opportunity and Treatment for Women Workers and a Resolution establishing a Plan of Action to promote equal rights for women workers were adopted.

A significant development in this field was the adoption by the ILO of two new instruments, a Convention (No. 156) and a Recommendation (No. 165) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities.

These instruments aim at ensuring that men and women workers with family responsibilities are not subjected to discriminatory practices and that they are able to fulfil their employment and family responsibilities harmoniously. These instruments are essentially concerned with training and employment, conditions of employment, child-care, family services and facilities, social security etc. Both instruments encompass all branches of economic activity and all categories of workers.

Equality of Treatment of Women Workers with Regard to Social Security and Other Benefits

The Commission on the Status of Women examined a number of reports prepared by ILO in 1955, 1956 and 1957 on the question of older women workers and observed that certain difficulties were often encountered by older women obtaining and retaining employment. The Commission in Resolution 6(XI) adopted on 28 March 1957, expressed its belief that older women workers should be accorded conditions of work including social security benefits like other workers.

The ILO Declaration on Equality of Opportunity and Treatment for Women Workers (1975) called for specific measures, which were necessary and appropriate to ensure equality of treatment for workers, employed regularly on a part-time basis - the majority of whom were women.

Improvement of the Status and Role of Women in the Field of Health Care and Nutrition

In many countries and especially rural areas, conditions frequently have precluded the enjoyment by women of the right to health on the basis of equality with men. Additionally, women are denied the special health care needed during pregnancy, delivery and lactation. Women also experience malnutrition to a greater degree than men, either because society places a lesser value on women or because they deprive themselves for the sake of their families.

The Commission on the Status of Women, the World Health Organisation (WHO) and the United Nations Children's Fund have been concerned about the fact that women generally do not enjoy the right to health equally with men. Special attention has been given to health needs of women, the utilization of health services by women, and women's role in the promotion of health. In recent years emphasis has been placed on older women, battered women and women suffering from mental illness. The Convention on the Elimination of All Forms of Discrimination against Women in Article 12 contains provisions relating to discrimination against women in the field of health.

The World Health Organisation's Global Strategy for Health for all by the Year 2000 calls for "the attainment by all peoples of the highest possible level of health" by that year. Following the International Conference on Primary Health Care, held at Alma-Ata, USSR, in 1978. WHO identified primary health care as the key to attaining health for all⁹.

In its 1982 report to the Commission on the Status of Women, WHO stated¹⁰:

Member States are now engaged individually in developing and updating strategies to attain health for all in their own countries. In order to assess progress towards this goal, WHO has suggested a number of indicators to be used in monitoring and evaluating the implementation of health strategies. It is significant that among the proposed social and economic indicators are the percentage of women in the labour force and the female literacy rate. The literacy rate of women is particularly important for health since it is they who most often provide primary health care in the home. This becomes still more important if the concept of literacy is extended to include "health literacy", namely an elementary understanding of nutritional and health needs and of how to prevent or control common health problems.

On the question of operations based on customs, the Commission has often expressed the view that the operations, as carried out in certain

⁹The United Nations and Human Rights (United Nations publication, Sales No. E. 84.1.6), p. 163.

¹⁰ Ibid, p. 164.

parts of the world, are not only dangerous to health but also impair the human dignity of women. The Economic and Social Council in Resolution 771 D (XXX) of 25 July 1960 expressed the hope that Governments would avail of the services of the United Nations and the specialised agencies which they consider appropriate for the purpose.

Other Matters Concerning Equality in Economic Status

In 1963, the Commission on the Status of Women expressed concern that the age of retirement and pension rights in many areas were not the same for men and women. It noted in Resolution 9 (XVII), 25 March 1963, that although there was a trend towards equal provision on retirement of men and women a discrepancy existed in the views of governments and women's organisations. It recommended that provision of age of retirement and the right to a pension "should be sufficiently flexible to meet a variety of changing circumstances, individual preferences as regards effective retirement, bearing in mind the encouraging trend towards equal economic conditions for the work of men and women, including equal provision in the matter of age of retirement and the right to a pension".¹¹

The Declaration on Equality of Opportunity and Treatment for Women Workers, specifically emphasised that there should not be any discrimination against women in respect of social security, as also in the provision pertaining to retirement and pensions, and that the differences which existed between men and women under such schemes should be revised.

¹¹ Ibid, p. 162.

The Commission on the Status of Women and the Economic and Social Council in Resolution 1136(XLI) of 26 July 1966, have been concerned with the repercussions of scientific and technological progress on the position of women workers, and requested the ILO in 1966 to study the question. The ILO report showed that the status of women workers is adversely affected by certain unfavourable scientific and economic progress, due partly to the low degree of skill of most women workers and their consequential difficulty in changing their occupations. The organisation recently has undertaken a number of diverse studies on technological change and continues to review international conventions from the point of view of changes which have occurred as a result of development in science and technology.¹²

Another matter of concern to both the Commission and Council has been the problem of the access to women to financial assistance.¹³ The General Assembly in 1975 urged the Governments and organisations to extend facilities to women, which till then had been offered only to men by financial and lending institutions. The Assembly also recommended the establishment of courses for women to improve their financial and business acumen.

The 1980 World Conference of the United Nations Decade for Women adopted numerous resolutions relating to equality in economic status. In Resolution 29, it appealed to all women and men to concern themselves

¹² Ibid.

¹³ United Nations Action in the Field of Human Rights, n.7, p.98.

primarily with the rights of women who live in intolerable conditions of poverty and to all governments to eliminate the socio-economic causes of their poverty. Other resolutions too deal with the question.

Measures Taken and International Instruments and Standards Implemented by United Nations Bodies to Deal with Problems that Affect Women Adversely

United Nations bodies, particularly the Commission on the Status of Women and the Economic and Social Council have adopted measures aimed to deal with problems that affect women adversely, some of which are cited :

The Unmarried Mother and Child:

The Commission on the Status of Women considered in 1967, the "study of discrimination against persons born out of wedlock¹⁴". It called upon States (in 1970 and again in 1972) that had not done so to take adequate measures of social assistance in favour of the unmarried mother and child born out of wedlock.

On the Commission's recommendation, the Economic and Social Council in 1972, recommended to Member States that, in order to secure for the unmarried mother and her child acceptance on an equal footing with other members of society, they should apply the following principles:¹⁵

- Maternal filiation shall be recognized in law, in all cases, automatically as a consequence of the fact of birth.

¹⁴The United Nations and Human Rights, n.9, p.171.

¹⁵ibid, p.172.

- Whatever the legal system applying in the case of married parents, the unmarried mother, whether paternal filiation is established or not, shall enjoy in all cases, as a parent, the fullest set of rights and duties provided for by law. In particular:
 - (a) if maternal filiation only is established, the surname of the mother should be transmitted to her child, if possible, in such a manner as not to reveal the fact of birth out of wedlock;
 - (b) if maternal filiation only is established, the nationality of the unmarried mother shall be transmitted to her child as a consequence of birth;
 - (c) the unmarried mother should be vested in law with full parental authority over her child, in all cases as an automatic consequence of the fact of birth;
 - (d) maintenance rights and obligations as between the unmarried mother and her child should be the same as between a sole parent and a child born in wedlock;
 - (e) there should be no discrimination against the offspring of unmarried mothers in all matters of inheritance;
 - (f) the unmarried mother should enjoy all the measures of social assistance and social security devised for mothers in general and for single parents in particular; and

(g) there should be no discrimination against the unmarried mother in matters of employment, education and training as well as in access to child-care facilities.

Emergencies and Armed Conflicts

In 1970, the Economic and Social Council, requested the General Assembly to consider the possibility of drafting a Declaration on the Protection of Women and Children in Emergency or Wartime. A draft was prepared by the Commission on the Status of Women and the Economic and Social Council which the General Assembly adopted and proclaimed on 14 December 1974, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.¹⁶

The Commission on the Status of Women was informed in 1978 that two Protocols in addition to the Geneva Conventions of 1949 dealing with the protection of victims of international armed conflicts/non-international armed conflicts, had been adopted in June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. These additional Protocols contained provisions with respect to the protection of women and children.

Conditions in Which Women are Detained

In 1980, the Economic and Social Council found that in many countries women who are prosecuted, indicted or imprisoned are often subjected to

¹⁶G.A. Res., 3318 (XXIX) of 14 December, 1974.

intolerable treatment and torture; especially when they are harassed in violation of fundamental rights.

The Council appealed to Governments and international bodies concerned with the defence of human rights to pay particular attention to the conditions in which women are detained, keeping in mind article 5 of the Universal Declaration, and the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

The Economic and Social Council in 1955 appointed a Committee to prepare a draft supplementing the 1926 Slavery Convention. The Convention was adopted on 7 September 1956 by a Conference of Plenipotentiaries convened by the Economic and Social Council. The Convention came into force on April 30, 1957.

It obligates States Parties to take steps to abolish, at the earliest, a set of institutions and practices which include: serfdom, child betrothal; debt bondage; and marital practices in which a woman is treated as property by her own or her husband's family or is liable to be inherited after the death of her husband.

¹⁷ The United Nations and Human Rights, n.9, p.175.

Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others

This Convention consolidates four earlier Conventions which were drafted to provide protection to women and children, i.e., the International Agreement for the Suppression of the White Slave Traffic of May 18, 1904, which was amended by the Protocol of the General Assembly of the United Nations on December 3, 1948; the International Convention for the Suppression of White Slave Traffic of May 4, 1910 (amended by the same Protocol); International Convention for the Suppression of Traffic in Women and Children of 30 September 1921 (amended by the Protocol adopted by the General Assembly of the United Nations on 20 October 1947) lastly the International Convention for the Suppression of Traffic in Women of Full Age (amended by the Protocol of 1947).

The Convention was drafted by the Third Committee and incorporated numerous modifications based on the replies to questions submitted to the Sixth Committee (Legal). The Convention was adopted by the General Assembly by Resolution 317 (IV) of 2 December 1949 and came into force on July 25, 1951.

The Convention reflects the then dominant view within the Third Committee that prostitutes are victims and punishment should, therefore, fall on procurers. It obligates States Parties to punish those who procure persons, even with their consent, for the purpose of satisfying another. The treaty also covers those who are financially involved in the

maintenance or running of a brothel or anyone who lets or rents premises for the purpose of the prostitution of others.

Convention on the Political Rights of Women

It was the first global treaty in which States Parties undertook a legal obligation concerning the exercise of political rights by their citizens, and the Charter principle of equal rights of men and women was applied for the first time to the problem of women in the political arena.

In Resolution 56(1) of December 11, 1946, the General Assembly recommended to states that they adopt legislation to provide women the same political rights as men, in keeping with their obligations under the Charter. The Universal Declaration of Human Rights of 1948, in Article 21 provides that everyone regardless of sex, has the right to participate in the government of his or her country and to have equal access to its public service.

The Convention was adopted by the General Assembly in 1952.¹⁸ It was opened to signature on 31 March 1953 and entered into force on July 7, 1954.

The Convention provides that women are entitled to vote, are eligible to stand for election, and may hold public office, all on equal terms with men.

¹⁸ C.A. Res., 640 (VII) of 20 December, 1952.

Other instruments which provide for equality of men and women in the civic and political fields are: the Convention on the Elimination of All Forms of Discrimination Against Women (Articles 7, Article 8); the Programme of Action for the Second Half of the United Nations Decade for Women prepared by the World Conference of the United Nations Decade for Women: Equality, Development and Peace, contains recommendations of the Conference concerning the participation of women in political and other decision making processes.

Participation of Women in Public Life at the National and Local Levels

In Resolution 154B(VII) of 20 August 1948 the Economic and Social Council recommended that Member States should "(a) grant women whether married or unmarried, access on equal terms with men to posts in the public service at all levels including diplomatic, consular, legal and judicial office, and to all liberal and other professions", and "(b) consider women equally with men when appointing their delegations to organs and agencies of the United Nations and to international bodies and conferences".

The World Plan of Action for the Implementation of the Objectives of the International Women's Year, also took up the question of political participation. A major objective of the Plan, it is said, "is to ensure that women shall have, in law and in fact, equal rights and opportunities with men to vote and to participate in public political life at the national, local and community levels, and that they shall be made aware of

their responsibilities as citizens and of the problems affecting society and affecting them directly as women".

Participation of Women in Public Life at the International Level

The General Assembly expressed the hope that the United Nations system would set an example with regard to equal opportunities for the employment of women at professional and senior levels in accordance with Article 101, Paragraph 3, of the Charter. In another resolution it noted that reports on the composition of women in the Secretariat revealed an unsatisfactory situation which called for specific measures and programmes in order to achieve an equitable balance between the number of men and women, particularly in senior and policy-making positions, including those of Under Secretary General and Assistant Secretary General.

In 1975 the World Conference of the International Women's Year examined the situation of women in the employment of the United Nations and specialized agencies. It was noted that the Secretary General had set up a Standing Committee on the Employment of Women in the Secretariat to assist in eliminating discriminatory measures against women employees and to increase the recruitment of qualified women, and that the ad-hoc Group on Equal Rights for Women had "prepared a draft plan of action concerning long-term goals, and presented a petition to the Secretary General on 7 March 1975 making specific suggestions for promoting equality of treatment of women employees of the United Nations"¹⁹.

¹⁹United Nations Action in the Field of Human Rights, n.7,p.88.

In 1982, the General Assembly²⁰, noted with concern that women were still not represented on an equitable basis with men in decision making positions in a majority of national and international institutions.

Convention on the Nationality of Married Women

The nationality problems faced by married women were addressed as early as 1930 in the Hague Convention on the Conflict of Nationality Laws as also in 1933 in the Montevideo Convention on the Nationality of Women.

The problem of the nationality of married women has been the concern of the United Nations since 1948, when the Commission on the Status of Women decided to study the issue. By 1955 the convention had been drafted and sent to the Economic and Social Council which approved and then forwarded it to the General Assembly.

The Convention on the Nationality of Married Women was adopted by the General Assembly²¹ and opened for signature, and ratification. It entered into force on 11 August 1958.

Continuing the principle established by the Hague Convention, it emphasises the independence of the nationality of the wife from that of her husband, rather than the traditional concept of family unity. State Parties accept, with respect to their citizens that celebration or dissolution of marriage or a change of nationality by the husband, will not automatically

²⁰G.A. Res., 37/61 of 3 December, 1982.

²¹G.A. Res., 1040 (XI) of 29 January, 1957.

affect the nationality of the wife. They agree to establish special naturalization procedures to allow a wife to acquire the nationality of her husband if she so desires.

Another instrument which deals with the nationality of married women is the Convention on the Elimination of All Forms of Discrimination Against Women (Article 9).

Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages

The Convention is the result of initiatives taken by the Commission on the Status of Women and the Economic and Social Council on the one hand, and by the Conference of Plenipotentiaries (1956) which prepared and adopted the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, on the other.

The Conference suggested that the Economic and Social Council should initiate a study of marriage laws, emphasising the desirability of free consent of the partners and of setting a minimum age. In 1957 the Council referred the issue to the Commission on the Status of Women.

The draft Convention was presented by the Commission to the Council and adopted by the General Assembly²². It was opened for signature and ratification on 10 December 1962 and entered into force on 9 December 1964.

²²G.A. Res., 1763A (XVII) of 7 November, 1962.

In order to ensure free consent of the parties to marriage the Convention requires that, following public announcement of the marriage, the parties involved must give personal consent in the presence of the competent authority. It requires states to legislate a minimum age for marriage and to set up a programme for registration of marriages officially.

Improvement of the Legal Status of Women

Since its first session, in 1942, the Commission on the Status of Women has been concerned with the improvement of the legal status of women. In addition the Convention on the Elimination of Discrimination against Women in Article 2 calls for the adoption of national legal measures prohibiting discrimination against women. In Article 15 too, it states that States Parties shall accord to women equality with men before the law; that they shall accord women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity; and that they shall in particular give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. Under Article 15, further, States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void; and undertake to accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Elimination of Discrimination Against Women in Penal Law

In 1980 the Economic and Social Council on the recommendation of the Commission on the Status of Women, expressed deep concern about the fact that close relatives, particularly the spouses, mothers and children, of persons accused of penal offence are often, because of their relationship to these persons, were the victims of persecution, harassment and other infringements of their rights.²³

The Council reaffirmed the principles set forth in the Universal Declaration of Human Rights, particularly Articles 3,6,7 and 10, which governed the fundamental guarantees of the individual. It called upon Governments to ensure the strict application of these provisions, and to ensure that no one can be prosecuted, persecuted or harassed simply because of a family or social relationship with an accused or convicted person.

The Council recommended that the competent international bodies, particularly the Commission on Human Rights should find ways to put an end to such action, ensuring that all person may enjoy fundamental rights and guarantees; in particular providing effective protection for women ...²⁴

Right of Married Women to Engage in Independent Work

In 1954, the Commission on the Status of Women studied the right of married women to work, and noted that under some legal systems the husband had the powers to prevent his wife from engaging in independent work and

²³ ECOSOC Res., 1980/40 of 2 May, 1980.

²⁴ United Nations Action in the Field of Human Rights, n.7, p.88.

that he had control over her earnings. The Economic and Social Council in resolution 5473(XVIII) of 12 July 1954, recommended that Governments should take all necessary measures to ensure the right of married women to undertake independent work to administer and dispose of her earnings without the necessity of securing her husbands authorization.²⁵

In Resolution 587D (XX) of 3 August 1955 the Economic and Social Council, accepting the proposals of the Commission relating to the domicile of married women, noted that in the legal systems of many countries the domicile of the wife follows that of her husband; in these countries the wife, upon marriage, loses her original domicile and acquires the domicile of her husband which she retains until the dissolution of the marriage, even if residing separately. The Council expressed the belief that such legal systems were incompatible with the principle of equality of spouses during the marriage, and noted that their application resulted in particular hardships for married women in countries where domicile determined the jurisdiction of courts in matrimonial matters and where the law in the place of domicile governs a person's status. The Council recommended that Governments take all necessary measures to ensure the right of a married woman to an independent domicile.²⁶

Property Rights of Married Women

In most countries property relations between husband and wife are governed by a special body of regulations which are set forth by law.

²⁵ Ibid.

²⁶ Ibid, p. 103.

These sets of rules are often termed "matrimonial regimes"; the most common being community property and separate property. These control administration and ownership of property as well as the division of property when the marriage is dissolved. Other laws of inheritance are taken into consideration, in cases where marriage is ended by the husbands death.²⁷

After studying the question of matrimonial regimes, the Commission on the Status of Women prepared a draft resolution (in 1954) on the subject. This was adopted as Resolution 5471(XVIII) of 12 July 1954 by the Economic and Social Council. In the Resolution the Council expressed the belief that statutory matrimonial regimes in many countries were incompatible with the principle of equality of rights of spouses during marriage and at its dissolution; some of them deprived the wife during marriage of her rights over community property and over her own property and others deprived her at the time of dissolution of marriage of which she had participated either directly or indirectly. The Council recommended that Member States should take all necessary steps to eliminate such discriminatory provisions from their legislation. It also drew their attention to the desirability of a statutory matrimonial regime which would provide for the separation of the property belonging to the spouses at the time of marriage and either for the separation of property acquired during marriage or for common ownership of property acquired by both spouses during marriage; such community property to be administered jointly by the spouses; and in either case, on

²⁷ Ibid, p. 102.

dissolution of marriage, property acquired during marriage would be divided equally between them or their heirs²⁸.

Equal Rights and Responsibilities of Husband and Wife During Marriage

The Commission on the Status of Women in 1968 undertook a study of the status of women in private law within the framework of Article 6 of the Declaration on Elimination of Discrimination Against Women. One result of the study was the adoption by the Council, in 1974, of a resolution drafted by the Commission which noted the existence of two situations not in conformity with Article 6:

- In a number of legal systems, married women do not enjoy the right to engage freely in independent work.
- In various legal systems, the exercise of such right by the wife and her capacity to manage and dispose of her earnings from independent work are subject to limitations which do not apply to the husband.²⁹

To correct these situations the Council recommended that Member States take all the necessary measures to ensure that the legal capacity of married women is equal with that of men, concerning: (a) gainful employment outside the home; (b) the full capacity to administer their property and revenue of their work; (c) the administration of the joint property of the spouses; (d) parental authority over the children and their interest; and

²⁸ Ibid.

²⁹ The United Nations and Human Rights, n.9, p.168.

(e) dissolution of marriage and its legal effects. The Council recommended further that, in such cases, Member States provide adequate remedies, judicial or otherwise, to both spouses to help them solve their disagreements in respect of the questions mentioned above, particular emphasis being put on the necessity of mediation through competent authorities, with the assistance of personnel trained in all aspects of family relations³⁰.

Inheritance Laws as They Affect Women

In 1962 in Resolution 884D (XXXIV) of 16 July 1962 the Economic and Social Council, at the suggestion of the Commission on the Status of Women, noting that in the legal systems of a number of countries, the inheritance rights of women were not equal to those of men, recommended that Governments take all possible measure to ensure equality of rights in this field by providing³¹ :

- that men and women, in the same degree of relationship to the deceased, shall be entitled to equal shares in the estate and shall have an equal rank in the order of succession; and
- that the inheritance rights and the capacity of women to make a will, to accept or refuse an inheritance or to be administrators or executors of estates shall not be affected by marriage; and
- that the interest of the widow in the estate shall be equal to that of the widower.

³⁰ Ibid.

³¹ United Nations Action in the Field of Human Rights, n.7, p.103.

Dissolution of Marriage, Annulment and Judicial Separation

In 1965 the Commission on the Status of Women proposed, and the Economic and Social Council recommended in Resolution 1068F (XXXIX) of 16 July 1965 that Governments should take all possible measures to ensure equality of rights between men and women in the event of dissolution or annulment of marriage, or judicial separation on the basis of the following principles³²:

- Facilities for reconciliation should be made available.
- A divorce or judicial separation shall be granted only by a competent judicial authority and shall be legally recorded.
- Both spouses shall have the same rights and shall have available the same legal grounds and legal defences in proceedings for divorce, annulment of marriage and judicial separation.
- The right of either spouse to give or withhold full and free consent should be ensured by law in the event of divorce on the ground of mutual consent in countries where mutual consent is a ground for divorce.
- In proceedings regarding custody of children, the interest of the children shall be the paramount consideration.
- Divorce, annulment of marriage, judicial separation or dissolution of marriage by death shall not have as a consequence an inequality in legal status and capacity of men and women.

³² Ibid, pp. 105-106.

Parental Rights and Duties Including Guardianship

On the recommendation of the Commission on the Status of Women, the Economic and Social Council in Resolution 587D (XX) of 3 August 1953, took note of the fact that in some legal systems' parental authority belonged exclusively to the father; in some countries in the event of loss of such authority, it did not pass automatically to the mother; and in some instances, on dissolution of marriage, custody of children was awarded to the father regardless of the merits of the case.

The Council in 1967 in Resolution 1207(XLII) of 29 May 1967 recommended that Governments should take all possible measures to ensure equality between men and women in the exercise of parental rights and duties. It further recommended the following principles for ensuring such equality³³:

- Women shall have equal rights and duties with men with respect to guardianship of their minor children and the exercise of parental authority over them, including care, custody, education and maintenance.
- Both spouses shall have equal rights and duties with regard to the administration of the property of their minor children, with the legal limitations necessary to ensure as far as possible that it is administered in the interest of the children.

³³The United Nations and Human Rights, n.9, p.166.

- The interest of the children shall be the paramount consideration in proceedings regarding custody of children in the event of divorce, annulment of marriage or judicial separation.
- No discrimination shall be made between men and women with regard to decisions regarding custody of children and guardianship of other parental rights in the event of divorce, annulment of marriage or judicial separation.

Family Planning

In recent years a significant and most arduous field of inquiry on which the United Nations bodies have embarked is the study of the inter-relationship between the status of women and family planning.

The Commission on the Status of Women, in 1965 and 1966 adopted resolutions which emphasised the importance of making family planning available to married couples. In 1968, the International Conference on Human Rights, held at Tehran, Iran noted that moderation of the current rate of population growth in some areas would enhance the condition for offering greater opportunities for the enjoyment of human rights and for the improvement of living conditions of each person³⁴. It considered that couples had a basic right to decide freely on the number and spacing of their children and a right to adequate education and information in this respect.

³⁴ Ibid, p.172.

In 1968, the Commission on the Status of Women appointed one of its members, Mrs. H. Sipilä, as Special Rapporteur for a study of the status of women and family planning. The study was completed in 1973. It stressed the interrelationship between the promotion of family planning and social welfare and the role and status of women in the context of national development.

The Declaration on Social Progress and Development adopted by the Assembly in 1969³⁵, states that: "Parents have the exclusive right to determine freely and responsibly the number and spacing of their children" and recommends "the provision to families of the knowledge and means necessary to enable them to exercise that right".

In 1970 the General Assembly recommended Objectives and Minimum Targets to be achieved as widely as possible during the Second United Nations Development Decade (the 1970s), among them: "Making available to all persons who so desire the necessary information and advice to enable them to decide freely and responsibly on the number and spacing of their children and to prepare them for responsible parenthood, including information on the ways in which women can benefit from family planning. Such information and advice should be based on valid and proven scientific expertise, with due regard to the risks that may be involved"³⁶.

In 1975, the World Conference of the International Women's Year, in a Resolution entitled "Family Planning and the Full Integration of Women in

³⁵G.A. Res., 2542 (XXIV) of 11 December, 1969.

³⁶The United Nations and Human Rights, n. 9, p.173.

Development", recognised that it was necessary to provide women with information and means, to enable them to determine the number and spacing of their children. This was recognised as a necessity for integrating women in the process of development. The Conference called upon Governments to make available to all persons the necessary facilities, information and services and to prepare young people for responsible parenthood³⁷.

The Convention on the Elimination of all Forms of Discrimination provides that States Parties on the basis of equality of men and women should ensure the same rights to decide freely and responsibly the number and spacing of children and to have access to information, education and other means to exercise these rights.

Women in Development

The Commission on the Status of Women, the Economic and Social Council, the General Assembly and many other bodies within the United Nations system have sought to improve the role of women in development and in particular to achieve their effective mobilisation and integration in development programmes. The concerned bodies have noted that accelerated development required the real and effective participation of women and men in all aspects of the developmental process.

³⁷ Ibid.

Advancement of Women in Developing Countries

As early as 1960, the Economic and Social Council in Resolution 771H (XXX) of 25 July 1960, observed the need for and possibility of further United Nations assistance in the efforts of developing countries to advance the status of women. In 1962, the Economic and Social Council adopted a resolution for the advancement of women in developing countries³⁸.

The International Labour Organisation, the United Nations Educational Scientific and Cultural Organisation, the Food and Agriculture Organisation and the United Nations Children's Fund were invited by the Council to strengthen and expand their programmes designed to meet the needs of women in developing countries, and to seek new methods to achieve this purpose. Women's non-governmental organisations were also urged to supplement United Nations efforts on the national and international levels.

The Declaration on Social Progress and Development proclaimed by the General Assembly on 11 December, 1969 provides for the continuous raising of living standards through the attainment of certain goals. Since the proclamation of the Declaration, the effective mobilisation and integration of women in development has been a major concern of the United Nations system - as expressed in the International Development Strategy for the Second United Nations Development Decade³⁹ and reiterated in the Declaration and Programme of Action on the Establishment of a New

³⁸ECOSOC Res., 884 E(XXXIV) of 16 July, 1962.

³⁹C.A. Res., 2626(XXV) of 24 October, 1970.

International Economic Order⁴⁰; the Charter of the Economic Rights and Duties of States⁴¹; as well as in the Assembly Resolution⁴² on the Mid-Term Review and Appraisal of Progress in the Implementation of the International Development Strategy for the Second United Nations Development Decade and on Development and International Economic Cooperation⁴³.

The General Assembly took up other specific issues concerning integration of women in development - in agriculture, industry, science and technology⁴⁴; business and financial management⁴⁵; integration of women in formulation, design and implementation of development projects and programmes⁴⁶; economic and social development⁴⁷; development oriented studies focusing on the impact of policies aimed at mobilisation and integration of women in the development process were to be undertaken⁴⁸. The Assembly⁴⁹ also established procedures for considering within the United Nations systems, questions pertaining to the role of women in development.

⁴⁰G.A. Res., 3201 and 3202 (S-VI) of 1 May, 1974.

⁴¹G.A. Res., 3281 (XXIX) of 12 December, 1974.

⁴²G.A. Res., 3517 (XXX) of 15 December, 1975.

⁴³G.A. Res., 3362 (S-VII) of 16 September 1975.

⁴⁴G.A. Res., 3505 (XXX) of 15 December, 1975.

⁴⁵G.A. Res., 3522 (XXX) of 15 December, 1975.

⁴⁶G.A. Res., 3524 (XXX) of 15 December, 1975.

⁴⁷G.A. Res., 31/175 of 21 December, 1976.

⁴⁸G.A. Res., 33/185 of 29 January, 1979.

⁴⁹G.A. Res., 36/127 of 14 December, 1981.

The integration of women in the development process was a major focus of the World Conference of the International Women's Year (1975). In the World Plan of Action seven resolutions were adopted which deal with the question. In the Programme of Action for the Second Half of the United Nations Decade for Women, Copenhagen 1980 the recommendation was adopted which aimed at "strengthening and implementing, national, regional and global programmes aimed at women's integration in development - revising and redefining, if necessary development concepts, objectives and policies to achieve it"

The International Development Strategy for the Third United Nations Development Decade in 1980⁵⁰ emphasised that social and economic changes should include women's greater access to nutrition health services, education and training employment and financial resources and their greater participation in the analysis, planning, decision making, implementation and evaluation of development. Changes should also lead to the sharing of responsibilities by men and women in the family and equal participation in the management of the household should be encouraged.

Participation of Women in Community Development

The Commission on the Status of Women recognises the great importance of community development in stimulating the advancement of women. Community development is the process by which the efforts of the people are united with governmental authorities to improve the economic, social and

⁵⁰G.A. Res., 35/78 of 5 December, 1980.

cultural conditions of communities, to enable them to contribute fully to national progress⁵¹. Participation of women in community development is focused on three points : (a) extent of women's participation in community development programmes specially in rural areas; (b) the ways in which these programmes have helped to advance the status of women; and (c) the making of recommendations to improve the status of women and benefit the programmes themselves⁵².

Improvement of the Situation of Women in Agricultural and Rural Areas

Women in some countries who live in rural areas make up the majority of the female working force. Although they account for a substantial share of food production and play the main role in procuring and preparing food for family consumption and in other aspects of family life, they usually have very low socio-economic status as compared to male agricultural workers.

For employment in agriculture, training of women is extremely important. An increase in the contribution of women agricultural workers to the development of their countries could solve many serious economic and social problems, but severe handicaps of rural unemployment, underdevelopment and misallocation of human resources affect women adversely.

⁵¹United Nations Action in the Field of Human Rights, n.7, p. 110.

⁵²Participation of Women in Community Development (United Nations publication, Sales No. E.72.IV.8).

The Commission on the Status of Women and other competent bodies within the United Nations system especially International Labour Organisation, and Food and Agriculture Organisation have endeavoured to find methods to improve the condition of women in rural areas. The World Conference of International Womens Year (1975), the World Conference of United Nations Decade for Women: Equality Development and Peace (1980) also took up the issue. The Copenhagen Conference called upon Governments to ensure that rural women inter alia⁵³: (a) are provided with education, technology and training suitable to their needs in order to improve employment opportunities in rural areas; (b) have access to credit and financing mechanisms on a basis of equality with men; (c) are encouraged to participate in organisations concerned with marketing; and (d) have free access to participation in rural industrialisation programmes.

Women and Mass Communication Media

The Commission on the Status of Women in 1972 noted that, in its efforts to promote the advancement of Women, a serious obstacle had been encountered which was the deep-rooted attitudes imbeded in men and women, which tended to perpetuate the status quo. These, it observed were due to a large extent determined by cultural concepts about men and women. These were being disseminated on a vast scale as a result of technical advances in mass communication media⁵⁴.

⁵³The United Nations and Human Rights, n.9, p.168.

⁵⁴Ibid, pp. 175-176.

In 1974, the Commission recommended to the Economic and Social Council, and the Council concurred in the adoption of a resolution inviting all organisations of the United Nations system, particularly UNESCO, to increase their audio-visual material and to develop their programmes in such a way so as to promote the integration of women in development.

In 1976, the Commission decided to appoint a special Rapporteur, Mrs. Esmeralda Anboleda Cuevas to study the impact of mass communication media on the changing roles of men and women. The report was submitted in 1983. The Commission and Council took note of the report and stated their recognition of the importance of the problems; it outlined and called upon those responsible for the content and presentation of material in mass communication media to make efforts to present in a more balanced manner the right of women to enjoy equal rights and opportunities with men.

As suggested by the Commission and the Council, the report served as a background document for the World Conference of the United Nations Decade for Women, held at Copenhagen in 1980. An Expert Group meeting was convened at Vienna from 24 to 27 November 1981 to develop guidelines, for the media. It decided, however, to prepare "proposals for action" rather than guidelines. These proposals called for measures to be taken at the community, media organization and national and international levels. The Expert Group's report was later published under the title 'Women and the Media'⁵⁵.

⁵⁵ Ibid.

International Women's Year (1975)

In 1972, the General Assembly in Resolution 3010(XXVII) of 18 December, proclaimed the year 1975 as International Women's Year. A programme for International Women's Year was adopted by the Economic and Social Council in Resolution 1849(LVI) of 16 May 1974. Its full implementation was called for by the General Assembly in Resolution 3275 (XXIX) of 10 December 1974.

It was decided to devote the year to intensified action to promote equality between men and women, to ensure full integration of women in the developmental effort in all its aspects, and to recognise women's contribution to development of cooperation and friendly relations amongst States.

The focal point of the International Women's Year was the World Conference held at Mexico City from 19 June to 2 July 1975.

Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace

The Declaration of Mexico was adopted by the World Conference of the International Women's Year, the first major international conference taking up women's problems. The Conference was held to examine to what extent the United Nations system had implemented recommendations for the elimination of discrimination against women which had been made by the Commission on the Status of Women. There was an effort to launch an international action

programme which was to include short term and long term measures aimed at achieving the integration of women as full and equal partners in the total development effort and eliminating discrimination on the grounds of sex, and, to achieve the widest involvement of women, for strengthening international peace.

The Conference adopted the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975; the World Plan of Action for the Implementation of the Objectives of the International Women's Year; regional plans of action; 35 resolutions; and a decision recommending the convening of a second world conference in 1980⁵⁶.

The Declaration urged State Parties, the United Nations system and the international community to dedicate themselves to the creation of a just society for men and women.

World Plan of Action for the Implementation of the Objectives of the International Women's Year

The World Plan of Action was adopted by the World Conference of the International Women's Year. It defines a society wherein women participate in the real and full sense in social, economic and political life. The Plan, including its proposals for action was endorsed by the General Assembly in Resolution 3520 (XXX) of 15 December 1975.

⁵⁶ Report of the World Conference of the International Women's Year Mexico City, 19 June - 2 July 1975, (United Nations publication, Sales No. E.76.IV.1)

The aim was to stimulate action at the national, regional and international levels, to solve such problems which place women in an inferior position, elimination of discrimination against women, the integration of women in development and to increase the involvement of women in political life and in international co-operation and the maintenance of peace.

The World Plan of Action establishes nine key areas for national action. Among the guidelines for implementation are: international co-operation and peace; political participation; education and training; employment; health and nutrition; the family; population; housing and other social questions.

It addresses a wide range of issues and outlines strategies for improving the treatment of women in administrative, legislative, economic, political and other areas. It particularly emphasises the need to redefine sex roles within the family and aims at eliminating discrimination in all its forms.

International Research and Training Institute for the Advancement of Women

The World Conference of the International Women's Year 1975, recommended the establishment of an International Training and Research Institute for the Advancement of Women, under the auspices of the United Nations. It was to be financed through voluntary contributions which would⁵⁷: (a) undertake research and collect and disseminate information as a

⁵⁷The United Nations and Human Rights, n.9, p. 186.

basis for the formulation of programmes and policies for the effective participation of women; (b) assist in the design of research for monitoring changes in the situation of women and the impact on their lives, of economic, social and technological changes; and (c) develop, adapt and provide training courses for women, in particular those of developing countries, which would enable them to undertake national research, to assume leadership roles within their own societies, and to increase their earning possibilities.

The Institute with its permanent headquarters at Santo Domingo Dominican Republic was endorsed by the General Assembly in 1983.

Voluntary Fund for the United Nations Decade for Women

In 1974 the Economic and Social Council established the Voluntary Fund for the International Women's Year (1975). In December 1975, the General Assembly decided that the Voluntary Fund should be extended to cover the period of the Decade for Women.

In 1976 the Assembly decided that the Fund should be used for⁵⁸: (a) technical co-operation activities; (b) development and/or strengthening of regional and international programmes; (c) development and implementation of joint inter-organizational programmes; (d) research, data collection and analysis, relevant to (a) - (c) above; and (e) communication support and public information activities designed to promote the goals of the Decade and, in particular, the activities undertaken under (a) - (c) above.

⁵⁸United Nations Action in the Field of Human Rights, n.7, p.122.

In selecting projects and programmes the Assembly emphasised that special consideration should be given to those groups of women who are especially disadvantaged.

In 1985, the Voluntary Fund for the Decade became the United Nations Development Fund for Women (UNIFEM) under the aegis of the United Nations Development Programme (UNDP).

United Nations Decade for Women : Equality, Development and Peace (1976-1985)

After taking note of the report of the World Conference of the International Women's Year and endorsing the proposals emanating from that Conference, the General Assembly, in Resolution 3520 (XXX) of 15 December 1975, proclaimed the period 1976 to 1985 the United Nations Decade for Women: Equality, Development and Peace. The Decade was to be committed to effective and continuous national, regional and international actions, to implement the resolutions and decisions of the Conference. The General Assembly, in the same resolution, decided to convene in 1980, at the mid-term of the Decade, a World Conference to Review and Evaluate the Progress Made in Implementing the Objectives of the International Women's Year.

The General Assembly approved the Programme for the United Nations Decade for Women⁵⁹, which focused on the first half of the Decade, 1976 to 1980; urged Governments and United Nations bodies to take all necessary

⁵⁹C.A. Res., 31/136 of 16 December, 1976.

steps to give effect to the Programme and to give it priority in view of the real need to attain the goals of the Decade; called upon Governments to take measures to ensure equal and effective participation of women in political, economic, social and cultural life and in policy-making at local, national, regional and international levels, thereby increasing their role in international co-operation and in the strengthening of peace; and recommended that Governments should establish machinery, where appropriate, which could include governmental and non-governmental agencies, in order to ensure the effective implementation and evaluation of the World Plan of Action within the framework of national development plans and regional policies.

The Assembly invited the organisations of the United Nations system to develop and implement a Joint Interagency Programme for the Integration of Women in Development. In Resolution 31/18 of 16 December 1977, the General Assembly noted that the Joint Interagency Programme for the Integration of Women in Development, the establishment of which it had called for in Resolution 3520 (XXX) of 16 December 1975, had been established and was functioning.

In Resolution 33/185 of 29 January 1979, the General Assembly invited the relevant organizations of the United Nations system to review the progress made as well as constraints and specific problems encountered in their technical and operational areas in the achievement of the objectives of the Decade, and to suggest appropriate programmes for the Second Half of

the United Nations Decade, with special emphasis on the sub-theme "Employment, Health and Education."

World Conference of the United Nations Decade for Women : Equality
Development and Peace

In conformity with the General Assembly Resolution 33/191 of 29 January 1979, the World Conference of the United Nations Decade for Women; Equality, Development and Peace, was held at Copenhagen from 14 to 30 July 1980⁶⁰.

It formulated at the mid-point of the United Nations Decade for Women, a Programme of Action for the Second Half of the Decade, 1980-1985.

The programme was designed to promote the attainment of the three objectives of Equality, Development and Peace, with special emphasis on the sub-themes - namely, Employment, Health and Education - as significant components of development, taking into account that human resources cannot achieve their full potential without integrated socio-economic development. It aimed at strengthening comprehensive and effective strategies to remove obstacles and constraints on women's full and equal participation in development, including actions to solve the problems of under-development and of the socio-economic structure which places women in an inferior position and to increase their contribution to the strengthening of world peace.

⁶⁰Report of the World Conference of the United Nations Decade for Women: Equality Development and Peace, Copenhagen 24-30, July 1980. U.N. Doc. A/Conf. 94/35 (Sales No. E.80.IV.3).

In addition to preparing the Programme of Action for the Second Half of the Decade, the Conference reviewed and evaluated the progress made and obstacles encountered in attaining the objectives of the Decade at the national, regional and international levels from 1975 to 1980.

Later that year, the General Assembly endorsed the new Programme of Action⁶¹, and urged the Governments to ensure its implementation at the international, national and regional levels.

Programme of Action for the Second Half of the United Nations Decade for Women

The Programme of Action designed for the second half of the United Nations Decade for Women was based on an appraisal of the progress made to implement the World Plan of Action during the first half of the Decade.

The Programme states that its purpose is "to redefine and strengthen practical measures for advancing the status of women, and to ensure that women's concerns are taken into account in the formulation and implementation of the International Development Strategy for the Third United Nations Development Decade".

The Programme covers a broad range of economic, political, social and legal issues related to the status of women. It calls for measures to improve the position of women in all fields at the international as well as at the national level. Special attention is paid to health and nutrition,

⁶¹G.A. Res., 35/136 of 11 December, 1980.

training for employment, education and the particular needs of women among the rural and urban poor.

At the international level, the Programme recommends that the United Nations system and its various organizations should support the efforts towards establishing and strengthening national, regional and global programmes designed to advance the status of women as well as aimed at the integration of women in development. At the regional level, responsibility is placed on regional commissions to provide assistance to Governments in developing strategies, policies and programmes for the second half of the decade. It also sets out guidelines for the formulation of regional policies and programmes. At the national and local levels high priority is accorded to accelerating the equal and full participation of women in economic as well as social development.

World Conference to Review and Appraise the Achievements of the United Nations Decade for Women

The General Assembly decided to convene a World Conference to Review and Appraise the Achievements of the United Nations Decade for Women. In 1981, it called on the Commission on the Status of Women in Resolution 36/126 of 14 December to act as the Preparatory Body for the Conference. Finally the General Assembly in Resolution 40/108 of 13 December 1985 decided to convene the Conference⁶².

⁶²Report of the Conference to Review and Appraise the Achievements of the United Nations Decade for Women : Equality Development and Peace, Nairobi, Kenya 15-26, July 1985. U.N. Doc. A/Conf. 116/28 (Sales No. E.85.IV.18).

The United Nations Conference had two main functions : (i) to review and appraise the progress achieved and the obstacles encountered by the United Nations System at the regional and international levels and attaining the goals and objectives of the United Nations Decade for Women and (ii) to adopt the Document-Forward Looking Strategies of Implementation for the Advancement of Women and concrete measures to overcome obstacles to the achievement of the goals and objectives of the United Nations Decade for women for the period 1986 to the year 2000.

During the Conference it was noted that progress was most substantial and visible in the field of legal equality. With a few exceptions, governments had granted constitutional or legislative provisions guaranteeing equality between men and women.

Regarding the aspect of Development the Conference recognised the necessity to fully integrate women in development. Several countries reported the inclusion of women in national planning and policy objectives. Nevertheless, it has been observed that development did not always benefit women and that their integration in the development process could mean further marginalisation in the labour market.

It is important to re-assess the meaning of the phrase integration of women in development to ensure that it does not result in perpetuating the position of women as a disadvantaged group or increase their "double burden" without adequate remuneration in the name of development⁶³. It has

⁶³ K Saradmoni, "Beyond Nairobi", in B.K. Pal, ed., Problems and Concerns of Indian Women (New Delhi : ABC Publishing House, 1987), p.T02.

been observed that for women development should be seen within the purview of the new international economic order.

With regard to Peace the Decade has been successful in building public awareness of the need for women to participate actively in the area of peace and disarmament, particularly in the peace movements. The Decade has created the need to enhance the meaning of peace that is to understand peace as the absence of conditions that produce violence and destruction of the family at local, national and international levels. "Peace could also refer to a state of affairs in which resources - materials, human and information are properly allocated and managed and, thus, promote social justice."

The Decade has contributed in the realm of widening the scope and extent of the goals of the decade - equality, development and peace. It links absence of war at the international and national sphere to absence of strife at home and a new international economic and information order to women's status and equality. When the goals had been set at Mexico (1975) the linkages were not clear or sharp⁶⁴.

With respect to the progress made during the Decade in areas namely Employment, Education and Health, the observations are quite significant. In the fields of Employment it was noted that both in 1975 and 1985 women comprised 35 per cent of the world's labour force, occupied positions at the bottom of job hierarchies and earned less than men. Some countries

⁶⁴ Ibid, pp.102-103.

however, showed signs of decreasing gap in earnings between women and men, and of diminishing occupational segregation in industry.

In Education, substantial improvements in educational opportunities and in the actual enrolment of girls and young women have occurred during the Decade. In this context, the United Nations Review Document observed that the influence of the media cannot be under-estimated in promoting non-sexist images of women.

Regarding Health, the data analysed by the United Nations showed that the standards have risen for women during the Decade. The average life expectancy for women in developing countries is now 57 years and that in industrialised countries 73 years. But in some countries of Asia and Africa it is less than 50 years. An important obstacle was the lack of recognition of maternity as a distinct and essential social function which can only be performed by women and hence deserves specific support.

It must be noted that threats to global peace, escalation of arms race, racial discrimination and exploitation of economic relations among nations have been recognised as obstacles to women's development. At the national level, attitudes perceiving women as inferior to men have been cited as a major obstacle. Moreover attitudes which treat women as passive and subordinate members of the society have been found to be accepted both by men and women.

The year 2000 is the next marking point in the political economic and social liberation of women according to the Forward Looking Strategy.

At the Conference the following strategy to achieve equality for women throughout the world was drawn up⁶⁵:

- a) Set up an Emergency Committee of Women for expressing concern, and mobilising world opinion against any violation of civil, legal and human rights of women.
- b) Work towards the setting up of an International Commission on Women's Rights which would aim at (1) creating a net work of women's organisations which would exchange information and share experiences on women's struggles for their rights in different parts of the world; (2) formulating draft legislation in specific areas of concern for women at the regional and international levels and (3) conducting research in areas of special concern for women.
- c) Planning for regional conferences to bring together women's organisations so as to exchange information and share experiences on strategies and to co-ordinate research and action at the regional level on issues of Women, Law and Development.
- d) Beginning a campaign entitled "Know Your Legal Rights" for empowering women throughout the world. Such a campaign would include : (1) popularising the language of the law, using mass media and other strategies to demystify the law and to make it more accessible to the people; (2) working towards an "Alternative Law" which maximises women's rights but which is drawn from the language, the reality and

⁶⁵P.D. Kudal, "The Women, the Constitution and the Law", Journal of Constitutional and Parliamentary Studies, vol. 21, nos.1-2, January-June 1987, pp. 69-70.

CHAPTER THREE

SOCIO-ECONOMIC SITUATION IN INDIA

Social structure, cultural norms and value systems are important determinants of women's roles and their position in society. In a country like India, the inequalities inherent in her traditional social structure, based on caste, community and class have a very significant influence on the status of women in different spheres.¹ The subjection of Indian women is therefore rooted in the social and economic structure of the society of the period. Moreover, the inferior status of women in the society was further made sacrosanct by religious ordinances. Religion provides ideological and moral bases for the accorded status and institutionalised roles of women in society.² The social restrictions on women, and also the people's notions about their proper roles in the domestic and extra-domestic spheres, are largely derived from the religious conceptions of a woman's basic characteristics, her assumed 'virtues' and 'vices', her proverbial strength and weaknesses.³

Ancient Indian society was highly structured and well organised with the fundamental rights and duties not only of individuals but of classes, communities and castes clearly laid down. The concept of Dharma, the supreme law which governed the sovereign and the subject alike covered the basic principles involved in the theory of rights, duties, and freedoms. Thus the concept of human rights is neither entirely western in

¹ Towards Equality, Report of the Committee on the Status of Women in India (New Delhi: Department of Social Welfare, 1975), p.3.

² Ibid, p.38.

³ Ibid.

origin nor so modern.⁴ Women in the early period of Indian history enjoyed rights and freedoms equal to men. It was only with the establishment of caste system and mistranslation of religious texts, that women's position began to decline. For a proper assessment of the status of women, a brief resume of the background of Indian women through the ages is essential.

As early as the Indus Valley Civilisation of Harappa and Mohenjodaro, women occupied a position of honour and importance as evident in the prevalence of the worship of mother goddess.

Vedic period represented Indian classical age when the culture and civilisation were at their height of glory. In the Vedic period, 2,500-1,500 B.C., women enjoyed freedom for spiritual progress and intellectual development. The Rig Veda shows that women were the equals of men in their rights and privileges in society, in their access to education and training and in their learning and participation in religious functions.⁵

In social and religious gatherings women occupied a prominent position. They moved freely in society. They could freely attend mixed public functions, social, religious or intellectual. The position of the wife was an honoured one in the family, and by and large monogamy was the rule. There was no child marriage. Widows could re-marry. Swayamvar or self-choice of a husband was in vogue. However, marriage itself was not

⁴Subhash C. Kashyap, Human Rights and Parliament (New Delhi: Metropolitan, 1978), p.19.

⁵Madhuben K.Shah, "Woman-Past, Present and Future- (1)," Swarajya, vol. 19, no. 14, October 1974, p.3.

compulsory. Women with aptitude for learning and intellectual pursuits were free to devote their lives to them and remain single.⁶ Many women had distinguished themselves as philosophers, debators and teachers like Lopamudra, Gargi, Vachaknavi and Maitreyi. The Vedic literature contains no less than 20 hymns, authored by women. Even the abstruse Upanishads, preserve the conversations of Gargi and Maitreyi.

Cokhale and Basham pointed out that though the Rig Vedic society was a patriarchal one, women were not at that time confined to the home.⁷

Regarding women's right to property, it was limited. A married woman had no share in the property of her father or husband. She could hold or inherit no property. Apart from the lack of proprietary rights women could not become queens or regents in their own rights. Moreover, in gambling, a woman could be put at stake.⁸

It has been argued that the freedom enjoyed by women in this early period is attributed to political and religious cause. "The general freedom and better status enjoyed by women in Vedic period was largely due to men being engrossed in the work of conquest and consolidation. Women used to take an active part in agriculture, and in the manufacture of cloth, bows and arrows and other war materials. **They were** useful members

⁶Sucheta Kripalani, "Woman-Past, Present and Future-(2)," Swarajya vol.19, no. 15, October, 1974, p.3.

⁷Louella L. Prabhu, "Woman in India - Past, Present and Future-(4)," Swarajya, vol. 19,no. 17, October 1974, p.3.

⁸Radha Krishna Sharma.Nationalism, Social Reform and Indian Women (Delhi: Janaki Prakashan, 1981), p.3.

of society and could not be treated with patronage and contempt".⁹

In the post-Vedic period, 500 B.C. to about 600 A.D., caste system and the priestly oligarchy came to be firmly established.¹⁰ These changes slowly deprived the women of the privileges, she had enjoyed previously and opened the door to a flood of social evils. The woman was no longer eligible for Vedic studies and sacrifices. This denigration of womankind had far-reaching effects upon their social position. The birth of a daughter was deplored and her education practically stopped.

Manusmriti or the code of Manu is the important source of information regarding the rights and duties of men and women of this period. In Manu's Code, a woman ceased to be man's equal in her own right. In a man's world her position was one of subordination. Manu disapproved niyoga or widow marriage and intercaste marriage. Women were deprived of the right to secure education. She was also denied the right to study the scriptures and even to remain unmarried.¹¹ As a matter of fact Manu denied freedom to a woman during any period of her life. Manu had ordained that a maiden should be protected by her father, a wife by her husband and a widow by her sons.¹² He approved early or pre-puberty marriage for a girl, and a man of

⁹A. S. Altekar, 2nd Ed., The Position of Women in Hindu Civilization (Delhi: Motilal Banarsidas, 1977), pp.413-414.

¹⁰Radha Krishna Sharma, n. 8, p.4.

¹¹Ibid.

¹²Kamala Mankekar, Women in India (New Delhi: Central Institute of Research and Training in Public Co-operation, 1975), p.5.

30 or 24 could marry a girl of 12 or 8. Moreover, the code of Manu put many limitations on women from which man was kept free. A man could have more than one wife but the wife had no option to have a second husband.¹³

As wives and daughters no longer had the same access to learning as they enjoyed in the earlier period and consequently lost some of the privileges of participation in religious functions, the procreation of a son became a religious necessity as he alone could perform certain religious functions and rituals. The man thus became the superior of woman in social and religious matters.¹⁴

The rise of Buddhism meanwhile, tried to retrieve and restore the position of women in social life. They were eligible for admission to the religious order - the Bhikshuni Sangha. Many achieved distinction as teachers and scholars. Not only did these women enjoy prestige and respect in the country, but travelled abroad to preach the faith.

From 500 A.D. to 1200 A.D., there was further deterioration in women's position in society. Hindu religion had become complicated, its interpretation confused; the people less learned. The period between the invasion by Mohammed of Ghor and the advent of British rule in India, brought a setback to the position of Indian women. Till the 12th century there had been no 'purdah' among Indian communities and women had enjoyed a degree of freedom of movement. However, during this period, in the face of constant invasions when menfolk were often away fighting battles, it was

¹³Radha Krishna Sharma, n. 8, pp.3-4.

¹⁴Kamala Mankekar, n.12, p.4.

considered safer to keep women in seclusion. This was the origin of the 'purdah' system.¹⁵ As 'purdah' restricted the movement of women outside the home, it proved an impediment to their education. It also made women increasingly dependant on men for activities outside the home.

At the same time constant political strife created an atmosphere of uncertainty and insecurity among the people. Protection of young, single women became a problem for their guardians. This situation gave impetus to undesirable social practices like female infanticide, child-marriage and sati.

The medieval period in India saw both Hindu and Muslim women losing all their liberal activities and becoming property of their male masters.

The social evils reached their climax in the 18th century which is recorded as one of the darkest periods in Indian History. One aspect of this period was the wide prevalence of the rite of widow burning or sati, though the rite had been prevalent amongst upper caste Indians for at least two thousand years¹⁶. The origin and extent of the inhuman practice of sati is not known. However, reference has been made by Manu who says that "after the death of her husband a wife must practice austerities or ascend the pyre after him".¹⁷ The custom became prevalent with the religious ban

¹⁵ Ibid, p.6.

¹⁶ Krishna Basu, "Movement for Emancipation of Women in the Nineteenth Century", in Renuka Ray et.al. Role and Status of Women in Indian Society (Calcutta: Firma KLM Pvt. Ltd., 1978), p. 138.

¹⁷ Kamala Mankekar, n. 12, p.6.

on widow remarriage. The basic rationale behind this practice seems to be two-fold; to ensure preservation of the chastity of a widow, and the desire for economic benefits from the assets of the deceased by claimants other than the widow.¹⁸

The Bhakti Movement of the period tried to give relief to women. It proclaimed the principles of love and equality for all. Women also came to be associated with this movement. Meera Bai was the best representative of the women Bhaktas and her inspiring and devotional songs in honour of Krishna won her enduring fame. But the impact of the Bhakti Movement did not prove permanent.

It is true that Indian History recorded instances of outstanding women like Gargi, Chandbibi, Nurjehan, Razya Begum, Rani of Jhansi, Mirabai and Ahalyabai, who accomplished great feats in the spheres of literature, art, philosophy, administration and even warfare. But these women sprang from the governing privileged strata of society and were, therefore, free from conditions of social subjection in which the Indian women, in the mass, lived and who had therefore, neither freedom nor opportunity for the development of self-expression.¹⁹

With the establishment of British rule in India came the Western ideas and culture. The impact of English education and Western liberalism, revealed the deplorable condition of Indian society and the utter necessity

¹⁸ Ibid.

¹⁹ A. R. Desai, 5th Ed., Social Background of Indian Nationalism, (Bombay: Popular Prakashan, 1984), pp.273-274.

of reforms to eradicate these social evils. This resulted in a number of movements for social change and religious reforms in the 19th century. The women's question came up as a part of the Hindu social reform movement.

The broad aim of these movements in the social sphere were specially emphasizing caste reform or caste abolition, improvement in the rights and status of women and generally against social and legal inequalities. The latter, involved an attack on certain social institutions and practices like child marriage, position and treatment of widows, seclusion and the denial of women's rights to property and education; the roots of which lay in the religious traditions of different communities.²⁰

Leaders of the reform movements, therefore, realised that it was difficult to separate social reforms from religious reforms. It was, therefore, inevitable that the movement for social reform should develop within the folds of each religion rather than as a unified movement for the transformation of the society as a whole.²¹

The new reformist zeal took two different lines for the amelioration of women's position - (1) social upliftment of Indian women through the abolition of useless customs of sati, child marriage, and enforcement of widow remarriage and (2) female education.

Raja Ram Mohan Roy was the first Indian in modern times to initiate social reforms and champion the cause of women. He pioneered the agitation

²⁰ Towards Equality, n.1, p.50.

²¹ Ibid, p.51.

against the heinous practice of sati. In his crusade against the social evils, the most effective weapon was his intelligent use of the press. In 1818 and 1819 he published pamphlets against sati and appealed to the government to put an end to this practice on humanitarian grounds. The practice was rendered illegal by Lord William Bentinck's Regulation XVII of 1829.²²

Increasing contact with Western liberalism, growing social consciousness among masses and numerous reform societies, heralded another crusade on the social front i.e., of widow remarriage. The chief promoter of this reform movement was Pandit Ishwar Chandra Vidyasagar. In 1856 he published a pamphlet "Marriage of Hindu Widows" and presented a petition to the government on the issue. The agitation, with support from the press and British officials, led to the Act of 1856 which legally permitted the remarriage of widows; but social custom was difficult to change by legislation.²³ However, it helped in the stirring up of social conscience.

The next prey to the nineteenth century reformists' onslaught was the practice of polygamy and Kulinism which permitted the Kulin Brahamins to marry an indefinite number of wives in order to satisfy the desires of the bride's families to have daughters wedded to men of one of the highest Brahmin castes.²⁴ In 1870s, Vidyasagar wrote tracts exposing the evils of

²² Kumari Jayawardena, Feminism and Nationalism in Third World: In Nineteenth and Early Twentieth Century (The Hague: Institute of Social Studies, 1982), p.83.

²³ Ibid, pp. 83-84.

²⁴ Krishna Basu, n.16, p.44.

polygamy, but government policy at that time was against too much interference in traditional practices effecting family life.

The evil practice of female infanticide was also abolished by 1870. The practice of female infanticide followed²⁵ (i) religious dictums in favour of child marriage, and (ii) foreign invasions which made protection of maidens an arduous task. A girl, it was ordained by priests, must be married between the age of 6 and 10, before she attained puberty. The match had to be arranged between equals in caste status. Often when parents failed to secure a suitable match in the short span of 4 years they suffered religious and social disgrace. Female infanticide provided escape from such situations.

The issue of child marriage was also one that was taken up by social reformers of the 19th century. Unlike sati, polygamy and the ban on widow remarriage, which affected the upper segments of society, child marriage was widespread among Hindus. The practice was considered a religious and social obligation by 'higher' castes and a means of protection of daughters (from men with economic power) by the lower castes; in addition it was an economic saving, since male children commanded lower dowries.²⁶ The reformers best known for their agitation on this issue were Keshab Chandra Sen and Vidyasagar. As a religious reformer, Sen urged that the practice of child marriage was a corruption of the scriptures. Vidyasagar pointed out in 1850, that child marriage was linked to the problem of Indian widows

²⁵Kamala Mankekar, n.12, p.7.

²⁶Kumari Jayawardena, n.22, p.84.

- as many of the child brides were widowed at an early age. In 1872 some success was achieved with the Marriage Act which set a lower age limit for marriage of 14 for girls and 18 for men.²⁷ Further agitation and publications by reformers like Behramji Malbari who had used the press for the campaign against child marriage, led to the Age of Consent Bill of 1891, which raised the legal age of consent for consummation from 10 to 12.²⁸

Another Act in 1925, made distinction between marital and extra-marital sexual consummation. It raised the age of consent to 13 in the case of former and 14 in the case of latter. In 1928 the Age of Consent Committee raised the age of consent to 15 years and 18 years respectively. However, this did not result in any further positive legislation, except the enactment of the Child Marriage Restraint Act [Sarda Act (1929)].²⁹

Another area of agitation was that of property rights for Hindu women. Women, specially Hindu women suffered many disabilities on this score as the two old systems of succession were in force : the Mitakshara and the Dayabhanga dealing with property rights. In the former coparcenary, only the father and the male descendants of four generations from the common ancestor could hold joint family property. A female (wife, daughter or sister) was excluded from inheritance rights. Under the Dayabhanga system

²⁷ Ibid, pp.84-85.

²⁸ Krishna Basu, n. 16, p.50.

²⁹ Sachchidananda and Ramesh P. Sinha, Women's Rights: Myth and Reality (Jaipur: Printwell, 1984), pp.34-35.

the daughter got an equal share with the brothers and she was also a coparcenary to the property.³⁰

The existing unwritten practice was particularly harsh on Hindu widows who had no claim on the husband's property except the right of maintenance, making widows dependent on and at the mercy of their husband's relatives. In 1874, the Right to Property Act gave a widow a life interest in her husband's share of the property and a share equal to that of a son. However, the Act did not give a widow the right to own or dispose of this property and daughters continued to be excluded from rights of inheritance.³¹ Later the Indian Succession Act of 1925 made provisions for a husband or wife to inherit the property of whoever died first. The Hindu Women's Right to Property Act 1937, for the first time gave a wife, a widow or daughter absolute right to property.

Efforts to tackle the existing social problems were also supported by Brahma Samaj in Bengal, Arya Samaj in the North and by Prarthana Samaj and enlightened social leaders like Mahadeo Govind Ranade, R.G. Bhandarkar, G.C. Agarkar, G.K. Gokhale and D.K. Karve in Western India.

Apart from the social upliftment of Indian women, the other factor that attracted the reformers was the question of female education. Female education was not a new invention of the nineteenth century reformers.

³⁰Shahnaz Anklesaria, "Law and Women's Status: Property Laws as Symbols of Sex Discrimination", Social Action, vol.35,no.2, April-June 1985, p.133.

³¹Kumari Jayawardena, n.22,p.85.

Even in the past, especially in the Vedic Age, women played an important part in the scholastic field. With the increasing rigidity of customs and misinterpretation of the Shastras, there was general reluctance to send girls to educational institutions. Moreover, the practice of child marriage, 'purdah' system, lack of girls' schools, retarded the growth of female education.

Many liberal reformers campaigned in favour of female education, Vidyasagar being at the forefront of the campaign establishing forty girls schools in Bengal between 1855 and 1858. Indian reformers believed that social evils could best be eliminated through education and that education would contribute to national progress. Many Indian reform groups like the Arya Samaj and Brahmo Samaj ran educational institutions for women and Indian women, such as Pandita Ramabai, and Ramabai Ranade were involved in projects for female education.³² Already by the 1870s, women had begun to write literary works in English, one notable example being a Bengali writer Toru Dutt. Education enabled some women to break through into avenues of employment previously denied to them.

Along with the Hindu social reformers, the Muslims also began action in the field of social reform in the late 19th century. Many of the issues agitating the Hindus did not apply to Muslim women since Muslim law permitted widow remarriage, divorce and a share of parental property. However, concern was expressed by Muslim social reformers on issues such as polygamy, 'purdah' and female education. The most prominent Muslim

³² Ibid, p.86.

reformer was Syed Ahmed Khan, who pioneered Muslim higher education and in 1875, founded the Aligarh Muslim University. Other reformers included Badruddin Tyabji who campaigned against the 'purdah' system and his wife Amina Tyabji started a Muslim girl's school in 1895.³³

In the late nineteenth century, the reform movement, to a certain extent, merged with national resurgence inspired by Gandhi, Tilak and Gokhale, with political emancipation of the country as its goal. The founding of the National Congress in 1885 provided the spring board to political and national activity for Indian women.³⁴

The freedom movement under the leadership of Gandhi acted as a catalytic agent in breaking the barriers and bringing out women in the field of man's work. The period especially after 1919 saw the rapid entry of Indian women into politics. They not only enthusiastically exercised the limited suffrage granted to them but even participated in mass movements started by the Indian National Congress as in the Swadeshi (1904-1911), Non-cooperation (1918-1923), Civil Disobedience (1930-1934) and Quit India (1942) Movements.³⁵ This was unique in the entire history of India, the spectacle of hundreds of women participating in political mass movement, picketing of liquor shops, marching in demonstrations, courting jails. At one stroke, the Indian women broke through their age long restrictions. From docile domestic housewives they rose to the level of

³³ Ibid, pp.90-91.

³⁴ Kamala Mankekar, n.12,p.9.

³⁵ A. R. Desai, n.19, p.278.

citizens, voting political programmes and participating in political movements.³⁶

This awakening of Indian women was the manifestation of the growth of national sentiment and democratic urges for national and individual liberty among them. The women's cause found able leaders in women like Sarojini Naidu, Raj Kumari Amrit Kaur, Kamaladevi Chattopadhyaya, Durgabai Deshmukh etc. It also found organised expression in the formation of national bodies like the All India Women's Conference (founded in 1926), the Women's Council (founded in 1920), the State level bodies like the Jyoti Sangha (1934) in Gujrat and the Sri Ratan Tata Industrial Institute (1938) in Maharashtra.³⁷

The involvement of these organisations in the struggle for political freedom had taken women a long way from the position they had reached under the reformers. However, the women's movement had not yet reached the masses. It continued to belong to a veneer of the upper class elite. Besides, it was so neatly merged with the nationalist movement for political freedom and social reform that it never really sorted itself out as a separate force. With the lapse of time, the accent shifted from strong and sporadic institutionalised efforts to socio-economic and legal efforts.³⁸

³⁶ Ibid, p.279.

³⁷ Sachchidanda and Ramesh P. Sinha, n.29, p.3.

³⁸ Ibid, p.4.

Reference to women's economic activities are extremely sparse in Indian history. The economic activities of women were mainly growing food, spinning and weaving, preparing perfumes etc. Economic legislation affecting women's work status included limiting house work in organised industries, prohibiting night work, restricting work in the mines, establishment of creches etc. It may be noted that though women of the lower strata worked for wages, the middle class women's entry into the field of work appears more significantly after the Second World War. Only few women took up professions like law, medicine, teaching etc. Thus during this period we do not find many voices raised regarding women's economic standing.

In India unlike in the West, the movement for social reform and women's advancement was initiated and led by enlightened male leadership. It was not a suffragette movement.³⁹ It formed a part of the larger socio-religious reform movement and the nationalist movement. Again, the movement was not militant as in the West. Very rarely women's organisations launched mass women's oppositional movements as a protest against the non-enactment of a progressive bill for women's rights into law.

To summarize, the movement for emancipation of women began in the 19th century, when the social reformers initially were critics of outmoded social practices and they attempted to change some of these practices by applying the rationale and humanitarian criteria to the problems. They

³⁹Kamala Mankekar, n.12, p.9.

further laid stress on the education of women as a liberalising activity. The National Movement not only drew a large number of women to political activity but it also generated strength and confidence among women which helped them to organise and to fight for their own cause, rather than depend upon the 'benevolent' men in society to promote their cause. The pre-independence period therefore, marked the beginning of awareness of the sufferings of women due to oppressive social customs.⁴⁰ During this phase a favourable climate was created to improve the status of women through legal reforms and pave the way for constitutional guarantees of equality in the post-independence period.

⁴⁰Neera Desai and M.Krishnaraj, Women and Society in India (New Delhi:Ajanta Pub., 1987), pp.40-41.

CHAPTER FOUR

QUESTION OF APPLICATION OF INTERNATIONAL NORMS

From time immemorial the role of women in India has been that of a dependent, bordering upon bondage. Child marriage,[®] dowry, polygamy, 'purdah' system, denial of divorce and education had reduced her to the position of chattel and confined her to the home. Gender inequality cannot really be differentiated from the variety of social, economic and cultural inequalities and the inequalities inherent in the traditional social structure based on class, caste and community which have a decisive influence on the status of women in different spheres.

The Indian Constitution provides not merely for the establishment of a secular and democratic society, but it has special provisions for the vulnerable sections of society, including women which have suffered in the orthodox milieu. The provisions of the Constitution do not merely guarantee certain human rights and safeguards against exploitation : they are a charter for future development. Women, constitute an integral part of the Constitution so that the goals of justice "social, economic and political" and equality of opportunity for all including women could be achieved. Indian women are beneficiaries of the rights and opportunities embodied in the Constitution in the same manner as Indian men and the Constitution lays the foundational norm for gender equality.

The Preamble to the Constitution of India resolved to secure to all citizens - Justice - social, economic and political; Liberty - of thought, expression, belief, faith and worship; Equality-of status and opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation.

The values of freedom and equality befitting the dignity of the human individual enhanced by ideals of economic and social justice as proclaimed by the Preamble is elaborated in the Fundamental Rights (Art. 14, 15 and 16) and the Directive Principles of State Policy. Part III of the Constitution which guarantees Fundamental Rights contains perhaps one of the most elaborate charters of human rights yet framed by any State.

Part IV - the Directive Principles of State Policy details the principles which should guide the state in promoting the welfare of the people. Although these principles are not judicially enforceable, they are to be treated as fundamental in the governance of the country and are to be applied in enacting legislation. The State is required to secure to all citizens, men and women - equality, the right to adequate means of livelihood [Art.39 (a)], equal pay for equal work [Art.39 (d)], right to work and to education [Art.41] etc.

In this context one of the provisions of the Constitution is of special significance. After having laid down that the State shall not discriminate against any citizen on grounds of sex, among other things, it provides that "Nothing in this article shall prevent the State from making any special provision for women and children"¹. So there is a Constitutional provision in India permitting the State to discriminate in favour of women, if such discrimination is found necessary.

¹Article 15 (3).

The basic principles enunciated in the Universal Declaration of Human Rights and codified in the International Covenant on Civil and Political Rights and the International Covenant on Economic Social Rights have been incorporated in the Constitution of India. The Indian Constitutional format in respect to human rights is significant, for it sought to delicately balance political and civil rights on the one hand and social and economic rights on the other, and also tried to incorporate individual rights. The Preambular assurance of the dignity of the individual - which is the basic principle underlying the international standards of human rights is sought to be implemented through Parts III and IV of the Constitution. The Constitution of India incorporates the first set of rights (Civil and Political) under the Fundamental Rights-Articles 12 to 35; and the second set of rights (Economic and Social) under the Directive Principles-Articles 36 to 51. The Convention on the Elimination of All Forms of Discrimination reaffirms the goals of equality between men and women in all spheres and reiterates the norm of non discrimination on the basis of sex. Other international norms and standards too, embody the above principles. The Government of India, keeping the above in mind has implemented a number of legislations and Acts.

A review of the situation of women and of strategies and instruments for women's development in India shows that a number of Constitutional legal and administrative measures have been adopted to improve women's social and economic position. In line with the Constitutional provisions and Directive Principles many laws have been made to benefit women.

The legislative protection, thus, provided to Indian women has, consistently, been supported in each of the Five Year Plans by a series of provisions, financial allocations and programmes aimed at promoting the education of women and at providing for their development and welfare. In addition to being provided for in programmes to be conducted by the several Ministries at the Central and the State levels, the objective of facilitating the progress of women was institutionalized in the establishment of the Central Social Welfare Board in 1958.

The Central Social Welfare Board is a national body involved in women's development at three levels-policy, programmes and implementation². The Board frames policy at the central level through links with voluntary women's organisations, makes its own development programmes for women on the basis of funds given by the government, and implements programmes through its Welfare Extension Projects which reach remote areas of the nation.

Agencies administering programmes for women's development are scattered in different departments of the Government at the Centre, the State and the local level. At the Central level, the Planning Commission, Ministry of Education and Social Welfare, with its two specialised agencies, the Central Social Welfare Board and the National Council for Women's Education, Ministry of Health and Family Planning, Ministry of Home Affairs and Ministry of Labour and Employment, usually share the work of implementing such programmes. They are diffused in many

²Neera Desai and M. Krishnaraj, Women and Society in India (New Delhi: Ajanta Pub., 1987), p. 330.

departments like Health, Education, Family Planning, Agriculture and Community Development and Local Self Government. Some States also have separate directorates for Women's Education or Women's Welfare.

The Planning Commission defined three major areas in which they have paid special attention to women's development : Education, Social Welfare and Health³. The First Plan stressed adequate services which need to be promoted for welfare of women, such as school feeding schemes for children, maternity and child health centres and family planning. The special focus of the Second Five Year Plan was on the problems of women workers. The Third emphasised the expansion of education for girls. The Fourth emphasised women's education and allowed the voluntary sector to operate programmes of social welfare. The Fifth gave priority to training women in need of care and protection, women from low income families, needy women with dependent children and working women.

In 1971 the Committee on the Status of Women in India was constituted to assess the impact of development on the social status of women and to suggest remedial measures.

The year 1975 must be regarded as a watershed for the reappraisal of women's issues with the United Nations declaring 1976-1985 the Decade for Women. The Women's Decade in India began in 1975 with an official report of the Committee on the Status of Women in India. In its report the Committee identified the areas of health, education and employment as

³ Ibid.

critical for action programmes for Indian women⁴. One of the recommendations was for setting up of a Statutory Commission at the Centre and in the States to look after the interests of women. Similar pleas were made at various forums during the International Women's Year 1975 and during the valedictory meeting of the National Committee of the International Women's Year in 1976 under the Chairmanship of the Prime Minister.

Accordingly, a National Committee of Women was constituted on 19th October 1976 with the Prime Minister as the Chairman and Minister of Education, Social Welfare and Culture as Vice-Chairman. The National Committee was reconstituted on January 1978. Its term expired in 1980. Due to certain administrative reasons, the Committee has not been convened since then.

Simultaneously with the formation of National Committee on Women, a national machinery for women was set up in India, comprising⁵:

- (a) National Committee on Women (referred to above);
- (b) A Steering Committee of the National Committee ;
- (c) An Inter-departmental Co-ordination Committee;
- (d) The Women's Welfare and Development Bureau in the Department of Women's Welfare, Ministry of Human Resource Development.

⁴Towards Equality, Report of the Committee on the Status of Women in India (New Delhi: Department of Social Welfare, Govt. of India, 1975).

⁵Achievements of the United Nations Decade for Women in Asia and Pacific, ST/ESCAP/434 (Bangkok: ESCAP, Social Development Division, 1987), p. 92.

The United Nations Decade of Women (1976-1985) has been a decade of substantial progress and achievement. In 1976, a women's unit in the Indian Council of Social Science Research (ICSSR) was established as a result of the Committee on the Status of Women's report and the United Nations Declaration for Women's Decade. The programme of women's studies undertaken by the unit in the subsequent years has the objective⁶ (a) to improve policies for women's socio-economic development, (b) to increase public consciousness and review the debate on the women's question, and (c) to develop new perspectives in the social sciences through examining basic assumptions, methodological approaches and concepts e.g., the family, the household, women's work, productivity etc. to remedy the neglect and under assessment of women's contribution to society.

Based on the guidelines contained in the World Plan of Action for the implementation of the objectives of the International Women's Year, the recommendations of the Mexico Conference, the report of the Committee on the Status of Women in India and Declaration of Mexico on the equality of women and their Contribution to Development and Peace 1975, the Government of India framed a National Plan of Action for Women (NPA). The NPA identified the areas of employment, health, family planning, legislation, nutrition, welfare strategies and measures for improving the position of women.



⁶Balaji Pande, Post Independence Educational Development Among Women in India, Occasional Paper 9, (New Delhi: Centre for Women's Development Studies, 1987), p. 21.

Slowly there occurred a change in policy from viewing women as targets of welfare policies, to recognising them as critical groups for development. It also started becoming evident that women as a group are adversely affected by the process of economic transformation. This recognition is reflected in the Sixth Five-Year Plan which contains, for the first time, a chapter on "Women and Development"⁷. It laid down three strategies as essential for women's development : (a) economic independence; (b) educational advances; and (c) access to health care and family planning.

A main objective of the Seventh Five-Year Plan (1985-90)⁸ is to integrate women in all developmental sectors as equal participants and beneficiaries with men, so that they can take a fair share in the developmental process and realize their full potential as citizens. To achieve this objective, women will be treated as a separate target group in the planning process and in implementation of policies. Their share in the physical target is to be specified and monitored in development schemes of concerned ministries, so as to ensure that the required focus is achieved not only at the policy state but also in implementation. More funds have been allocated in the Seventh Plan to existing schemes for the socio-economic development of women. Certain new schemes will be started during the Seventh Plan to give extra thrust to socio-economic development programmes.

⁷Sixth Five Year Plan, Government of India (1980-85), pp. 423-429.

⁸Seventh Five Year Plan, Government of India (1985-90).

In 1983, a special Ministry for Women and Social Welfare was formed at the Centre. Other important steps taken by the Government include a National Plan of Legal Literacy, setting up of Special Cells to help women in distress, incorporation of Equality for Women as No.12 in the Twenty Point Programme of Development. The Government also provides financial assistance to voluntary organisations for women's welfare. Currently, the nodal department for women's development is the Department of Women and Child Development. It formulated a National Perspective Plan 1988-2000 A.D. in which recommendations have been made in all fields pertaining to women.

Keeping in mind the numerous objectives of the United Nations World Conferences on women's issues and the Government of India's policies and programmes undertaken to ameliorate women's position, it is thus imperative to study the status of women in law as well as in the political, education, employment and health spheres.

Status of Women in the Political Field

In India, it was in the year 1917 that women started an agitation for getting franchise under the leadership of Sarojini Naidu. After heavy protests the question was left to be decided by the provincial councils. Madras granted the right in 1921, other provinces followed suit in 1926 and 1929. They were enfranchised on the same terms as men. During the fight for freedom, women fought shoulder to shoulder with men. Independence brought the promise of actual liberation and equality. The Constitution

pledged the nation to achieving a just society, based on the principles of equality and dignity of the individual, and proclaimed the right to political and legal equality as fundamental rights of all Indians. Adult franchise and complete social and political equality before law became realities.⁹

It is necessary to attempt a definition of political participation which is broader than the one covering women's participation only in the electoral and administrative processes. It includes the gamut of voluntary activities with a bearing on the political processes, including voting, support of political groups, holding party offices, communication with legislators, dissemination of political views and opinions among the electorate etc. Thus, in a limited sense it refers to those activities designed to influence decision-making carried on within the framework of a political system¹⁰. And yet, this meaning has serious limitations, especially in the context of political participation by Indian women. The available data of women in the political process bears evidence to this fact due to a curious combination of some social, economic and political variables¹¹.

Broadbased political participation of women is severely limited due to a nexus of traditional factors, these are the domination of Indian politics

⁹Usha Mehta, "Indian Women and Their Participation in Politics", Social Change, vol.8,no.3, September 1978, p. 31.

¹⁰Neera Desai and M. Krishnaraj, n.2,p.295.

¹¹Ibid.

by considerations of caste, class, religion, feudal and family status etc., all of which are parochial essentially patriarchal forces that work in favour of men against women¹².

Women are thus left on the periphery of the political process and political participation remains elusive for most of them, inspite of their voting rights and occupation of high posts, including that of Prime Ministership.

Gender equality is a sine qua non for effective participation of women in strengthening the institutional structure of democracy. Women have been marginalized because of several socio-economic constraints. The number of women in leadership positions at the local, village, district and national level is still not commensurate with their numbers in society.

Voting is the basic activity by which the citizen gets assimilated in the political process. The following table shows the comparative participation of men and women during the last seven general elections¹³

¹² National Perspective Plan for Women 1988-200 A.D. Report of the Core Group (New Delhi: Department of Women and Child Development, Govt. of India, 1988), p.154.

¹³ Neera Desai and M. Krishnaraj, n.2, p.296.

Voters and Electors (1957-1984)

Year	Total Voting Percentage	Percentage turn-out of men voters	Percentage turn-out of women voters
1957	47.74	55.77	38.77
1962	54.76	62.05	46.63
1967	61.33	66.73	55.48
1971	55.35	61.00	49.15
1977	60.49	65.63	54.96
1980	56.92	62.15	51.22
1984	63.61	68.17	58.06

Women's participation in formal elections is to a great extent dependent on the mobilization efforts of the political parties, general awareness among the community of the importance of exercising franchise, and the overall political culture. Seldom efforts have been made to mobilise women as a political pressure group by any political party. Factors like education, religion, class and tradition seem to affect women's participation.

Voting as an indication of political participation for women in India, has its own strength and weakness. Voting has a tremendous impact for equalising and mobilising women¹⁴. Yet, it has to be noted that voting requires the least initiative and internal motivation. Moreover, the act of voting itself does not yield the desired end of equality. In a nation,

¹⁴ National Perspective Plan for Women 1988-2000 A.D., n.12, p.155.

where the rate of female literacy is 24.82 per cent even in 1981, political equality does not have much meaning¹⁵.

The number of women contestants in parliamentary elections has not increased significantly over the years. The proportion of seats won by women to the Lok Sabha stands in 1988 at 46 seats out of a house of 537 seats. The Rajya Sabha has 28 women in a house of 245 seats.

Political parties seem uniformly reluctant to field women candidates. The high cost of electioneering is another deterrent to most women candidates. So the number of the successful women is naturally very low as evident in the following table¹⁶:

Women Ministers

Year	Cabinet-rank Minister	Deputy Minister	Minister of State
1957	--	3	--
1962	2	5	2
1967	1	3	2
1971	1	2	2
1977	1	--	3
1980	2	2	2
1985	1	--	4

¹⁵ Neera Desai and M. Krishnaraj, n.2, p. 309.

¹⁶ Ibid, p. 302.

The pattern is not very different at the state level. The all India total stands at 44 women elected out of 241 women contestants, as against 1486 men out of 8415 male contestants. An indepth study of women at grass roots level politics reflects a similar trend. However, participation of women in Panchayati Raj institutions has been recognised as a step towards equality. The Committee on Panchayati Raj institutions 1978, recommended the reservation of 2 seats for women in Panchayats and to co-opt women in case they did not come through elections¹⁷.

It has been contended that a significant number of politically powerful women attained their position atleast partly through ascriptive channels. There are quite a few women who have attained high political status via the widow succession, or as a stand-in candidate or through a complex network of patronage link rather than as a reward for long and enduring record of commendable socio-political work at the grassroots. Further, even after being elected they do not get their due share in offices as revealed in the portfolios which are assigned to them. Women are primarily given 'soft'stereotyped Ministries such as Health Social Welfare and Education¹⁸.

There is a strong disparity between the formal idea of women's political participation and their meaningful use of power. Women's votes have never been considered of any consequence either by political parties

¹⁷ National Perspective Plan for Women 1988-2000 A.D., n. 12, p.156.

¹⁸ Neera Desai, "Changing Status of Women: Policies and Problems", in A. K. Gupta, ed., Women and Society. The Developmental Perspective (New Delhi: Criterion Pub., 1986), p. 92.

or by women themselves. They have no direct link with the formal channels of power and are unable to perceive their political efficacy. They have never emerged as a potential voter's bloc.

The reasons for low political participation of women in India has been well illustrated by Vina Majumdar. She has pointed out "Traditional values and behavioural norms bred through thousands of years inhibit them (women) in asserting themselves as individuals except in very limited contexts. The more complex the process becomes, the greater is the communication gap and the difficulties in women's effective participation in the political process. This is borne out by the experience of women in the most developed countries where inspite of higher educational levels and better developed communication system, women's effectiveness in politics has remained limited"¹⁹.

If women have to become integrated fully into political life, cultural change is essential. In short, women's real active political participation will necessitate changes both in value and in social structure²⁰.

Status of Women in Law

In what follows, an attempt is made to examine some of the more important legislations enacted by the central legislature²¹ in India to ameliorate certain unhappy conditions in which women, particularly Hindu

¹⁹Neera Desai and M. Krishnaraj, n.2, p. 307.

²⁰National Perspective Plan for Women 1988-2000 A. D., n.12, p.163.

²¹Various State Legislatures also adopted certain legislative measures.

women find themselves.

Free India inherited a system from the British where the differences in the various communities was sought to be perpetuated by their being governed by personal laws - the only commonality being that the position of women was far from equal. The policy makers deferred to implement a Uniform Civil Code²² which would establish one family law to govern all citizens irrespective of community and religion. However, a uniform law governing all Hindus was implemented in the Hindu Code Bill.

During 1955-56 Parliament passed statutes reforming Hindu law relating to (1) Marriage and Divorce (2) Adoption (3) Minority and Guardianship (4) Succession.

Historically, Hindu marriage was not a contract between two consenting persons, and no religious requirement was necessary for prior agreement to live together as husband and wife. The Courts infact held that Hindu marriage was a sacrament²³. The position is similar in Christian Law. The Muslim law makes marriage a contract by two consenting parties.

Hindu law was substantially reformed in the 1950s. Further changes came when the major recommendations of the Committee on the Status of Women were implemented by the Marriage Laws (Amendment) Act 1976. It brought about considerable changes on the grounds for divorce, judicial separation

²²This has not been possible so far because the of the adverse susceptibilities of minority groups.

²³National Perspective Plan for Women , 1988-2000 A,D, n.12, p.139.

and nullity of marriage. However, the marriage laws of Christians and Muslims have not been reformed.

The Hindu Marriage Act 1955, introduced radical changes. Hindus as defined under the Act constitute 80 per cent of the population (which includes Buddhists, Sikhs and Jains) and for the first time the Act provides a uniform law of marriage for all Hindus. It makes monogamy the rule for men as well as women; the age of marriage is fixed for women at 15 years and men 18 years; an idiot or lunatic cannot marry; it provides for registration of marriages; the grounds for annulment of marriage are carefully defined and are available to either spouse; the Court may award costs and maintenance to either spouse etc. The provisions of judicial separation as a matrimonial relief to either spouse and differences in caste became immaterial in regard to validity of marriages.

In 1978, an important amendment to the Child Marriage Restraint Act raised the legal age of marriage for girls to 18 and boys to 21 years²⁴. Contravention of the law is now a cognisable offence [Hindu Marriage Act Section 5 (iii)]. In the past the only offence was imposition of a fine on the parents. The marriage remained valid. After the amendment, in case of marriage of a minor, the marriage can be repudiated whether or not it was consummated. The Child Marriage Restraint Act has provisions for punishing a male more than 21 years marrying a girl below 15. Whoever conducts Child

²⁴ Joseph Minattur, "Women and the Law: Constitutional Rights and Continuing Inequalities", in Alfred De'Souza, ed., Women in Contemporary India and Asia, (New Delhi: Manohar, 1980), p. 166.

Marriage is punishable too. Civil Courts have jurisdiction to issue injunction, but marriage if performed would be valid.

Two years before the adoption of the Hindu Marriage Act which inter alia provided for divorce, the Special Marriage Act of 1954 was enacted. It revised and replaced the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India, and by citizens of India in foreign countries irrespective of the faith which either party to the marriage may profess. Minimum age of females is 18 years and 21 years for males. There is also a provision for obtaining a decree of divorce by mutual consent, provided that the parties have lived separately for a year or atleast a year has elapsed since the date of marriage.

A Muslim is governed by his personal law of marriage and divorce and mainly uncodified law consisting of principles derived from the Koran and judicial decisions and partly codified by Dissolution of Muslim Marriage Act, 1939²⁵. Accordingly, a Muslim female can marry on attaining her puberty but she can be given in marriage even earlier by her father, paternal grandfather or brother and other male relatives on the father's side. In default of paternal relations, the right devolves upon the mother, maternal uncle or aunt and other maternal relations within the prohibitive degrees.

²⁵K. B. Pathak, "Law and Age at Marriage for Females in India", The Indian Journal of Social Work, vol. XL, no. 4, January 1980, p. 408.

The Parsi Marriage and Divorce Act, 1936 governs the matrimonial matters of the Parsis. This Act however, contains no provision as to the age at which a Parsi marriage can be validly contracted. The Child Marriage Restraint Act XIX of 1929 is also applicable for the Parsis and other communities except Muslims. The Jews have their own customary law derived from the traditional Mosaic law followed in the decisions of the courts in India. Then there is the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1969 which govern the Christian's Marriage²⁶.

Registration of marriage operates as an effective check on child and bigamous marriages and ensures the legitimacy and inheritance right of children.

Among the Parsis and Indian Christians the registration of marriages is compulsory as also for marriages solemnized under the Special Marriage Act, 1954. There also exist provisions for registration under Section 8 of the Hindu Marriage Act, 1955 but unregistered marriages under this Act are recognised as valid²⁷.

Although the law of divorce is different under each personal law. It may be said in general that the right of a wife to obtain a divorce in India is much more restricted than that of the husband under customary law; however, in certain Hindu communities and in most tribal groups, it is possible for the husband and wife to obtain divorce without recourse to court.

²⁶ Ibid.

²⁷ Towards Equality, n.4, p. 114.

The Muslim man can unilaterally and without assigning any reason proclaim divorce; the Christian man can get divorce on the grounds of adultery, but the Christian woman has to prove not only adultery, but also an additional ground such as desertion, cruelty, sodomy or bestiality. There is no provision of divorce by mutual consent in either Muslim or Christian law.

The Hindu Marriage and Divorce Act, 1955 was passed by Parliament after 15 years of bitter debate. It makes monogamy the law for all those who come under the Hindu personal law. Anyone contravening the law can be criminally prosecuted and the marriage held invalid. The Act also provides for judicial separation and divorce, enabling the wife to obtain divorce on the same grounds as the husband. But the husband is still considered to be the 'natural guardian' of children five years and above, and stands a better chance obtaining their custody²⁸.

An amendment to the Act in 1979 makes it easier for a couple to get a divorce by mutual consent. Another important change in the law since 1975 says that if marriage is declared void or voidable--in case of lunacy, bigamy or other recognised ground--even if the wife has not gone to court and obtained a decree of nullity, the children of such a marriage are recognised as legitimate. Previously a decree of nullity was necessary, thus penalising children in case a wife, for some reason, could not or did not want to go to court²⁹.

²⁸Thomas P. Mathai and Harji Malik "Women in India", Indian Journal of Public Administration, vol. 26, no.2 April-June 1980, p. 500.

²⁹Ibid.

Both the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 recognise the right to divorce on the following grounds³⁰: "adultery, cruelty, desertion, conversion to other religion, insanity, suffering from leprosy, venereal disease, renunciation of the world, disappearance for 7 years or more, no cohabitation between parties for one year after the decree of judicial separation, failure to comply with a restitution of conjugal rights decree for one year after the decree is passed".

In addition to these, a wife has four grounds :

- i) if the husband has another wife living,
- ii) if he has been guilty of rape, sodomy or bestiality,
- iii) if he has failed to comply with a decree of maintenance for a year or upwards,
- iv) if she repudiates her marriage on attaining 15 years of age but before she is 18, if she was married before 15 years.

Thus the Hindu law has been reformed and the husband and wife have the same grounds for divorce in addition to the option of divorce by mutual consent under the provisions of the Marriage Laws (Amendment) Act 1976.

The Report of the Committee on the Status of Women in India recommended that "Adultery should be regarded only as a matrimonial offence, the remedy for which may be sought in divorce or separation... continuing to regard adultery as a criminal offence is against the dignity of an individual and should be removed from the Penal Code."

³⁰Section 13 (1) Hindu Marriage Act.

Since the recommendation has not been given effect to, the Supreme Court upheld section 497 of the Indian Penal Code which confers upon the husband the right to prosecute the adulterer of his wife though it does not confer any right upon the wife to prosecute the woman with whom her husband has committed adultery³¹. This has resulted in giving husbands legal rights which are denied to their wives.

The law allows for double standards of sexual morality. Under Muslim law the husband has the legal right to have four wives, while bigamy among Hindus became a criminal offence in the 1950s. [Section 5 (i)] of Hindu Marriage Act, 1955. Section 4 (a) of Special Marriage Act, 1954]. A marriage contracted during lifetime of a spouse is void and punishment is provided for accordingly under the Indian Penal Code (Sections 494 and 495, Indian Penal Code 1860)³². Existing penal provision against bigamy is defeated in a considerable number of cases because of the technical construction placed on Section 17 of the Hindu Marriage Act. The big lacuna is the word "solemnisation". This means the offence of bigamy is committed only if the required ceremonies of marriage are performed.

Also under the present law only an aggrieved person (husband or wife) can initiate proceedings for bigamy. A peculiar feature is that the first wife of a bigamous marriage has no right to file a petition for nullity under the Hindu Marriage Act, as there is a provision that a petition for declaration of the nullity of marriage can be filed only by either party to

³¹ National Perspective Plan for Women 1988-2000 A.D., n. 12, p.137.

³² Ibid, p.140.

marriage; but she can file for divorce under Section (1)(i), Hindu Marriage Act, 1955 .

Thus two major lacunae have impaired the legal prohibition against bigamy. Continuing judicial treatment of such offences as a private wrong have left it to the wife as the aggrieved party to press charges, an unlikely event in view of the traditional attitude and her economic dependence. The Courts tend not to recognise any second marriage, and therefore the existence of bigamy, unless proper ceremonies have been performed.

Under all the personal laws relating to marriage, there is a provision for restitution of conjugal rights. Though this provision is available to both the spouses, it is most often used by the husband against the wife in ways that are against the fundamental right to dignity and personal liberty.

Hindu law upholds the duty to maintain ones dependents. Husbands obligation to maintain the wife has been recognised. However, earlier a wife living apart from the husband was not entitled to maintenance. Gradually, a wife living separately was entitled to maintenance as in the Hindus Married Woman's Right to Separate Residence and Maintenance Act, 1946.

The husband is under a legal liability to maintain his wife whether before judicial separation or after. Section 125 of the Criminal Procedure Code (C.R.P.C) 1973 provides for maintenance even to a divorced wife.

Section 128 also deals with maintenance. Specific provisions are contained for grant of maintenance under section 24 and 25 of the Hindu Marriage Act, 1955 and section 18 of the Hindu Adoption and Maintenance Act, 1956. Provisions for maintenance for other communities are available under the Parsi Marriage and Divorce Act, 1936, the Indian Divorce Act, 1869, The Dissolution of Muslim Marriage Act, 1939, the Muslim Women (Protection of Rights on Divorce) Act 1986³³.

Under all the personal laws and under the Guardians and Wards Act, 1890 the father is the natural guardian of the children. The Hindu Minority and Guardianship Act, 1956 provides that the natural guardian for both boys and girls is first the father and after him the mother and this too is recognised with respect to custody in the case of children below 5 years.

The Hindu Minority and Guardianship Act (1956) also bestowed a few additional rights on Hindu women³⁴. It provides that though the father may appoint by will a guardian for his minor children, any such appointment will not take effect during the life time of the mother if she survives the father. It will take effect only on her death, provided she has not appointed a guardian by her own will. The Hindu widow and the Hindu mother, entitled to act as the natural guardian of her minor children are empowered under the Act to appoint guardians for them by will.

³³ Ibid, p.142.

³⁴ Joseph Minattur, n.24, p. 173.

In 1956 substantial changes were effected in the law of adoption applicable to Hindus. The Hindu Adoption and Maintenance Act 1956, has invested the Hindu woman with certain rights of adoption which she had not enjoyed earlier, e.g. previously, only a male could adopt, but, under the Act a woman is competent to adopt to herself a son or a daughter. Also, a married man cannot, except under certain special circumstances, make an adoption without the consent of his wife.

Under the original law there was no provision for a daughters adoption³⁵. Now a girl can be adopted, even a girl and boy. The old law made no provision for mothers consent while giving away her son in adoption. Now, under the Act, it is essential. Under the old law a mother could not give in adoption if the father had prohibited it. But under the new Act, the mother need not have permission of any kind after the father's death or his being incompetent to give his consent.

Earlier adoption and guardianship used to be religious in character. The Hindu Adoption and Maintenance Act made them more secular in character. Although, undoubtedly the Act has improved the status of women, there is scope for further improvement. Both the parents should have an equal right to adopt with the other spouses' consent.

An estimated one million babies, out of 21 million born every year, are abandoned soon after birth. Most of these infants are girls. Social workers have been pressing for comprehensive law on adoption for over 25

³⁵ Rama Mehta, Socio-Legal Status of Women in India (Delhi: Mittal Pubs., 1987), p. 106.

years. The Adoption of Children Bill, introduced in Parliament in 1972, but not passed, would have been a first firm step towards the uniform civil code demanded by many women's organisations. The present law of 1956 applied only to Hindus and regulated adoption with hardly any safeguard for the future of the adopted child; indeed the adoption itself would be extra-judicial. In contrast, the reform Bill has no reference to the religion of the adopted child or the adopting parents, permits no adoption except on a court order and also makes it possible in law to secure the further interest of the child. This is envisaged as an enabling law.

However, a glaring discrimination in the laws of adoption is that only Hindus are legally allowed to adopt. Men and women of other communities do not have this right and can, at best be appointed guardians of their "adopted" children.

Neither the personal laws based on religion, nor the secular laws relating to property rights give women equal rights to property.

The 1956 Hindu Succession Act was legislated to change the situation which existed before Independence, when there were various systems of inheritance and succession among Hindus and the position of women was one of dependence on the males e.g. the Joint Family, which with all its assets is called a coparcenary³⁶.

³⁶Shahnaz Anklesaria, "Law and Women's Status : Property Laws as Symbols of Sex Discrimination," Social Action, vol. 35, n. 2, April-June 1985, p. 133.

Before the adoption of the Hindu Succession Act in 1956, when a woman succeeded to the divided property of a deceased Hindu male, she took only a limited interest. A woman was denied legal capacity to be a coparcener in a Hindu Joint Family. Ostensibly, the Hindu Succession Act was legislated to rectify the confused situation of women. The Act abolished the different systems and established a common code. The Hindu Succession Act, 1956 which applies to Hindus, Buddhists, Jains and Sikhs determines the heir on the basis of consanguinity or affinity without any discrimination on the ground of sex. Section 14 of the Act gives women the right to acquire absolute ownership of property. The Act further lays down certain rules for succession to such property, independent of the general rules of succession given under Section 8 of the Hindu Succession Act. The widow, the mother, the daughter of the predeceased son now inherit an equal share of property as owners.

Though the amended Hindu law has given the woman many new rights she cannot be a member of the coparcenary and cannot ask for a partition, thus codifying a power structure which excludes women from exercising direct control over family assets. The law still recognises the sons right by birth, and the equality conferred on the daughter is restricted to the father's interest in such property.

The Hindu Women's Right to Property Act (1973) conferred the right to enjoy her husbands share in coparcenary property for life time without a right to alienate property. Under the Act, the daughters, the widow and the mother can inherit the property of the deceased simultaneously and each

takes an equal share. This is the position with respect to the self-acquired property of the deceased. With regard to coparcenary property, the son takes his own share and in addition takes the father's share of such property as well³⁷.

The Indian Succession Act XXXIX of 1925, which applies to all communities except Hindus (including Jains, Buddhists and Sikhs) further undercuts succession rights of women from the minority communities.

If a husband from the Christian community dies without making a will, a widow is allowed just one-third or Rs.5,000 of his property. The rest is shared by his lineal/male descendants. To further complicate matters the Travancore Succession Act and the Cochin Christian Succession Act govern Christians³⁸.

Muslim and Parsi women have some property rights but not equal rights with their brothers. Under their respective laws the son gets twice the share of the sister.

Muslims in India are enabled, under the Muslim Personal Law Shariat (Application) Act of 1937 to avail of their personal law rights of inheritance marriage and divorce. The Courts presume that Muslims are governed by Hanafi law unless established to the contrary where - there are 3 groups of heirs, related to the deceased by blood; the sharers or

³⁷ Sachchidanda and Ramesh P. Sinha, Women's Rights : Myth and Reality, (Jaipur : Printwell, 1984), p.32.

³⁸ Shahnaz Anklesaria, n. 36, pp. 134-135.

Koranic heirs the agnates or 'residuaries' and the uterine relations or distant kindred³⁹.

Chapter II of the Indian Succession Act, as amended in 1939, which applies to Parsis, the son's share of his fathers property is twice that of a daughter. The widow gets as much as her son. When a woman dies intestate, leaving her husband and children, then the property is divided equally among the children and widower. Thus the son is entitled to an equal share of the mothers property along with the daughter, the daughter is not entitled to the same rights when she inherits the property of her father⁴⁰. When the intestate is male who has left children, the father is entitled to a share equal to half the share of the son, but the mother is entitled to a share equal to half the share of the daughter. If an unmarried son dies intestate, the father, if alive, claims the entire estate. The mother has no such claim. But if the father is dead, and there are brothers and sisters, then the mother has to share property with them.

In the area of Criminal Law two enactments seeking to uphold the dignity of women are the Criminal Procedure Code, 1973 and the Indian Penal Code, 1860. The former covers subjects like search and arrest of a person, maintenance of wife, provisions regarding the making of a complaint, requiring a woman as witness etc. The Indian Penal Code denounces

³⁹ Ibid, p. 136.

⁴⁰ Durgabai Deshmukh, "Law and Women in India", Social Change, vol. 2, no.1, March 1972, p.12.

practices derogatory to the dignity of women. It seeks to uphold woman's dignity by making provisions against prostitution, kidnapping, abduction, rape, bigamy, adultery.

There are certain other types of social legislation which seek to protect interests and benefits that are of special concern to women. The Suppression of Immoral Traffic in Women and Girls Act, 1956, is intended to protect helpless women and girls from a typical mode of exploitation not altogether unknown in the country. The same year saw the enactment of another piece of social legislation : the Women's and Children's Institutions (Licensing) Act, 1956. This was later on superseded by the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960. The object of the enactment was to regulate the activities of these institutions and to prescribe a proper standard to which the treatment and the training of the inmates should conform. Such a measure was found necessary because, while there are many good and properly managed charitable institutions, there are many others run with the objective of exploitation as their main and sustaining inspiration.

The basic objective of the Suppression of Immoral Traffic in women and Girls Act, 1956 was to punish brothel keepers procurers and pimps and prevent prostitution in the vicinity of public places. The Act has not proved effective for various reasons, some of them inherent in the weakness of the legislation itself, others rooted in the social and economic factors which lead to prostitution particularly of poverty stricken women. The Act was amended in 1978 and, more recently, in 1986 now titled "The Immoral

Traffic (Prevention) Act". It is applicable to both women and men and provides for more stringent penalties with references to offences against children and minors⁴¹.

The Medical Termination of Pregnancy Act, 1971 may also be mentioned in the context of social legislation relative to women. It provides that a pregnancy may be terminated where the length of the pregnancy does not exceed twenty weeks, if two medical practitioners are of the opinion that the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health. Reports show that by 1980, no government facilities for abortions exist in rural areas. Many doctors are reluctant on ethical grounds to perform abortions and some demand a husband's or parents consent even though the law does not require it.

But decades after infanticide was banned, a new crime against the female child in the womb, in the name of prenatal sex determination tests is being committed. The Maharashtra Government has made this illegal by passing the Maharashtra Regulation of Use of Prenatal Diagnostic Techniques Act, 1988. A Central legislation has become a necessity against the above crime.

The Indecent Representation of Women (Prohibition) Act, 1986 focussed attention on sexist advertisements and hoardings.

⁴¹National Perspective Plan for Women 1988-2000 A.D., n. 12, p.138.

The Dowry Prohibition Act, 1961 made dowry, its giving, taking or abetment, punishable with imprisonment upto 6 months or a fine of Rs.5,000 or both. It made demanding dowry a penal offence.

Although the Act became law in 1961, recent studies indicate that the practice of dowry is widely prevalent.

The institution of dowry may have originally been a partial recognition of a daughters right to property in a society where only sons inherited. But today it has become a social and economic evil which lowers the status of women and treats them as pieces of property to be bought and sold. The anti-dowry legislation has been handicapped by ineffective administrative machinery, poor social response and loopholes in the law itself.

The Dowry Prohibition Act, 1961 was amended in 1984 and again in 1986 to make the provisions of this law more stringent and to plug the gaps which had made it ineffective.

A new section on "dowry murder" has been introduced in the Indian Penal Code. The Indian Evidence Act amended to shift the burden of proof to the husband and his family where dowry is demanded and the bride dies within 7 years of the marriage other than under normal circumstances. Provisions for appointment of Dowry Prohibition Officers and Advisory committees has also been made.

The amended law and the active involvement of women's organisations has led to social awareness of this crime and an increase in the number of

cases recorded. The Voluntary Action Bureau of the Social Welfare Boards and the Legal Aid and Counselling Centres run by voluntary groups with Government funding have been rendering valuable services in this field. However, there has been no significant reversal of the trend nor any visible change in attitudes even among the educated urban elite.

Between 1975 and mid-1980, public awareness of, and reaction to, crimes against women, including 'bride burning' and rape, have grown. Organisations engaged in anti-dowry protests are simultaneously highlighting the high incidence of rape in the country.

Women's organisations and women lawyers had made rape the focus of a national debate. They were urging re-examination and reform of the Indian Penal Code, the Evidence Act and the Criminal Procedure Code. The Law Commission had also recommended changes in these legislative measures in connection with rape. On the basis of these recommendations, the Government amended the law on the rape and introduced the Criminal Law (Amendment) Bill in 1980 which was ultimately passed as an Act in 1983. These changes include protection of the victim from the glare of publicity during investigation and trial, change in definition of rape to remove the element of consent, addition of the crime of 'custodial rape', enhancement of punishment for the crime and the shifting of the onus of proof on the accused. These are steps forward in recognising that the woman victim of rape deserves a different kind of treatment⁴².

⁴² Ibid, p.137.

The most recent case of law being enacted to protect the woman victim is the law against the practice of widow burning or Sati. The law - Sati (Prevention) Act, 1987 was passed in Parliament in response to the National demand following the burning of Roop Kanwar on the funeral pyre of her husband in Deorala, Rajasthan.

The Act also prescribes the maximum punishment for the abetment of the commission of sati, to equate it with murder rather than with abetment of suicide under section 306 of the Indian Penal Code, as had been done in earlier cases of commission of sati. The Act also makes glorification of the practice of sati an offence and goes a long way in refuting the myth that sati is a manifestation of the glory of Hindu women.

Parliament passed the Family Courts Act in 1984 in order to provide a forum in which family disputes would be resolved in an atmosphere of reconciliation and understanding, keep the advocates out and provide for counsellors to assist the judge. Unfortunately only three States have set up these Courts till this date and women are still compelled to seek justice in the normal courts where they are always at a disadvantage.

With the growing importance of human rights in the international sphere, (Universal Declaration of Human Rights in Article 15, declares 'everyone has the right to nationality and that no one shall be arbitrarily deprived of that nationality') the concept of nationality has come to acquire great importance. In 1957 the United Nations General Assembly adopted the Convention on the Nationality of Married Women. The

Convention on the Elimination of All Forms of Discrimination Against Women also dealt with the nationality of married women.

Many Indian women marrying foreigners become stateless because the Citizenship Act, 1955, does not provide for such an eventuality.

The present rule prevents children of Indian women marrying aliens from being considered as Indian citizens. The Committee on the Status of Women suggests that section 4 (1) of the Act should be as follows - "A person born outside India on or after 26 January, 1950 shall be a citizen of India by descent if his father or mother is a citizen of India at the time of his birth"⁴³.

Although the Government of India has enacted laws to improve the legal status of women loopholes continue to exist which prevent women from asserting their rights.

Status of Women in Education

Although it is almost a century since the first Indian woman obtained a university degree, till independence there was very little improvement in women's educational status. The roots of the problems in independent India can be traced back to the colonial period when formal education of women started. The Indian educational system as well as other aspects of development by and large are the legacy of the colonial past.

⁴³The Section otherwise runs as "A person born outside India on or after 26th January, 1950 shall be citizen of India by descent of his father is a citizen of India at the time of his birth.

The colonial administration initially cast the educational system in a male mould and favoured the education of men for government service jobs. During the late 19th century and early 20th century, the Victorian concepts of women as helpless and dependent excluded them from the public sphere and relegated them to the private and domestic sphere. Even Indian social reformers who emphasized the importance of educating women during that period did so to raise their status within the family, to make them more capable in their traditional roles as wives and mothers, rather than for participation in the wider social sphere. A differentiated curricula supported by the Education Commission of 1882 was based on the view that certain subjects - hygiene, domestic service, needlework and music, were more suited for the desired roles girls were expected to perform in society.

The issues and manifestations of the problems were governed, in the social context by differential responses to women by class, religion, culture and region. Women's education was given impetus by private organisations and their activities were restricted to urban areas while rural areas were almost entirely neglected. During that period social handicaps such as sati, child marriage, the ban on widow remarriage and 'purdah' denied women access to education. The effects of 'purdah', and its related concept of female chastity and honour, have an impact even to this day in terms of early withdrawal from school and fear of co-educational institutions.

The reason for the predominance of the British legacy on the country's policies and planning after independence could be linked with the historical conditions under which India achieved freedom.⁴⁴ After independence, the country's leadership came into the hands of nationalist leaders, many of whom were greatly influenced by western liberal ideology. Also the unequal relations with imperialism continued. Thus the values and institutions prevailing under the British not only remained intact but also led to the import of new ideas unsuitable to Indian conditions. The cumulative effect was that India failed to evolve its own independent policies for education.

Independence became a "watershed in the history of women's education in India." Nevertheless, the wide disparity in the education of men and women at the end of the colonial period, the impact of its policies and practices, and a long history of lack of education for women were great handicaps for the new government.

	1951	1981
Female Literacy	7.9	24.8
Male Literacy	25.0	47.7

Source: Ratna Ghosh, "Human Rights and Sexism in Indian Education", India International Centre Quaterly, vol. 13, nos. 3-4, December 1986.

With the acceptance of the equality of women, the goals of their education were recognised as being the same as those of men's education. Education was seen as a means of providing equal opportunity and more

⁴⁴Balaji Pande, "Women's Education", Social Scientist, vol. 13, nos. 10-11, October - November 1985, p.11.

recently emphasised the need for human resource development in the process of national development. In the constitutional provisions of equal rights, equal access to women at all levels of education was given (Article 41). Further, the Directive Principles in Article 45 provided that within 10 years of the acceptance of it, free and compulsory education should be provided for all children upto the age of 14 years. These constitutional directives have been included as one of the components of the "Minimum Needs Programme" and given over-riding priority.

After India achieved independence, the first governmental act to organise the education system was the setting up of the University Education Commission headed by Prof. S. Radhakrishnan. The Government also constituted a Secondary Education Commission on the issue of girls education which stated among other things, "in a democratic society ... differences which may lead to variations in the standard of intellectual development achieved by boys and girls cannot be envisaged."⁴⁵

In 1958, the Government of India appointed a National Committee on Women's Education to study the difficulties that hindered the progress of girls education and to make recommendations in order to bring girls education at the same level as the boys. It was emphatically stated that what was needed was a re-education for men and women to accept new and scientific attitudes towards each other and to themselves⁴⁶.

⁴⁵Balaji Pande, n.6, pp.2-3.

⁴⁶Ibid, p.3.

In 1963, the Government appointed another Committee on differentiation of curricula for boys and girls. The Bhaktavaslam Committee was appointed in 1964 to look into the causes for the lack of public support particularly in rural areas for girls education and to enlist public cooperation. The Education Commission (1964-66) was established to study the issue of women's education at length.

Based on the broad recommendations of the Education Commission the Government declared a National Policy on Education in 1968 with the aim to achieve "economic and cultural development of the country for national integration". The policy was committed to a continuous effort for the expansion and equalisation of educational opportunity, sustained effort to raise quality, emphasis on development of science and technology and cultivation of moral and social values.

The First Five Year Plan visualised education as the vehicle for successful achievement of planned development. It advocated the need for adopting special measures for solving problems in the field of women's education.

The major schemes undertaken encompassed elementary education, secondary education, university education, post graduate education and research, technical education scholarships, social/adult education and physical education.

The Second Plan continued to emphasise the overall expansion of educational facilities. The Report of the National Committee on Women's

Education (1959) made a strong impact on the Third Five Year Plan. It launched important schemes like condensed school courses for adult women, Bal Sevika training and child care programmes. Subsequent plans supported these measures and also continued incentives such as free text books and scholarships for girls. This trend was continued in the Fourth and Fifth Five Year Plans. The major thrust of the Fifth Plan was to offer equality of opportunities as part of the overall plan of ensuring social justice and in improving the quality of education.

A landmark on the Sixth Plan was the inclusion of women's education as one of the major programmes under 'Women and Development'. The programmes for universalisation of elementary education was specially directed towards higher enrolment and retention of girls in schools. It was envisaged to promote balwadi-cum-creches attached to the schools to enable girls responsible for sibling care at home to attend schools. Women teachers were to be appointed in rural sectors to encourage girls education. Science teaching in girls schools and colleges had to be strengthened to achieve greater participation of women in this field as well as encourage women in engineering, electronics, agriculture, veterinary, fishery and forestry courses. The number of girls hostels were to be increased for encouraging education of women belonging to backward classes. Multi-purpose institutions for imparting training in arts, crafts etc. and co-educational institutions were encouraged and the adult education programme too received a fillip.⁴⁷

⁴⁷ National Perspective Plan for Women 1988-2000 A.D. n.12, p.70.

The Seventh Plan envisages restructuring of educational programmes and modification of school curricula to eliminate gender bias.⁴⁸ At the elementary stage, education has been made free for girls. Efforts are to be made to reach 100 percent coverage in elementary education. Incentives to needy girls by way of distribution of uniforms, free text books and attendance scholarships are to be continued. Non-formal elementary education is to be expanded to benefit girls in the age-group of 6-14 years. It is also proposed to expand the Open Learning System, including correspondence courses for them. In order to promote technical and vocational education for girls, more women's polytechnics are to be set up and programmes for vocationalisation of education to be expanded.

After over three decades of "planned" development in the country, the literacy rate has just reached nearly 36 per cent, a rate of increase of only 1 per cent per year. Of these nearly 13 per cent have never received any formal education; 11 per cent have studied up to primary level and 6 per cent up to middle level. That, there is no significant improvement in the educational sector can be related to the fact that there has been a constant reduction in the proportion of plan allocations for education in relation to the total plan outlay. This has been contrary to the recommendation of the Education Commission (1964-66) which had recommended that at least 6 per cent of the national income should be earmarked for education but the amount had never increased above 3.5 per cent of the national income⁴⁹.

⁴⁸ Ibid, p.71.

⁴⁹ Balaji Pande, n.44, pp.11-12.

Sectoral allocation to education during these plan periods indicates that considerably more amounts have been sanctioned at the higher level. However, at the elementary level which is to be free and compulsory calculated cuts have been made.

Along with a sharp reduction in the proportion of allocation for elementary level the Fourth All India Educational Survey conducted by NCERT in 1978 reported that 3000 primary schools have no teachers at all; only 9 percent of primary schools have five teachers; more than half of the primary schools are in thatched houses or open spaces; one-third have no mats, benches etc.; 40 per cent have no black boards; 70 per cent have no books and 80 percent have no toilet facilities.⁵⁰

Literacy/Illiteracy

Though each census reports a rise in the literacy rate of women, from 7.95 per cent to 24.82 per cent between 1951 and 1981, the gender gap appears to be widening: from 1055 illiterate women to 1000 illiterate men in 1911; 1058 illiterate women to 1000 illiterate men in 1931 which jumped to 1138 in 1951 to 1250 in 1961; to 1248 in 1971 and to 1322 in 1981.⁵¹

The increase in the gender gap is mainly due to the growth in absolute numbers. Further, there are substantial regional imbalances and differences, e.g., in Kerala female literacy is as high as 73 per cent

⁵⁰ Ibid, p.12.

⁵¹ Balaji Pande, n.6, pp.8-9.

whereas in Rajasthan it is less than 12 per cent. Again, though the overall female literacy figure according to the 1981 census is 24.8 per cent in rural areas, while in the towns and cities women's literacy has gone up to 47.8 per cent.⁵²

Enrolment

The enrolment figure indicates that the gap between boys and girls continues at a high proportion. Girls constitute only a third of total enrolments at every level of schooling and their drop-out rate is higher than that of boys. The following table makes clear that (a) though overall enrolments have been steadily rising with each census recording, yet (b) there are substantial differences in male-female rates of participation.⁵³

	Primary Classes I-V (6-11)			Middle Classes VI-VIII (11-14)		
	BOYS	GIRLS	TOTAL	BOYS	GIRLS	TOTAL
1950-51	55.0	20.1	37.8	20.8	4.6	13.0
1955-56	59.5	25.0	42.6	25.6	6.9	16.5
1960-61	74.0	35.0	54.8	35.5	12.5	24.3
1965-66	90.2	47.6	69.2	49.9	20.7	35.6
1970-71	95.5	60.5	78.6	46.3	19.9	33.4
1975-76	100.4	66.1	83.8	48.6	23.9	36.7
1980-81	101.8	67.6	85.2	53.5	29.1	41.6

Source: Malavika Karlekar, "Women's Education in India: Some Basic Issues", Social Action, vol. 36, no.1, January-March 1986.

⁵² Ibid, p.10.

⁵³ Malavika Karlekar, "Women's Education in India : Some Basic Issues," Social Action, vol. 36, no.1, January - March 1986, p.28.

While girls enrolment increased from 64 lakhs in 1951 to nearly 400 lakhs in 1981, this still accounted for only 12 per cent of the relevant age-groups at all levels as against the figure of 20 per cent for boys.

It has been officially admitted that drop-out rate among girls is much higher than the boys, e.g., in 1975-76, 66.1 per cent of girls in the age group of 6 to 11 years were enrolled in primary school classes, mainly in Class I. The 1980-81 figures show that during the period when these girls should have been going into Class VI, the enrolment figure had dropped to 29.1 per cent. Thus, before primary school is over, well over 50 per cent of those initially enrolled leave the system. It is similar for boys too. In a situation where 44 million children are a part of the labour force and every third house-hold has a working child, national strategies for development have to contend with individual strategies for survival.

Secondary Education

There is a progressive rise in the rate of enrolment in secondary education of girls during the various Plan periods as seen:

Period	Figures in Lakhs
1950-51	1.61 (16)
1965-66	11.72 (24)
1970-71	17.08 (37)
1980-81	30.98 (43)
1984-85	49.37 (44)

(Figures in brackets show enrolment of girls per 100 boys)

Source: National Perspective Plan for Women 1988-2000 A.D. Report of the Core Group (New Delhi: Department of Women and Child Development, Govt. of India, 1988.)

The enrolment ratio of girls in the age group of 15-18 years for secondary classes is 14.3 per cent as against 29.3 per cent for boys. Secondary education continues to be confined to urban areas and accessible to the upper and middle economic strata. The 10+2+3 system of education has been introduced to establish a uniform pattern of education all over the country in terms of its curriculum, structure etc. It has laid a foundation for higher education without differentiation between boys and girls.

Higher Education

Despite regional variations, going to college is by and large an urban middle class phenomenon, which is more marked in the case of girls. The total enrolment of about 10 lakhs accounts for 1.5 per cent of the 17 to 23 years age group which makes 38 girls to every 100 boys in higher education. The proportion of women to men is higher at the post graduate level than at the undergraduate level; suggesting that once women in certain areas are able to break through the barriers of prejudice, they proceed to acquire a further degree and perhaps jobs in these areas. The following table shows women in Higher Education (in thousands)

Faculty	1970-71		No. of	1980-81		No. of
	Total Women		Women for 100 Men	Total Women		Women Per 100 Men
Arts	842	280	49.8	1114	420	60.5
Science	513	96	23.0	535	154	40.4
Commerce	255	8	3.2	553	89	19.2
Education	56	21	60.0	71	34	91.9
Engineering/Technology	87	1	1.2	129	5	4.0
Medicine	90	20	28.6	110	27	32.5
Agriculture	27	(.148)	---	39	1	2.6
Veterinary Science	6	(.044)	---	8	(.240)	---
Law	71	3	4.4	175	12	7.4
Others	6	3	50.0	18	7	63.6
Total	1953	431	28.3	2752	749	37.4

Source: Malavika Karlekar, "Women's Education in India: Some Basic Issues", Social Action, vol. 36, no.1, January-March 1986.

The proportion of women's enrolment to total enrolment increased from 11 per cent to 29 per cent. The state-wise enrolment data indicates that at the graduate level this proportion increased from 12 per cent to 31 per cent and at research level from 14 per cent to 26 per cent. The gender gap in enrolment is also bridging at a faster rate. The sex ratio of enrolment was 122 in 1950-51, 186 in 1960-61, 279 in 1970-71, 374 in 1980-81 and 410 in 1983-84 and this gap is shrinking at a faster rate at the post graduate level.

Entry of women to higher education has been gaining ground since 1950-51 as indicated by the following data:⁵⁴ in arts and humanities the share rose from 16 per cent to 42 per cent, in commerce from 0.6 per cent to 15 per cent, in medicine from 16.3 to 24.3 per cent, in engineering and technology from 0.2 per cent to 4.1 per cent, in law from 2 per cent to 7.7 per cent and in veterinary science from 0.5 per cent to 5.3 per cent.

Indian education is the proverbial pyramid, with higher education at the apex catering to a minority and primary education at the base, providing a semblance of education to the masses. However, even within higher education there are substantial differences, in access and it is not only socio-economic class which determines access to higher education of a certain kind but also the sex of a recipient. Gender based inequalities operate in the same manner as class inequality.

Non-formal Education

It was only in the Sixth Five Year Plan, that adult education was included as a part of the "Minimum Needs Programme" and the goal of reaching 100 per cent literacy by 1990 was set under the New Twenty Point Programme. Adult Education Centres were set up, which provided education on subjects like health, nutrition and family planning. Under the Adult Education Programme the content of education was to be modified to incorporate new value systems regarding the role of women in the family and community.

The Seventh Plan also envisages inter alia the preparation of district level plans with local community participation both for activating and

⁵⁴Balaji Pande, n.6, p.16.

implementing the literacy programme and the creation of special mechanisms to monitor the progress of implementation at state levels.

The Integrated Rural Development Programme (IRDP), National Rural Employment Programme (NREP), Training of Rural Youth in Self Employment (TRYSEM) and other such programmes also deal with functional literacy for women. The programme of Functional Literacy for Adult Women (a component of the ICDS programme) was abandoned, though the concept of anganwadi workers could have been an effective mechanism for imparting non-formal education. Although the scheme has been revised to focus on issues of immediate relevance to women, it has yet to be introduced.

The scheme of 'condensed courses of education and vocational training' for adult women, started in 1958 under the aegis of the Central Social Welfare Board, was expanded over the years to vocational training in fields of high employment potential.

The various schemes, however, have not been able to make any significant impact on literacy levels of the Indian population, especially women. According to a World Bank Report, in 2000 AD, there will be 500 million illiterates in India, constituting 54 per cent of the world's population of illiterates.⁵⁵ As per the Seventh Plan, the total number of adult illiterates is about 900 lakhs, of whom 580 lakhs are women. Although the proportion of women in adult education centres has risen above

⁵⁵ National Perspective Plan for Women 1988-2000 A.D., n.12, p.75.

50 per cent (52.34 in 1984-85), women still constitute 57 per cent of the illiterate population.

Despite constitutional guarantee for equal opportunity of education for both the sexes, women's education continues to be plagued with bias. There has been persistent ambivalence between the traditional view that supports women's education to equip them to become better wives and mothers and modern attitude which visualises education as an instrument for women's equality and development. This ambivalence was observed by the Committee on the Status of Women in India. It noted that this had an impact on academic planning, allocation of resources and development of values in society for both men and women. The subsequent official and non-official documents have been critically highlighting this aspect and recommending measures to remove it. But despite government assurances to remove this ambivalence, till today subjects have been specifically categorised as 'masculine' and 'feminine'.⁵⁶ Home science, needlework or fine arts thus regarded as girls' subjects while mathematics and science are considered difficult for them. Mathematics is compulsory for boys up to secondary level but is optional for girls in some states. It has been widely accepted that the school curricula not only widen women's contribution in the various fields but also projects them as being inferior to men. Various Committees on women's education have pointed out that text books and other reading materials are generally dominated by urban male biases. The Committee on the Status of Women in India reported that the " schools

⁵⁶Balaji Pande, n.6, p.17.

reflect and strengthen the traditional prejudices of inequality through their curricula, the classification of subjects on the basis of sex and unwritten code of conduct enforced on their people.⁵⁷ Consciousness of sex stereotyping in school programmes and textbooks has grown, as illustrated in the organisation by the National Council of Educational Research and Training of a Seminar (1975) on identification of values commensurate with the status of women.

The year 1975 marks the beginning of a reappraisal of women's issues including education with the United Nations declaring 1976-1985 the Decade for Women. The post 1975 phase saw more official concern towards improving women's access to education.

In the area of education, the major problems identified by the Committee on the Status of Women were (a) illiteracy, (b) widening gap in access to elementary education, (c) problems of non-enrolment, wastage and drop out, (d) imbalances in educational developments, (e) ideological imbalances among educational planners and administrators regarding the objectives of women's education. The Committee recommended several measures to improve women's education which were accepted by the Empowered Committee of the Government of India.

Women remain greatly under-represented within the educational system and concomitantly dominate the ranks of the illiterates. Although in the sector of literacy there has been a 6 per cent increase in female literacy

⁵⁷Towards Equality, n.4, pp. 281-282.

during the decade - figures being 18.70 per cent in 1971 and 24.82 per cent in 1981, the literacy rate of males was substantially higher - 46.7 per cent. In fact, the growth rate had been shrinking over the last two decades from 102.3 per cent in 1961 to 76.56 per cent in 1971 and 63.75 per cent in 1981, though the sex ratio among literates indicates an improvement during this period from 354 in 1961 to 440 in 1971 and 494 in 1981.⁵⁸

The number of illiterate females has been increasing steadily, the figures being 185.2 million in 1961, 215 million in 1971 and 241 million in 1981. According to the 1981 census nearly 75 per cent of the total female population is illiterate - Rajasthan being the highest 88.58 per cent followed by Bihar 86.37 per cent, Uttar Pradesh 85.12 per cent. The gender gap in access to literacy is also widening. During the decade the sex ratio of illiterates have increased from 1243 in 1971 to 1319 in 1981 in rural areas and from 1281 to 1344 in urban areas.⁵⁹

No significant change occurred in the enrolment ratios of the sexes during the decade and the gulf between boys and girls enrolment continue to exist at a high proportion. Over 55 per cent at primary level, more than 75 per cent at the middle level and more than 85 per cent at the secondary level are out of schools. The corresponding figures for boys are 20 per cent at primary, 57 per cent at middle and 71 per cent at the secondary level.

⁵⁸Balaji Pande, n.44, p.15.

⁵⁹Ibid.

Under the Programme for Universalisation of Elementary Education, there has been a special drive for higher enrolment and retention of girls in schools. The enrolment of girls increased from 272.78 lakhs in 1979-80 to 282.28 lakhs in 1980-81; 291.19 lakhs in 1981-82, and 301.58 lakhs in 1982-83 in classes I-V. For classes VI-VIII, the enrolment of girls improved from 61.53 lakhs in 1979-80, to 65.68 lakhs in 1980-81, 73.83 lakhs in 1981-82 and 81.20 lakhs in 1982-83. The target for 1983-84 was 87.41 lakhs. However, what is more alarming is the fact that the target fixed by the Planning Commission always maintains a big gap between boys and girls enrolment at the elementary level.

The proportion of women's enrolment to total enrolment in higher education indicates an improvement during the decade though the gap remains very high. At the graduate level, the proportion of women's enrolment to total enrolment increased from 21.70 per cent in 1970-71 to 27.70 per cent in 1981-82. At the post-graduate level from 25.80 per cent to 28.60 per cent, at research from 20.70 per cent to 27.70 per cent. Subjects in which women's enrolment increased significantly during the decade are Commerce (3 per cent to 16 per cent); Science (18 per cent to 28 per cent) and Education (36 per cent to 48 per cent). The table mentioned below indicates the sex ratio (number of women per thousand men) of faculty wise enrolment during the decade.

Percentage of Female Enrolment Faculty-Wise									
	Arts	Science	Comm.	Educ.	Eng/ Tech	Med.	Agri.	Vet.	Law Sci- ence
1950-51	16.1	7.1	0.6	32.4	0.16	16.38	0.17	0.45	2.1
1970-71	33.2	18.6	3.1	36.5	1.0	22.9	0.5	0.7	3.7
1980-81	37.7	28.7	15.9	47.3	3.8	24.4	3.3	3.3	69.0

Source: Balaji Pande, "Women's Education", Social Scientist, vol.13, nos.10-11, October-November 1985.

Following the United Nations General Assembly Resolution on the World Plan of Action during the Decade 1975-85, the Government of India prepared a National Plan of Action for Women in 1977 which outlined the following objectives for women's education:⁶⁰

- a) "To prepare women to fully participate in socially productive work, and to be fully aware of family planning needs with a view to achieving her full integration with the democratic and developmental efforts of the country;
- b) To help break down overt and covert biases against women;
- c) To make women aware of the various legal, social and economic rights, provisions and privileges available to them and of the way they can take advantage of them for their advancement;
- d) To enable women to be self-reliant to achieve economic independence;

⁶⁰ Ibid, p.16.

- e) To impart the idea of equality between the sexes and participation by women in development through the education system;
- f) Above all, to find full expression for her talent, ability and personality and for this purpose, enable her to adopt a discriminating attitude so that she can escape the bonds of superstition and obscurantism."

The Sixth Five Year Plan in the Chapter on 'Women and Development', deals with the efforts required in the different welfare and development sectors (education, employment and health) for women. However, no separate outlay was suggested. The Seventh Plan too envisaged to bridge the gender gap in education.

The Central Advisory Board of Education in 1983 recommended measures for the acceleration of the education of women. It also urged the formation of a Standing Committee to ensure the implementation of these measures, as well as women's cells in the educational agencies of the State Governments. In order to raise the share of female enrolment in tertiary education beyond one-third the Government has formulated a two pronged approach⁶¹ - equal access is to be ensured to all educational facilities. Simultaneously women's institutions will receive developmental grants, research and training fellowships and financial support in the establishment of computer facilities and the re-development of the undergraduate curricula.

⁶¹ Achievements of the United Nations Decade for Women in Asia and Pacific, n.5, p.101.

The Government has provided financial assistance amounting to Rs. 73.2 million in 1983-84, to nine states for part time non-formal education programmes. Responsibility for co-ordination and monitoring is entrusted to the Standing Committee on Women's Education, headed by the Minister of State of Education and Culture.

The National Policy on Education (NPE) 1986 is a landmark in the field of women's education. For the first time a document has addressed itself to the basic issues of women's equality. In the section "Education for Equality" the Preamble reads, "the new policy will lay special emphasis on the removal of disparities and to equalise educational opportunity by attending to the specific needs of those who have been denied equality so far.

The sub-section entitled "Education for Women's Equality" envisages three distinct functions of the education system⁶² : (1) a positive interventionist role in the empowerment of women (2) development of new values through redesigned curricula and text books and (3) promotion of women's studies as part of various courses and to encourage educational institutions to take up active programmes to further women's development.

Another landmark of the New Education Policy is the document "Programme of Action" (POA) prepared by the Government. It specifies measures which the government will undertake to implement the policy directives.

⁶²Balaji Pande, n.6, p.23. Also see National Perspective Plan for Women 1988-2000 A.D., n.12, pp. 75-76.

The programme entails the following ⁶³:

- 1) A phased time bound programme of elementary education for girls, particularly up to primary stage by 1990 and up to the elementary stage by 1995.
- 2) A phased time bound programme of adult education for women in the age group 15-35 by 1995.
- 3) Increased women's access to vocational, technical, professional education and existing and emergent technologies.
- 4) Review and re-organisation of educational activities to ensure that they make a substantial contribution towards women's equality and creation of appropriate cells/units thereof.

National Literacy Mission (NLM) which aims at eradication of illiteracy in 15-35 age-group by 1995 concretises what is envisaged in NPE as regards literacy and adult education. The mission document emphasises the importance of imbibing the values of national integration, women's equality, observance of small family norms etc.

The programmes for women's education will have to be implemented as a priority so that women attain a comparable level of education by 2000 A.D. The strategy to be adopted for raising literacy levels and education among women has to keep in view the vast cultural, geographical and social variations as also the problems relating to poverty and ignorance. The objectives to be achieved by 2000 AD in regard to women's education

⁶³ Balaji Pande, n.44, p.14.

reiterated that the goals and strategies spelt out in the National Policy on Education, Programme of Action and the National Literacy Mission would ensure a much larger access for women to education.

Status of Women in Employment

Women all over the world, by and large, have been discriminated against in almost every sphere of life. This discrimination is more conspicuous in the field of economic activity which was till recently considered a man's prerogative.

Until the 1960s differential treatment of men and women at work was considered natural. Differentiations, the fact that women were generally subordinate to men, and unequal pay for equal work, were taken for granted. Recently these same social processes have come to be viewed as discrimination.

The debate regarding the need for equality of rights and opportunities for economic participation centres around three arguments⁶⁴:

- a) That women's economic subjugation and dependence lead to exploitation and is a denial of social justice and human rights.
- b) That the development of the society requires full participation by all sections of the population, and opportunities for full development of the potentialities of women.

⁶⁴Status of Women in India, Synopsis of the Report of the National Committee on the Status of Women. Indian Council of Social Science Research, (New Delhi : Allied Pub. 1975) p.59.

c) That the modern trends in demographic and social changes are introducing major changes in women's roles and responsibilities. A social crisis would result if women are unable to meet these challenges because of social handicaps.

It would be important to analyse the changes in female work participation rates so as to assess the impact of various programmes on female/employment.

Crude Work Participation Rates, All India 1971 to 1981

(Furnished by Census & NSS)

	Rural		Urban	
	Male	Female	Male	Female
Main Activity				
1971 Census	53.62	13.36	48.80	6.65
1981 Census	52.62	16.00	48.54	7.28
1977-78 NSS	62.25	28.82	56.29	13.81
Modified main activity (including Marginal Workers)				
1972-73 NSS	63.84	35.53	57.09	15.53
1977-78 NSS	64.06	38.48	57.48	17.80
1981 NSS	53.80	23.18	49.07	8.32
1983 NSS	63.23	38.74	57.71	17.13

Source : National Perspective Plan for Women 1988-2000 A.D. Report of the Core Group (New Delhi : Department of Women and Child Development, Ministry of Human Resource Development, Govt. of India, 1988).

Keeping in mind the above in the 'main activity' section the participation rates for rural females in 1981 are noticeably higher than in 1971, whereas only a marginal increase is evident with respect to urban females. The NSS work participation rates show a much higher participation due to the differential base figures used in the calculations. The NSS data

employing the concept of modified main activity (including marginal workers) show an upward trend in the work participation rates between the periods 1972-73 and 1977-78.

According to the census data, age specific participation rates revealed an increase in women's participation rate, except for the age group of 60+.

Age Specific Worker Participation Rates Census Main Activity, 1971 and 1981

Age Group	Rural Males		Rural Females		Urban Males		Urban Females	
	1971	1981	1971	1981	1971	1981	1971	1981
0-11	7.56	6.30	3.05	3.53	2.75	2.46	0.82	0.88
15-19	62.31	58.19	18.80	22.77	28.32	31.54	5.51	6.19
20-24	86.56	82.71	20.58	24.29	67.49	63.35	9.54	9.29
25-29	95.45	92.79	22.16	26.14	90.54	86.78	11.68	12.17
30-39	97.61	96.71	23.78	28.45	95.45	94.93	13.11	15.14
40-49	97.62	97.25	24.43	28.90	95.15	95.40	14.53	15.34
50-59	95.50	94.08	21.08	23.94	87.85	86.86	12.71	12.42
60+	77.52	67.69	11.19	11.29	55.35	47.49	6.46	5.75
All ages	53.62	52.62	13.36	16.00	48.80	48.54	6.65	7.28

Source : National Perspective Plan for Women 1988-2000 A. D. Report of the Core Group (New Delhi : Department of Women and Child Development, Ministry of Human Resource Development, Govt. of India, 1988).

A decline in the self-employed category and an increase in casual labour for both male and female workers except for a slight decrease in 1983 for female casual workers category was noticed as seen in the Table.

Unorganised or Informal Sector

Women hold a large share in the rural unorganised sector as seen in the Table below:

	Women	(lakhs) Men
Agriculture	18.70	754.70
Dairying	750.00	50.00
Fisheries	10.00	18.00
Small Animal Husbandry	150.00	20.00
Kkadi & Village Industries	17.00	19.90
Handicrafts	5.40	22.00
Sericulture	8.00	12.00
Handlooms	29.80	44.80

Source : National Perspective Plan for Women 1988-2000 A.D. Report of the Core Group (New Delhi : Department of Women and Child Development, Ministry of Human Resource Development, Govt. of India, 1988).

Investment outlays in these sectors command high priority and several government programmes exist to increase the productivity of these sectors. However, the beneficiaries are men and male organizations; programmes are executed by male bureaucrats and male extension workers. Women are not viewed as participants and target groups but as beneficiaries through male members of their households. Most of the jobs in this sector are low paid and performed by women. Also, women are being displaced from some of these sectors. Structural problems have also arisen as a result of the hierarchical pattern of land ownership, the nature of land relations and gender division of labour and the credit system. The strong caste-class relationship in the ownership of land adversely affects the weaker sections particularly women.⁶⁵

⁶⁵ National Perspective Plan for Women 1988-2000 A.D., n.12, p.26.

Though women are major partners in agriculture, their contribution is unrecognised and undervalued. Many productive activities of women in agricultural household are hidden under the label of domestic work and hence become invisible.

In addition to those women formally included as workers in the Census or National Surveys, more than a quarter of the rural women and more than half of all women are engaged in these unrecorded activities e.g., sewing, free collection of firewood, fish; tailoring etc.

Women's contribution in wages in proportion to that of men in landless households is estimated to be 1.2 or 1.6 to 1.0 per cent. Only a mere 4 percent of women cultivators and less than 20 per cent women agricultural workers are literate. This makes it difficult for these women to move out to other jobs.

Agriculture, the oldest and most extensive employer of women similarly exhibits sexual allocation of tasks and operations. The reasons for these vary from region to region and appear to be mostly culturally determined. Some of it could be due to certain tasks being more easily combined with household responsibility. One of the greatest myths that is sustained is that women do light work. The arduousness of most women's tasks is never acknowledged because of a patriarchal shroud that covers up the actual labour input, the energy expended on different tasks.

According to an estimate by the National Commission on Self Employed Women, 94 per cent of the total female workforce operates within this

highly exploited sector. One of the main reasons for women's work becoming increasingly limited to this sector is that women lack the opportunity to acquire skills and training which could improve their job prospects. This is linked to the prevailing social relations between men and women. As women have to bear the major burden of domestic chores, they do not have the time to acquire skills and training. Low skill attainment among women and their consequent relegation to jobs which are labour intensive and arduous is also perpetuated by their unequal access to technology⁶⁶.

Women's employment in the unorganised sector also consists of self employment in petty trade, food processing, or on family units of traditional occupations etc. Industries where women workers exceed men workers are: weaving, cane bamboo, cotton spinning outside mills, coir products, sweets and condiments, rope making, silkworm weaving, butter ghee-jam-jelly making, and tobacco processing. These industries are facing increasing competition from the modern sector. In these household industry women are accorded the status of family workers with no direct control over earning and where patriarchal control is most closely exercised.

Organised Sector

The organised sector which consists of public sector and non-agricultural public sector establishments absorbs less than one-eighth of the actual work force of the country. In this sector the share of women to the total employment was 12.4 per cent in 1978 which was a small

⁶⁶ Ibid.

improvement from the 11 per cent of 1971. Women's employment in this sector grew from 19.30 lakhs in 1971 to an estimated 33.41 lakhs in 1986. Despite the increase shown, their proportion in the total public sector work force has remained roughly constant. Female employment in the public sector increased from 8.62 lakhs in 1971 to 19.50 lakhs in 1986. In the private sector too, women's employment improved from 10.67 lakhs in 1971 to 13.07 lakhs in 1986⁶⁷.

Occupational Distribution in Industry

Between 1971 and 1981, there was continued concentration of women in agriculture. In industry also, women are only in some sectors. In the tea-estate they constitute 90 per cent of the work force; in plantations they constitute 72 per cent of the work force. However, in other industries, their representation is scanty.

The highest concentration of women outside agriculture is in food products, tobacco, beverages and textiles. Women are employed in sanitary, domestic, education and health services such as teaching and nursing. Of the one hundred and fifty occupations mentioned in the occupation survey of the country, women appear only in thirty occupations⁶⁸.

Taking a few major industrial groups one finds that even within the industry, which employs women, women are selectively employed in a few narrow range of tasks. This makes women workers vulnerable to retrenchment-

⁶⁷ Ibid, p.25.

⁶⁸ Neera Desai and M. Krishnaraj, n.2, p.74.

when automation occurs in specific task operations. The question of occupational segregation of women is a major problem area. The actual situation is rationalised as women being good at certain tasks.

In the Public Sector the total number of women employees was around 1.7 million and in the Private Sector 1.2 million. In the various Ministries of the Union Government, in 1984 except for the Home Affairs where women employees were 5.80 per cent of the total and Communications which had 7.2 per cent women - representation in other departments was insignificant. The Finance Ministry had only 0.8 per cent women. Overall, in all the Ministries women employees were barely 2.5 per cent of the total labour force in 1984⁶⁹.

Construction labour is a fairly large sector of casual work, employing women in substantial numbers. The use of contractors to mobilize labour for this sector has perpetuated recruiting by "credit trying" and "loan bondage" methods.

Domestic work offers another major avenue of employment for women and girls. This section, as others in the organised sectors, has remained unrepresented in the national data systems and is the most unregulated and disorganised. An estimate in 1977-78 reported 1.68 million female domestic worker as against 0.62 million male workers.

⁶⁹ Ibid, p. 80.

Child labour

A 1978 sample survey estimates that among children (below 15 years) 4 per cent in the rural areas and 1.6 per cent in the urban areas are workers. In the rural areas 4.6 per cent boys and 3.5 per cent of girls are workers. In the urban areas, 2 per cent of boys and 1 per cent of girls are workers⁷⁰.

Proportionately, the number of girls who joined the labour force was more than the boys between 1971 and 1978. Compared with the 1971 Census figures there has been a decline in the overall work participation ratio of children from 4.67 per cent in 1971 to 3.61 per cent in 1978 - presumably due to the increase in literacy rate and educational opportunities. The decline for rural boys from 7.52 per cent to 4.55 per cent is significant. However, the work participation rate among girls seems to have increased between 1971 and 1978, from 2.9 to 3.48 per cent in the rural areas, from 0.82 per cent to 0.99 per cent in the urban areas, from 2.57 per cent to 3.05 per cent overall.

A combination of social and economic factors are responsible for the low participation rate and discrimination of women. In India, the proportion of women in low paid and less skilled jobs is greater than that of men. According to the Second Occupational Wage Survey (Government of India, 1973) in the cashew nut and tobacco industries females constitute more than 90 per cent of the employees. Females also constitute more than

⁷⁰ Thomas P. Mathai and Harji Malik, n. 28, p. 497.

40 per cent of the employees in tea and coffee plantations, and in bidi factories; whereas in engineering, chemicals and petroleum refineries they constitute less than one per cent. The work in the latter is more skilled and the minimum wages higher as compared to the plantations and bidi industries.

Further, women employees are concentrated in a few job categories e.g. in cotton textiles where there are more than 28 categories. Here women are concentrated as "reelers". In plantations women normally are pluckers. The pay for jobs with female concentration is less than that of men and these jobs are among the lower rungs of the ladders of skilled jobs. Disparities in the various job categories are due to both prejudices and discriminatory recruitment policies. Women are recruited into dead end jobs from which advancement is highly improbable.

The major reason for wage differentials in India is role differentiation which begins in childhood and effects labour force attachment, choice of occupation, location, hours of work, investment in education etc. Also societal attitudes which even today do not consider it appropriate for women to work outside the home for wages.

Women workers, in general, are unorganised and unaware of their rights. Poverty, illiteracy and the seasonal nature of employment also exacerbates their position. Apart from these, discrimination against women at work, is strengthened by assigning lower rates for jobs traditionally done by women. A fundamental economic force that keeps women's wages low is the gap between supply and demand for female labour. India's overall growth

rate 3.5 per cent per annum has not been high enough to generate sufficient demand for labour (particularly female labour) and to provide productive employment to a labour force which is growing at over 25 per cent per annum.

Technological modernization has further adversely affected women by eliminating the traditional employment activity. Also the demand from modern industry pushes the price for raw materials beyond what traditional workers can afford. Fishing communities are displaced by mechanised fishing. Increasing deforestation, linked to 'development' has meant longer trips for women to collect fuel, water and fodder. Adoption of new farming technology has downgraded the input of women, due to their limited education.

Secular Decline in Female Labour Participation

Year	Female Workers as % Female Pop.	Male Workers as % Male Pop	Pop. Sex Ratio (No. of females per 1000 males)	Female Workers as per 1000 male workers
1901	31.70	61.11	972	504
1911	33.73	61.90	964	525
1921	32.67	60.52	955	516
1931	27.63	58.27	950	450
1951	23.31	54.04	946	408
1961	27.93	57.12	941	460
1971	14.22	52.75	930	215
1981	20.85	53.19	936	367

Source : Neera Desai and M. Krishnaraj, Women and Society in India (New Delhi : Ajanta Pub., 1987).

In 1971 there was a drastic dip in the female labour participation rate, which in 1980 improved slightly. During 1961-1981 the participation of males in the workforce had been falling, and this decline is closely associated with the growth of male population being faster than their absorption in the labour force. But for women, the reduction was mainly due to their substitution by male labour.

The lack of unionisation and organisation hampers the bargaining position of women, especially in the unorganised sector. This sector presents a number of difficulties in implementing protective labour laws relating to wages, conditions of work, insurance, provident fund, maternity leave, creche facilities etc. The exploitation in this sector is only marginally under the purview of laws. Channelling inputs such as literacy, health, family welfare services, etc. are also difficult in this sector.

A major hurdle to the development of employment opportunities for women is the lack of adequate training. The purpose is to develop employable skills that can generate better income and improve the status of women workers. The existing training programmes are primarily aimed at men creating further imbalances. Though facilities to train women through the industrial training institutes or polytechnics and apprenticeship training under Apprentice Act are available, there is no special focus on the training of women packaged with other inputs such as credit and marketing support.

The Indian Constitution guarantees equality of opportunity in matters relating to employment [Article 16(1)], and directs the state to secure

equal rights to adequate means of livelihood [Article 39(a)], equal pay for equal work [Article 39(d)], the right to a living wage (Article 43) and just and humane conditions of work (Article 42). Article 41 provides for the right to work and to public assistance on unemployment, old age, sickness and disablement. Article 15 of the Constitution prohibits any discrimination on the grounds of sex, but empowers the state to make 'special provisions for women and children' even if they violate the fundamental obligation of non-discrimination between the sexes. This enabled the state to introduce special protective measures for women labourers.

Enforcement of these laws is the responsibility of the government, trade unions and employers. Though these laws follow very closely the Conventions adopted by the International Labour Organization, they may also be seen as fulfilment of the Directive Principles of State Policy. Despite the principle of equal pay for equal work (backed by an ILO Convention) for both men and women, women continue to be discriminated against in the matter of payment of wages in comparison to men for doing the same job.

Patriarchal values and attitudes cannot be removed by merely putting a clause in the Constitution. Although it had been noted that economic bondage led to subordination of women, the provision of 'equal pay for equal work' for men and women was incorporated as a Directive Principle in the Constitution. This meant that it was not justiciable and could not be enforced in a court of law.

As was to be expected, employers took full advantage of this and continued to pay women less wages than men. Even State Governments forgot the Constitutional mandate to equality and non - discrimination, and adopted different wages for men and women. The Committee on the Status of Women recorded that six states, Punjab, Haryana, Tamil Nadu, Uttar Pradesh, Madhya Pradesh and Bihar gave different rates to sowers, weeders, reapers, for example, in Bihar a male sower gets Rs. 44.05 whereas a woman get Rs. 29.50; in Haryana a male weeder get Rs. 64.00 and a woman Rs. 30.60⁷¹.

With a view to remove this anomalous situation and to give effect to the provisions contained in Article 39 of the Constitution, a change in the law was brought about during the International Women's Year by the passing of the Equal Remuneration Act (1976).

The Preamble of the Act States, "An Act to provide for payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental thereto."⁷²

The Act stipulates equal pay for men and women for equal work or work of a similar nature. It seeks to correct any existing discrepancies in payments. The employer cannot reduce any worker's wage to maintain the parity at a lower level and it also makes provision that due to such equal

⁷¹Towards Equality, n.4, p. 165.

⁷²T.N. Srivastava, Woman and the Law, (New Delhi : Intellectual Pub. House, 1985), p.174.

payment the recruitment of women workers would not suffer a set back (Section 5).

The Act applies to all employments and provides for an Advisory Committee by the appropriate Government to provide for increasing employment opportunities for women. It also provides for appointment of authorities by Government to hear complaints, claims and appeals and to investigate whether the provisions of the Act are being complied with. The Central Government has set up Advisory Committees, so have many of the States and Union Territories. It is difficult to say how they have functioned. However, it is necessary to remember that years of prejudice against women workers getting the same pay will not be overcome by legislation alone but needs a serious implementing machinery.

Even when framing the Act, the position in countries which had already passed similar laws and norms laid down at the international level were not considered. Therefore, the Equal Remuneration Act only provides for payment of equal remuneration to men and women workers for the same work or the work of similar nature and for the prevention of discrimination against women in matters of employment. The result is that the employers are free to categorise the work done by men and women workers differently and thus they are put into different categories.

Wage disparities still persist between the wages of male and female employees working on the same job or jobs of similar nature and the discrimination on the basis of sex in the matter of employment is still

widespread. This is due to a number of factors, chief among them⁷³:

- (a) It is difficult to implement the Act in the unorganised sector because implementation needs a very large enforcement machinery.
- (b) There is general lack of awareness among women workers of the existence of such an Act.
- (c) Most of the women are in low paid jobs because of economic compulsion and hence they never oppose due to the fear of losing their jobs.
- (d) Protective laws are out of reach for most women because, by and large, they have neither the mental awareness nor the financial resources to take advantage of these provisions.
- (e) In the organised sector very few women workers take part in trade union activities and hence their interests are bypassed.

The question whether anti-discrimination laws help the cause of women is also relevant here. The obligation put upon employers to pay equal wages for equal work and in addition bear the cost of providing certain extra benefits and facilities to women workers is reported to have been responsible for the decline of women's participation in economic activities in India.

It has been recognised that physical structure and maternal functions of women place her at a disadvantageous position in the struggle for existence as to form a substantial difference between male and female workers. It has also been accepted all over the world that women workers

⁷³D.K. Lal Das, "Sex Discrimination Against Women at Work", Social Change, vol.8, no.3, September 1988, p.72.

should be provided with some special protection. The Conventions of the ILO and the United Nations Convention on the Elimination of All Forms of Discrimination embody this idea.

In India, a number of laws seek to protect the rights and interests of working women. The following are some of the prominent labour legislations which contain special provisions for women workers:

(a) Factories Act, 1948; (b) Plantations Act, 1951; (c) Mines Act, 1952; (d) Beedi and Cigar workers (Conditions of Employment) Act, 1966; (e) Employees' State Insurance Act, 1948; (f) Employees' Provident Fund and Miscellaneous; (g) Maternity Benefit Act, 1961; and (h) Equal Remuneration Act, 1976.

It is not possible to go into details of all these Acts. However, a gist of special provisions are given below⁷⁴ :

1. Prohibition in dangerous operations: Factories Act prohibits women's employment in which a prime mover or transmission machinery is at work. They are not allowed to clean, lubricate or adjust heavy machinery while it is in motion. Section 27, prohibits employment of women in a factory in which cotton opener is at work.
2. Washing Facilities : Factories Act provides for provision of exclusive toilet/washing facilities for women workers.

⁷⁴T.N. Srivastava, n.72, pp. 173-183.

3. Heavy weight: both the Factories Act and Mines Act authorise the appropriate government to fix the maximum load that can be lifted, carried or moved by women workers.
4. Prohibition of night work: The Factories Act, the Plantation Act, the Mines Act and the Beedi and Cigar Workers (Condition of Employment) Act, prohibit employment of women between 7 p.m. and 6 a.m. State Governments are authorised to relax this up to 10 p.m. In case of fishcuring and fish canning factories, further relaxation is permitted.
5. The employment of women in any part of the mine which is below the ground is prohibited under Section 46 of the Mines Act, 1952.
6. Provisions of Creches: Creches are to be provided for the use of children of the working mothers manufacturing bidis and cigars. Under the Factories Act, where more than 30 women workers are ordinarily employed, the employer shall provide and maintain suitable room or rooms for the use of children under the age of six years of these women workers. Similar provisions occur in the Plantation Labour Act, Mines Act and Beedi and Cigar workers (Condition of Employment) Act.
7. Maternity Benefit: The Employees' State Insurance Act and the Maternity Benefit Act contains provisions for maternity leave and payment of maternity benefits. Initially the Maternity Benefit Act applied only to those factories, mines and plantations not governed by the Employees' State Insurance Act which in turn, at first applied to those employees earning less than Five Hundred Rupees per month. It

was amended in 1975 and was applicable to employees earning one-thousand rupees per month. The Maternity Benefits Act was amended with effect from May 1, 1976, extending benefits to women earning more than one thousand rupees in establishments covered by the Employees' State Insurance Act, 1948.

The Salient Features of the Maternity Benefit Act relate to maximum leave a woman is entitled to and the number of days a woman ought to work.

Provisions Common for all Workers

Most of the enactments dealing with conditions of work inside the industrial establishment are comprehensive and make elaborate provisions for all workers. These provisions are usually applicable to female workers and they relate to hours of work, interval of rest, overtime, rest rooms, weekly holidays etc. These are basically community regulations, infringement of which invites the interference from authorities competent to enforce the law.

There are certain other provisions in the industrial law which, though uniformly applicable to all workers, male or female, have an individual character. These are related to⁷⁵ :

(1) Conditions of Service : which is governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946 and applies to every industrial establishment which employs one hundred or more workmen. The

⁷⁵ Ibid, p. 184-194.

model rules provide for payment of subsistence allowance in case a workman is placed under suspension in contemplation of disciplinary proceedings.

The dismissal, discharge or retrenchment of an individual workman falls in the category of an industrial dispute under Section 24 of the Industrial Disputes Act, 1947.

The above two Acts apply to the whole country and the Central Government and State Governments are the implementing agencies.

(2) **Death-cum-Retirement Benefits** : A basic feature of the post-independence labour legislation is the provision of adequate social security measures in the case of death of a worker during employment, or on his retirement after completion of the prescribed span. These provisions are contained in the Employees' Provident Fund and Miscellaneous Provisions Act 1952⁷⁶ and the Payment of Gratuity Act, 1972. The former enactment contains three schemes - Provident Fund, Family Pension Scheme and the Deposit Linked Insurance Scheme; while the latter provides for payment of gratuity.

(3) **Minimum Wages** : The price of the labour is determined on the principle of supply and demand. In a country, where there is abundance of labour this leads to a situation in which wages tend to get fixed below the subsistence level and exploitation of the labour force becomes a common phenomenon. To prevent the above, the Minimum Wages

⁷⁶ A separate enactment exists for workers working in the coal mines - The Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

Act, 1948 was passed immediately after independence. The Act enjoins upon the appropriate government to fix the minimum wages of employees in the schedule employment and the appropriate government have the power to make additions to the list. The list is comprehensive and includes employment in agriculture also. This Act provided for different wages for men and women.

- (4) Insurance Benefits : The Employees' State Insurance Act confers an important benefit to the employees in industrial establishment and other employments, to which the Act has been made applicable, in the form of medical benefits, disablement benefits, cash benefits, sickness benefits, maternity benefits, dependents and funeral benefits. The employers and employees are required to make a nominal weekly contribution as prescribed by Schedule I of the Act so as to be entitled to the above benefits.
- (5) Compensation for Injury and Disablement: One of the oldest piece of welfare legislation for the benefit of workers is the Workmen's Compensation Act, 1923. It provides for payment of compensation for the death or injuries or partial disablement.

The Constitutional and legal provisions that specifically apply to women workers have already been discussed. Several committees have made recommendations regarding the employment of women. The Committee on the Status of Women had made far reaching recommendations. It had suggested⁷⁷:

⁷⁷ Neera Desai and M. Krishnaraj, n.2, p. 135.

(1) reduction in the period of service for qualifying for maternity benefits; (2) reduction in the limit of women workers in establishments from 50 to 20 for provision of creches; (3) extension of time beyond 7 p.m. for women; (4) development of training and employment programmes; (5) creation of part time employment; (6) employment information; (7) provision for re-entry; (8) better enforcement of law and (9) unionisation of agricultural workers and other sectors presently not covered.

In accordance with the recommendations of the Committee on the Status of Women, the Ministry of Labour created a Women's Cell to prepare and co-ordinate policies and programme of female employment within the content of national manpower and economic policies, to monitor and evaluate the implementation of the Equal Remuneration Act, and to service the Advisory Committee for the promotion of women under the afore mentioned Act. Similar units have been established in some State Governments. However, the Labour Ministry felt that there was no need to have a separate policy relating to women and employment, particularly as special clauses had been written into various labour laws.

A National Plan of Action was formulated by the Government of India which identified the areas of problem as⁷⁸ :

- i) limited overall opportunities for wage employment;
- ii) attitudinal barriers to women's employment;
- iii) employer prejudices;
- iv) inadequate training;

⁷⁸ Ibid.

- v) lack of information and guidance;
- vi) inability to combine house work and child care responsibilities with wage work in the absence of support services.

Since 1975 the Indian Council of Social Science Research has sponsored a good deal of research on the problems of women in all spheres and on factors contributing to changes in their status and conditions. In a Memorandum submitted to the Government of India in 1976, the ICSSR noted the decline in women's employment and the increasing displacement of women from economic activity which had accelerated since 1951. It recommended among other things⁷⁹ : (a) the Government should take a policy decision to increase women's employment through special provisions in the Annual Plans. (b) Effort should be made to provide employment to at least 25 per cent of the female population. (c) Directives should be issued to concerned Ministries, the Planning Commission and State Governments that pre-planning exercises should estimate:

1. the size and characteristics of the women needing work in a given area;
2. possible types of occupations/activities which they could undertake with their existing or additional skills and without injury to their health;
3. possible effects of proposed development activities on the quality and volume of women's employment;

⁷⁹ Balaji Pande, n.6, p.21.

4. needed supportive service in the way of training, housing or transport, security arrangements, health and child-care and other organizational measures to facilitate women's work;
5. in order to sensitise these exercises to women's actual needs and problems, it is imperative to ensure systematic consultations and involvement of official and voluntary organizations and field workers dealing with women (e.g. gramsevikas, balsevikas, health and agricultural extension workers, mahila mandals and other women's groups formed by official or non-official agencies);
6. a system of quotas or job reservation for women in organised industries and services should be considered as a short time measure in order to reduce the present gap between the employment of men and women.

The Sixth Five Year Plan in the Section 'Women and Development' has raised the issue of employment of women. It recognised the need to offer larger employment to them in the schemes for public distribution system, rural godowns, operation flood, dairy development and social forestry and in armed forces. Modernization of traditional occupations of women such as spinning and weaving, match-making, coir, fishery etc. would be selective and would include simultaneous development of skills for alternative employment for them. Mechanisation was to be encouraged in such areas where the process or manufacturing involved extremely strenuous and debilitating hardwork which was injurious to health. The impact of new

projects on women's employment was to be monitored. Family aid services would be supported so as to enable women to remain in employment.

A major step to be taken to expand female employment would be to expand and diversify the education and training opportunities available to women. The Seventh Five Year Plan also envisages the need to encompass the above to ameliorate the position of women in employment.

An appraisal is necessary to examine the viability and marketability of the trades for which training and assistance is being provided by the government. The Central Social Welfare Board (CSWB) is implementing some employment generation schemes under which voluntary agencies in the country have been availing of financial assistance. Training also given under Apprentice Training Scheme should be made to expand the categories to encompass new and viable trades and create necessary linkages⁸⁰.

Vocational training opportunities are available for male and female youths through the more than 1,000 industrial training institutes in 32 engineering trades and 26 engineering trades, with 129 of these institutions being reserved for women. Female enrolment comprises less than 10 per cent of the total and is concentrated in the traditional and non-engineering trades⁸¹. The Ministry of Education is establishing women's polytechnic institutes to offer courses of study unavailable at the general institutions.

⁸⁰ National Perspective Plan for Women 1988-2000 A.D., n.12, p.32.

⁸¹ Achievements of the United Nations Decade for Women in Asia and Pacific, n.5, p.100.

Following a 1975-76 survey that assessed the impact of vocational training on female employment, the women's vocational training programme of the Ministry of Labour was re-oriented. Advanced instructional material and new course syllabi were developed and applied. A major step forward was the development of the National Vocational Training Institute and three regional vocational training institutes.

While the Department of Women and Child Development has a number of schemes such as short stay homes, working women's hostels, women's development corporations, it has no national programme for women's training. Further it is evident that the mixed programmes such as the TRYSEM have not reached women as effectively as visualized. Currently, there are at least 45 schemes in 17 Departments/Ministries of the Government of India catering to training of women but they do not present a systematic integrated approach to women's training. It is essential that such an approach be fostered. The focus of such training should be at those who are presently the most disadvantaged i.e., the vast majority of women engaged in the informal or unorganized sector and forming 90 per cent of the total female labour force⁸².

Women at work find themselves in a paradoxical situation. On the one hand social development and modernization have opened new avenues in employment for women, on the other, the technological changes have affected the work participation of women adversely in the primary and secondary sectors because of a lack of training opportunities and lack of mobility.

⁸²National Perspective Plan for Women 1988-2000 A.D., n.12, p.30.

Another dyad persists: a woman needs more protection than man in her work place. Protective and anti-discriminatory legislations for women recognise that welfare of children and society depend on them. But anti-discrimination legislation works to the disadvantage of women.

Labour laws for women in India are among the most progressive in the world, yet treatment of women is unsatisfactory. Employers circumvent labour laws and women workers are affected adversely because of ignorance and lack of organised strength. Although, sex discrimination against women exists in almost all the countries, it is particularly acute in the developing countries where wage disparities have a marked effect on female labour. Legislation and development alone are not the answers for achieving equality or social justice, an effective implementation machinery and a change in the attitudes of both men and women are essential to minimize any kind of role differentiation between the sexes.

Status of Women in Health

The health status of women in India may be gauged by demographic indicators; availability of and access to health services including family planning facilities and trends in consumption especially of food. The national aspiration is reflected in Article 47 of the Constitution which directs state policy to raise the level of nutrition, standard of living and public health of the people.

The ratio of women to men has been steadily declining. This is attributed as much to women dying at a faster rate than men, as to more boys being born than girls. Female mortality has been higher than the male rate, in the age groups 0-8 and 15-54⁸³. Medical Research has traced this mainly to maternal mortality accompanied, in most cases, by infant mortality.

Females have a lower expectation of life. While it was 26 years for both females and males in 1921-31, it improved for males to 47.1 years by 1961-71 and for females only to 45.6 years. The 1971-76 figures are 50.1 and 48.8 and 1976-81 are 52.6 and 51.6 respectively⁸⁴.

From the 1978 National Sample Survey of infant and child mortality, we can see that mortality for both male and female babies are high, but the female rate is substantially higher: 130 males to 142 female deaths for every 1000 live births in the villages; 69 males to 71 female deaths for every 1000 births in urban areas⁸⁵.

In the field of family planning, the programme of birth control in India has had mixed results. The annual rate of population growth went up from 1.3 per cent a year in 1950 to 2.2 per cent in the late 1960s and is estimated to be around 2 per cent now⁸⁶.

⁸³Thomas P. Mathai and Harji Malik, n. 28, p. 492.

⁸⁴Ibid.

⁸⁵Ibid, pp.492-493.

⁸⁶Ibid.

In the community health and preventive care programme there has been some progress. Although the number of primary health care centres have increased, there is scope for further improvement.

The Government intends to achieve primary health care for all by 2000 AD. In accordance with this objective and the Government's 20 Point Programme, the National Health Policy of the Ministry of Health and Family Welfare emphasises the following⁸⁷:

1. Promotion of Family Planning on a voluntary basis as a popular movement;
2. augmentation of primary health care facilities;
3. acceleration of measures to improve welfare and nutrition of women and children, particularly those in remote areas;
4. utilization of indigenous machines;
5. development of a health information system;
6. promotion of community participation in health care; and
7. development of medical research.

In accordance with this plan the health care infrastructure is being strengthened at all levels.

The number of primary health centres increased from 5250 in 1974 to 5471 in 1979 and nearly 6000 by 1983. In order to provide specialised backup support to the above, 471 community health centres were opened with the long term target being one for every 100,000 rural inhabitants.

⁸⁷ Achievements of the United Nations Decade for Women in Asia and Pacific, n.5, p.102.

In rural and urban areas services for mothers and children are being expanded through the improvement in the health care infrastructure.

As a decisive input for health, the nutritional status of women determines their own, as well as their children's health. Steps have been taken to provide supplementary feeding for pre-school children and expectant and nursing mothers from the weaker sections of the society. There is also a special nutrition programme in operation for pre-school, pregnant and nursing mothers and a countrywide education effort of the Applied Nutrition Programme. Based on the principle of community self reliance, the programme limits the role of the government to the provision of funds etc.

In the final analysis it is evident that the Government of India has undertaken various measures for ameliorating the position of women in all fields. However, it may be pointed out that although women in India are granted equal rights by law this equality is confined to constitutional texts, legislations and Acts only.

CONCLUDING OBSERVATIONS

From the analyses presented in the preceding chapters one point is clear that the position of women in society has varied tremendously over time and from place to place. But society has in all ages tended to discriminate between its different segments, between men and women in particular, by limiting the choice of roles an individual can play and the freedom to play that role, thus denying women of their human rights which are essential for the fullest realisation of the potential which nature has bestowed them with, as human beings.

The status of women is most often portrayed by the statement which says that women constitute one-half of humanity, perform two - thirds of the work, receive one - tenth of the income, and own one - hundredth of property. One finds that of all the violations of human rights, the most systematic, entrenched and widespread is the denial of equality to women. Despite some progress in recent years, there is no country in the world where women are recognised as equals. Demands to recognise rights of women therefore, focus on the eradication of gender -- discrimination.

As noted earlier, the movement for women's rights gained momentum only in the 20th century and more specifically since the post war period. However, as the analyses of the preceding chapters show, very little has so far been achieved in terms of ameliorating various social and legal constraints that characterise the status of women.

Various forums of the United Nations have spearheaded the movement for spelling out international standards and norms which deal exclusively with women. By recognising women as a vulnerable section of society it has

adopted various instruments exclusively dealing with the rights of women. These instruments may be divided into three categories : protective, corrective and non-discriminatory.

The protective category describes those provisions which reflect a societal conceptualisation of women as a group which either should not or cannot engage in special activities, where the implication is that women are a subordinate group.¹ Protection takes the form of exclusionary provisions which stipulate certain activities from which women are prohibited and these provisions apply to all women as a separate group.

The corrective category also identifies women as a distinct group which needs special treatment. The aim of the corrective provision is to alter and improve specific treatment that women are receiving, without making any overt comparisons to the treatment of men in the area². These provisions are inclusionary rather than exclusionary often removing a previous bar to activity.

Finally, the non-discriminatory sex-neutral category includes provisions which reject a conceptualisation of women as a separate group, and rather reflect one of men and women as entitled to equal treatment.³ These provisions treat women in the same manner as men. These conventions are inclusionary since they seek to end discrimination against, or special

¹Natalie Kaufman Hevener, International Law and the Status of Women (USA : Westview Press, 1983), p.4.

²Ibid.

³Ibid.

treatment of women and they apply to all men and women unlike the above two categories.

The application of universal, internationally accepted standards is a corrective for policies and practices that impede women's advancement, or which perpetuate gender discrimination justified by the local traditions. These standards lay down minimum norms which can be and should be observed worldwide. International legal instruments lay down minimum standards concerning the rights of women, which form a part of international obligations binding on governments. They also encompass all the aspects of discrimination : economic, social, political and cultural and provide provisions for elimination of discrimination. As elaborated in Chapter Two the United Nations has taken up the question of women's rights in totality and generated an awareness among the international community on the problems of women. The International Women's year (1975) was a landmark in the women's movement and its most significant achievement was the proclamation of the United Nations Decade for Women (1976-1985). Equality, Development and Peace were accepted as the goals for Women's Decade and a World Plan of Action was adopted as a strategy for the attainment of these. At Copenhagen (1980) the above noted strategy was reiterated with emphasis on the sub - themes, Employment, Education and Health.

At the World Conference at Nairobi (1985) the conferees elaborated a strategy of activities towards improving the position of women and concrete measures to surmount the impediments to the attainment of the aims of the United Nations Decade for women for 1986-2000 A.D. period.

The United Nations Decade enhanced attention of the international community to the problems of women. Indubitably, the most important result of the decade is the heightened consciousness of women and the realisation of their responsibilities for the solutions to the problems faced by them.

The mere fact that the international community especially the United Nations experienced the need for norms and standards to be followed specifically for women and to remove discrimination, implies that women have not been treated at par with men. The international community set international norms and standards to be adhered to in general terms in every part of the world. Nonetheless the implementation of those norms remains the responsibility of respective States. Of the international norms which are legally binding on governments and which contain provisions relating to non discrimination and equality of rights with regard to women, India has accepted a few of them, e.g. International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the Convention on the Political Rights of Women. India has also signed the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Nationality of Married Women. The ILO Conventions that India has ratified are : (No. 81) relating to Labour Inspection; (No. 89) relating to Night Work Women (Revised); (No. 100) relating to Equal Remuneration; (No. 111) relating to Discrimination (Employment and Occupation); (No. 118) relating to Equality of Treatment (Social Security); (No. 123) relating to

Minimum Age (Underground Work); (No. 141) relating to Rural Workers Organisation.

International legislations have helped in setting the goals for governments to improve the status of women. But due to differing socio-economic conditions these goals have not been fully realized. Although in all spheres, be it political, social, education, employment or health legislations have been enacted to improve their position both at the international and national level, women still suffer from discrimination. India has accepted and appropriated legislations adopted at the international level, however the implementation aspects of these norms at the national level leaves much to be desired.

The Indian Constitution guarantees equality, including equality of opportunity in employment to all citizens, and prohibits discrimination on the grounds of sex. The Directive Principles of State Policy provide for special protection of women, e.g. the right to an adequate means of livelihood, equal pay for equal work for both men and women, just and humane conditions of work and maternity relief.

In conformity with the Constitutional provisions and Directive Principles, as noted in Chapter Four many laws have been made to benefit women.

Important measures in social legislation include the Hindu Marriage Act, the Hindu Succession Act, the Hindu Adoption and Maintenance Act, the Child Marriage Restraint Act, the Dowry Prohibition Act, and the

Suppression of Immoral Traffic in Women and Girls Act. These Acts provide for monogamy, rights of ownership of ones property, prohibition of the giving and taking of dowry, trafficking in women and girls for purposes of prostitution and other similar matters.

Notwithstanding these legislative measures and Constitutional guarantees inequality is especially pronounced in the area of civil law where the rights of women are restricted in such matters as legal capacity, rights and obligations in marriage, guardianship, inheritance, income, property and participation in public affairs.

It is true that legally and Constitutionally Indian women have been given equal rights with men. But few are aware of these rights; fewer still are in a position to exercise them. Though they are entitled to inherit property, if there is a dispute rarely a sister would fight for her right with her parental family or brothers, firstly, because she is not educated enough to independently launch such proceedings and, secondly, because she looks up to her parental family for emotional and economic security and assistance in times of need.

There is more to the social realities in India as in other parts of the world. Equality of rights and responsibilities of man and woman are subject to numerous customs. The reality is that equality of the two is a myth. In several communities with their distinct religious customs and traditions, a female, whether as a daughter, wife or widow has no equal share in property and inheritance rights are limited.

Let us take for instance, international norms relating to family and marriage. Rights relating to family, in the context of Indian social realities, as enunciated in international instruments have to be interpreted in their essence, and not in their literal sense. Keeping in mind that Indian social realities do not conform with patterns of social relationship envisaged in international human rights instruments the Government has not ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Both the Universal Declaration (Article 16) and the Covenant (Article 23) extend recognition to the rights to get a life partner of the opposite sex - with his or her consent - and reiterate that the family is the natural and fundamental unit of society. The basic thrust of the right relating to marriage as, enumerated in the international human rights instruments, is freedom to choose and that no one should be forced to wedlock under any social compulsion e.g. Article 23 of Covenant and Article 16 of the Universal Declaration lay down that : (a) marriage shall be entered into with the free and full consent of the intending spouses; (b) choice to be exercised without any limitation due to race, nationality or religion etc., and (c) both spouses shall have equal rights and responsibilities as to marriage, during marriage and its dissolution.

In all these respects, the provisions could be regarded as contrary to, or far advanced of, the social realities existing in India. Traditions, age - old custom and religious rituals are rampant here. True, all religions Buddhism, Christianity, Hinduism, Islam - call for free consent of both the spouses. However, social pressures are such that

hardly anyone, bride or bridegroom, would dare say "no" to a marriage arranged by their respective parents. Thus generally speaking, marriages are arranged by parents, with or without the free consent of the spouses. Likewise laws relating to divorce are largely favourable to man.

As regards registration of marriages, it is not followed in India. Matters concerning marriage are generally governed by the personal laws, customs and traditions of the respective communities. Although in India laws relating to registration of marriages exist, permitting two persons to marry without any restriction of religion, race, nationality etc. the people adhere to their traditional systems. Lack of registration of marriages do, sometimes create complications and are often taken advantage of by men to the detriment of the weaker partner. However, given the existing social realities compulsory requirement of registration for recognition of a valid marriage would create chaos in the lives of people, and would prove counter productive.

Let us take another instance, that of civil and political rights. The provisions of political equality and adult franchise to both sexes in the Indian Constitution, and the prominence of a few women in some overt positions in the political structure, might lead to a wrong assumption that Indian women participate fully in the political process of the country. Although women's participation in general elections as voters is significantly high the number of women getting into elective positions is very small. Their proportion has never risen beyond that of 7.1 per cent

of Members of Parliament elected at any general election, or 6.77 per cent of State legislatures.

It is noteworthy that the election speeches, party manifestoes and press discussions on polling issues very rarely touch any women's issues. This is largely because women have not yet organised themselves as a distinct party or group at the local or national level whose support is sought by candidates seeking elections.

Women's representation is woefully low in local level decision making bodies as Gram Panchayat, Block Development Boards and Cooperative Societies (approximately - 1 to 2 per cent). Thus, a vast majority of women lack training in the articulation of their problems which in turn prevents them from effective participation in leadership and political decision making. There are ideological constraints as opposed to constitutional ones which reinforce the traditional norm that man should manage the world outside the household and that woman's place is within the four walls of the household, thus hampering women's participation in the political field.

Let us turn to the right to education. Notwithstanding the proclaimed policy of compulsory and free education for all children upto 14 years. There is a wide gap between school enrolment figures of boys and of girls at all stages of primary and middle level education. Although women representation in higher education has increased, they are mostly to be found in traditional 'ornamental' fields which are considered feminine.

In India, the actual number of illiterate women have increased from 1138 illiterate women to 1000 illiterate men in 1951 to 1322 illiterate women to 1000 illiterate men in 1981. 75 per cent of our women are still illiterate.

As elaborated in Chapter Four we find numerous factors keep girls away from school. Important among these are : cost of education in the face of the poverty of families; (b) social beliefs such as early marriage and a widespread belief in keeping females in 'purdah' which in turn places pressure for exclusive girls schools and women teachers. Since the input is little there can not be very many schools exclusively for girls and by women teachers; (c) discriminatory processes at work within the school system; (d) lack of relevance of school curricula; (e) the requirement for older girls to stay at home to take care of siblings when mothers are away at work; (f) very high percentage of Indian families are impoverished. About 40% live below the poverty line and the main source of income is agriculture or domestic chores. In such a situation the boys are sent to school and girls are made to work in order to help augment the family income.

In the area of labour legislation, the Indian Government in adherence with, international norms enumerated various Acts, e.g. the Factories Act, the Mines Act, the Plantation Labour Act, the Maternity Benefits Act etc., regulating working conditions, payment, welfare facilities, provision of creches etc. The Equal Remuneration Act provides for 'equal pay for equal work'.

However, even when framing the Act, the norms laid down at the international level were not considered. Therefore, the Equal Remuneration Act only provides for payment of equal remuneration to men and women workers for the same work or the work of similar nature and for the prevention of discrimination against women in matters of employment. The result is that the employers are free to categorise the work done by men and women workers differently and thus they are put into different categories.

If the ILO Recommendation had been taken into account, the policy makers would have found that instead of mentioning equal pay for same or similar job work of equal value or comparable work' would have been a better criterion and one which the employers would not have found so easy to circumvent. Another loophole in the Act is that it mentions only that there should be no discrimination in wages at the stage of recruitment. What happens once a woman is appointed seemed to be no concern of the law.

The size and composition of the female labour force reflect women's overall subordinate socio-economic status. In absolute terms, the female labour force has grown from an estimated 78.6 million in 1973 to 88.9 million in 1978 and 99.4 million in 1983, indicating an average annual addition of 2.1 million. In proportional terms, however, their participation rate has declined dramatically from 33.7 per cent in 1971 census to 20 per cent in 1981 census. Even following the new and broader definition of work the female participation rate between 1971 and 1981 has

registered only a marginal improvement from 12.06 per cent to 13.99 per cent.⁴

Sector-wise composition of women workers reveals an increasing marginalisation of women, with agriculture accounting for 94 per cent of the employment in 1981 as against to 80 per cent of the employment in 1971. In industry, women workers declined from 14.7 per cent in 1911 to 10.5 per cent in 1971 and in the service sector from 11.4 per cent to 9.4 per cent between 1911 and 1971.

It should be noted that there has been some marginal improvement in the ratio of female to male workers during the decade 1971-1981. However, this marginal improvement is not likely to be maintained because of late there has been a decline of work opportunities for women.

In the proportion of those engaged in the primary sector, women's work participation decreased by 1.4 per cent. But it increased in the secondary and tertiary sectors by 1.2 per cent and 0.2 per cent respectively. But in relation to males, the proportion of increase is lesser.

Work opportunities for women in India have been declining steadily over the last several decades. Some of the reasons for the low participation of women in employment are : segmentation in the labour market which works against women; adverse implications of technological growth for women; lack of unionization of female workers; absence of a purposeful human resources development policy aimed at improving women's

⁴For citation of sources see Chapter Four, pp. 173-176.

employability and productivity through training; and conceptual ambiguities and lack of National Labour Policy encompassing workers in the unorganised sector. Also in subsistence farming where high female participation exists women work on a complementary basis with men but their control over resources is not necessarily assured; in labour intensive cash crop economy, women work harder but they have no control over earnings; in small farm households, landlessness has emerged where women are hardest hit; individual male migration has posed social hardship to women; the existing system of marriage and kinship place women in a subordinate position; and there is total absence of social services for women in agricultural work.

In addition there are numerous cultural taboos : whether a particular work is done outside the home, whether it is done in male company, whether some tasks will be polluted by women. Age also makes a difference. Young unmarried women have greater taboos about mixing with strange men or men outside the kin group. Some of these taboos are safeguards by the family against the all too common sexual exploitation of young females.

It was assumed that Constitutional legal and administrative measures, as well as other development policies, would benefit everyone without regard for variations in women's status and the nature of social stratification linked with caste structure and land relations. However, these measures benefitted only a tiny minority of women and the masses were virtually excluded from development strategies in post Independence India.

Equality for all, is a basic principle of the Indian Constitution and necessary not merely on the grounds of human rights and social justice but

as a basic condition for the social, economic political development of the nation. An integral part of social justice is the gender justice which is the human right of every woman to enjoy equally with man the uninhibited and free opportunity to be herself and to unfold her free faculties; the right to develop ones potentiality which nature has bestowed on her as a human being; eliminating from the social milieu all sex prejudices, sex bias, sex servitude. The basic strength of gender justice in the Indian context lies in the fact that human rights are an integral part of the Constitution.

Thus we find, that although the position of women has improved since independence, in India illiteracy, traditional beliefs, superstition, religious rituals, blind faith etc. combined with socio-economic conditions are the main factors denying women their equal status.

Thus the roots of the concept of inherent inferiority of women are so deeply imbedded in the social and cultural structure that the ameliorative legal provisions relating to women and the actual situation women find themselves are in contradiction. In reality a hiatus exists between the ideals of the constitution and the prevalent status of women in society. There is a wide gap between the stated ideals and the achievements, between the legal framework and empirical realities, between symbolism and actuality.

However, legislation by itself cannot change society. There has to be a concerted effort to bring about a change in the social order to guarantee real equality for women.

To give human rights its full meaning, women who constitute half of humanity, must be recognised as equal partners in the improvement of the quality of life. However, the initiative and momentum must come from women themselves when they decide to translate the letter of the law and of constitutional statutes into a living reality. It is also necessary to change the attitudes of both men and women, of society in general, to the objectives sought to be achieved by legislations. A radical change in the attitudes of women induced by an awareness of their rights which are constitutionally guaranteed and legally protected will be the first step in the complex process of transforming society so that women may enjoy full equality with men in every sphere of life.

Problems of women are problems of society as a whole, and changes in the present economic political and social situation of women must become an integral part of efforts to transform the structure and attitudes that hinder women's advancement. International cooperation based on the principle of the Charter and other legislations of the United Nations should be developed and strengthened in order to find solutions to problems of women and to build an international community based on equity and justice.

In sum, one conclusion is inevitable that international norms and standards have spurred some action at both social and legal, and at

governmental as well as non governmental level. But what has been attained leaves much to be desired. It is also true, that women rights cannot be viewed in isolation. Women's status is intertwined by overall socio - economic development. When we talk of equality of women we do not mean equality with men in the literal sense. Differences between men and women are inherent. Differences also exist amongst the various segments of society in the economic, social and cultural fields. Thus, when we talk of equality we are talking of adequate opportunity for all, to develop the potential which nature has bestowed him or her with. This kind of equality can be obtained not only through legislations but by all round socio - economic development.

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APPENDIX

APPENDIX I

CHRONOLOGY OF WOMEN'S RIGHTS TO VOTE

- 1893 New Zealand.
- 1901 Australia.
- 1906 Finland.
- 1930 Norway.
- 1915 Denmark, Greenland, Iceland.
- 1917 Canada, USSR.
- 1918 Austria, Ireland, Poland, Sweden, United Kingdom.
- 1919 Belgium, Germany, Luxembourg, the Netherlands.
- 1920 Czechoslovakia, USA.
- 1923 Mongolia.
- 1928 Ecuador.
- 1931 Portugal, Spain, Srilanka.
- 1932 Maldives, Thailand, Uruguay.
- 1934 Brazil, Cuba, Turkey.
- 1935 Burma.
- 1936 Puerto Rico.
- 1937 Pakistan, Phillipines.
- 1941 Panama.
- 1942 Dominican Republic.
- 1944 Bermuda, Bulgaria, France, Guadeloupe, Jamaica, Martinique.
- 1945 Albania, Guatemala, Indonesia, Italy, Japan, Senegal, Solomon Islands.
- 1946 Cameroon Djibuti, Liberia, Rumania, Trinidad and Tobago, Vietnam, Yugoslavia.
- 1947 Bangladesh, Bolivia, Malta, Venezuela.
- 1948 Israel, Korea, Singapore, Suriname.
- 1949 Chile, China Costa Rica, Syria.
- 1950 El Salvador, Haiti, India, Peru.
- 1951 Antigua and Barbuda, Barbados, Dominica, Nepal.
- 1952 Argentina, Bolivia, Cote d' Ivoire, Greece.

1953 Bhutan, Mexico, Sudan.
 1954 Belize, Nigeria.
 1955 Ethiopia, Ghana, Honduras, Nicaragua.
 1956 Benin, Burkina Faso, Comoros, Central African Republic,
 Chad, Egypt, Gabon, Guinea, Kampuchea, Laos, Mali,
 Mauritania, Mauritius, Niger, Somalia, Tago, Tunisia.
 1957 Colombia, Lebanon, Malaysia.
 1959 Madagascar, Tanzania.
 1960 Cyprus.
 1961 Burundi, Gambia, Rwanda, Sierra Leone.
 1962 Algeria, Bahamas, Monaco, Uganda.
 1963 Congo, Equatorial Guinea, Iran, Kenya, Libya, Morocco.
 1964 Afghanistan, Malawi, Zambia.
 1965 Botswana.
 1966 Guyana, Lesotho.
 1967 Dominica, Grenada, St. Christopher - News, St. Lucia,
 St. Vincent and Grenadines, Yemen DR, Zaire.
 1968 Nauru, Swaziland.
 1970 Yemen A.R.
 1971 Switzerland.
 1973 Jordon, San Marino.
 1975 Angola, Cape Verde, Papua New Guinea.
 1977 Guinea - Bissau, Mozambique.
 1978 Zimbabwe.
 1980 Iraq, Vannatu.
 1984 Liechtenstein.

