

स्वाध्याय

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UTTAR PRADESH RAJARSHI TANDON OPEN UNIVERSITY
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Indira Gandhi National Open University



UP Rajarshi Tandon Open University

CWED-03
Constitutional and Legislative
Foundations for Gender Equality

- First Block** : Gender Equality : Text and Context
- Second Block** : Constitutional Foundations for Gender Equality in India
- Third Block** : Laws and Legal Reforms for Gender Equality
- Fourth Block** : Women's Movement and Legal Change

Shantipuram (Sector-F), Phaphamau, Allahabad - 211013



**Constitutional and
Legislative Foundations for
Gender Equality**

Block

1

GENDER EQUALITY: TEXT AND CONTEXT

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LET US BEGIN HERE

This is the second Elective course of the Women's Empowerment and Development Programme. It is divided into four Blocks. Each of these Blocks represents a specific theme, which is discussed in three to five Units. The Units are logically arranged into a sequence to cover the main aspects of each theme. Besides Units, each Block contains a Block Introduction in the beginning and a list of references at the end. Block I contains, in addition, a Course Introduction. You are advised to carefully read the Course Introduction in order to know about the rationale, focus and content of the course you have been offered to read. Similarly, you should also read the Block Introduction, in order to follow the logic and content of a Block.

You have now in your hands the first Block of this Course. It comprises four Units in all. Before proceeding to read the Units, you are advised to go through these instructions about how to read the course-material. Here we first give the design of a Unit and then explain the system of numbering of sections in a Unit. Then we tell you what is contained in various sections of unit, and how you should go about completing different tasks involved while reading the course-material.

DESIGN OF A UNIT

A systematic representation of the design of Units is given below:

Unit X*

- X.0 Aims and Purpose
- X.1 Introduction
- X.2 Section (Theme of Section)
 - X.2.1 Sub-section 1 of X.2
 - X.2.2 Sub-section 2 of X.2
 - Think it Over 1
 - Learn From Your Experience 1
- X.3 Section (Theme of Section)
 - X.3.1 Sub-section 1 of X.3
 - X.3.2 Sub-section 2 of X.3
 - Think it Over 2
 - Learn From Your Experience 2

*X stands for unit number

The numbering and length of the above section and their sub-sections may vary according to the volume and depth of course material in each unit. The last three sections in each unit with the following titles are also numbered.

- Summing Up
- Clarification of the Terms Used
- Some Useful Readings

Numbering of Sections in a Unit

The number of sections in each Unit may vary and the numbering of sections will conform to the number of sections in the Unit. The last three sections are numbered in the serial order following the number of earlier sections.

As the scheme suggests, we have divided the Units into sections and sub-sections for easy reading and better comprehension. Each section is indicated distinctly by **BOLD CAPITALS** and each sub-section by a **relatively smaller but bold typeface**. The significant divisions within sub-sections are in **still smaller bold typeface** so as to make it easier for you to see their place within the sub-sections and the items which need to be highlighted are numbered (i), (ii), etc. For purpose of uniformity we have employed the same scheme in every Unit throughout the Course. Let us now discuss each section of a unit.

Aims and Purpose

We begin each Unit with the section **Aims and Purpose**. It articulates briefly what we expect from you once you complete working on the Unit.

Introduction

In the section **Introduction** we clearly specify

- a) the relationship of the present unit to the earlier Units of a block
- b) the theme of the Unit, and
- c) the order of presentation of all the sections from Introduction to Let Us Sum Up.

Summing Up

The section of each Unit under the heading **Summing Up** summarises the whole Unit for the purpose of recapitulation and ready reference.

Do You Know?

Since a course may deal with abstract ideas and other related concepts, it is sometimes necessary to explain some ideas in a separate enclosure (called **Do You Know** in our units). This is side-information, necessary to fully comprehend the main text. These enclosures include (i) explanatory note regarding concepts, (ii) biographical details about particular thinkers, (iii) information of relevant event(s), person etc. (iv) historical background of socio-political events etc.

Illustration

There are several illustrations in each Block in the form of graphs, tables, pictures, diagrams, and charts. The main purpose of these illustrations is not only to make the study comprehensive and interesting, but also to provoke you to rethink and articulate questions about various formations.

Think it Over!

We have given self-check exercises under the caption **Think it Over** at the end of the main sections or long sub-sections in the Unit. To answer the questions you should

- a) write your answers using a separate sheet
- b) compare your answers with the given text.

You should read each Unit and note the important points in the margin. This will help you in your study. It will also help you to answer the assignment questions.

Learn From Your Experience

Besides Think it Over exercise we have another exercise for you in the form of **Learn From Your Experience** activities. Here you should carefully read the course material and apply the information contained therein while carrying out this exercise. These exercises are meant to develop your ability to relate your knowledge to day-to-day life experiences. You should complete this exercise on a separate sheet and then discuss your answers with other students at the Study Centre. The questions in Assignments and the Term-end Examination may sometimes be linked to this part of your course-material. Therefore, make sure that you complete all these exercises in each Unit.

Clarification of the Terms Used

Each unit has Clarification of the Terms Used at the end to explain the basic ideas, technical terms and difficult words.

Some Useful Readings

We have referred to a few books or articles under the caption Some Useful Readings. You may consult these books if they are available in your Study Centre or in any other library near your home. This is not a compulsory reading. But it will certainly help to increase your level of understanding of the particular themes in each Unit.

References

Besides Further Reading we have given a List of References at the end of each Block. This is a comprehensive list of the books and articles used by the course writers to prepare the Units. This shows you that your course material is based on a wide spectrum of literature available on particular themes, related to your course. This should give you confidence of being aware of a wide body of information available in the subject of your choice. The main purpose of this list is to inform you about the range of literature available in this area of study. If interested in widening your knowledge you may try to look for these references. To help you in locating them, each reference covers the name of the author, year of publication, title of the book/article, place of publications and name of the publisher.

Audio and Video Aids

Some of the themes have been selected for the audio and video programmers to supplement the printed material. These will help you to understand the course with greater clarity. You are encouraged to contact the Coordinator of the Study Centre assigned to you to get the benefit of the audio and video aids. Your suggestions regarding new types and formats for making more programmes are most welcome by the course development team of this programme.

Assignments

You will receive a set of two assignments for the whole course. Both of these are Tutor-Marked Assignments (TMAs) and should be sent after completion to the Study Centre assigned to you for evaluation. Make sure to complete all your assignments because the grades you get in each of these assignments are included in the final evaluation for your degree. While working through the assignment you must:

- Clearly write your enrolment number
- Answer them in your handwriting and in your own words
- Write clearly and neatly so that it is easy to read your answers
- Have enough margins on one side of your answer-sheets so that the evaluator may write his/her comments on your performance.

Before Answering the Assignments

- Read all the Units in the block and additional reading material (if available).
- The answers to the assignments must reach the Study Centre by the last date indicated.

Term-end Examination

Your understanding of the print-material provided in the four Blocks FEW-01 and in the audio-video programmes, relating to particular Units and Blocks in this Course will culminate in your taking the Term-end Examination. The question paper for this examination will have three sections. Section A will contain questions, requiring descriptive answers while Section B will have questions, requiring explanatory and analytical approach in your answers. Last section, i.e. Section C, contains short and objective type of questions, requiring exact and specific answer in terms of yes/no or true/false. Try to prepare for the term-end examination in terms of these three main categories of questions.

Preparation of Course Material

The syllabus of this course is designed by an Expert Committee (see p.2. of this block) and prepared by the Course Preparation Team, which comprises a Course Editor, Course/ or Block Coordinator and authors of the various units. The Expert Committee has selected the themes and sub-themes of the Blocks and Units of this course while authors of the units have provided their expertise in elaborating them in the form of the main text of each unit. The course editor and the block editors have carefully examined the course contents and given their suggestions and comments for improving the clarity, readability and comprehensibility of the material in the units. The Course or Block Coordinator, who is always one of the IGNOU faculty members, has the sole responsibility of editing and transforming the Units in IGNOU style after receiving the course material from authors. The Coordinator sends the revised drafts of the Block to the Course Editor and the language editor then incorporates their suggestions and comments. The Block Coordinator is also responsible for getting the artwork done and for preparing the final manuscript for printing. Later, going through page proofs and getting the Hindi translation of the Block is also carried out by the Block Coordinator. Finally, along with the coordination of the production of audio-video programmes, related with the Block, preparing the manuscript of the Block in its Hindi version is to be carried out by the coordinator who has to set the Hindi translation and later check the proofs as well. The course coordinator, who has an overall idea of the course structure, checks the units for a possible repetition of or contradiction in the material. Thus, through this long process of checks and re-checks, the IGNOU faculty prepares the self-instructional material (SIMs), which reaches you. All the same, the IGNOU faculty wishes to request you through this column for sending your comments and suggestions on specific points in this material so that further prints of this course may carry improvements, suggested by you.

COURSE INTRODUCTION: CONSTITUTIONAL AND LEGISLATIVE FOUNDATIONS FOR GENDER EQUALITY

In the previous two courses of this programme we have explained to you the various dimensions of gender construction in the society and the process of alignment of various institutional arrangements and ideologies for the sustenance and perpetuation of this gender construction. In the last course we have specifically discussed how within the given process of gender construction women in Indian society have got a marginalised position in all domains of public and private lives. They are economically exploited, socially segregated, culturally subjugated and have emerged to be politically a powerless group in the society.

The founding fathers of Indian Constitution were aware of these realities of women in India. They were also aware of the various resolutions and initiatives taken at the level of United Nations at that point of time. They realised that a constitutional mandate to secure equality and justice to all sections of Indian population will not ensure equality for women in the society under the given socio-cultural order, unless special provisions are made in the Constitution for them. As against this backdrop some special provisions for women have been introduced in the Constitution of India. In Block 3 of the Foundation Course we discussed some of the vital issues on laws and women in India, in this course we shall be dealing with all these issues in greater details to explain how the constitutional mandates and the laws be used as tools for women's empowerment in Indian society. There are four Blocks in this course.

Block 1 is on the Gender Equality: Text and Context. This Block discusses the various initiatives taken at the international levels by the United Nations from its very inception to make women's rights a human rights. It also explains the constitutional mandates and struggles for women's rights as human rights in India. The meaning, dimensions and the processes of actualisation of women's rights as human rights and struggle for it are also explained in this Block.

Block 2 discusses the Constitutional Foundations for Gender Equality in India. We have tried to introduce to you the various constitutional provisions made for gender equality in India. We have also analysed the various omissions and amendments made in the Indian Constitution for gender equality. The Bill on Women's Reservation in the Parliament and the functioning of National Commission for Women (NCW) are also discussed in this Block.

In Block 3 we explained the Laws and Legal Reforms for Gender Equality in India. The legal reforms, the issues of secular vs. personal laws, laws relating to violence against women, labour laws and the laws relating to social security of women are discussed in length in this Block.

The last Block of this course is on **Women's Movement and Legal Change.** In India in recent years various laws are amended because of effective women's movement against the existing provisions of some of the laws. This Block focused on some of these laws viz. rape, dowry, family courts and customary rights.

It has not been possible for us to cover all the laws relating to women in Indian society. However, discussions in this course will help you to rethink about various provisions of the laws, societal arrangements in which laws are rationalise and to make use of some of these laws and constitutional provisions as tools for gender equality in Indian society.

BLOCK INTRODUCTION

BLOCK 1 : GENDER EQUALITY: TEXT AND CONTEXT

This is the first Block of this course called WED-02 : **The Constitutional and Legislative Foundation for Gender Equality**. In this Block we shall be dealing with the socio-political context prevailing both at the national and international levels, for the emergence of the issue of gender equality. The various texts emerged in the form of constitutional mandates and laws, international resolutions and conventions etc. are also lucidly explained here. There are three interrelated but distinctive units in this Block.

Unit 1 deals with the various socio political dimensions and contexts of the famous notion that **Women's Rights are Human Rights**. The meaning and origin of this notion are discussed here. This unit also deals with the various conventions, resolutions and conferences that have taken place under the auspices of the United Nations to shape the notion of Women's Rights as Human Rights. This unit has also discussed the various constitutional provisions of India initiated to qualify the notion of women's rights as human rights in this country.

Unit 2 discusses the various Global Debates on the issue of gender equality. Here the initiatives of the United Nations and the SAARC are analysed for a clear understanding of this issue. The themes like women's political rights, transgression of women's body, women's role in economic development, impact of the change of global economy on women, violence against women etc. are discussed.

Unit 3 discusses the **Forms of Struggle for Gender Equality**. It briefly touches upon the evolution of the idea of gender equality and goes on examining the historical background to the women's struggle for gender equality in India. It also explores the various forms of struggle for gender equality in contemporary India.

UNIT 1 WOMEN'S RIGHTS ARE HUMAN RIGHTS: MEANING AND DIMENSIONS

Contents

- 1.0 Aims and Purpose
- 1.1 Introduction
- 1.2 Human Rights: Meaning and Origin
 - 1.2.1 Meaning of Human Rights
 - 1.2.2 Human Rights: Origin and Development
 - 1.2.3 Women's Rights are Human Rights
- 1.3 Women and Human Rights Issues in the U.N.
 - 1.3.1 The United Nations Conventions
 - 1.3.2 Evolution of Women's Rights as Human Rights
 - 1.3.3 World Conference on Human Rights and Violence against Women
 - 1.3.4 Fourth World Conference on Women and the Human Rights
- 1.4 Women and Human Rights in India
 - 1.4.1 Constitutional Measures
 - 1.4.2 Human Rights Issues and the Women's Movement
 - 1.4.3 Women's Rights as Human Rights in India
- 1.5 Concluding Remarks
- 1.6 Clarification of the Terms Used
- 1.7 Some Useful Readings

1.0 AIMS AND PURPOSE

In this unit we discuss important aspects of gender equality from the viewpoint of human rights and women's development. After you have read this unit you should be able to:

- explain the concept of "human rights" and what do we mean by saying that "Women's Rights are Human Rights";
- describe the various steps taken by the United Nations in the field of human rights and those related to women;
- discuss the process of development of women's issues as human rights issues; and
- explain, with special reference to India, how the violation of women's rights has been the violation of human rights.

1.1 INTRODUCTION

This unit introduces you to an important concept of human rights and how "Women's Rights are Human Rights". The first section 1.2 explains the meaning

Gender Equality : Text and Context of human rights, how did the concept originate and develop and what do we mean by saying that "Women's Rights are Human Rights". Section 1.3 discusses the issue of human rights from a gender perspective. It provides a background to the activities undertaken by the United Nations in this regard. The unit focuses on how the idea of women's rights as human rights originated since 1975, the International Year of Women, and evolved over the years till the Fourth World Conference on Women at Beijing and thereafter. This is done with special reference to the World Human Rights Conference and the issue of violence against women. The last section of this unit examines the issue of human rights in India, the efforts by different organisations in this direction and how the violation of women rights has indeed been the violation of human rights.

1.2 HUMAN RIGHTS: MEANING AND ORIGIN

In this section we shall be examining the meaning of "human rights" to understand why and how "Women's Rights are Human Rights".

1.2.1 Meaning of Human Rights

The issue of human rights came into prominence with the establishment of the United Nations in 1945. Since then, it has developed and broadened with various conventions.

Although there is no universally endorsed definition of human rights, the United Nations defines human rights as those rights, which are inherent in our nature and without which we cannot live as human beings. They are rights which enable people to fully develop and utilize their innate qualities, such as intelligence and talents and to satisfy deeper needs such as spirituality. Human rights are the foundations for a quality of life in which each individual's inherent dignity and worth will receive due respect and protection.

The concept of human rights is closely associated with the concept of human dignity. According to Boutros-Boutros-Ghali, the former Secretary General of the United Nations, full human dignity means not only freedom from torture, but also freedom from starvation. It means freedom to vote as it means the right to health. It means the right to enjoy all rights without discrimination. And true development requires a solid basis of democracy and popular participation (Message in Observance of Human Rights Day, 10 December, 1992). Thus, human rights issue touches all aspects of human life and respect for these is the foundation of freedom, justice and peace in the world as declared by the **Universal Declaration of Human Rights** in 1948. The **Vienna Declaration and Programme of Action**, adopted at the **World Conference on Human Rights** in June 1993, also proclaimed that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Over the years, a whole network of human rights instruments and mechanisms

has been developed (i) to ensure the primacy of human rights and (ii) to fight against the violations of human rights, wherever they may occur.

1.2.2 Human Rights: Origin and Development

While human rights were officially enshrined in the declaration of the United Nations only in 1948, the struggle for their realization has been an integral part of all struggles over the centuries. These were for instance, struggles against slavery, racial discrimination, and colonialism and for the right of a human being to lead a decent and civilized existence. Human rights are a twentieth century term for what have been traditionally known as natural rights or fundamental rights or simply, the rights of man. More precisely, the modern concept of human rights emerged at the end of the Second World War (1945) in response to the atrocities and massive violations of these rights witnessed during the conflict.

Do You Know ? 1	
The International Bill of Human Rights recognises the rights to:	Document and Article*
1. Life	D3, C6
2. Liberty and security of person	D3, C9
3. Protection against slavery	D4, C8
4. Protection against torture and cruel and inhuman punishment	D5, C7
5. Recognition as a person before the law	D6, C16
6. Equal protection of the law	D7, C14, C26
7. Access to legal remedies for rights violations	D7, C14, C26
8. Protection against arbitrary arrest or detention	D9, C9
9. Hearing before an independent and impartial judiciary	D10, C14
10. Presumption of innocence	D11, C15
11. Protection against ex-post-facto laws	D11, C15
12. Protection of privacy, family and home	D12, C17
13. Freedom of movement and residence	D13, C12
14. Seek asylum from persecution	D14
15. Nationality	D15
16. Marry and found a family	D16, E10, C23
17. Own property	D17
18. Freedom of thought, conscience and religion	D18, C18
19. Freedom of assembly and association	D20, C21, C22
20. Political participation	D21, C25
21. Social security	D22, E9
22. Work, under favourable conditions	D23, E6, E7

23. Free trade unions	D23, E8, C22
24. Rest and leisure	D24, E7
25. Food, clothing and housing	D25, E11
26. Health care and social services	D25, E12
27. Special protections for children	D25, E10, C24
28. Education	D26, E13, E14
29. Participation in cultural life	D27, E15
30. Self-determination	E1, C1
31. Humane treatment when detained or imprisoned	C10
32. Protection against debtor's prison	C11
33. Protection against arbitrary expulsion of aliens	C13
34. Protection against advocacy of racial or religious hatred	C20
35. Protection of minority culture	C27
<ul style="list-style-type: none"> • D* = Universal Declaration of Human Rights. • C = International Covenant on Civil and Political Rights. • E = International Covenant on Economic, Social and Cultural Rights. 	
Jack Donnelly, 1997	

The Charter of the United Nations signed in San Francisco on 26 June 1945 is the first international treaty whose aims are based on universal respect for human rights. The Charter granted fairly broad responsibilities to a large number of bodies and organisations. Thus, all the principal United Nations (U.N.) bodies have been given a direct or indirect role in the field of human rights. In addition to the principal organs, a network of subsidiary bodies specialised in human rights was also created.

The Commission on Human Rights was the first specialised body to be established in 1946. The first most important activity of the Human Rights Commission was the drafting of the "Universal Declaration of Human Rights" (UDHR) and its adoption and proclamation by the United Nations on December 10, 1948. The UDHR consists of a total of thirty articles, with the first article stating that, *all human beings are born free and equal in dignity and rights*.

Article two of the UDHR sets forth the essential principle of equality and non-discrimination which provides that the UN should encourage respect for human rights and freedom for all without distinction as to race, sex, language or religion. Article three proclaims three interrelated fundamental rights namely, the right to life, the right to liberty and the right to security. This article serves as the first pillar of the Declaration, introducing a series of articles (4-21) in which civil and political rights are developed. Article twenty-two, the second basic element of the UDHR introduces articles 23-27. It sets forth the economic, social and cultural rights of everyone, "as a member of society". Lastly, articles 28-30 define

everyone's duties to the community (*The United Nations and Human Rights, 1945-1995: 153-155*).

Women's Rights are Human Rights: Meaning and Dimensions

The UDHR adopted two important Covenants, one, on civil and political rights, and the other on economic, social and cultural rights in 1966. They came into force in 1976, making many of the provisions of the UDHR legally binding and opening the door for international monitoring. A considerable number of international human rights instruments affirm the obligation to implement the Declaration. This is true, in particular, of the Vienna Declaration adopted by the World Conference on Human Rights in 1993.

1.2.3 Women's Rights are Human Rights

The statement, "Women's Rights are Human Rights" means that the human rights of women are an inalienable, integral and indivisible part of universal human rights. That is, they cannot be divided, isolated or separated from human rights issues. The human rights of women are integral and indivisible because women are affected by all the human rights issues in every area, as women and as people. That is, they are affected both in gender specific way and also in a general way, as part of the various populations of the world. Therefore, the full and equal enjoyment of fundamental freedom by women is a priority for governments and the United Nations. It is essential for the advancement of women.



Uniting for Women's Human Rights
Courtesy : CSR, New Delhi.

The view that women's rights are human rights became popular with the growing public awareness of the many serious problems of women that had previously been neglected. The years that followed saw the successful integration of women's concerns into different aspects of human rights, be it a question of health or education or development and environment. There has been a mainstreaming of gender issues in all meetings and conferences of the U.N. and other bodies. The World Conference on Human Rights at Vienna in 1993 reaffirmed clearly those human rights. The International Conference on Population and Development at Cairo in 1994 reaffirmed women's reproductive rights and the right to development.

The women's movement all over the world promotes an understanding that women must bring their perspectives to bear on different issues. Women have focused in particular on gender specific issues like violence against women and demanded that they be considered as human rights issues. However, many cases of violence against women in the private domestic sphere is not taken up by various human rights bodies and also not accepted as human rights abuses. Notably women's organisations all over the world have attempted to integrate such women's specific issues that have been ignored so far, into human rights concerns (*Human Rights Tribune, June, 1993: 29-32*).

Think it Over!

What do you understand by the phrase "Women's Rights are Human Rights"?
Read the previous sections of this unit very carefully and try to get an answer.

1.3 WOMEN AND THE HUMAN RIGHTS ISSUES IN THE U.N.

This section of the unit will provide you with the background of the United Nations activities in relation to women. It explains the steady progress of the view of women's rights as human rights, culminating in a discussion on the Vienna Conference on Human Rights and thereafter.

1.3.1 The United Nations Convention

The aims of the Charter of the United Nations signed on 26 June, 1945 are expressly based on universal respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The Commission on Human Rights established in 1946 also included an Article entitling every person, "to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex or social origin, property, birth or other status". The Commission on the Status of Women was established in 1946 to promote women's political, economic and social rights and for

formulating global policies and recommendations for the advancement of women. Apart from these, the Convention for the suppression of the "Traffic in Persons and of the Exploitation of the Prostitution and Others" was adopted in 1949 by the U.N. In 1952 the General Assembly adopted a Convention on Political Rights of Women, the first global endorsement of equal political rights under the law.

The two Covenants that were adopted in 1966, "International Covenant on Economic, Social and Cultural Rights" and "International Covenant on Civil and Political Rights" guaranteed that the rights enunciated in these Covenants "will be exercised without discriminations of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status". The Covenants also ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights and of all civil and political rights (*The United Nations and Human Rights, 1945-1998: 230 and 235*).

The "Declaration on the Elimination of All Forms of Discrimination Against Women" adopted in 1967, was one of the earliest and most far reaching achievements in regard to women's status. It called for recognition of equality for women in reality as well as in law, and broadened the concept of equality beyond the civil and political arena to include such rights as access to education, job opportunities and health care. The Declaration principles were subsequently included in a binding International Convention, known as the "Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW), adopted by the U.N. General Assembly in 1979. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

According to the Convention, "discrimination against women" is a violation on the basis of sex of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Article 1). The article is based on the principle of equality between men and women.

By recognising the Convention, independent nations of the world commit themselves to undertake a series of measures to end discrimination against women in all forms. The Convention provides the basis for realising equality between men and women through ensuring women's equal access to opportunities in political and public life as well as in education and employment. The Convention affirms the reproductive rights of women, right to acquire, change or retain their nationality and the nationality of their children. The independent Nations of the world agree to take appropriate measures against all forms of traffic in women and exploitation of women. They also agree to take all appropriate measures including legislation so that women can enjoy all their human rights and temporary special measures and fundamental freedom.

Countries that have ratified or acceded to the Convention are legally bound to put into practice its provisions. They are also committed to submit national reports,

Gender Equality : Text and Context at least once every four years, on measures they have taken to comply with their treaty obligations. Accordingly the Committee on the Status of Women in India was set up in 1971.

The Convention, which came into force on 3 September 1981, has, as of 31 May 1996, been ratified by 152 U.N. member States including India [Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); United Nations, Dept. of Public Information, June 1996: 1-14].

Another landmark step in the direction of women's human rights has been the Declaration on the Elimination of Violence Against Women adopted by the U.N. in 1993. This is discussed in detail in Section 1.3.2.

1.3.2 Evolution of Women's Rights as Human Rights

The early seventies saw a significant change in bringing women's issues to the center stage. In 1972, the General Assembly designated 1975 as International Women's Year to focus on women's issues. Immediately in 1974, the UN called for a World Conference on Women to be held in 1975 in conjunction with the International Women's Year Tribune and adopted the first World Plan of Action and proclaimed the first Decade for Women's Equality, Development and Peace (1976-1985).

During this decade, an important change in priorities took place in the international community's concern with women's status. It was the shift from its emphasis and efforts from small social projects to giving women a major legal place in the world. The Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN in 1979, reflected this change in thinking. The Convention is the most recent of global human rights documents and defines international norms for treatment of individuals and groups by their governments. It was emphasised that Women Rights are Human Rights and those who work for implementation of the Convention are part of the international women's rights community. With the Convention becoming widely known, women's groups in developing countries are pushing for law and policy changes in conformity with Convention principles.

Adoption of the Forward-Looking Strategies (FLS) for the Advancement of Women in 1985 at the Third World Conference on Women at Nairobi, set out a blue print to advance the status of women and integrate women into broad based mainstream activities. Building on the principle articulated in Mexico city, at the first UN Conference in 1975, the FLS identified obstacles and recommended specific steps to overcome them, strongly emphasising participation by women at all levels of decision making [Women and the UN, 1945-1995, INSTRAW (UN International Research and Training Institute for the Advancement of Women) and UNIFEM (United Nations Development Fund for Women)].

The years that followed saw a growing public awareness of the many serious economic and social problems that had previously been overshadowed by the

political tensions of the cold war. In a series of conferences in the 1990s, beginning with the UN Conference on Environment and Development (UNCED), a new gender consciousness began to emerge and be articulated. Women were not only seen as the most adversely affected victims of social upheaval, but also the most potent agents for change. A global Consortium of activists and scholars called the International Women's Rights Action Watch (IWRAW) organised a seminar in 1989 in Vienna (Austria) in which about a hundred women from over forty countries participated to discuss their strategy to make women's issues central to the human rights agenda in preparation for the world conference on Human Rights to be held in Vienna in 1993.

The women's movement made a petition as early as 1991 asking that the world conference should incorporate women into the agenda in two ways: one, in relation to all the other topics; and two, in relation to women's specific issues, like violence. The increase in violence against women and their invisibility make clear that the human rights mechanisms were failing to address massive human rights violations. Statistics indicate that there are between 60-100 million women missing in the world, primarily in Asia, and a large number in India. The human rights community has not yet addressed these kinds of disappearances, which often stem from gender discrimination, particularly in the context of poverty and lack of socio-economic rights and the right to development (Women's Rights as Human Rights: An International Lobbying Success Story in Human Rights, Tribune, June 1993: 29-32).

These efforts by women's organisations all over the world culminated in the U.N. World Conference on Human Rights at Vienna held in June 1993. Here an international tribunal on the violation of women's human rights was organised and these rights were specifically integrated into all aspects of the UN human rights agenda and activities (The details are discussed in the next section).

The International Conference on Population and Development (Cairo, 1994) took the process a step further: For the first time gender equity and the empowerment of women through education, health, and nutrition were linked to traditional population issues such as family planning, as essential to the achievements of sustainable development.

Women's issues are thus fully integrated into the world's most important economic and social concerns, at least in theory, and efforts are on to translate them into reality. The Fourth World Conference on Women, discussed in section 1.4, incorporated the issue of Women's Human Rights as one of the critical areas of concern in its Platform for Action.

1.3.3 World Conference on Human Rights and Violence Against Women

On 25 June 1993, representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights.

It recognised that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on ground of sex are priority objectives of the international community. It further states that gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. It emphasises that the human rights of women should form an integral part of the United Nations human rights activities; including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges governments, institutions, inter governmental and non-government organisations to intensify their efforts for the protection and promotion of human rights of women and the girl child (World Conference on Human Rights, The Vienna Declaration and Programme of Action, June 1993; U.N. Dept. of Public Information, New York, April 1995: 53-57).

The World Conference on Human Rights took an important step to promote and protect the rights of women by supporting the creation of a new mechanism, a Special Rapporteur on violence against women. The commitment was acted upon quickly. At its next session, the UN Commission on Human Rights appointed a Special Rapporteur on violence against women, an issue previously limited to women's organisations. The Declaration on the Elimination of Violence Against Women was adopted by the UN in the same year (1993).

According to the Declaration on the Elimination of Violence Against Women, violence means any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Article 1). The Declaration consists of six articles and is designed to strengthen and complement the process of elimination of all forms of discrimination against women.

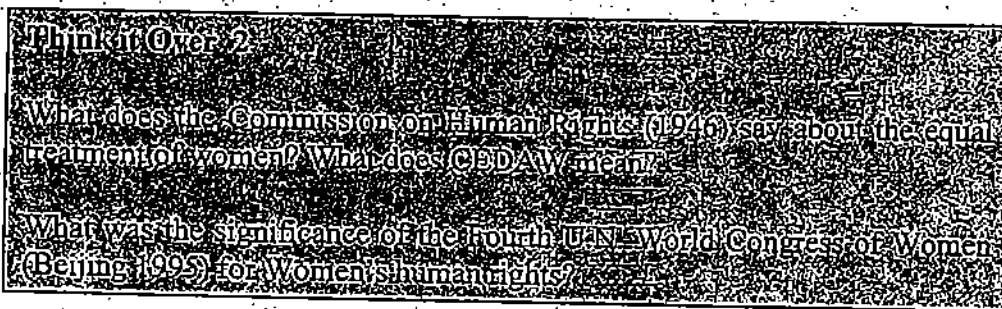
By now it has been accepted that violence against women is a pervasive human rights problem and not merely a private matter as most governments have regarded it till so far (Declaration on the Elimination of Violence against Women, U.N. Dept. of Public Information, New York).

1.3.4 Fourth World Conference on Women and the Human Rights

The Fourth World Conference on Women held in Beijing in September 1995 was an important step forward on the issue of protecting and promoting human rights of women as an integral part of universal human rights. The Conference adopted the Beijing Declaration and Platform for Action, which was a call for concrete action to make a difference. Human Rights were one of the ten critical areas identified by the Platform for Action. It marked the action to be taken by governments to promote and protect the human rights of women through the full

implementation of all human rights instruments, especially the CEDAW. It emphasised the need to promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes of governments in addressing the enjoyment of human rights (Platform for Action and the Beijing Declaration, U.N. Dept. of Public Information, 1995: 121-133). All forms of violence against women were clearly recognised as human rights violations, incompatible with the dignity and the worth of a human person. Governments were urged to take steps to combat and eliminate all forms of violence against women in private and public life, whether perpetrated or tolerated by the state or by private persons. Here governments declared that violence against women constitute a violence of basic human rights and is an obstacle to the achievement of the objectives of equality, development, and peace (Human Rights, Women and Violence, U.N. Dept. of Public Information, New York, Feb. 1996: 1).

The message of Hillary Clinton (wife of American President Bill Clinton) at the conference is self-explanatory, "It is time for us to say here in Beijing and for the world to hear, that it is no longer acceptable to discuss women's rights as separate from human rights. If there is one message that echoes from this Conference, it is that human rights are women's right and women's rights are human rights" (U.S. Information Service, Wireless file, Sept 6, 1995).



1.4 WOMEN AND HUMAN RIGHTS IN INDIA

This section introduces you to the issue of human rights in India, with special reference to women, as it is incorporated in the Constitution. The role of the women's movement and institutional mechanisms in dealing with women's rights, particularly, the issue of violence against women is discussed.

1.4.1 Constitutional Measures

An important mechanism of implementation of human rights on the national level in India has been the constitutional measures adopted in 1950. The Constitution aims to secure for all its citizens social, economic and political justice, liberty of faith and expression, equality of status and opportunity and to promote fraternity that assures the dignity of the individual and the unity of the nation. The various Conventions and Covenants related to this declaration of human rights find expression in the fundamental rights enshrined in the

Gender Equality : Text and Context Constitution, which are enforceable in a law court, and in the Directive Principles of State Policy, which enunciate the guiding principle of action for the state.

Women in India have been granted parity with men in all fields. The state cannot discriminate against any citizen (Article 15(2)) on grounds only of religion, race, caste, sex, place of birth or any of them. However, nothing in this article would prevent the state from making any special provision for women and children [Article 15(3)]. Sex cannot be a ground of inequality or discrimination in relation to employment or appointment to any office under the state. The state makes a provision to lay down certain principles of policy for women's welfare (Article 39) and the duty to provide for maternity relief and human conditions of work.

In India, thus, human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India that are also provided in the Universal Declaration of Human Rights (UDHR). For example, the right to vote and be elected (Articles 325 and 326; UDHR, Article 21), right to work (Article 14; UDHR, Article 23(1)), right to secure just and human conditions of work (Article 42; UDHR 23(1) and right to free and compulsory education for children [(Article 45; UDHR Article 23 (1) and 21 (6)]. Though with some reservations, India became party to the International Covenant on Economic, Social and Cultural Rights as well as to the Covenant on Civil and Political Rights in 1979. India has also become party to the Convention on the Elimination of All Forms of Discrimination Against Women, as well as the Convention on the Rights of the Child (CRC) in 1993. These initiatives on India's part show its commitment to the cause of human rights as well as those related to women. This concern is further strengthened by the Protection of Human Rights Act of 1993 that provided for the constitution of National Human Rights Commission, which came into being in October 1993 (NHRC, New Delhi. Booklet, 1995).

1.4.2 Human Rights Issues and the Women's Movement

The women's movement in India today, though not a single cohesive movement draws its strength from different forms of struggles all over the country and from its effort to influence programmes, policies and acts that lack gender perspective.

Though women began to organise themselves at the end of the last century, they became active during the freedom struggle, much the credit for which goes to Mahatma Gandhi. It was because of him that a large number of women came out in public from the traditional boundary of their households. The most recent phase of the women's movement began in the 1970s with the submission of the report of the Committee on the Status of Women in India (CSWI) in 1974. Various women's groups, NGOs, women's wings of political parties, women's cell and centers at the universities came up. They took up several issues, of rape and dowry in particular, discussed and lobbied for amendment in the related laws. For example, the Anti Dowry Campaign in Delhi in the seventies was an important event, the experience of which revealed the need for legal aid counseling and

advice to women. It was in response to this, that legal aid and counseling centers were set up in different parts of the country and led women in India to take up in a more concerted manner the implementation of rights granted to them by the Constitution and other legislations.



Women's Human Rights need a common struggle against gender injustice!

Courtesy: CSR, New Delhi.

It was by and large realised by then, that all such issues are human rights issues and their violation is the violation of human rights. The necessity of having good and adequate education and health facilities, right to work and a safe environment are as much human rights issues as violence against women, at home or at the workplace or discrimination in economic and political institutions. The Chipko movement of the seventies to save environment and the anti-Arrack movement in the eighties and early nineties for better health that led to a ban on the issuing of liquor license are only a few examples that show efforts on the part of women to fight for their human rights.

The last few years have seen the broadening and expansion of the movement to take a whole range of issues. The women's movement has been able to influence the approach and method of the development, which has moved from being welfarist to empowerment oriented. Its success is most evident in the constitution of the National Commission for Women on 31st July 1992, a high-powered, autonomous body. Subsequently, various Women's State Commissions have been either formed, or are in the process of being formed. Another very important

achievement of the women's movement in India has been the passage of the 73rd and 74th Constitutional Amendment Acts, reserving one-third seats for women in the elected panchayats and urban local bodies. These Acts became operational on April 24, 1993. Today, several states have successfully conducted elections and 33 per cent or more women are present in these local bodies at all the levels. Of no less significance was the event of India joining the world nations in ratifying the women's human rights treaty (CEDAW) in 1993.

The fact that the issue of women's human rights was one of the critical areas of concern in the Beijing Conference (1995) for women not only across the world, but also in India is clear from the words expressed in the Country Report of the Government of India presented at the Conference. It says, "History shows that although the struggle for women's rights as human is long and hard, it is a struggle that must be waged and won" (Fourth World Conference on Women, Beijing 1995, Country Report, Government of India: 128-130).

1.4.3 Women's Rights as Human Rights in India

Women's rights are human rights and violation of women's rights is the violation of human rights. This is a slogan and a belief, which reflects the unity of women in terms of their situation around the world, India being no exception to it. This idea focuses on two things. One that in discussion of all issues from poverty to development and from health and education to empowerment and peace, reference to women is necessary. All such discussions must have a gender perspective as they affect both men and women, though women are affected much more severely. Two, that there are specific gender issues, like violence against women that require specific attention of one and all and need to be given a space. In India, women are disadvantaged, suffering both from obsolete traditional norms of patriarchal society, as well as from the forces unleashed in the course of the process of development. Though in several aspects like health and education and employment women's position has improved, compared to men they are far behind. This can be seen by focusing on certain indicators of development and empowerment.

The sex ratio, females per thousand males is 927 (1991), which is constantly declining over the decades, is a matter of grave concern. Life expectancy at birth has improved in the last few years which now (1993) stands at 60.7 years for females and 60.6 years for males. The infant mortality rate at 81 per thousand live birth and maternal mortality rate of 570 per one lakh live birth (1993) are still high which shows negligence of child care and women's reproductive health problems that are intensified due to lack of better medical facilities. It was noted that 88 per cent of pregnant women aged 15-49 were anemic. There is still a huge gap between female and male literacy rates that are 39.29 and 64.3 percent respectively. Though school enrollment ratios have been rising, high dropout rate particularly for girls still continues to be a major problem. Only about 32 percent of girls entering the primary stage reach the end of schooling. There has only been a steady rise in work participation of females to 22.27 percent (1991) against males 51.61 percent, while most of them that are 85.9 percent are still in

the unorganised sector (Fourth World Conference on Women, op. cited, 1995: 10-22). Women's representation in various decision-making bodies is still negligible. In the Lok Sabha it has never gone beyond 8 percent and it has varied between 3 and 6 percent in different legislative assemblies. There are only about 2.5 per cent women as administrators and managers and 20.5 per cent as professionals and technical workers (U.N. Human Development Report, 1998).



Solidarity for Women's Human Rights
Courtesy: CSR, New Delhi.

Not only are women's human rights to basic facilities and decision making powers limited; they are also targets of violence. Incidents of dowry deaths and other forms of domestic violence have increased over the last few years despite the amendments in dowry, rape and laws. Sexual harassment, within the family, society and the workplace continue unabated. Violence and its perpetuation are often related to conflicts of caste, class, ethnicity, communalism, fundamentalism and terrorism, which cumulatively have a negative impact on women. Other forms of violence are trafficking in women and girls and custodial violence perpetuated by law enforcing agencies. There are other more latent and unquantifiable aspects of aggression namely emotional violence and other forms of cruelty-foeticide, infanticide denial of food to females (Fourth World Conference on Women, op.Cited: 98-102).

The fact that the Country Report presented at the women's conference (Beijing 1995) contains a full chapter on countering the threat of violence against women

Gender Equality: Text and Context shows increasing significance of the subject, when twenty years ago, in the Report of the Committee on the Status of Women in India (1974) there was no chapter on violence. The recently constituted National Human Rights Commission (1993) takes steps to resolve the cases of the violation of human rights, including the rights of women. It is the National Commission for Women (1992) that takes up specifically the case of violation of women's rights and deprivation, and works towards their welfare and development. They have taken up the cases of sexual harassment, atrocities on women, for example in Uttarakhand, dowry death cases, harassment at work place and overall gender based denial of opportunities. (Brochure, The National Commission for Women 1998, New Delhi).

Though a lot needs to be done, the efforts on the part of the Government and non-government organisations and women's groups prove that women concerns have become central to all other issues and more attention is given to the gender specific issues nowadays. It has been recognised that women's rights are human rights and their violation is the violation of human rights. India is committed to this issue.

Learn from Your Experience 1

On the basis of your observation and experience in family, society and work place, analyse incidents of violation of women's rights that you think are also the violation of human rights.

1.5 CONCLUDING REMARKS

In this unit we have understood the concept of human rights, how women's rights are human rights and why violation of women's rights is the violation of human rights. This is seen not only in terms of the poverty, illiteracy, health problems, political marginalisation or social stigma that a woman faces, but also and mainly in violence against her that is perpetuated in the family, in society, at the work place, in custody, on the streets, and also in case of war, and in terrorist, communal and caste oriented activities. On the whole they lack the freedom to live as human beings in peace and with pride and dignity. The unit also discussed the various steps taken by the United Nations in this direction and efforts of women and the women's movement to bring the issue of women's rights to the center stage in all the discussions on human rights and related aspects. These issues have been dealt with in reference to India as well.

1.6 CLARIFICATION OF THE TERMS USED

- | | |
|-------------------|--|
| Charter | : Written statement of rights from a recognised authority. |
| Commission | : A group of people legally authorised to discharge a task. |
| Committee | : A group of persons appointed to attend a special business. |

- Convention** : Agreement between states/rulers. It is less formal than a treaty.
Covenant : Formula agreement that is legally binding.
Endorsement : Instance of approving or supporting a claim.
Lobby : Influence the member of a law making body.
Tribune : A platform for speakers addressing an assembly.

Women's Rights are Human
Rights: Meaning and Dimensions

1.7 SOME USEFUL READINGS

- Bajwa, G.S. (1995) *Human Rights in India*. New Delhi: Anmol Publications Pvt. Ltd.
U.N. (1995) *The United Nations and Human Rights 1945-1995*. New York: United Nations Publications.
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UNIT 2 GENDER EQUALITY—THE GLOBAL DEBATE

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- 2.0 Aims and Purpose
- 2.1 Introduction
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2.0 AIMS AND PURPOSE

This unit deals with the evolution of main themes in the global debate on discrimination against women owing to gender biases. After studying this unit you should be able to:

- trace the chronology of the events that have shaped the debate;
- delineate the major actors responsible for the debate; and
- differentiate the major themes that orient the debate.

2.1 INTRODUCTION

This unit is a continuation of the earlier one. In the previous unit we discussed the text and the context of the emergence of women's rights as human rights. This unit attempts to understand the gist of the proceedings at the international level that have helped shape the present global debate on gender. The topic is of special importance in the post-World War II scenario when the need for an awakening to women's rights was felt world-wide. The United Nations took the initiative in giving these sentiments a concrete form through its resolutions and conferences.

We will be dealing with the theme of global debate on gender at three main levels. At the first instance, we will discuss the UN initiatives that have contributed towards shaping the course of the debate. It also looks at the special organs

of the UN, like the secretariat, the General Assembly and most important of all, the Commission on the Status of Women and their specific roles in contributing to the UN initiatives.

Next we would like to have a look at the regional debates on gender, with India as the reference point, in a spectrum of countries in the South Asian Region, that constitute the South Asian Association for Regional Co-operation called the SAARC.

Lastly, we will try and understand specific debates and themes of the ongoing debate on gender discrimination.

2.2 THE U.N. INITIATIVES

The global initiatives towards the enhancement of women's status and properties began in the post-World War period. In the world of post-colonial diversity that emerged from World War II, only 31 countries accorded women the right to vote, which strikingly did not include even a country like the United Kingdom, where women won the suffrage as late as 1948. The force of custom and cultural beliefs was too strong for any political or social intervention into women's issues in most parts of the world.

In projecting the question for women's rights the U.N. had a substantial role to play. The conditions that obtained in the post-war world, made this especially so. The U.N. initiative came in the form of setting up a U.N. Commission on the Status of Women in the year 1946 (which, in 1945 had started functioning as a sub-commission to the U.N. Economic and Social Council).

The international co-ordination on women's issues has helped bring to light the comparative status of women world-wide and the disparities on a statistical scale that they suffer, with respect to various other countries. The U.N. thus published land-mark statistical accounts like the *First World Survey on the Role of Women in Development in 1984* and *World's Women: Trends and Statistics*, a compilation of data on the situation of women throughout the world in 1991.

Besides these, the U.N. organised a string of conferences and other activities co-ordinated by its various organs, especially the Commission on Women. In the following section let us try and understand the role played by the U.N Commission on the Status of Women in trying to grapple with women's issues the world over.

2.2.1 The U.N. Commission on the Status of Women

The creation of the Commission on the Status of Women was the first step towards reorienting the political discourse to highlight the women's question that the U.N. initiated. The Commission was particularly instrumental in collecting data documenting the situation of women in many parts of the world.

The Commission helped draft the Universal Declaration of Human Rights (UDHR) comprising the International Bill of Human Rights and the International Covenant on Economic, Social and Cultural Rights. In the process, the Commission could influence the language of the draft to ensure the "explicit equality" of women in legal terms.

The General Assembly also requested the Commission on the Status of Women in December 1963 to start working on the draft, for the elimination of all forms of discrimination against women. The Declaration of the Elimination of All Forms of Discrimination Against Women, (DEDAW) 1969, later became a convention. The DEDAW in 1979, helped secure a legal foundation for woman's equality. The convention gave the call for drafting new laws to end discrimination against women, endorsed by old laws, customs and regulations.

In 1972, the year marking the 25th year of the formation of the Commission on the Status of Women, the Commission recommended to the General Assembly that the year 1975 be designated as the International Women's Year.

The International Women's Year was observed with particular importance attached to three themes that were recommended by the Commission. These themes were the equality of women in political and legal terminology, appraisal of the contribution of women to the process of development and their increasing contribution to the strengthening of world peace.

2.2.2 International Women's Conferences

The International Women's Conference, 1975, was organised to coincide with the International Women's Year. The International Women's Conference had delegations from 133 member states of the U.N. apart from the state delegations who met in the conference; 6,000 NGO representatives were also involved in a parallel gathering called the International Women's Year Tribune.

In the conference, the delegates drew out a **World Plan of Action for a decade 1975-1985** with a comprehensive set of guidelines for the advancement of women. The overall objective was threefold - to promote equality between men and women, to ensure the integration of women in the total development effort, and to increase the contribution of women to the strengthening of world peace.

The Plan of Action had stipulated targets to be reached by 1980. The major share of responsibility in carrying out the plan was left to the national governments. The UN on its own included a provision to improve data collection and analysis.

The conference recommended that the U.N. declare 1976-85 as the international decade for women. The conference at its close, adopted a World Plan of Action: the Declaration of Mexico, on the equality of women and their contribution to development and peace. The conference also expressed its opinion on many controversial political issues of the time (for example, Zionism).

The conference also called on the member states to draft legal procedures to make the 1967 declaration on Elimination of All Forms of Discrimination against Women effective.

Following the Mexico City conference, the General Assembly proclaimed the period from 1976-85 as the UN Decade for Women: Equality, Development and Peace.

The conference attained some major achievements at the policy - legal level, in introducing the CEDAW, 1979, which India also signed in 1992. As of 15 March 1996, 152 of the 185 UN member states have become parties to it.

A basic premise of this convention is that women are equal to men in making choices not merely in the political and legal spheres, but also in such spheres as marriage, home and the family. In other words, the convention urged the ending of the distinction between the public and private spheres of life on the question of discrimination against women.



Milking for whom? Has this private sphere got a public recognition?

Courtesy : CWDS, New Delhi.

Following the drafting of the convention, a Committee was set up on the Elimination of All Forms of Discrimination Against Women, which comprised of experts to oversee compliance with the 1979 convention.

The Copenhagen International Conference on Women, 1980 met to update the Mexico Plan of Action and review the progress in implementing the Mexico resolutions. Besides, the conference themes pointed three areas of urgent concern for women: employment, health and education. This was thanks to the refinement that was felt necessary in realising the objectives set by the Mexico conference.

The conference in a critical appraisal of the outcome of the Mexico Conference cited the lack of political will to improve women's status in many countries, lack of attention to the particular needs of women, and too few women in decision making positions.

The World Survey on the Role of Women in Development, helped to understand the women's condition, globally. It showed that only a minority of women had benefited from the programme thus far. This review laid the groundwork for the Third World Conference on Women in Nairobi, 1985.

The Nairobi Conference drafted the Forward Looking Strategies for the Advancement of Women, as an updating of the Mexico Plan of Action and for future strategies. At the heart of the strategies lay recognition of equality at the national level for implementing the various programmes. The document declared that as the various nations are at different levels of development, they should have the option to set their own priorities in accordance with their own development policies.

The Beijing Conference, 1995 held in the fiftieth anniversary of U.N., was the largest ever gathering held of government and NGO representatives. The Beijing Declaration and Platform for Action adopted unanimously by 189 countries, built on political agreements reached at the previous three conferences on women to establish 12 priority areas for action by the international community over the next five years.

Besides exhorting the national governments to adequately accommodate the programmes devised, the Platform for Action accords the UN in general, and the Secretary General in particular, a key role in the implementation and monitoring of the platform. The UN itself is asked to incorporate a gender perspective into its programmes and policies. Consequently, the UN has set as its target to have women as 50% of its staff, by the year 2000.

These were the general proceedings by which the debate on gender was geared in the post - World War II scenario. In the next section we shall see the themes of the global debate on gender.

Think it Over!

What were the major themes of the four International Conferences on Women? Has there been any change of these themes over the years? Do you think that some new themes be evolved to project the problems of Indian women at the international level?

2.3 REGIONAL DEBATE ON GENDER: THE SAARC INITIATIVES

The global debates on gender increasingly came to the conclusion that women at large were at a disadvantaged position. While realising this, the various conferences also realised the need for attending to the particular problems concerning women's issues emerging out of socio-cultural as well as economic backgrounds.

In the SAARC countries the major initiative in attention towards women's problems was through its declaration of the SAARC decade of the GIRL Child 1991-2000 A.D.

The consensual aims of the plan of action drafted and approved accordingly include: i) survival and protection of the girl child and safe motherhood, especially aimed at making her economically independent and ii) special protection for vulnerable girl children in difficult circumstances and specially those belonging to economically and socially deprived, or physically, mentally disabled groups.

As contrasted with the global debate, the debate amongst SAARC countries focuses on comprehensive growth and development of the girl child. This apart, themes like prevention of female infanticide and female foeticide have high priority in both the global and the regional agendas.

Other than the social themes that engage attention on the growth of girl child in society, developmental themes are also dominant, which show the plans to reduce infant mortality rate and elimination of severe and moderate malnutrition. The SAARC plan is also sensitive to the educational needs of the girl child. This is reflected in the plans to reduce the illiteracy rate in these countries, with special reference to women in the age group of 15 -20 years. These include programmes for offering vocational courses and in inculcating a scientific temper.

At the regional level, the countries have shown sensitivity to attend to themes that are specific to the country or society involved. Thus, the Government of India paid special attention to girls from socially disadvantaged sections like the scheduled castes and tribes. The children with AIDS or parents affected by AIDS also figure in the picture, apart from the physically or mentally disabled.

The SAARC convention also set up a research cell to look into the various complexities and give a situational analysis of the "Girl Child and the Family", as part of the SAARC Year of the Girl Child.

Learn From Your Experience 1

Should there be a different theme on women's issues at the local level? Discuss this question with the various grass roots activists who are working on gender issues. Based on your discussion with them and your own experience as well write a note on Gender Issues at Local Level.



Girl Child - victims of apathy?

Courtesy : Debal Singha Roy, IGNOU, New Delhi.

2.4 SOME IMPORTANT THEMES OF THE DEBATE

Amongst the themes on debates on gender, the first we will examine is the one pertaining to women's political rights i.e. rights relating to women's suffrage, representation and resistance.

2.4.1 Women's Political Rights

The first step towards concretising the presence of this debate lay in affirming women's rights as human rights. The UN has adhered to this specific affirmation when the World Conference on Human Rights, Vienna, 1993 reaffirmed, "the human rights of women and of the girl child as inalienable, integral and indivisible part of universal human rights"

The CEDAW, that was mentioned earlier also has to be seen in a similar light, that is, of advancement of women's issues to the general plane of human rights issue.

The major contributors to the debate on woman's rights at the UN level are the various national women's movements and non-governmental organisations (NGOs).

The national women's movements heralded the idea of equal rights to women much before the UN came into existence. The Indian suffragettes led by Sarojini Naidu in the early 20th century and the women's movements that evolved out of the abolitionist campaigns against slavery stand testimony to this fact.

The two World Wars accentuated this trend when women entered the work force in industries and factories in large numbers. The suffrage they achieved in France and Japan immediately after World War II can be ascribed to this enterprise.

The Nairobi Women's Conference, 1985, further spurred such movements in various member states of the UN. The member states responded by creating national level mechanisms for women with instruments which also proliferated at the local, regional and national levels.

Similarly, the NGOs are also working on similar issues to attain a global consensus on women's rights. The Women's Tribunal, a parallel NGO event at the Conference on Human Rights in Vienna, presented evidence and speakers from around the world on human rights violations, especially violence against women.

2.4.2 Transgression of Women's Body and Related Issues

Women's rights to resistance against transgression of their bodies, assume significance in the light of the practices that are carried out in the name of tradition. Genital mutilation, a traditional practice affecting women's health, is practised in Asia and Africa and among immigrants in the U.S. and Europe. Dowry related abuse and female infanticide with selective abortion of female foetuses is still a common accepted norm in many Asian countries.

2.4.3 Women's Role in Development

The question of women's representation in decision-making bodies and their role in development are interlinked. The theoretical discourses inspired by feminist thought argues for an entirely alternative perspective on development to the one followed by most centralised national regimes of the world.

This argument for women's representation in various bodies has a force because most of the countries practice democracy and women make up half of the electorate. Thus the UN Economic and Social Council was persuaded in 1995 to set a target of 30 % women at decision-making levels. This agenda is far more significant in another light, namely that this participation by women envisages a path breaking role to the restructuring of those rural power systems, which immediately require redefinition in the light of the proposed development alternatives.

2.4.4 Changing Global Economy and Women's Issues

The debate around this theme is localised around the structural adjustment programmes that began in many developing countries, in the late 80's, following the end of the Cold War, that acquired a concrete shape in the Uruguay round of multi-lateral trade negotiations.

UNIT 6 THE NATIONAL COMMISSION FOR WOMEN (NCW)

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6.0 AIMS AND PURPOSE

This unit provides you with some basic information on the composition, function, and priority areas of action of the NCW. After reading this unit you should be able to:

- describe the composition and functions of the NCW;
- examine the various activities of the NCW;
- delineate the various recommendations made by the NCW on the issue of gender equality and
- make an appraisal of the NCW's performance.

6.1 INTRODUCTION

The National Commission for Women (widely known as NCW) has emerged out of a historical struggle of women in India. It has also several epoch making functions to perform. Will the Commission be able to perform these functions? We will examine this question in this unit. Towards this endeavour we shall discuss in this unit the composition and function of the NCW. The various plans of action and the initiatives undertaken by it have also been described here. One of the important functions of this Commission is to make recommendations on various gender issues to the government. Some of these recommendations are also discussed here. In the last section of this unit we have analysed the achievements of this Commission.

6.2 NATIONAL COMMISSION FOR WOMEN: COMPOSITION AND FUNCTIONS

The National Commission for Women has emerged out of a long drawn struggle of women in India. Indeed, the NCW is a part of a movement. There are several views on the composition and function of the NCW. One group of activists is of the opinion that NCW is formed to co-opt the women's movement by the state so as to arrest the momentum of the movement. They are also of the view that the Commission has very limited potential since it functions as the mouthpiece of the state. The others, however, are of the view that the recommendations of the NCW can be used as a tool for women's empowerment and that the NCW has been given revolutionary roles to perform. So let us examine this debate objectively, and get to know the historical antecedents, composition and functions of the NCW.

6.2.1 Historical Antecedents

The nineties have been a decade of a host of contradictions and crosscurrents. For nearly two decades, since 1971, the leadership of the women's movement within the government and outside has struggled to mainstream women in the country's political and development process. Senior women within the government as well as those from the women's movement examined the role and status of women in the development and modernisation process of the nation. Prior to the first International Women's Conference in 1975 the Government of India set up a high-powered committee, which submitted a report called 'Status of Women' Report. This committee examined the nation-building process from a women's perspective.

By the mid-80's many more concerted efforts began to be made not only for the upliftment or welfare of women but also for their development and empowerment. During this period, three significant committees were set up a commission to look at women in the unorganised sector; a commission to look at women in detention, and a core group, which drafted the National Perspective Plan after

Gender Equality : Text and Context women raped each year. In the United States of America, 16 women every hour are confronted by a rapist; a woman is raped every six minutes. In 1991, the FBI (Federal Bureau of Investigation) recorded 106,593 rapes in the United States. In July 1991, a group of teenage boys attacked and raped 71 school girls at a boarding school in one east African country for refusing to participate in a protest strike against local school administrators. Nineteen girls lost lives in the attack. Statistics like this, from all over the world, demonstrate that sexual coercion is common in the lives of women and girls. Certain violent acts against women are inflicted on pretext of religious and traditional practices. Female genital mutilation is an instance in this regard.

Though it is seriously contentious, whether many of the sanctions are actually religious or cultural, the U.N. agencies have nonetheless placed female genital mutilation on women's health and human rights agenda.

At the national level, Egypt's health ministry, for example, decrees that female genital mutilation performed should be only under medical supervision, which supposedly limits the hazards of female genital mutilation. Kenya has comprehensively banned all forms of this practice, since 1990. The Inter African Committee Against Traditional Practices Affecting the Health of Women and Children, created by women to combat the practice of genital mutilation of women is now an international NGO based in Geneva.

2.5 CONCLUDING REMARKS

In recent years there has been growing awareness on the issue of lower status of women in the family and society. This awareness has been reflected in various national and international level debates. These debates have also acted as function to this awareness. In this unit we have discussed some major facets of these debates. We discussed in details the various initiatives undertaken by the UN especially reflected in various conferences and in the objectives of various commissions. The SAARC debates on gender issue has also been examined here briefly. In the last section of this unit we examined the various issues emerged out of these debates viz. women's political rights, transgression of women body, women's rôle in development, women in changing global economy and violence against women.

Needless to say the main aim of these debates is to bring gender equality in our society. There have been several struggles in these endeavour. In the next unit of this block we shall be dealing with these struggles.

2.6 CLARIFICATION OF THE TERMS USED

- Global** : a perspective or issue related to the whole world.
Perspective : a way of regarding situations, facts, etc., and judging their relative importance.

Suffrage : the right to vote, especially in public elections, franchise etc.

2.7 SOME USEFUL READINGS

- Agarwal, A. 1983 *Women's Studies in Asia and Pacific: An Overview of Current Status and Needed Priorities*. Kaulalumpur: APDC.
- Desai, N. and Patel, V. 1985 *Indian Women: Change and Challenge in the International Decade 1975-85*. Bombay: Popular Prakashan.
- Govt. of India. 1988 *National Perspective Plan for Women-1988-2000 A.D. Deptt. of Women and Child Development*. New Delhi: Ministry of Human Resource Development.

- undertake promotional and educational research so as to suggest ways of *ensuring due representation of women in all spheres* and identifying factors responsible for impeding their advancement;
 - participate and advise on the planning process of socio-economic development of women;
 - evaluate the progress of the development of women under the Union and any State;
 - inspect a jail, remand home, women's institution or other place of custody where women are kept as prisoner or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
 - fund litigation involving issues affecting a large body of women;
 - make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
 - any other matter, which may be referred to it by the Central Government;
- Judicial Functions the Commission shall—
- i) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - ii) requiring the discovery and production of any document;
 - iii) receiving evidence of affidavits;
 - iv) requisitioning any public record or copy thereof from any court or office;
 - v) issuing commissions for the examination of witness and documents; and
 - vi) any other matter, which may be prescribed.

(cf. The National Commission for Women Act, 1990)

Think it Over 1

- What is the composition of the NCW?
- What are the major functions of the NCW?

6.3 INITIAL FOCUS AND ATTENTION OF THE COMMISSION

The Commission has undertaken several activities. Its initial focus was on matters of crucial importance.

6.3.1 Promotion of Legal Literacy and Awareness Among Women

The NCW focussed on formation of expert committees to review the existing laws affecting women and recommend amendments that would give the laws more teeth in protecting women's rights.

a) **Codification of criminal laws relating to women**

A seminar on National Debate on Codification of Criminal laws related to Women was organised on the 27-7-96 to examine and recommend how a more comprehensive law subject to other laws existing or overriding other legislation could give sufficient protection to women; and a total justice delivery system.

b) **Training programme**

NCW works at involving Universities and colleges to take on the responsibility of conducting Legal Awareness Programmes.

c) **Mahila Adalats**

NCW is very concerned about long-pending legal cases in lower and district courts, which are mostly related to issues and claims concerning women. It was evident to the Commission that 'justice delayed is justice denied', and that they would have to do something to change the situation. With this in mind, the Parivarik Mahila Lok Adalats were initiated. A law has been passed to make a mahila adalat's judgement binding. The mahila adalats cover both urban and rural areas.

6.3.2 Anti-liquor movement

The saga of "Tinchiri Mai" of Pauri Garhwal is well known. In the early 1980s, this old woman saw the ills of liquor spreading in her region and she went to the District Magistrate demanding the closure of all liquor vends. The Magistrate expressed his inability in carrying this out. So she single-handedly organised a morcha. She got good number of women together and taking cans of kerosene they burnt all the liquor vends in the area. She then went to the DM and asked him to arrest her. He did so on paper and then let her off.

The NCW began anti-liquor work in the region and on 14 December 1996, organised an anti-arrack seminar in Thal (Pittoragarh). The NCW also associated itself with the anti-arrack movement of the Andhra Pradesh.

It continued pressure on state governments to support prohibition, set guidelines and regulatory structures for states where there is no prohibition, and to control this menace, especially among children.

6.3.3 Political Empowerment

During the pre-election period, the Commission involved women from all political parties in making women's representation in Parliament a pre-election issue; got this issue included in the manifestos of all political parties by submitting a list of potential women candidates, and conducted a study in 6 states to document women's efforts in the election and also identify the problems women candidates face.

Gender Equality : Text and Context The movement for women's equal rights grew and gathered support throughout the eighteenth and nineteenth centuries. Utopian socialists like Robert Owen and Charles Fourier included this issue in their writings in the 18th century, and socialist women like Flora Tristan (1803-44) wove a strong relationship between the struggles for women's rights and workers struggles for a humane environment at a time of capitalist expansion. Like socialists, liberal philosophers too gave their support to the cause of the women. The liberal philosopher John Stuart Mill analysed women's issues in his work on *The Subjugation of Women* in 1869. The struggle against repressive legislation governing the status of women, for voting rights, equal rights to property and education, reached a peak around the turn of the century both in Europe and America. The suffragettes led the struggle for women's voting rights in early twentieth century Britain, and a section of the suffragettes led by the legendary Sylvia Pankhurst allied the struggle with the socialist struggles of the time. French women gained the legal right to dispose of their own salaries in 1907, and American women gained the right to vote after the First World War (1914-19). British women won this right only after the Second World War (1939-1945) in 1948.

3.3 HISTORICAL BACKGROUND TO THE WOMEN'S STRUGGLE IN INDIA

In Unit Nos. 6 and 7 of the Foundation Course of this programme we will discuss at great length the women's movement in pre and post independent India. In this section we shall have a summary of the movement. In the subsequent units we shall discuss only the modern period.

3.3.1 Pre-Independence Struggle

In India, as elsewhere in the world, the growth of democratic consciousness saw the rise of the women's movement. The early propagators for social justice for women were mostly educated and enlightened men from the relatively higher classes and castes. The nineteenth century in particular saw the articulation of demands for women's rights as the clash of cultures resulting from the inroads made by western education and mind sets upon traditional structures. The early work of Raja Rammohan Roy, Ishwar Chandra Vidyasagar, and the Brahma Samaj in Bengal attacked practices like sati and promoted women's education. The demand for social acceptance of widow remarriage was a key demand of the nineteenth century reformers, and the Brahma Samaj was in the forefront of opening schools and other educational opportunities for women. The work of Jyotiba Phule had similar dimensions in Maharashtra, and Phule integrated an attack on the caste, race, and gender divisions of society. He worked for education of Dalit girls. He and his wife Savitri set up schools for them. They also worked for the human rights of widows and unwed mothers. On the basis of available information, it is correct to generalise that improvement in the condition of women was one of the priority items on any agenda for social reform in the nineteenth century. The excitement of charting out new ground, and the difficulties and

isolation faced by the pioneers is exemplified in the lives of exceptional women like Anandi Gopal Joshi and Pandita Rama Bai and Savitri Bai Phule. Anandibai was the first woman doctor of the country who studied and trained in the teeth of social ostracism, and Savitri Phule opened a school for Hindu widows near Pune under similar circumstances.

3.3.2 Independence Struggle

The movement for improving the condition of women developed strong links in the early years of this century with the movement for national independence. Organisations like the Women's India Association (WIA), the National Council for Indian Women (NCIW), and the All India Conference of Women (AIWC) were formed in 1917, 1926 and 1927 respectively. They all concerned themselves with the social problems of women and with educating them. These groups also set up some special programmes for women in distress like stay homes and production units, but of course, the scope of these efforts was miniscule compared to the extent of the problem. A limitation of these groups was their narrow social base, most of these groups being restricted to educated women from society's upper strata in the role of policymakers and activists. Women from other strata included in these groups as beneficiaries, if at all.

To a very large extent, this problem of a narrow social base was overcome when women in large numbers flocked to take part in the freedom movement under the leadership of Mahatma Gandhi. The kind of mobilisation of women that Gandhi achieved while using overtly Hindu terminology and imagery, (e.g., in the Salt Satyagraha) was responsible for converting a section of the Congress leadership to an ideology of women's equality, and this in turn was responsible for the breadth and scope of guarantees of women's equality that were woven into the Constitution. It is a different matter that all anomalies and discriminations were not eliminated in practice, and that women in independent India continue to suffer several forms of discrimination in and out of the home.

3.3.3 Struggle against Socio-Economic Oppressions

In the pre-independence period, we also have evidence of another stream of social action that sought to define freedom in terms of basic structural changes in society. Struggle led by the then Communist Party of India in North Bengal and Bihar on the issue of sharecroppers' rights (the Tebhaga struggle), peasant struggles in the Telengana region of Andhra Pradesh, and adivasi struggle in the Thane district of Maharashtra and many such others challenged power structures in society. The battle against economic and social oppressors sought to include women as equal comrades in struggle. This struggle included all elements of challenge against the most blatant forms of oppression of women (like wife beating, witch hunting, and alcohol induced violence by men) and sought to give women a visibility.

This entire heritage of pre-independence women's struggle passed on to the present generation of women seeking to find their just space in Indian society and polity.

Think Over 1

What were the major women's issues which were addressed by the early social reform movements in India as social issues? How have these been reflected in the later phase of the struggle?

3.4 THE STRUGGLE OF CONTEMPORARY INDIAN WOMEN

One of the most striking features of democratic polity in present day India is a vibrant movement of women for ending different forms of oppression and moving closer to being equal citizens along with others. Unlike in the earlier period, there has been much more participation in these struggles by ordinary women. This movement has had many different strands, and it may be helpful to consider these separately.

3.4.1 Spontaneous Actions by Women

There have been many occasions when women have spontaneously got organised in protest against a certain issue. Two examples from the not so distant past are the Anti Price Rise Movement in Bombay during 1972-75, and the Anti Arrack agitation in Nellore, A.P. almost two decades later. These are discussed in this section as illustrations of spontaneous actions by women.



Women in anti arrack movement.

Courtesy: India Today.

- a) **The Anti Price Rise Struggle** was a response to the hike in the prices of essential commodities in the wake of the economic crisis of the late 1960s. In an unprecedented chain of events, thousands of working class and lower middle class women took to the streets in the so called "latni" morchas, and developed strong structures of mobilisations and communication. The movement was generalised and visible in many of the metropolitan cities, with important nodes like Patna and Bombay. Women marched down the streets of Bombay waving rolling pins and empty cans of oil, and for a brief period in 1961-62, were at the centre of media attention. It threw up important leaders like Mrinal Gore who later provided leadership to the women's and the socialist movements in western India.
- b) **The Anti Arrack Agitation** in Nellore district of Andhra Pradesh was triggered off by certain lessons in the literacy campaign texts on alcoholism and its ill effects on women. The spontaneous action was indicative of the strong feeling that women suffered the optimum because of alcoholism of their family members. Thousands of women joined in picketing liquor outlets, disciplining habitual drunkards, and demanding from the administration a total ban on alcohol sales. The subsequent interactions between sections of the women's movement, the NGO spearheading the literacy campaign in the state, the district administration and the liquor lobby are an extremely interesting lesson in understanding the possibilities as well as the limits of spontaneous action. **It revealed that persistent mobilisation on social issues creates a new social identity for women which is crucial for their empowerment in society.**
- c) **The Chipko Movement** against tree felling in the Garhwal Himalayas also began as a spontaneous action by women to assert their rights over wood fuel and minor forest produce in the face of increasing dominance of commercial forestry. Women in groups hug to the trees to prevent them being felled by the labourers of the contractor who had taken a lease of the forest for the manufacture of sports goods. The movement later deepened its articulation of environmental issues and developmental choices as a whole under the leadership of Gandhian environmental activists like Vimla and Sunderlal Bahuguna and Chandi Prasad Bhatt.

It must be noted that the spontaneous actions referred to above did not begin with an assertion of women's rights. However, having achieved a political platform with the one point programmes, these movements like the Nellore experience, went on to take clearer positions on the women's question.

Learn from Your Experience

Has there been any agitation pre-dominantly by women on any particular issue in your area? Are the womenfolk of your area being organised for any collective action by any group/agency? Write a brief note in any of the above describing the role of the leadership and organisation involved in the mobilisation of women in our society.

Post independence India has also seen women participate in large numbers in several mass movements. These include the **Bodhgaya Land Struggle** in the late seventies, the **Kerala Fishworkers' Struggle** for the preservation of the rights of traditional fisherfolk, and the **Workers' Movement in Chhattisgarh** in eastern Madhya Pradesh. What is very interesting is that in all these examples, women have not only participated in the struggles in large numbers, they have also articulated and made felt, a definite woman specific struggle agenda. In the case of Bodhgaya, in the context of the struggle for the distribution of the vast landholding of the Bodhgaya Math, this took the form of demand for land rights to women. Similarly, in Chhattisgarh, in the context of the struggle of contractual mine workers for just and humane working conditions, a strong statement of women's equal right to work emerged. Since technology has often bypassed and marginalised women, there was also a demand that technology options should be worker and woman friendly.

Political parties have also developed women's wings and associated women's organisations during this period, in recognition, no doubt, of the fact that women were now raising their voices, and that it was not possible to take them for granted. Among groups with left political tendencies one can mention the Janwadi Mahila Samiti of Delhi, affiliated to the All India Democratic Women's Organisation. Groups like this have focussed on issues of women workers especially of working class women, and attempted to analyse from a women's point of view, major contemporary developments like impact of the New Economic Policy on women, etc. All major political parties have functioning women's wings responsible for women's membership and women specific issues.

While this is on the whole a welcome development, what is somewhat disturbing is that the fundamentalist forces have also developed women's units, and have co-opted much of the vocabulary and tactics of the movement for women's rights. There is no doubt that this is in recognition of women's potential for struggle, and their demonstrated strength; for the women's movement however, it raises a very serious dilemma of position and interpretation.

3.4.3 The Autonomous Women's Movement

The 'Autonomous Women's Movement' refers to the somewhat more articulate, generally urban based women's groups which have sprung up in many places since the seventies, and which do not necessarily have links with any movement or larger issues. Many such groups have come up in the metro cities from the mid seventies. While their social base is narrow, they have played an important role in highlighting women's issues in the media, in issue specific campaigns, and in public interest litigation. Groups like this from Bombay and Delhi played a major role in calling attention to the shortcomings in the laws regarding rape, in the wake of the Mathura and the Rameeza Bee rape cases, (much publicised cases of custodial rape in the decade of the seventies), and drew attention to the

menace of dowry related murders of young brides that became part of the cultural landscape of north India from the late seventies onwards. Women and women's groups associated with this trend pioneered the publication of consciousness raising journals like *Manushi* (English and Hindi) and *Baiza* (Marathi) in the late seventies and early eighties. They also led the campaigns against the use of untested hormonal-contraceptives, and sex selective foeticide. In 1988, the Nari Mukti Sangharsh Sammelan in Patna was an effort to bring these groups and women's wings of many non party mass movements on a common platform.



Women showing solidarity with Indian Army during Kargil War - an extension of autonomous women's movement.

Courtesy : CSR, New Delhi.

With the international recognition that women's issues received following the declaration of 1975-85 as the international decade for women, there began a substantial inflow of development funds into women's issues. As a result, a large NGO sector came up that worked on women's issues, and who took on many of the functions that the autonomous groups (government aided autonomous bodies viz. the Comprehensive Area Development Corporations of West Bengal etc.) were until then fulfilling. The relationship between the autonomous groups and mass based groups was always a tenuous one, and became more complicated by the entry of NGO based professional gender specialists into the field.

3.4.4 Women's Studies: The Struggle for Visibility

The report of the Committee on the Status of Women, "Towards Equality" was published by the Indian government to mark the International Decade for Women.

Gender Equality : Text and Context The Committee comprised of eminent social scientists and activists, and for the first time, a serious effort was made to look at and document the diverse experiences of Indian women in terms of social status, economic opportunities, and legal disabilities. This report marked the launching of a new area of academic inquiry and discourse, viz., Women's Studies. In 1981, the first conference of Women's Studies at Bombay's S.N.D.T. Women's University led to the birth of the Indian Association of Women's Studies (IAWS). Over the next years, IAWS organised other similar conferences, and lobbied successfully with the academic establishment for recognition of this new area of study.

As a result of these processes, Women's Studies courses began to be offered, and Women's Studies Research Centres were established at many universities. While this mainstreaming led to the visibility of the issues, not all research centres and academics were able to maintain academic rigour and research standards, and some trivialisation of the activities of women's studies did take place in academic circuits, even on the issue of location of this area of study.

3.4.5 State Sponsored Struggles for Women's Equality

One result of the mainstreaming of women's rights issues and in a way, of the struggles of the past several decades, was that the state appropriated much of the vocabulary and arguments of the women's movement. This process was also facilitated by international donor support, and the Govt. of India's own public commitment to the United Nations' Convention to End All Forms of Discrimination Against Women (CEDAW) following the U.N. decade for women. The series of UN conferences on women during and after the decade (1975-85) also played a role in sensitising sections of the bureaucracy and political leadership on the issue of women's rights.

Beginning with the 1988 **National Perspective Plan for Women**, the Govt. of India went on to produce other analytical documents on the status of women and the progress in achieving equal rights, like the 1995 **Country Report** presented at the Beijing Conference. The setting up of the National Commission for Women in 1991 was another landmark.

The government also set up Women and Child development directorates, and schemes like the Development of Women and Children in Rural Areas (DWCRA) through the eighties. It also attempted to replicate activist motivated struggles for women's equality through programmes like the Women's Development Programme (WDP) in Rajasthan, and Mahila Samakhya in Uttar Pradesh, Karnataka, and Madhya Pradesh. These programmes created a series of activist cadres at village level in the programme areas, but ran into serious problems when programme activity and the cadres involved began to challenge the socio-political establishment. The experience of Rajasthan, where the Sathins were subjected to physical violence by village elite and faced bureaucratic resistance from within the programme illustrates the limitations of the state as an agent of genuine change.

Think Over 2

There are several issues which contributed towards the emergence of the women's movement in India. Can you analyse the issues which have contributed to the emergence of the autonomous women's movement in recent years?

3.5 CONCLUDING REMARKS

While the different sections active on the issue of women's rights share a common commitment to the advancement of women, there are many differences in issue articulation, struggle, location and approaches. It is also difficult to locate the central trend in today's women's struggle. There is sometimes a glib tendency to regard the city based groups as representatives of the general trend, but this is obviously incorrect as the above account shows. There are major debates today about the cooption of feminist approaches by fundamentalist groups and by the state. One can see the limitations of state intervention with the analysis of past experience. An analysis of women in various forms of social struggle shows that gender and social justice were compatible, and that women's empowerment (of which mobilisation is a first step) would release women's energies for social good.

This unit tries to give you an overview of the struggle initiated by women in various forms. This will help you to examine the issues of women's empowerment in relation to the legal and constitutional arrangements of our society. As has been discussed in the following units of this course our constitution has provided the basis of gender-equality in our society. However, mere constitutional provisions are not sufficient to provide gender justice until and unless there is sufficient pressure from the below to realise that justice. This pressure can be built up only through the struggle of different forms as has been discussed above.

3.6 CLARIFICATION OF THE TERMS USED

- Elite** : A group/category of people who usually occupy the upper strata of the social, economic, professional or political hierarchy.
- Movement** : Organised efforts by a group of people to bring about or to resist change. Here movement is also used as a vehicle to create a new social identity.
- Suffragettes**: Women supporters of female suffrage.

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उत्तर प्रदेश
राजर्षि टण्डन मुक्त विश्वविद्यालय

CWED -03

Constitutional and Legislative Foundations for Gender Equality

Block

2

CONSTITUTIONAL FOUNDATIONS FOR GENDER EQUALITY IN INDIA

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BLOCK INTRODUCTION

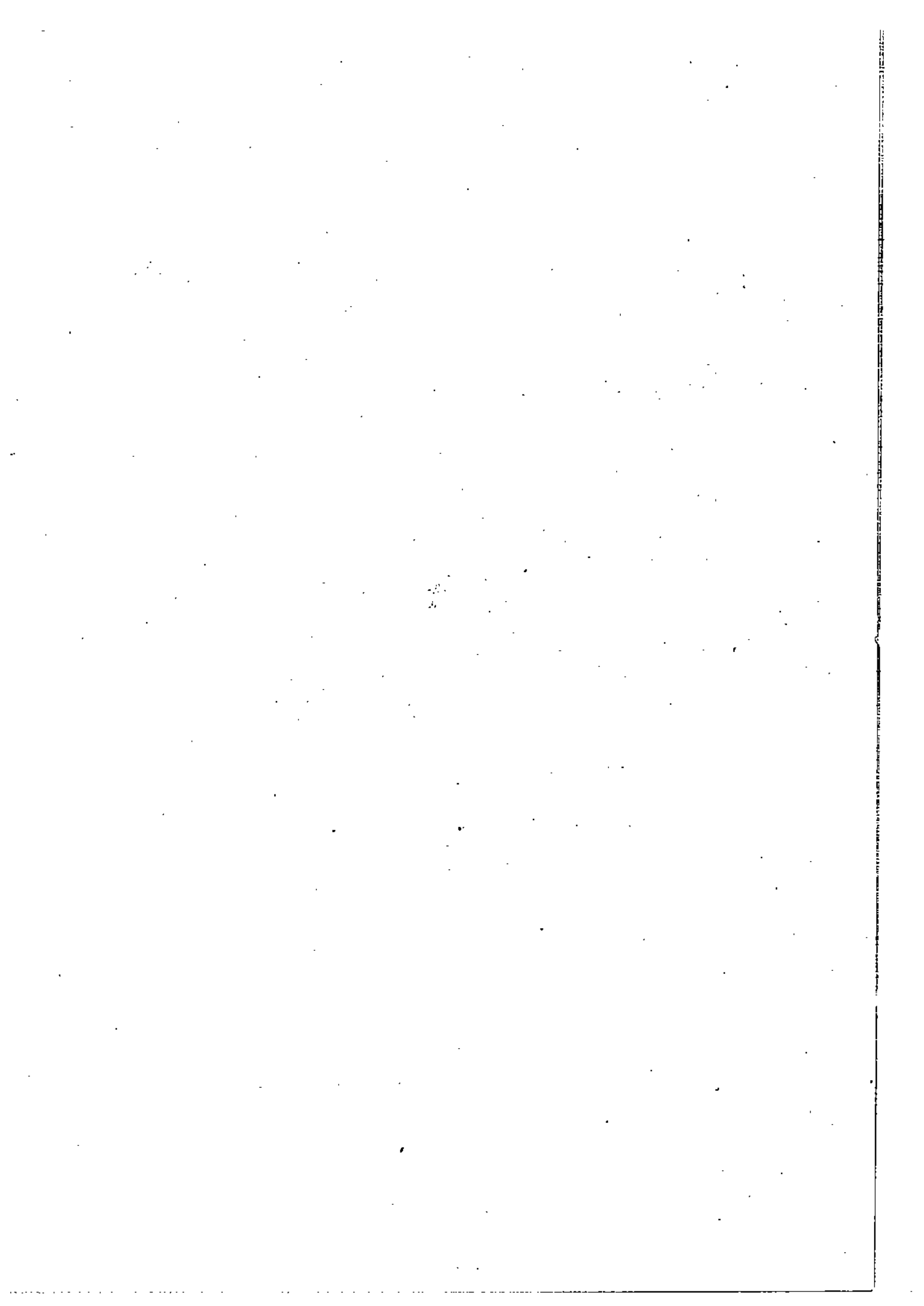
BLOCK 2 : CONSTITUTIONAL FOUNDATIONS FOR GENDER EQUALITY IN INDIA

This Block tries to give you not only a brief account of various constitutional provisions for gender equality available in India, it also explains the various constitutional omissions, women's struggles for constitutional amendments for gender equality. The Women's Commission has emerged as an institutional custodian of women's rights in India. This has also been discussed in this Block. There are three units in this Block.

Unit 4 is on **Constitutional Provisions for Gender Equality in India: Mandates and Omissions**. It discusses the various provisions of the Fundamental Rights and the Directive Principles of the Constitution of India as the corner stones of gender equality. It also focuses on the constitutional provisions for gender equality in employment and inheritance and issues of personal laws of the various religious communities in the Constitution. Constitutional omissions on gender equality are also examined in this unit.

Unit 5 is on **Constitutional Amendments: Emerging Scope for Gender Equality**. Besides examining the social background of constitutional mandates for gender equality, it also explains the changing scenario and the emerging scope for constitutional amendments for gender equality in India. The issue of Women's Reservation in the Parliament is discussed in length here.

Unit 6 has discussed the historical antecedents, composition and functions of the **National Commission for Women in India**. This unit highlights the initial focus and attentions of the commission, present areas of actions and some important recommendations of the NCW for women's empowerment.



UNIT 4 CONSTITUTIONAL PROVISIONS FOR GENDER EQUALITY IN INDIA: MANDATES AND OMISSIONS

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- 4.6 Constitutional Provisions: Some Omissions
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4.0 AIMS AND PURPOSE

This unit deals with the various constitutional provisions for gender equality in India and also various omissions in the Constitution on this issue. After going through this unit, you should be able to:

- describe the constitutional provisions for gender equality;
- discuss the specific constitutional provisions for women;
- explain the constitutional safeguards in the realm of personal law; and
- discuss the mandates and omissions in the constitutional provision for gender equality.

4.1 INTRODUCTION

In this unit we discuss the provisions for gender equality as enshrined in the Constitution of India. We begin the first section, 4.2 by discussing the constitutional mandates, particularly the Fundamental Rights and the Directive principles in Part III and IV of the Constitution respectively. The next section, 4.3 discusses the constitutional provisions for gender equality in the field of employment. Though the Constitution grants right to equality (Article 15), special provisions can also be made for women as per our constitution, Article 15(3). These specific constitutional provisions are discussed in section 4.4 of the unit. India is a secular state and the Constitution guarantees right to freedom of religion (Article 25) and practice of personal law equally to all the religious communities in India. These are explained in section 4.5. Some omissions regarding constitutional provisions for gender equality are also discussed in section 4.6 of the unit.

4.2 GENDER EQUALITY: CONSTITUTIONAL MANDATES

In this section we will describe the constitutional provisions for gender equality in India with special reference to the Fundamental Rights and the Directive Principles of State Policy.

The Constitution of India came into force on 26th January, 1950 and resolved to "secure to all its citizens: Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and the integrity of the nation (Preamble of the Constitution of India).

Do You Know? 1

PREAMBLE OF THE INDIAN CONSTITUTION

It will be seen that the ideal embodied in the above Resolution was "something fully reflected in the Preamble to the Constitution, which, as amended in 1976, summarises the aims and objects of the Constitution:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

The importance and utility of the Preamble has been pointed out in several decisions of our Supreme Court. Though, by itself, it is not enforceable in a Court of law, the Preamble to a written Constitution states the *objects* which the Constitution seeks to establish and promote and also aids the legal interpretation of the Constitution where the language is found to be *ambiguous*. For a proper appreciation of the aims and aspirations embodied in our Constitution, therefore, we must turn to the various expressions contained in the Preamble, as reproduced above.

To attain these national objectives, the Constitution confers certain rights on women and men called the "Fundamental Rights" which can be enforced by the courts of law. These may be termed positive rights. There are also some negative rights enforceable by the court. They are crucial for gender equality. The negative rights are the prohibition of discrimination or denial of equal protection.

The Constitution also directs the state to implement certain principles called the "Directive Principles of State Policy". These are not enforceable in courts but are declared to be fundamental in the governance of the country and have a moral and political value.

In this way, the Constitution of India firstly, ensures equality of men and women and secondly, notes that in certain respects women have been ill treated and allows the state to make special provisions for them. Thirdly, the Constitution expects that the state will make special efforts to improve the positions of the weaker sections of society, including women, and fourthly, to prevent the exploitation of women. The first two approaches flow from fundamental rights, while the third and the fourth are directions, which the state should bear in mind.

4.2.1 Fundamental Rights

Fundamental Rights are included in Part III of the Indian Constitution comprising 24 articles between 12 and 35.

Articles 14 of the Constitution ensures equality of sexes before the law or the equal protection of laws within the territory of India.



Gender Equality - State proposes and Society.....?
Courtesy : CWDS, New Delhi.

Article 15 prohibits "discrimination on grounds of religion, race, caste, sex or place of birth", but clause 4 of this article [15(3)] empowers the state to make "special provisions for women and children", even in violation of the fundamental

obligation of non-discrimination among citizens, *inter alia* of sex. This provision has enabled the state to make special provisions for women and for the courts to justify reservation and upholding statutory provisions in favour of women, such as exempting them from punishment for adultery, providing them special rights in respect of bail under section 497(1) of the Criminal Procedure Code, authorising service of summons on men only, providing maintenance for women only, reservation of seats for women in local bodies or in educational institutions, or punishing indecent assault on women (Verma, 1995: 100).

Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to "any office under the State".

Article 16(2) forbids discrimination in respect of any employment of office under the state on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. The obligation not to discriminate in matters relating to employment or appointment to any office under the State has thus at least normatively ensured equal status to Indian women.

4.2.2 The Directive Principles

The Directive Principles of State Policy enunciated in Part IV of the Constitution, embody the major policy goals of a welfare state. They concretise together with the chapter on Fundamental Rights, the vision of the founding fathers of the Constitution towards a new Indian socio-political order. The Directive Principles are declared as non-justiciable and non-enforceable, i.e. their alleged breach does not invalidate a law, nor does it entitle a citizen to complain of its violation by the state so as to seek mandatory relief against the state. The Directive Principles are however, fundamental in the governance of the country and the state is charged with the duty to apply these principles in making laws (Article 37). Legislation enacted to implement the Directive Principles should be upheld as far as possible. Judicially they are a vital part of Indian constitutional law. Some of them (a) concern women indirectly or by necessary implication, and (b) a few are "women specific" (CSWI, 1974: 2).

We can categorise constitutional provisions under two headings: Articles which relate to women indirectly and Articles which relate to women directly.

- a) The following are the articles which relate to women indirectly: a) The omnibus provision of Article 38 in brief directs the state to secure and protect effectively, social, economic and political order to promote the welfare of the people.

Article 39 clauses (b), (c) and (f) are concerned with the distribution of ownership and control of material resources of the community for the common good, prevention of concentration of wealth and means of production to the common detriment, and protection of children and youth against exploitation and moral and material abandonment.

Article 40 is related to the "organisation of village panchayats to promote self government".

Article 41 speaks of the right to work, education and public assistance in cases of unemployment, old age, sickness, disablement and other types of undeserved want.

Article 43 provides for workers a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure, of social and cultural opportunities, and the promotion of cottage industries.

Article 44 deals with the Uniform Civil Code.

Article 45 deals with free and compulsory education for all children up to the age of 14.

Article 47 deals with raising the level of nutrition and the standard of living of the people and improvement of public health.

Learn From Your Experience 1

Consult the above mentioned provision of the Constitution in original from the Constitution. In view of your own understanding of your society try to relate these provisions to the issue of women's work, education and health. Have the mandates of the Indian Constitution been achieved? Develop a note on these issues.

- b) The Directive Principles which concern women directly and have a special bearing on their status are the following: Article 39(a) deals with the right to an adequate means of livelihood for men and women equally, Article 39(d) with equal pay for equal work for both men and women, Article 39(e) with the protection of the health and strength of workers – men, women and children from abuse and entry into avocations unsuited to their age and strength, Article 42 deals with just and humane conditions of work and maternity relief for women.

A special clause (e) of Article 51-A which covers fundamental duties is of special importance to women as it asks every citizen to follow the duty of renouncing practices derogatory to the dignity of women (Part III & IV).

Think It Over 1

What are the important constitutional mandates for gender equality in India? And what is the basic difference between fundamental Rights and the Directive Principles? Bind out answers to these questions after reading the texts presented in the previous sections.

4.3 CONSTITUTIONAL PROVISIONS FOR GENDER EQUALITY IN EMPLOYMENT

As stated in the previous sections of this unit, Article 16 mandates equality of opportunity for all citizens in matters related to employment or appointment to any office under the state. Also Article 16(2) clarifies that no discrimination shall be made on the ground of sex in respect of any employment of office under the state.

Article 39(a) of the Constitution provides that the state shall in particular direct its policy towards securing that citizens, men and women equally, have the right to an adequate means of livelihood. Article 39(d) provides that the state direct its policy towards ensuring equal pay for equal work for both men and women. To further this provision, the Parliament in 1976 enacted the Equal Remuneration Act. Section 4 of the Act provides that an employee cannot be paid less than another worker (of the same establishment or employment) of the opposite sex, who performs the same work or work of similar nature, and while recruiting employees for the same work or work of a similar nature, the employer can not discriminate against women. This provision, however, does not apply where the employment of women in such work is prohibited or restricted by law (Mathew, P.D, et al., 1998: 8-9.).



Are they paid equally for the similar job?

Courtesy: Atul Yadav, New Delhi.

Article 39(e) of the Constitution requires that the state secures "the health and strength of workers, men and women, and that the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength". As per Article 39(f), the state is under a duty to protect childhood and youth against exploitation and against moral and material abandonment. For this purpose, the Immoral Traffic (Prevention) Act, 1986 has been passed which covers all persons, whether male or female, who are exploited sexually for commercial purposes.

Article 42 directs the state to provide just and humane conditions of work and maternity relief. The 1961 Maternity Benefits Act was passed to give effect to this provision. The Act was amended in 1976 to cover women who do not fall within the purview of the Employees State Insurance Act, 1948. The other important legislation passed in pursuance of these principles is the Factories (Amendment) Act, 1976, providing for the establishment of crèches where 30 or more women are employed. To improve their condition and to tackle crimes committed against women, the Dowry Prohibition (Amendment) Act, 1986 makes the provisions of the 1961 Dowry Prohibition Act more stringent and effective. The Criminal Law (Amendment) Act, 1983 amended the Indian Penal Code (IPC) and introduced certain reforms concerning the punishment of rape, the procedure and the rules of evidence. New provisions are added in the IPC for dowry death (Sec. 304b) and cruelty committed by husband and other relatives (Sec. 498 A) (Verma, S.K., 1995: 101-2). We shall be dealing with these provisions in Unit 11 and 12 of this course.

Apart from mandating such provisions, the Constitution of India also imposes on the state the duty regarding humane conditions of work and to guarantee gender equality and right to work with human dignity. Article 19(1) (g) guarantees right to practice any profession, or to carry on any occupation, trade or business and Article 21 provides for protection of life and personal liberty. Some development has been made in recent years regarding the constitutional rights of women with reference to personal liberty. The problem of women in police lock up came before the Supreme Court. The case arose out of a letter to the Supreme Court complaining of custodial violence meted out to women prisoners in police lock-ups in Bombay. Acting on the letter, the Supreme Court laid down guidelines on how women in lock-up should be treated. The guidelines incorporated a number of safeguards including separate places of detention for female suspects and interrogation of female suspects only in the presence of female police officials.

Unlike the Articles mentioned in the beginning which are the Directive Principles of State Policy, these Articles flow from the Fundamental Rights of equality and freedom and provide safeguards against sexual harassment implicit therein.

Think it Over 2

What do the following Articles of the Constitution deal with?

- a. 39 (a)
- b. 39 (b)
- c. 39 (d)
- d. 39 (c)
- e. 42
- f. 19(1) (g)

4.4 SPECIAL CONSTITUTIONAL PROVISIONS FOR WOMEN

Article 15(3) of the Constitution specially provides that the state is permitted to make special provisions for the benefit of women. The courts have applied the validity of the special provisions for women because of Article 15(3) as can be seen in the following illustrations.

- 1) Section 36 of the Special Marriage Act allows maintenance (during tendency litigation) only in favour of wives. Its validity has been upheld.
- 2) Women are exempt from punishment for adultery. The validity of this exception has been upheld.
- 3) Provisions exist in the Code of Criminal Procedure giving special rights to women for release on bail. These also have been upheld.
- 4) Under the Code of Civil Procedure, summons cannot be served on a female member of the family. This has also been held to be valid.
- 5) Provisions for reservation of seats for women in local bodies have been held to be valid. Similarly, the provisions for reservation for women in educational institutions have been upheld.
- 6) The provision in Section 354 of the Indian Penal Code punishing indecent assault only on women has been held to be valid as a reasonable classification.
- 7) Part IX of the Constitution of India through constitutional 73rd and 74th Amendments (1992), has reserved one-third of the total number of seats for women in rural and urban local bodies.
- 8) There are provisions in the Legal Services Authority Act for providing legal aid to women free of cost irrespective of the situation they are placed in.
- 9) The National Commission for Women (NCW) has been constituted (1992) along with other State Women's Commissions to look into the complaints and harassment of women (Mathew, 1998: 10).

4.5 PERSONAL LAWS AND THE CONSTITUTION

Article 25 of the Constitution grants right to freedom of religion to all persons equally i.e. freedom to "profess, practice, and propagate" religion. Different religious communities in India are governed by their own personal laws which deal with matters pertaining to marriage, divorce, maintenance, guardianship, adoption, inheritance and succession.

All the religions have discriminatory aspects as far as women are concerned. Even in those cases where the law is codified, as among Hindus and accords equality, a wide gap exists in legal prescription and societal acceptance. In the matter of inheritance, while the Hindu Succession Act (1956) maintained the equality of the sexes in general and confers rights of inheritance on female heirs, it contains several retrogressive features. By virtue of Article 4(2), laws providing for the prevention of fragmentation of agricultural holding have been exempted from the application of the Act. This means that in the name of prevention of fragmentation of agricultural lands a Hindu woman can be deprived of her right to property. Further, a restriction on her right to demand partition is imposed by Section 23, that is, if a Hindu dies intestate (without making a will), his female heir cannot claim partition of the dwelling house until the male heirs choose to divide their respective shares therein and till then female heir is entitled to a right of residence only. Where the female heir is a daughter, she has a right of residence in the dwelling house only if she is unmarried or has been deserted by or separated from her husband or is a widow. The CSWI report recommended the removal of this discrimination so that all daughters enjoy the same right (1974, p.138). The Hindu Guardianship and Minority Act (1956), also accepts the father as the natural guardian of the child and only in his absence, the mother can be the natural guardian. The mother can have the custody of the child who has not completed the age of five years. However, in a significant judgement in February 1999, the Supreme Court of India has provided natural guardianship to both the parents equally. This judgement is considered a historic victory of Indian women.

In Muslim personal law, a man can have four wives. Regarding divorce, the Dissolution of Muslim Marriage Act (1939) has ameliorated the condition of Muslim women. However, the retention, under Muslim Law, of the provision of unilateral divorce by the pronouncing of *talaq* by the husband, together with the prevailing practice of polygamy, has undermined the status of women. After the passing of the Muslim Women's (Protection of Rights on Divorce) Act (1986) in the wake of the Shah Bano case, the Muslim women's right to seek maintenance from her husband under Section 125-127 of the Criminal Procedure Code has been severely curtailed. In the matter of inheritance, in accordance with the Shariat Law, there is right for inheritance for females. But this is unequal as a son takes double the share of the daughter. There is no provision for adoption under the Muslim law.

The Christian and the Parsi laws of marriage and divorce do not reveal any major disparity in the status of men and women. But the law is found to be demonstrably inadequate where cruelty alone is not a ground for divorce under the Indian Divorce Act (1869) applicable to the Christians. Under the Act, the wife can ask for divorce only if the husband has changed his religion and married another woman or has been guilty of adultery along with bigamy or rape, sodomy, bestiality, cruelty or desertion. Thus the provisions of the Act clearly discriminate against women (see for details CSWI Report, 1974, Ch. 3).

Many people argue that to overcome the existing disparity in the treatment of women under different personal laws, the enactment of a Uniform Civil Code as directed under Article 44 of the Constitution is desirable. In 1986 in the Shah Bano case, the Supreme Court expressed this view and also in a recent judgement of May 1995 in the Sarla Mudgal versus Union of India case, to take a fresh look at Article 44. Some others feel that first, attempts should be made for making uniform laws for different religions or what can be called, the codification of personal laws. Still some resist totally the concept of Uniform Civil Code on the ground that it will be violative of the citizen's right to freedom of religion guaranteed under Article 25 of the Constitution. But the same Article limits this right by subjecting it to public order morality and health [Article 25 (1)] and giving power to the state to regulate or restrict any activity which may be associated with religious practice [(Article 25(2)(a))]. Some balancing therefore, can be done between the principle of gender equality and freedom to follow one's own religion as both aspects constitute a part of the Constitution of India.

Learn From Your Experience 2

Take one religious community with which you are familiar and find out its personal laws regarding any two of the following aspects: marriage, divorce, maintenance, guardianship, adoption, succession and inheritance. Compare this with the provisions in the Constitution of India and find out to what extent they are in consonance with the constitutional provisions for gender equality.

4.6 CONSTITUTIONAL PROVISIONS: SOME OMISSIONS

The concept of equality is embodied in the chapter on "Fundamental Rights" under different articles as discussed earlier. It has been recognised that though women have equal rights as citizens, they have specific problems owing to gender discrimination. Article 16 mandates equality of opportunity for all citizens in matters related to employment or appointment to any office under the state. However, the ambit of this provision is confined to employment and appointment under the state and does not include the non-governmental sector where this rule of non-discrimination can be violated. Then to make special provisions for women

under Article 15(3) is not a command to the state and the state in its wisdom, may not adopt any such provision (Verma, 1995: 100-1). Hence, women are at the mercy of the state to enjoy the full potential of the rule of equality.

Apart from the fundamental rights which are enforceable in a court of law, there are certain specific provisions relating to women in Chapter IV of the Constitution, the Directive Principles of State Policy, as mentioned in section 4.2. They are fundamental in the governance of the country and the state is under a duty to apply these principles in making laws, but they are not enforceable and cannot be tried in law courts. Therefore, various specific principles protecting women, can be easily violated.

In the case of various personal laws which are discriminatory towards women as mentioned in the section 4.5, the right to equality cannot be extended unless the initiative comes from the peoples of the respective communities. The existence, practice and absorption of personal laws cannot be curbed through instruments of the state as it will amount to an interference in the practice and propagation of religious faith. But such customs and practices can be challenged and prohibited which are derogatory in nature and anti-humanist in character. In May 1997, a full bench of the Mumbai High Court granted divorce to a Christian woman on grounds of cruelty alone, though under the Indian Divorce Act (1896), a Christian woman cannot seek divorce on this ground.

Thus, the Supreme Court can use its discretion and give judgements which are gender just. Then there are various laws regarding crimes against women that women can make use of. These will be discussed in greater detail in the following units.

Think it Over 3

What are the major commissions in the constitutional mandates for gender equality in India? How can it be overcome?

4.7 CONCLUDING REMARKS

In this unit we discussed the constitutional provisions for gender equality. We began by focusing on the constitutional mandates. In the two parts of this section, the Fundamental Rights and Directive Principles were dealt with in detail and the difference between the two was clearly spelt out. Special emphasis was placed on the constitutional provisions relating to employment. The necessity of making special provisions for women and the contents of these provisions were described as the fundamental right to equality does not prohibit the State from making special provisions for women. The Constitution also guarantees right to freedom of religion, but it can intervene where the practice of personal laws derogate women and where they are meted out inhuman treatment. But this paradox is not

is solved easily as discussed. The last section deals with some of the omissions in the constitutional provisions for gender equality.

4.8 CLARIFICATION OF THE TERMS USED

Avocation	: Occupation that is not a person's ordinary business.
Fraternity	: Brotherly feeling.
Intestate	: Death without making a will for the division of property.
Mandates	: Obligatory or compulsory commands or orders.
Omission	: Portion left out.
Personal Law	: Exclusive legal rules of a particular religious community.
Provision	: Conditions in a legal document.

4.9 SOME USEFUL READINGS

- Committee on the Status of Women in India (1974) *Towards Equality*. New Delhi: GOI.
- Mathew, P.D. and P.M. Bakshi (1998) *Women and the Constitution*. Legal Education Series. New Delhi: Indian Social Institute.
- Shukla, V.N. (1994) *Constitution of India*. Lucknow: Eastern Book Company.

UNIT 5 CONSTITUTIONAL AMENDMENTS: EMERGING SCOPE FOR GENDER EQUALITY

Contents

- 5.0 Aims and Purpose
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- 5.2 Social Background of Constitutional Mandate for Gender Equality
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 - 5.4.2 Women in the Lok Sabha
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 - 5.5.1 Text and Context
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 - 5.5.3 The Possible Outcome
- 5.6 Concluding Remarks
- 5.7 Clarification of the Terms Used
- 5.8 Some Useful Readings

5.0 AIMS AND PURPOSE

In the earlier units of this course we have discussed various constitutional provisions for gender equality. This unit deals with the constitutional amendments relating to gender equality in our society. After reading this unit you should be able to:

- explain the social background of constitutional mandates for gender equality in India;
- analyse the text and context of the 73rd and 74th constitutional amendments;
- discuss the Women's Reservation Bill and the debates surrounding it.

5.1 INTRODUCTION

"Women are one half of the world but it remains a man's world. The laws are man's laws, the government a man's government, and the country a man's country. This man's world must become a 'man's-and-a-woman's' world." This is one of the quoted slogans of women's movement anywhere in the world. This however is not a simple slogan. It expresses the agony, frustration and an inbuilt urge for change in the social order. This change, however, cannot be automatic. It requires

sufficient organised efforts from below in the form of people's movements on the one hand and a good deal of political commitment on the part of the state on the other. Now that the latent discontents of women have been manifested in the form of well-articulated women's movements in various parts of the world, it has become imperative on the part of the state to express its political commitment for gender equality.

The Constitution of India provides the broad framework for gender equality. However, this framework alone is not sufficient to actualise gender equality within the given socio-economic and political structure of our country. There is immediate need for amendment to the Constitution to provide, as per constitutional guidelines and the shift in development strategy, protective discrimination for women in the society in the form of reservation. Here we are talking about only *one aspect of the reservation i.e.* reservation for participation in the decision-making bodies at various levels. To analyse and examine the text and context of reservation in this unit we will discuss the socio-cultural context of gender inequality and imbalanced political participation of women. We will also discuss the changing nature of the development perspective and the need of reservation for political empowerment of women in our society. In this regard we will discuss the 73rd and 74th and the proposed 81st constitutional amendments of our Constitution. These amendments have generated some debates in our society. An overview of this debate will also be presented here.

5.2 SOCIAL BACKGROUND OF CONSTITUTIONAL MANDATE FOR GENDER EQUALITY

It has been asserted by Western and Indian historians from late nineteenth century to present times that women had an equal and honored position with men in early Aryan Vedic Society (For example, see Altekar, A.S. 1938 rpt. 1987, *The Position of Women in Hindu Civilization*, Delhi, Motilal Banarsidas). This view however, has been challenged by recent historians. (See Uma Chakravarty and Kumum Roy, April, 1988 "In Search of Our Poet: A Review of the Limitations and Possibilities of the Historiography of Women in Early India", *Review of Women Studies, Economic and Political Weekly*, pp. WS2-10). Various social evils in the way of commission of sati, dowry, child marriage, polygamy, early marriage etc. took their form in society. During the British period, social reformers like Raja Rammohan Roy, Ishwar Chandra Vidyasager and Jyotibai Phule and many others raised their voice against atrocities on women. Sati Prevention Act and Widow Remarriage Act were passed during the British period. Later on, under the leadership of Gandhi and Nehru and in association with women like Kasturba Gandhi, Sarojini Naidu, Vijayalakshmi Pandit, Aruna Asaf Ali, Usha Mehta and others, women struggled against the British for freedom of the country and upliftment in women's status.

Down the years, many national organisations have worked for women. These were the Women's Indian Association (1917), the National Council of Women

in India (1920), All India Women's Conference (1926), which went on to organise several women's conferences. Again, the Federation of University Women in India (1920) was set up with the sole objective of stimulating the interest of women in civic and public life and the removal of disabilities of women whether legal, economic or social and the promotion of social, civil, moral and educational welfare of women and children.

When Gandhiji came on the political scene, he could draw a large number of women to the political arena by giving a very broad meaning to Swaraj, and helping them find dignity in public life and a new place in the national mainstream. His views on many issues instilled a new confidence among women and a consciousness that they could fight against oppression. To him the fight for Swaraj meant not merely political awakening, but an all-round awakening, social, educational, moral, economic and political.

As a result a large number of women came and joined the civil disobedience movement during the thirties. Besides Sarojini Naidu and Kamala Devi Chattopadhyay, there were thousands of others who readily participated in the freedom struggle. It was primarily due to the efforts of such women and their role in the freedom struggle that women got the right to vote and got provision and protection of gender in the Constitution of independent India. The founding fathers of the Indian Constitution were aware of the fact that within the given socio-cultural order, it may not be possible for women to get gender justice. Here they made special provision for women on the lines of other weak sections of society. In India special provisions are made in the Indian Constitution especially in the Fundamental Rights and the Directive Principles of State Policy for women. Various important articles are introduced to provide positive discrimination and to promote and protect the interests of women. Article 15(3) empowers the state to make special provisions for women. However, in spite of these constitutional arrangements a great gap has arisen between the inherited socio-economic reality of women and the constitutional mandate for gender equality.

Article 14 of our Constitution assures *equality before the law and equal protection of laws*. Articles 14 and 15 guarantee a life of dignity without discriminating against women on the basis of religion, race, caste, sex, belief, faith or worship. Article 15(1) categorically prohibits *discrimination on grounds of religion, sex, caste, birth* and a host of other factors. Article 15(3) is vital since it encapsulates a specific constitutional derogation and dilution from the principle of equality by declaring, 'Nothing in this article shall prevent the state from making any special provision for women and children.' Here then is the affirmative, substantial and specific constitutional mandate for protective discrimination focussed for the benefit of two disempowered segments of our society-women and children.

Article 16 of the Indian Constitution focuses exclusively on the specific subject of equality in public/state employment. While Article 16(1) seeks to guarantee equality of opportunity in such employment, article 16(2) prohibits discrimination

in public employment on grounds, *inter alia* of religion, race or sex. Article 16(4) specifically empowers the state to make special provision for backward classes and it was this sub clause, which was held to provide the mandate for reservation for OBCs following the Report of the Mandal Commission. Consequently, both at the general level of equality and in the specific categories of women, children, backward classes and SC & ST reservations, special provisions and other special schemes have been recognised by specific constitutional provisions like Articles 15(3), 16(4) and 330.

Years of colonial domination destroyed many of our indigenous crafts and depleted our natural resources. Industrialisation, changing technologies, illiteracy, lack of mobility all resulted in the inability of women to cope with the new order. As customs, culture and religion are intertwined in our traditional society change is very slow. The problems that women face within their families are in many ways uniform regardless of religion, caste or community. However, in spite of similarities among women as a social category, women in India continue to be governed by a multiplicity of family and religious laws. Thus, though we are moving towards the 21st century women still have an identity aligned to family or religion and not to that of a citizen of a secular state.

Think it Over!

Can you explain the socio-political contexts in which women in India are given special constitutional safeguards? What are those safeguards?

5.3 FROM WELFARE TO EMPOWERMENT: SOME STRATEGIES

Before we go further, let us examine the changing nature of the social development strategy in India and its relations to the Panchayati Raj Institution (PRI).

5.3.1 Change in Development Perspective

The social development strategy in India has undergone a phenomenal change over the decades. In the early decades of our independence the Draft Five Year Plans provided the background for "development with stability". In the seventies it was shifted to "development with justice". Indeed in the context of deteriorating economic conditions of the down trodden and manifestation of their revolt in various parts of the country the development initiative was directed exclusively towards the needs of the poor. In the 1980s and 1990s there has again been a shift in the development strategy in view of globalisation of the economy on the one hand and resurgence of people's movements on the other. Now our national leaders and the policy planners are mostly speaking about "development with empowerment of the marginalised". Indeed empowerment of women has acquired a central place in the dynamics of this development paradigm.

Now you would be interested to know what does empowerment mean? The central thrust of the process of empowerment is "power". It is a process of gaining power. But how can power be gained? Can it be gained automatically without altering the prevailing power structure? Is there any legislative method for the transformation of the power structure?

Ours is a stratified society. In this society women are exploited and subjugated in various ways. In the caste hierarchy they are socially neglected not being represented in decision making. In the class system of inequality they are economically exploited getting lower wages and within the gender hierarchy they are culturally oppressed in several ways. Multiple structures of subordination are imposed on them. Thus without altering the structure of subordination women cannot gain power in society. Here constitutional amendments play a crucial role towards the alteration of such oppressive social and political arrangements.

The World Development Summit 1995 recommended to all the states of the world that a stable legal framework be provided for sharing of power by the marginalised groups. Towards this effort, formulation of various laws, constitutional amendments etc. are suggested to provide a stable legal framework for the empowerment of marginalised groups.

In India, as has been seen in the earlier decades, there has been a shift from welfare to development, to integrating women in development, to empowerment in this decade. The process of giving power to women through constitutional means has emerged as a vital option. The constitutional setting up of new commissions and committees has been important corner stones in this regard. **The 73rd and 74th Amendments of 1993 to the Indian Constitution providing for reservation of seats for women in panchayats and municipalities is a giant stride in the empowerment of women.** The setting up of the National Commission for Women has also helped in creating an environment for the realisation of women's equality.

Do You Know?

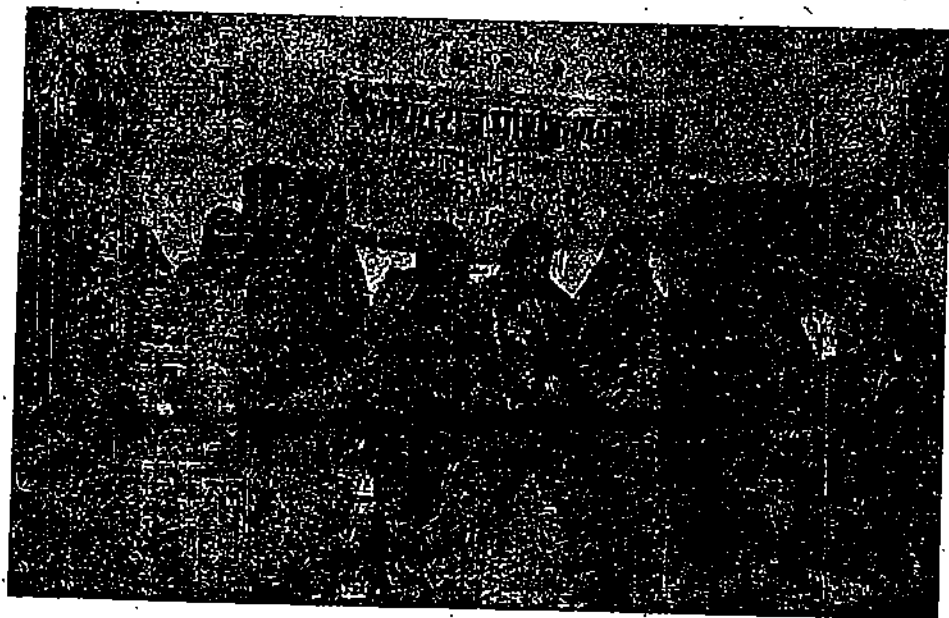
Legally woman is equal to man and is assured of a dignified life by the supreme law of the land but in actuality, she can be sold for half the price of a buffalo, be beaten mercilessly for refusing to provide money to an alcoholic husband, thrown out of the house for not being able to give birth to a boy, burnt for not bringing the desired dowry, raped to satisfy the lust of men and stigmatized as an accomplice, she can be blamed for every fault of man because she is the child of a lesser god and has an inferior status in society.

The years, 1975-1985, celebrated as the **International Decade for Women**, saw renewed efforts to discover the reasons behind the deterioration in the condition of women. There were important policy decisions during this period. A new department, Women and Child Welfare, was created, and other institutions like the Self Employed Women's Commissions, the National Commission for Women, Crime Against Women's Cell-all came up.

The life of average women in India is governed less by constitutional guarantees and laws and more by traditions, customs and unwritten codes of conduct, which pose several restrictions on women's political participation. However, in spite of these restrictions women in India have shown their incalculable potential for political participation by taking an active part in the independence movement, peasant movements, ecological movements etc. In the last five decades there has been enormous proliferation of grass-roots mobilisation with conspicuous participation of women in the rural areas. These mobilisations have clearly shown the following:

- women are no longer a politically passive category.
- there has been organised women's resistance against various forms of oppression in the society.
- women have themselves to be effective catalyst of change in rural society. They have also been sufficiently trained to undertake political leadership.
- women are becoming gradually aware of their rights in society.
- as women suffer the most, they have been the active participants in those mobilisations, which were directed against caste, and class based oppressions.

To ensure that the form and extent of women's political participation in India is less guided by societal customs and traditions than by the constitutional guarantees, some important constitutional amendments have been introduced in recent years to ensure women's political participation at the local level. Let us look at that.



Training for the task! Great responsibility ahead.

Courtesy: Asha Misra, Bhopal.

5.3.2 Panchayati Raj and Constitutional Amendment

The Constitution of India was adopted in 1950. It states (Article 40) that "the State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

The Provision of 73rd Amendment Act may be recapitulated

- Not less than one-third of the seats will be reserved for women (including that of S.C. and S.T.) and these may be allotted by rotation of different constituencies of a Panchayat.
- In proportion of the total population of S.C. and S.T. to the population of the areas, seats will be reserved for S.C. and S.T. There would be reservation for women in these seats allotted to Scheduled Castes and Scheduled Tribes. Not less than one third of the S.C. and S.T. seats may be reserved for women.
- Not less than one third of the total number of seats for the offices of the chairpersons at each level would be reserved for women. This would be rotated among different Panchayats at each level-Gram Panchayat, Panchayat Samiti and Zilla Parishad.
- In addition, there are certain general features, which could be taken advantage of by women, such as direct elections for membership and *Sarpanch* (President) posts, at the local (Gram Panchayat) as well as at the intermediary level (Panchayat Samiti).
- It was left to the different states to provide for reservation for membership or chairperson to citizens of backward classes, if they choose to do.

The 73rd constitutional Amendment, dated 24 April 1993, directed all states legislature to amend their respective Panchayat legislation to conform to the constitution amendment, within one year. All the states complied and adopted new Panchayat legislation by 23 April 1994 (cf. Kaushik, S. 1995: 25)

5.3.3 Changing Scenario in PRI (Panchayati Raj Institution)

The recent amendment has brought several changes in the form and extent of women's political participation.

The number of women brought into the administrative and political system by PRI has made a difference. The percentages of women at various levels of political activity has changed from 4 to 5% (pre PRI) to 25 to 40% (post PRI).

This difference is also qualitative. Women are bringing their experiences in governance of civic society into governance of the State. This way they are making the state sensitive to issues of poverty, inequality and gender injustice.

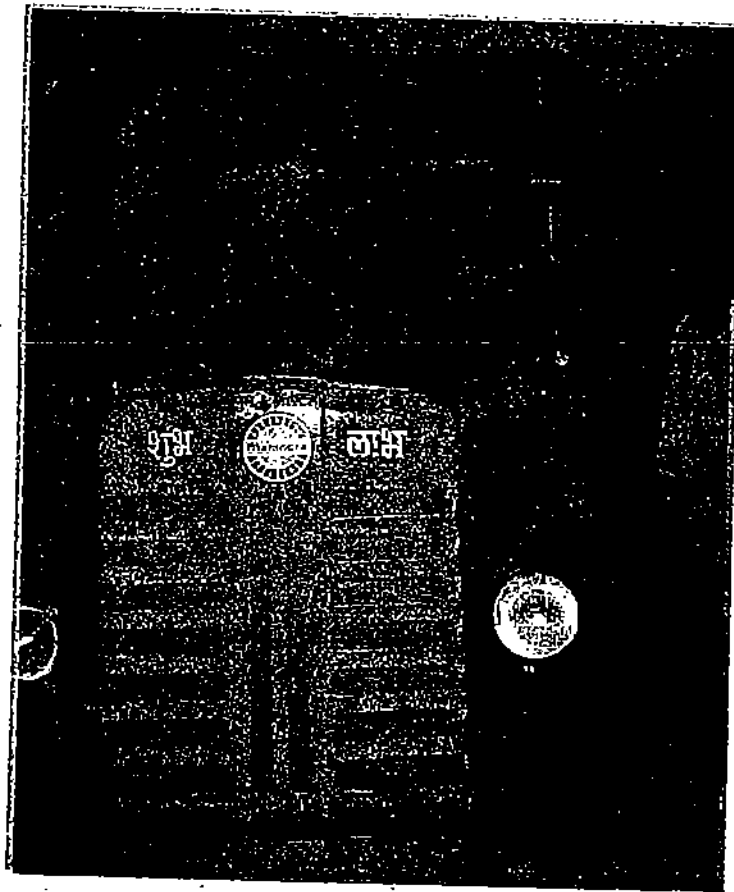
PRI has helped to change women's perceptions of themselves.

PRI has given many women a greater understanding of the working of politics, and the importance of political parties.

The 33% reservation of women in the village panchayat has made women to look at social issues from their own perspective. The words of Shiv Kanyabai Sarpanch of Borodia village of Madhya Pradesh reflects this perspective "Even after so many years of independence child marriage has not been stopped in our area. It is not the 'Child father' who dies to give birth to a baby – it is the child mother who dies. Even after 50 years of independence there is no hospital, no maternity home in the village. The male folks of the village do not realise the importance of a maternity home. They (men) really do not know what is a labour pain..." This sarpanch has stopped child marriage in this village and has collected Rs. 1,20,000 to construct a maternity home in the village.

Do You Know? 2

About 3,30,000 women who have entered formal politics have been elected to local councils by universal adult franchise. A law was passed in 1983 in the southern state of Karnataka. There was a clause that 25% of the seats in local councils would be reserved for women. In May 1987, the Janata Dal (the winning party) called a convention of all the 56,000 elected representatives of whom 14,000 (25%) were women. Interestingly all 14,000 women representatives were conspicuously present in this convention. What does it indicate?



Emerged to be confident.

Courtesy : Debal Singha Roy, IGNOU, New Delhi.

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The success of PRI lies in the possibility of women transforming the state from within. It is the first step towards converting grassroots leadership into state leadership, which according to many would bring about equitable, people-centered development.

Statistically speaking, Karnataka has the highest percentage of female representation in local bodies with 46.4 percent, followed by 35% in West Bengal and in Haryana 33.17 percent. In all, there are an estimated 10-lakh women in the Gram Panchayats at the Village level, Block Samiti level and the Zila Parishads in the districts. The activities of the elected representatives show that women's entry at the grassroots level democratic institutions is a positive indicator of change in the socio-political dynamics of rural society.

This is however, an optimistic view. Numerous studies on reservations for women in the panchayats show that women *sarpanches* face a lot of problems in asserting priority targets from a woman's perspective and in performing routine duties. These problems can range from an insensitive and apathetic administration and bureaucracy to male hostility, particularly upper caste, in the case of *Dalit* women *Sarpanches* and activists. The latter have, had to face social ostracising, refusal by village elites to give employment to *Dalit* families, sexual harassment, rape and even death. This is not surprising, given the unequal structures of caste, class and gender, which prevail in our society.

Learn From Your Experience 1

You must talk to a few female *Sarpanches* of your area. Try to get information from them as to what types of problems they face in performing the role of a *Sarpanch*.

5.4 EMPOWERING WOMEN THROUGH RESERVATION: SOME FACTS

Reservation of seats for women was part of the 1996 election manifesto of every party in the country. However, the Congress fielded only 49 women out of a total of 530 candidates, the BJP only 23 out of 477, the CPI 4 out of 43 and the CPI (M), 5 out of 77 candidates. The statistics in earlier elections make worse reading.

The Janata Dal, for all its-pro-women rhetoric, does not have a single woman in its 15-member Political Affairs Committee. When the United Front government was formed in 1996, not a single woman was included in its steering committee. The major political parties have so far shown little attitudinal change towards women in their own organisations in terms of nominating them to decision-making bodies and genuinely empowering them to play a more meaningful role in democratic governance.

A study conducted by the Women's Studies and Development Centre at Delhi University, which covered 80 women politicians, 56 at the national level, 14 at

the state level (Uttar Pradesh) and eight at the district-level (in Ghaziabad) reinforced the idea that reservation is an important means of women's empowerment in the society. Asked why so few women were given important positions in their parties, 72.5 per cent of the women in the sample, acknowledged discrimination based on gender and suggested reservation for women in parliament as a way out.

Political empowerment of women by way of reservation has been suggested by various leaders, it is the need of the hour. The Bill, if enacted into law, is expected to enable women to participate more effectively in the decision-making political process and a step ahead in gender equality. Women's groups and activists argue that once women are assured of their due representation in Parliament and state legislatures, it will not be difficult for them to enact more and more progressive laws, to rectify unequal provisions of personal laws discriminating against them, and to ensure effective and speedy implementation of the already existing laws meant for their well-being. Most of the progressive leaders of India are of the view that reservation for women is essential for the women to get into decision-making bodies, so that women can contribute effectively towards a gender just social order.

5.4.1 Women's Political Representation in India

Let us examine some crucial facts here:

- 1946 - There were 16 women out of 150 members in the Constituent Assembly.
- 1957 - When Panchayat Raj was first introduced, the concept was to co-opt two women "which are interested in work among women and children" (Balwant Rai Mehta Committee Report).
- 1961 - Maharashtra Zilla Parishad and Panchayat Samiti Act of 1961 provided for the "nomination of one or two women" to the Panchayat bodies "in case women were not elected".
- 1973 - West Bengal Panchayat Act, also provided for co-opting 2 women members.
- 1976 - The Report of the Committee on the Status of Women (CSWI) demanded representation of women in Panchayats as well as the establishment of an "All-Women Panchayat at village level".
- 1978 - In Maharashtra Panchayat, only 6 women were elected although 314 were nominated. In most parts of India, women were brought into Panchayat only through co-option.
- 1983 - As many as 25 percent of seats were reserved for women in the Karnataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayat under this Nyaya Panchayat Act of 1983. Elections under this Act were delayed for various reasons and could only be held in 1987. Some 14,000 women were elected out of 30,000 candidates who contested.
- 1988 - Elections were held in Uttar Pradesh for 74,000 village Sabhas. There was provision made for the co-option of only one woman. In

- Panchayat elections, less than one percent of women came through election.
- 1991 - Orissa Panchayat Samiti provided for "not less than one third of the total number of seats to be reserved for women". Elections were held in 1992 and over 22,000 women were elected.
- In Kerala Districts Councils elections, while 30 percent seats were reserved for women, 35 percent seats were won by women.
- 1994 - In Madhya Pradesh 150,000 women were elected to village, block and zilla panchayats.

5.4.2 Women in the Lok Sabha: Is it Sufficient?

Women's Representation in the Lok Sabha 1952-1998

Year	Seats	Women MPs	Percent
1952	499	22	4.4
1957	500	27	5.4
1962	503	34	6.8
1967	523	31	5.9
1971	521	22	4.2
1977	544	19	3.4
1980	544	28	7.9
1984	544	44	8.1
1989	517	27	5.3
1991	544	39	7.2
1996	543	39	7.2
1998	543	44	8.0

Source: CSDS Data Unit

Think it Over 2

Has there been any change in the extent of women's political participation in the Panchayati Raj Institutions in recent years? What are the major factors that have contributed to this change?

5.5 THE WOMEN'S RESERVATION BILL

The latest issue to be highlighted with regard to the empowerment of women is the Women's Reservation Bill. The moot question however is that can reservation suitably empower women? Given that we have only 181 women in Parliament, and 500 million outside, can reservation be an answer?

5.5.1 Text and Context

The activists in the pro-reservation movement are of view that the whole idea behind the Women's Reservation Bill is to make democracy more real. Reservation, however is not the 'be all and end all' of the women's movement, it is only an attempt to transform the traditional Indian psyche into one of viewing women not just as homemakers, but also as policy makers and professionals. The provision of one-third representation in Panchayats and municipalities is a welcome approach towards women's empowerment. The experience at the Panchayat levels has revealed that far more women have entered the decision-making bodies, and they have actually been able to bring about a qualitative change in the functioning of the village panchayat. [You should see the video on *Women's Empowerment : A Success Story* to get an illustration of the points made above].

The provision of 33 percent reservation in Parliament is a step further for the upliftment of women and for making them powerful. It is an attempt not only to **be empowered; it is to be aware and effective as an agent of change.**

The passage of the 81st (in the changed circumstances 84th) Constitution Amendment Bill [Article 330(A)], seeking 33 percent reservation of seats for women in the Lok Sabha and State Legislatures had to be deferred several times. The first time the bill was introduced on September 12, 1996, discussion on it was stalled. It was promptly referred to a Joint Select Committee the next day. The main objection was the exclusion of reservations for women in minority groups, specifically the OBCs (Other Backward Classes). Again it was supposed to be tabled on July 20, but it was held up.

Do You Know? 3

Enacting legislation for the woman's well being has never been easy. One need not look for examples. The pre-natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, introduced in 1991 with much ado, was passed only in 1994. Similarly, an amendment to the Maintenance Act, moved three years ago, still awaits ratification.

An amendment to the Anti-Dowry Bill took four years and laws against rape three years to get through. Unequal provisions in civil laws, criminal procedure code and Evidence Act are yet to be amended despite constant pressure from different women's groups. However, the 73rd and 74th amendments, giving 33% representation to women in local bodies when enacted in 1992, were not met with the same hostility that the recent reservation bill received.

The bill seeks to bring about revolutionary changes in the composition of the Lok Sabha and state legislatures by reserving 33 percent of the seats for women.

Some Important Features of the Bill

- 33% seats to be reserved for women in the Lok Sabha and State Assemblies;
- one-third of these to be reserved for SC/ST women;
- applicable after the dissolution of the House or Assembly existent at the time that it is passed;
- the 181 Lok Sabha seats to be rotated by a draw of lots;
- bill not to apply to States/Union Territories where seats reserved for SC/ST is less than three. So it will not apply in 10 States/Union Territories.

Constitutional Amendments:
Emerging Scope for Gender
Equality

5.5.2 Overview of the Debate

The bill has exposed sharp divisions among political parties, leaders, activists and social workers. While several of them, including women MPs, activists and professionals support the bill and assert that this is a must for strengthening the fight against gender bias, there are a few who say that election to these bodies should be based on merit and that there is no need to set aside a quota for women.

Traditionally, women's groups have had definite misgivings about quotas in legislatures-on the grounds that it implies an artificial and not particularly healthy gender-based demarcation and exclusivity of interests. Reservation was thought to be a negative comment on women fighting for equal status as a concomitant of equal competence.



We must get our share of power!
Courtesy: CSR, New Delhi.

"We were opposed to reservations for women in parliament till 1988," says Brinda Karat of the Communist Party of India (Marxist). "We wanted to see how it worked at the Panchayat level first. When the reservations brought about the participation of more than a million women, we thought this could now be used to correct the social imbalance and the under-representation of women in parliament and state assemblies."

Senior women's rights leader Vimla Farooqi of the CPI (Communist Party of India) contends "we wanted women to come up in fair competition with men and this is why we were opposed to reservation initially. But we found that no party, however progressive, was willing to give women their due or nominate women for elections. With the onset of reservations, they will be forced to give election tickets which in turn will ensure greater participation. This will also force an attitudinal change, albeit slowly, among the leadership," she asserts. Former Congress minister Shelja admits that many of the women who have managed nominations so far are a fall-out of the 'Parivar' (wife/daughter/sister/widow) syndrome.

In this kind of pursuit of statutory equality, reservation emerges as the only credible corrective. However, would not this effectiveness as a means of empowerment be negated if family connections become the sole determining factor instead of merit?

Karat contends that reservations cannot be seen as a Brahmastra'. It cannot solve all problems. But at least we can achieve the limited aim of correcting the gender imbalance. We are not talking about an immediate change in the quality of politics. But bringing women into public life will help in bringing about a social change. Reservation is not a panacea for women's problems, but merely an instrument for a wider struggle.

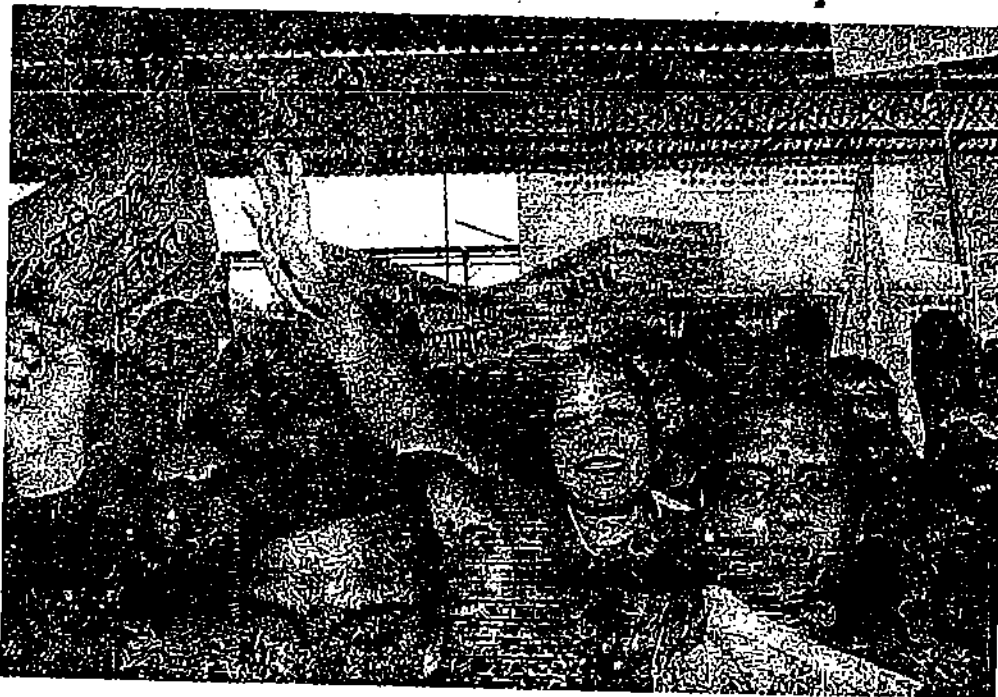
Clearly a more strategic lobbying plan needs to be developed, to ensure that if members of Parliament and their parties are not in support of the amendment, their constituencies are, and can be mobilised to speak out in this issue. This means taking the debate to the states, districts and village levels. **A very strong toll in support of the 81st Amendment would be due to the success or the implementation of the 73rd and 74th amendments passed in April 1993 by Parliament-whereby 33 percent of the seats in local governments are reserved for women: The 73rd Amendment refers to the village-area panchayats, and the 74th Amendment to urban-area municipalities, or nagar palikas.** The case for the 81st Amendment is strong. Democracy at the grassroots (which is already in motion) can be successful when there is representative democracy at the higher levels.

Reservation quotas will not bring about radical changes overnight. They are a step in the right direction, which will work if other steps follow in the same direction. Women who are elected within the reservation quota must be accountable to the electorate-by answering signs of corruption or lack of performance. Women's groups, progressive organisations, NGOs and concerned citizens are now organised to help, support, women leaders and legislators.

Women can accept new responsibilities-with support from their families, communities and the state. However, this cannot be done without **re-ordering their traditional role as homemakers**, which takes up much of their time and energy. It has to be shared by men and the community. Thus the new legislation is to be seen as a challenge to women and men and a tremendous new opportunity.

At the same time, thoughtful efforts are essential to ensure that the socialisation of women and men changes, at every level. Women have to believe that they have a contribution to make and can participate in the political life of India, for which they have to acquire appropriate skills. Men need to understand that women have been denied these opportunities, but can reverse this by policy and programme measures.

Justice Khanna is of the view that the bill may be welcome to the extent to which patronage can enable women to **throw off the yoke of exploitation by becoming educated and economically independent**. "But, not the way it is being done," He adds "bringing women straight into the vortex of high political system will render the very system lopsided and is, therefore, undesirable." On the other hand, Justice VR Krishna Iyer, a leading legal luminary, comments, "Women can be uplifted only by giving them political empowerment. **Political empowerment begins with social and economic empowerment. Quota for women is basic to gender justice**", he observes.



Reservation for gender justice.
Courtesy : CSR, New Delhi.

"Women constitute the vulnerable section of society. They need awakening. Amongst the people all over the world, women are least represented in power structure, have not been given their due share in the governance of the country," opines Justice PN Bhagwati, former Chief Justice of the Supreme Court. He calls the bill an effort in the right direction. It will enable the women to occupy at least 30 per cent of the seats in Parliament and state legislative assemblies.

The bill is aimed at opening up possibilities for bringing about gender justice in a society where women are victims of inequity and injustice. Ever since it was first introduced in Parliament on September 12, 1996, there has not been a single protest meeting or demonstration anywhere in the country against this Bill. People in general considered it a welcome step. They wanted Parliament to make the small beginning to give women an equal share in the political institutions of decision-making, and thereby, in public life.

5.5.3 The Possible Outcome

Women's reservation, by bringing a large number of women simultaneously into public life will undoubtedly help to change prevailing social attitudes, which see a woman as being an appendage to a male. **It will help establish the rights of women as independent citizens.**

The women's reservation bill is not meant to undo all the evils that dog our polity. It has as its aim the reduction of the blatant inequality between men and women in the legislatures. By reducing this inequality democratic process will be strengthened and both men and women will gain.

Thirty three percent reservation means over 180 women in the Lok Sabha. That is some number. Today the women members are quiet, subservient to the male will. Except for the exceptions their contribution to the proceedings is minimal, their role in policy making negligible. But just as the few were bold enough to unite for the passage of the women's bill, the 180 odd will definitely have a say on many more issues concerning women, gender justice, human rights, and other issues on which women, on an average, have always been more sensitive than men. Gradually the few women who do get in without male patronage will insist on party seats being given to women who have worked in their constituencies or can play a major role in state legislatures and Parliament. Vested interests that dominate party organisations today will definitely be challenged in the long run, and it might not happen immediately but it will begin to happen as soon as women begin to get a sense of their own empowerment.

It is already happening. And happening in the remote villages where women's rights have no meaning. For the many women *pradhans* who remain subjugated to the male will, there is the odd woman who has begun asserting herself. Two years into the elections, one came across village after villages in Uttar Pradesh where the women *pradhans* were seen in action. In one village an older woman had been elected. Her husband was around but she was busy asserting her authority. It is already happening. She was sitting on the platform in an election meeting, she gave a speech in support of the candidate and she insisted on escorting the candidate around the village. It was amazing and no one around

was able to challenge her authority. She was an old Muslim lady who knew her mind. In another village the women folk were heard asserting that their *pradhan* was a woman. There was a major sense of pride and pointing to the mud paths cutting the village, the women in almost one voice said, "all this will now be repaired and we will have roads very soon. We have a woman *pradhan* you know." In this case she was a young, dynamic Hindu woman who knew her mind and had begun asserting her status. Women will eventually break out of the mould into which they have been cast by the male politicians. As their numbers increase, and as they are assured of reservations they will not have to oblige the male politician who currently insists on personal *haziri* before he decides to give a seat nomination. Reservation will definitely change the situation for the better.

Think it Over, 3

What are the arguments against reservation? Has there been any qualitative change in women's attitude to political participation after the 30% reservation in the Panchayat? Answer all these questions in view of the text presented above and of your own experience as well.

5.6 CONCLUDING REMARKS

In this unit we have discussed the emerging scope of and conditions for gender equality in India which can be initiated through the constitutional amendments. At the outset we discussed the various constitutional provisions for gender in which these were incorporated in our Constitution. We discussed the changes in the development strategy in India where the perspective of development with justice has been replaced by development with empowerment in recent years. The process of gaining power cannot be automatic. It needs not only pressure from the below but also some significant initiatives from the state. The state initiatives are reflected in the way of various constitutional amendments especially the 3rd and 4th constitutional amendments. The 81st constitutional amendment bill has also been introduced in the Parliament. The struggles behind this bill and the various arguments made both against and favour of the same are also discussed here.

5.7 CLARIFICATION OF THE TERMS USED

- Atrocity** : behaviour or action that is wicked or cruel.
Amendment : correction, an addition or alteration to a document, etc.

5.8 SOME USEFUL READINGS

- Kannabiran, Vasanth and Kalpana (1997) 'From Social Action to Political Action; Women and the 81st Amendment'. *Economic & Political Weekly*. 32(5): 1-7. February: 196-197.
Towards Equality: *Report of the Committee on the Status of Women in India*. 1974, Ministry of Education & Social Welfare. Government of India.

The new measure for economic development is also closely related to the advancement of women, through its renewed emphasis on democratisation, good governance and the use of the market to direct economic development.

The first world survey on the role of women in development was termed the WID (Women in Development) policy approach. In contrast to the welfare and family oriented programme of the 60s, which emphasise women's reproductive role, the WID policy approach stressed the importance of women in economic and social development, linking up economic development with women's emancipation on the agenda of national and international development agencies.

The structural adjustment policies of the 80's began with privatisation of state owned enterprises. The policies in their turn were based on the neo-classical and monetarist principles of economic theory that have dominated western economic thought for the past thirty years.

The movement towards privatisation increases women's chances of being laid off, lowering their employment conditions, because, in many developing countries, the private sector is the biggest employer of women.



Should they be left to the mercy of the market?

Courtesy : CSR, New Delhi.

This has resulted subsequently in a deregulation of the labour market that left the market completely in control of determining the price of female labour and the conditions of female employment. Therefore, the scenario calls for closer

scrutiny, at various levels-local to the global, — of the policies by which the governments try to alter the situation in favour of utilising and effectively remunerating women's labour power. Also calling for reorientation in this regard are various poverty alleviation programmes. The programmes have to be sensitive to the prevailing gender inequalities.

The debates turn around by now widely accepted fact that women and men experience poverty differently and get impoverished through different processes. Women are also disproportionately represented among the poor and do not necessarily benefit from the poverty alleviation programmes.

As fallout of these debates, three actors have now come to be accepted as indispensable to the framing of any economic policy — the state, the market and the household. The International Labour Organisation (ILO) has been trying to co-ordinate global opinion for guaranteeing equality of opportunity and treatment for women in education, securing equal conditions of remuneration and protecting female workers especially against conditions that prove a threat to pregnant women. It is trying to sensitise national decision-makers and the international community to this end. In 1981, the Equal Remuneration Convention and Recommendation were adopted by the ILO, which as of January 1994 has been ratified by 120 member states.

2.4.5 Violence against Women

Violence against women is one of the major themes around which the argument for women's cause is most strongly placed. The statistics on atrocities against women in the form of sexual-harassment all over the world is shocking enough to make this plausible. The argument against gender violence needs to be placed forcefully in most of the countries of the world. Popular culture reflects the leniency afforded to the rapist and the contempt shown towards rape victims.

In 1979, The UN General Assembly adopted the Convention for Elimination of All Forms of Discrimination against Women (CEDAW). The convention, though comprehensive in many ways, never specified or singled out violence against women.

It was in 1993, on the recommendations of the Commission on the Status of Women, that the General Assembly adopted the Declaration on the Elimination of Violence Against Women, as violation of human rights. Article 1 of the declaration defines "violence against women as any act of gender based violence that might or does result in physical, sexual or psychological harm or suffering to women, plus threats of such acts, occurring in public or private life".

The Fourth World Conference on Women observes that violence against women essentially derives from the lower status of women in the family and society. The campaign for protective measures has access to statistical records, which show crime perpetrated on women all over the world. For example in South Africa a woman is raped every 90 seconds totalling approximately 3,20,000

identifying important sectors of critical action for women. But while such efforts were going on at the government level the complex socio-economic reality became evident: whether it was in relation to the condition of women in the informal sector, or in terms of the social backlash as in the case of major issues such as Shah Bano, Roop Kanwar, female infanticide, etc.

The women's movement gave birth to the National Commission for Women in 1992 which provides a platform for releasing the aspirations of millions of women all over the country and enables them to participate on an equal footing in the development process of the country. As an autonomous statutory body, the Commission has worked since its inception towards this goal. It has adopted a holistic multi-dimensional approach towards empowerment of women, taking up cudgels against legal, social, cultural as well as political barriers to their advancement.

The Commission undertook review of various laws affecting women and sponsored several studies on socio-economic conditions of women across the country. And realised that unless women got an equal share in political power it was difficult to achieve the goal of empowerment, equality and equity. Therefore, special emphasis was laid on political empowerment of women.

6.2.2 Composition of the Commission

The National Commission for Women Act 1990 states;

The Central Government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

The Commission shall consist of: Five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare.

A Member-Secretary to be nominated by the Central Government, who shall be-

- i) An expert in the field of management, organisational structure or social movement; or
- ii) An officer who is a member of a civil service of the Union or of an all-India service. The Central Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

The Commission may appoint such committees as may be necessary for dealing with special issues taken up by the Commission from time to time.

Do You Know? 1

The NCW Act received the assent of the President on 30.8.1990.

The NCW Act came into force on 31.1.1992.

The National Commission for Women was constituted on 31.1.1992.

6.2.3 Functions of the Commission

- 1) The Commission shall perform all or any of the following functions, namely:
 - investigate and examine all matters relating to the *safeguards* provided for women under the Constitution and other laws;
 - present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the *working of those safeguards*;
 - make *recommendations* for the effective implementations of those safeguards for improving the conditions of women by the Union or any State;
 - review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
 - take up cases of violations of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
 - look into complaints and take suo moto notice of matters relating to -
 - i) deprivation of women's rights;
 - ii) non-implementation of laws;
 - iii) non-compliance of policy decision;
 - call for special studies or investigations into specific problems or situations arising out of discriminations and atrocities against women and identify the constraints so as to recommend strategies for their removal.

Do You Know? 2

- NCW is a statutory body. It is set up to review the constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.
- The Commission has the powers of a civil court trying a suit while investigating cases of violation of safeguards provided in laws and examining complaints relating to deprivation and denial of women's rights.
- The Commission can summon any person and examine the persons on oath.
- It can requisition any document and receive evidence on affidavits.
- The Government of India shall consult NCW on all matters concerning women.

UNIT 3 FORMS OF STRUGGLE FOR GENDER EQUALITY

Contents

- 3.0 Aims and Purpose
- 3.1 Introduction
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 - 3.3.3 Struggle against Socio-Economic Oppressions
- 3.4 The Struggle of Contemporary Indian Women
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 - 3.4.3 The "Autonomous Women's Movement"
 - 3.4.4 The Struggle for Visibility: The Women's Movement
 - 3.4.5 State Supported Efforts for Women's Equality
- 3.5 Concluding Remarks
- 3.6 Clarifications of the Terms Used
- 3.7 Some Useful Readings

3.0 AIMS AND PURPOSE

There have been various types of struggles for gender equality in India. Many a time these have been parts of larger struggles of society and some of these have also taken an autonomous form. In this unit we shall try to present a glimpse of these struggles. Thus after reading this unit you should be able to:

- describe the process of evolution of gender equality;
- explain the historical background of the emergence of women's struggle for gender equality in India;
- analyse the various forms of struggles taking shape in our society for gender equality; and
- discuss the commonality and differences between the various forms of women's struggles in India.

3.1 INTRODUCTION

This unit will familiarise the learners with the basic concepts and landmarks in women's struggles for equality in India. While we begin with an international background to the women's movement, the unit concentrates on women's struggles in India in the modern period. The issues and various strands in these struggles are analysed, and we end with a review of current debates within the

women's struggle in India. It is expected that you will be able to arrive at an intelligent position on these matters on completion of this unit.

In units 6, 7 and 8 of the Foundation Course of this programme we will discuss the women's movements which have taken place in various stages of our history. You should read those units to get greater details on the issues presented in this chapter.

3.2 EVOLUTION OF THE IDEA OF GENDER EQUALITY

The idea that women and men are equal members of humankind has taken a long time to be accepted in modern human history. It has taken even longer for the concept of gender to be understood as a system of social relations that is designed to keep women in a subordinate position.

The beginnings of the idea of gender equality are to be traced to the age of "enlightenment" in Europe that led to the breakdown of feudalism and to the outbreak of the French Revolution. However, the early philosophers who proclaimed the "Rights of Man" were not necessarily sensitive to the need to consider women as equal human beings, and it was writers like Mary Wollstonecraft who stated the case for equal opportunities for women in her 18th century publication *Vindication of the Rights of Women*. Since the ideas of enlightenment have no frontiers, they spread across the Atlantic to the northern continent of America where the American War of Independence was seeking to establish a republic. It is interesting to note that when the new constitution of the United States of America was being drafted, the question of voting rights for women was raised by Abigail Adams (1744-1818), the wife of John Adams, one of the founding fathers of American constitution. It is also interesting that the idea met with ridicule.

Do You Know ? 1

Abigail, in a letter to her husband in 1776 urged that in the new code of laws, he should "remember the ladies" and not put unlimited power in the hands of the husbands. John Adams' reply was interesting. He answered, "As to your extraordinary code of laws, I cannot but laugh. We have been told that our struggle has loosened the bonds of government everywhere. That children and apprentices were disobedient, that colleges were grown turbulent, that Indians slighted their guardians and Negroes grew insolent to their masters. But your letter was the first indication that another tribe more numerous and powerful than all the rest were grown discontented."

Adams also discussed the issue in a letter to a friend "It is certain, in theory, that the only moral foundation of government is the consent of the people. But to what extent shall we carry this principle?"

(Rossi, A. 1973)

During the post-election period, despite a political scenario not conducive to giving the necessary representation to women, the NCW along with various women's groups got the Bill introduced in Parliament and continues to lobby for its passage.

Think it Over 2

Can you write a note on the role of NCW in the women's movement in India? You can also take help of any other information rather than the materials presented in the text of this unit.

6.4 AREAS OF ACTION FOR THE MOST OPPRESSED AND MARGINALISED

The NCW has identified several areas of action for the oppressed and marginalised women. Some of the areas of the action may be highlighted here.

6.4.1 Women in Prostitution

The Commission has identified the following as its objectives for women in prostitution:

- 1) control and prevention of trafficking of women and children into prostitution;
- 2) a humane, just and supportive treatment ensured to the women in prostitution who are not the criminals but the target and survivors of a criminal system;
- 3) ensuring minimum facilities for health care for the women and their children;
- 4) reduction of violence upon the women and children;
- 5) educational support for children of women in prostitution;
- 6) provision of amenities such as shelter and housing, ration cards, etc.;
- 7) forging a multi-sectoral alliance that will involve a more realistic, sensitive and effective response;
- 8) rehabilitation and care of women in prostitution;
- 9) elimination of abduction, rape and sexual abuse of children and lobbying for laws against abduction, abuse and rape of children;
- 10) identification of trafficking routes in collaboration with SAARC countries.

6.4.2 Scheduled Castes and Tribal Women

The examination of several cases throughout the country, for example the tragic experience of Geeta Rathava, a tribal woman who was living in the Rangpura Ashram, Baroda Distt. and similar cases, made it amply clear to NCW that the weaker sections of Indian society have not benefited enough from the development

programmes. Therefore, the NCW decided to bring to attention women from the Scheduled Castes, Scheduled Tribes, Minorities and the Backward Classes. These women suffer from various types of health problems relating to malnutrition and under-nourishment. The NCW is taking necessary steps for removal of occupational health hazards. The Commission decided to observe the 50th year of Independence as the 'Year of Gender Equality with Social Justice.'

The ongoing work that the NCW is doing among tribals is as follows:

- the filing of FIRs on atrocities against tribal women that were brought to their notice;
- setting up of **gramin mahila** (village women's) banks for the tribal women, and
- self-employment schemes in non-farm activities.

6.4.3 Women Under Trials/ Prisoners

The NCW makes important interventions in the case of under trial woman prisoners in jail. That they are not unnecessarily harassed by policemen. That they are also given legal-protection as and when necessary.

Several policy changes and measures have been recommended by the NCW e.g. exclusive jails for women with total women staff and the holding of **jail adalats** for speedy justice for women under trials.

6.4.4 Widows and Destitute Women

The NCW visited the widows of Brindavan and Mathura. They have been working actively for the welfare of widows. A study on the status of the widows pointed out that a lot of them are molested on the streets and ashrams. Based on these findings the NCW suggested the establishment of a short-stay home with provision for vocational training in Brindavan.

6.4.5 Physically and Mentally Handicapped Women

Let us take a note of the story of Neelam Katoch, a blind girl from village Plahie in Chamba district in Himachal Pradesh. Neelam had applied for the post of a teacher advertised for visually handicapped. All the 16 posts advertised for physically handicapped for recruitment for the post of teachers were filled up by blind male candidates.

The NCW's Complaint Cell took up this case and has dealt with it successfully. Then there is the incident of Anamika (not the real name)— a perfectly sane woman whose husband, by using the mental health act, tried to put her into a mental asylum. She appealed to the NCW for help and the Commission intervened and helped rehabilitate her. Through this incident, the plight of sane women languishing in mental homes was taken up by the Commission.

Think It Over 3

- Why were Mahila adalats constituted? What is the role-played by them?
- Can you highlight the efforts made by the NCW for the protection of the SC/ST, destitute and handicapped women?

Learn From Your Experience 1

Find out details from newspapers of two recent cases where the NCW has successfully intervened and arrived at a decision.

(This activity may be carried out as a teamwork and an important component would possibly involve meeting a member of the Commission, or looking through some of the interviews conducted with the former members of the NCW).

6.5 SOME IMPORTANT RECOMMENDATIONS OF THE NCW

The NCW has made 213 recommendations to the Government of India. The recommendations are based on the real life stories of the average woman in India. *Since it is not mandatory on the part of the government to accept and implement these recommendations, these remain mostly advisory in nature.* However, these recommendations are very crucial from the viewpoint of women's movement in India. These well-articulated recommendations can be used as the basis of women's empowerment and development in our society.

Some of the important recommendations of the NCW are given below:

6.5.1 Law and other Legislative Measures

- Same provision of the Dowry Prohibition Act, being aggravated forms of offence relating to dowry, may be transferred to the Indian Penal Code and Code of Criminal Procedure.
- Persons giving dowry (because of force and extortion) should be excluded from liability.
- Persons engaged in negotiations for dowry extortions should also be made liable along with those demanding and taking dowry. This offence should be made cognizable.
- The Indian Penal Code should be suitably amended to give enhanced punishment from 3 years to 7 years for the offending husband or his relative subjecting a woman to cruelty.
- The Indian Evidence Act, 1982 should be suitably amended so as to shift the

burden of proof to the accused in case of persons charged with the offence under Section 498B of the Indian Penal Code.

- List of presents given by the parents, relatives or friends at the time of marriage should be registered.
- The Hindu Marriage Act, 1955, should be amended to make registration of marriages under the Act compulsory.
- Marriage expenses in no case should exceed 20% of the annual income of the parents/guardians of the bride.

Sati Prevention

Since a person committing "sati" is in fact a victim, Section 3 of the Sati (Prevention) Act should be dropped. The offence of sati murder and its glorification should be included in the Indian Penal Code, the Code of Criminal Procedure and the India Evidence Act.

Sale of Minors and Child Marriage

Selling and buying of minors per se must be punishable. The Child Marriage Restraint Act should be amended to provide protection to a minor.

6.5.2 Violence against Women

- Reviewing/monitoring bodies set up at district level to deal with complaints of violence against women should be strengthened with more powers, appropriate status and financial and staff support. In states, where no district level mechanisms exist, suitable bodies should be created immediately.
- A special scheme should be introduced by the Central Government to provide financial support to NGOs for dealing with cases of violence against women.
- Women's Cells/Women's Police Stations should be set up in every town having a population exceeding one lakh and should be provided with adequate powers, funds and staff.
- A gender sensitisation module should be incorporated in all the training programmes for police, prosecutors, magistrates, forensic and medico – legal personnel and judiciary.
- A legal provision should be made to confiscate the property of the culprits (husband/in laws) in every case of dowry death.
- At block and panchayat levels, social action groups should be formed and empowered to register and forward the cases of violence against women taking place in the area to the police and courts and help victims get appropriate rehabilitation.
- Social recognition should be given to boys and girls who marry without giving and taking of dowry by offering them suitable incentives, facilities and positions.
- Curriculum at school and colleges should appropriately include some of the salient legal and constitutional features and provisions to deal with the cases of crimes against women.

- In case of a rape reported by the victim, the burden of proof to the contrary should be on the accused.
- When a women dies an unnatural death the burden of proving that it was not unnatural must rest on the husband or the in-laws with whom she had been normally residing.

6.5.3 Promotional Work for Empowerment of Women

a) Political Empowerment

The Central and State Governments should take suitable action to introduce reservation of 1/3rd seats for women in Lok Sabha and Rajya Sabha and in State Legislatures.

In order to operationalise the 73rd and 74th amendments of the Constitution, it is essential to (i) generate awareness and motivate women with leadership potential to contest the elections, and (ii) train these elected women to function with competence. The Central and State Governments must formulate and effectively implement specific schemes to:



Learning to raise voice in the Panchayat: Play-ground for grass-roots politics.
Courtesy: Asha Misra, Bhopal.

- spread consciousness regarding the mandatory quota for women in elections of the Panchayats and local bodies and design specific information to reach women and the community in the rural areas;
- programme for the elected women to empower them to participate effectively in the governance of the Panchayats/local bodies. The scheme should be adequately funded and conducted in collaboration with NGOs possessing the required capability;
- a gender sensitisation component should be incorporated in the existing training scheme for elected representatives of Panchayat and local bodies to generate consciousness and to exhort them to focus on women's issue and concerns at the grass root level.

b) Economic Empowerment

The Central Government, Ministries of Finance, Labour and Industry and the Planning Commission should undertake a survey/study of the impact of structural adjustment programmes on the poorer section of women and based on the findings thereof, implement remedial measures to mitigate the adverse effects on women.

In the services under the Central Government and State Governments (including the Police and the Judiciary) and under the Public Sector Undertaking as well as autonomous Government-funded bodies like Universities, 30 percent of the posts at all levels should be reserved for women, for a period of 10 years. Provision of following facilities to women workers should be made obligatory for employers: (a) transportation; (b) creches; (c) separate toilets; (d) canteen facilities; (e) recreational break/facilities; (f) safeguards against harassment at the work place.

6.5.4 Planning Process for Socio-economic Development of Women

a) Employment

- Special attention should be given to the training of handicapped women and development of modules for their economic progress.
- Appropriate training programmes to suit the specific needs of women should be organised by all the institutions engaged in training farmers.
- Suitable database on farmwomen should be developed. Towards this end, a cell for women's studies should be established at the National Academy of Agricultural Research and Management at Hyderabad or any other convenient centre.
- Women generally have a rich knowledge of indigenous technologies used both on farm and at home. Such information should be documented. Also these should be refined and blended with modern technologies to improve their effectiveness.
- A comprehensive legislation should be enacted to safeguard the interests of women engaged in the unorganised sector. A social component may also be included in this legislation to offer health insurance, accident cover and subsidies at normal as well as at time of natural disorders/calamities.

b) Mobilisation of Women

Socio-economic empowerment of women should be viewed as a two way process. Constructive activities to recognise women's role, should be accompanied by effective interventions leading to the community internalising the idea of women's empowerment for its progress and development.

c) Women in Slum Areas

- Majority of women in slum areas are involved in product based activities. They should be encouraged to form co-operatives for self-employment.
- The potential labour force should be involved in modern occupations like *ayaa*, semi-nurse, beautician and the preparation of electronic and electrical goods, commercial items like sportswear, designer garments etc.
- Provision should be made for supportive services like remedial teaching or day schools for girls where homework and other learning needs are taken. Wherever ICDS Projects are not located near primary schools, they should be set up in close proximity with schools.
- Education of girls should be free and compulsory up to elementary levels as it is a fundamental right.
- Public health system should be more sensitised to women specific issues. Reproductive health rights should form a part of human rights and accessibility for their fulfillment should be obligatory on the part of the state.

6.5.5 Population Policy

- In view of the increasing gap between incomes of poor and rich and damage to life support systems, the Minimum Needs Programme needs modification to include:
 - i) child care centres;
 - ii) free and compulsory education;
 - iii) adequate provision for skill formation of girls along with earn and learn opportunities;
 - iv) physical security of girls for attending schools, training institutions, etc. should be ensured. Some limits on consumption of water, especially ground water, fossils fuels and other finite natural resources too should be specified.
- A comprehensive health package should be developed by an independent body, possibly under the direction of Planning.
- In respect of reproductive health care, it is necessary to take careful steps for improving infrastructure and to bring about a comprehensive reproductive health care in the more backward parts of the country on a priority basis.
- Measures to prevent, detect and manage high-risk pregnancies and births should also include provision for care of pregnant women suffering from diseases like malaria, and worm infections.
- Methods tested scientifically and approved only should be made available to people. Testing of drugs should be in the hands of the Drug Control Department, who should exercise strict control on their marketing.

- Special awards may be given to the panchayati raj institutions for compulsory registration of marriages and eradication of child marriage, dowry, female, infanticide, illiteracy etc.
- Measures stated in the National Population Policy to ensure adoption of two-child norm by the state and central government employees require debarring of those who have married before the minimum age and restrictions on promotion for those having more than two children.
- An effective means of generating awareness would be inclusion of socially relevant messages in all advertisements in the media.
- An independent inter-disciplinary expert committee should be set up at the Centre under the charge of Department of Women and Child Development to scrutinise social and ethical implications of the bio-technologies and new technologies that concern reduction of fertility and technological changes designed to overcome infertility.

6.5.6 Education Policy

For improving education for girls especially in rural areas it is recommended that:

- a) intensive awareness generation activities be taken up;
- b) change in societal attitudes towards girls education be brought about;
- c) educational policies may be oriented to take care of specific needs and requirements of girls and women, particularly in their socio-economic context;
- d) economic policies should be geared to improve employment of women and their earning capabilities so that the parental attitude towards girls' education becomes more favourable.

6.5.7 Women belonging to Special Groups

i) Scheduled Castes and Scheduled Tribes

- Attention should be focussed on taking necessary action for removal of the occupational health hazards associated with the working environment of SC/ST Women.
- Tribal Sub Plans and Scheduled Caste Component Plans should give specific attention to women's concerns under health, education, economic development and other social services sectors.
- The Integrated Rural Development Programme and the other poverty alleviation programmes, where coverage of SC/ST are specified, should accord due priority to SC/ST women and not be restricted to men.
- The data available for tribal women regarding various indicators of health should be compiled and a special round of NSSO/SRS may collect data on women, particularly tribal women.
- A comprehensive review of existing educational services and factors affecting dropout rates of tribal girls should be done and a strong theoretical database generated.



Have they been integrated with the development process?

Courtesy : Asha Misra, Bhopal.

- The sub-plans in the approved integrated tribal development project areas should be reinforced specifically for employment of tribal women.
- The unique socio-economic-politico-cultural matrix of each tribal community should be recognised. The educational contents for tribal communities should be related uniquely thereto. Care should be taken that no gender bias gets reflected in the textbooks.
- Conspicuously low tribal female literacy pockets should be delineated and appropriate strategy for raising literacy levels adopted.
- A need based review of effectiveness of incentives like scholarships, uniforms, books etc. should be taken up prior to undertaking a wider reach out. In the case of tribal girls, particular attention may be paid to social security, physical needs and recreation.
- Local language as medium of instruction is crucial in the initial stages for the educational progress of tribal people. It assumes greater importance in the realm of female education since tribal women and girls have little interaction with the outside world.
- In keeping with the practice, qualified tribal women should be appointed as education officers, police officers, post-masters etc. A minimum of 33 per cent should be reserved for women for these posts.
- Local tribal women should be appointed as teachers. Those who are not trained should be provided with necessary teachers' training.

In tribal areas there is need for close coordination, co-operation and confidence building among governmental machinery, non-government organisations and the people.

Think it Over 3

What are the major recommendations of the NCW on the issue of women's health, education and employment? Do you like to suggest few more recommendations?

6.6 NCW: AN APPRAISAL

The NCW has completed seven years of its existence. Even during its short span of time, it has been able to make its existence felt in the national arena. Over the years it has organised a series of workshops, conferences, debates and meetings on several issues of women. Some of them are mentioned below:

- National Conference of Inspector General of Prisons;
 - Meeting with State Commissions for Women on Review and Networking of Activities;
 - National Meet on Rehabilitation of Prostitutes;
 - Discussion on Banking and Credit Needs of Women; and
 - National Debate on Codification of Crimination Laws Related to Women.
- a) The National Commission for Women convened a seminar on "Empowerment of Women – A Special Focus on the Role of Saathins", at Jaipur in October 1996. The seminar was organised to discuss the future of Saathins – the grassroots level women workers in Rajasthan – and create awareness about their role as the most powerful agents of women's development and change at the ground levels. Members of the NCW met leaders of various political parties. To emphasise the increasing role of women in the 1998 elections, the NCW is said to have submitted a set of slogans and jingles to Doordarshan to be featured as spots. These were very effective in mobilising public opinion.

Do You Know? 2

Number of Cases dealt with the Pre-litigation cell of NCW (Till October 1996)

Marital discord	117	Dowry harassment	185
Dowry related suicide	5	Dowry deaths/murder	18
Torture/cruelty/beatings	17	Death under mysterious situations	3
Murder (not related to dowry)	1	Rape/molestation	26
Bigamy	5	Harassment at workplace	35
Infanticide	1	Police apathy	53
Adultery by husband	2	Right to Property	20
Divorce and maintenance	77	Miscellaneous cases	105

Through its activities the NCW has been able to increase awareness amongst women and people at large on the role and functioning of the NCW as an effective instrument of change. Its initiatives have encouraged better social mobilisation of women and effective group action at various levels. In many cases it has been able to provide speedy justice to women. The NCW's sustained interaction with NGOs – government officials – resulted in reaching out to women at all socio-economic levels, including the grassroots level. Nowadays, NHRC, SC/ST Commissions, Media personnel, NGOs, Government Departments, seek to use the NCW as a Resource Centre for Information and know-how on women's issues.

6.7 CONCLUDING REMARKS

The NCW was set up specifically to be an autonomous statutory body, an independent Commission that would have the 'independence' to interact with the government – the state as well as society accountable for women's condition. It was even thought at one time to model it on the concept of the Lok Ayukt so that it would be particularly directed to redress discrimination against women, the inequality between men and women across all barriers.

In order to perform this role of acting as a guardian of women's rights to prevent as well as to make amends for injustice done to women, by definition it has to be genuinely independent both in its constitutional construction as well as in its operational instruments. It would be more effective if it is vested with some more investigative, prosecuting and implementing powers within the broad framework of our constitutional scheme of judiciary and executive and Parliamentary system of democracy.

6.8 CLARIFICATION OF THE TERMS USED

- NGO : Non-Government Organisation.
NHRC : National Human Rights Commission.
NSSO : National Sample Survey Organisation.

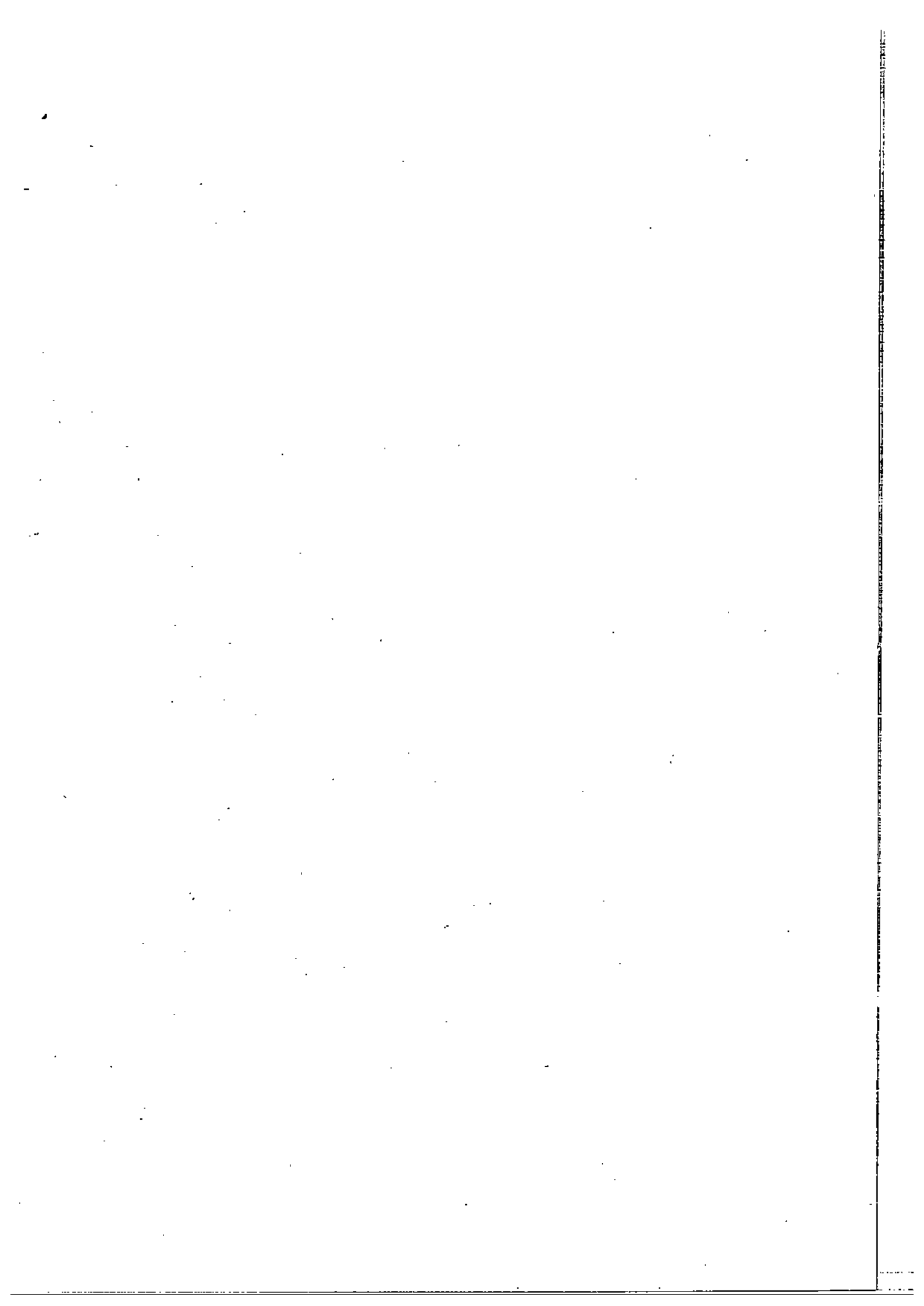
6.9 SOME USEFUL READINGS

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उत्तर प्रदेश
राजर्षि टण्डन मुक्त विश्वविद्यालय

CWED -03

**Constitutional and
Legislative Foundations for
Gender Equality**

Block

3

LAWS AND LEGAL REFORMS FOR GENDER EQUALITY

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BLOCK INTRODUCTION

BLOCK 3 : LAWS AND LEGAL REFORMS FOR GENDER EQUALITY

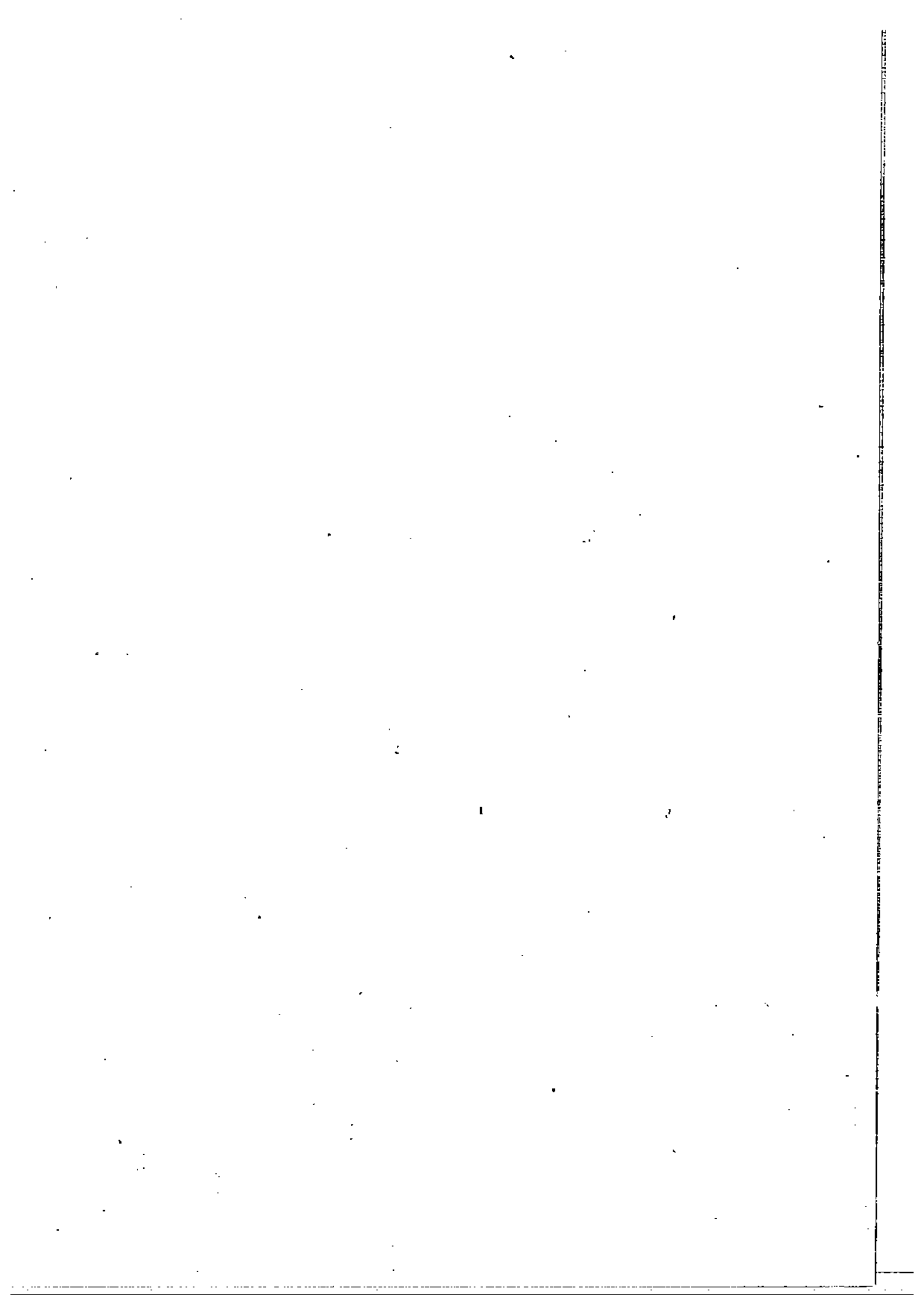
In the earlier blocks, you have been exposed to the Constitutional and Legislative Foundation for Gender Equality. Having studied this, the emphasis has been put on the Constitutional foundations for Gender Equality in India with special reference to various Mandates and Omissions as well as different Constitutional Amendments. The present Block deals with the laws and legal reforms for gender equality highlighting the aspects of Special Marriage Act, various forms of violence women encounter in their lives, labour laws etc.

Unit 7, besides understanding the marriage system and the rights of succession and maintenance among Indian women, tries to acquaint the students with some aspects of legal reforms affecting the status of women in India. The main focus of the Unit is to highlight the interface between the secular laws and that of the personal laws. After going through this unit, you would also realise the need for the immediate implementation of the Uniform Civil Code.

Unit 8 focuses not only on the various forms of violence incurred on women but an attempt has also been made to understand and explain the meaning and scope of "Violence Against Women". Various facts related to violence have been supported by vital statistics. Moreover, violence against the girl-child in particular is covered under each form of violence described. An urgent need for a stricter law is felt in the sphere of "Domestic Violence". Registration of crimes has also increased (which is a welcome step) and so is the awareness of legal provisions of women's rights.

In Unit 9 we have tried to introduce you to various labour laws in the context of the prevailing working conditions in which women workers work and which are crucial to protect the interests of women as workers. This unit also highlights some constitutional safeguards provided for the women workers in India and how far these reforms work towards gender equality for women, both as citizens and as workers. As you are already aware, in most of the under-developed countries women work under oppressive working conditions in the unorganised sector, therefore, they are entitled to have special protection in society for their development and empowerment. This unit also focuses on the various labour laws covering social security, welfare, working conditions of women workers etc. At the end of the unit, problems related with implementation of labour laws have been discussed to focus on the ineffectiveness of the laws in controlling the growing atrocities against women or ensuring equal rights for them.

Unit 10 discusses the laws and the schemes introduced for ensuring social security in India and its role in achieving gender equality. It focuses not only on the social security movement in India but also tries to highlight various legislations and government promoted schemes for ensuring social security. This unit is in fact, a continuation of the other units which center around various issues related to laws and legal reforms for gender equality through political and personal laws, criminal laws, labour laws and laws ensuring social security.



UNIT 7 LEGAL REFORMS AND POLITICAL COMMITMENTS: SECULAR VS. PERSONAL LAWS

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7.0 AIMS AND PURPOSE

The main purpose of this unit is to acquaint you with some aspects of legal reforms affecting the status of women in India. We have selectively identified few laws relating to marriage, property and inheritance to point out the interface between the secular credentials of our country and that of the personal laws. After reading this unit, you should be able to:

- present a historical overview on the legal status of women in India;
- explain the various laws governing marriage in various religious communities;
- examine the various provisions of the laws governing inheritance ;
- discuss the laws relating to maintenance among various religious communities in India.

7.1 INTRODUCTION

Societies in India are caught in the thick of dilemmas of tradition and modernity. On the one hand we have the whole gamut of inherited cultural realities represented by various religious beliefs, values and traditions. On the other hand,

we have secular law of the land – that is, our Constitution. The Constitution of India manifests the form and direction of our secular credentials and commitments. There are various personal laws defining the inner boundaries of socio-cultural activities of various religious groups. This unit explains the inter-relationships between the secular commitments and personal laws of various religious communities of our country. This unit begins with an historical overview of the legal status of women in our society. We have specifically focused on the areas of marriage, inheritance and maintenance. Let us read this unit carefully.

7.2 LAW AND STATUS OF WOMEN: A HISTORICAL OVERVIEW

The constituency of women has been frequently betrayed by society, its laws, and by the government. The root of this discrimination lies within the socio-religious system of society. Right from the stage of birth of the girl child, if she is allowed to be born at all, prevailing social attitudes have a crippling effect on her capabilities, roles, and opportunities within the family, the community and the larger society. The whole patriarchal power structures of Indian society are the reason behind the low status of women, which need special attention.

According to the **Shastric Hindu** law the inferior social status of women is well known. **Manu** stated that a woman is not entitled to independence for the father protects her in her childhood, the husband protects her in her youth and the son in her old age. **Baudhayana** laid down the general doctrine relating to the incapacity of woman to inherit as she lacks strength or prowess. Only by virtue of special texts, a limited number of female heirs were entitled to inherit in a limited way. But the position was not same during the early stages. In the Rig-Vedic civilisation, to an extent upper caste and class women enjoyed a better status than in later-times, and they could own property also. The wife was given a place of honour and participated with her husband in religious ceremonies.

The position enjoyed by upper caste and class women in the Rig-Vedic period deteriorated in the later Vedic civilisation. They were denied the right of inheritance and of ownership of property. Even the earnings of women became the property of their husbands and sons. However, women continued to receive education and worked as teachers.

During the Buddhist period women were not denied learning. They took active part in public life, but did not enjoy the right of Vedic Studies. The position of women really deteriorated in the Gupta Age and it was during this period that dowry emerged as an institution. Widows were not allowed to marry again and women had no right to real property but some women did receive higher education even in this period. Sati, that is, widow immolation became prevalent by the seventh century AD. The following period again was marked by further deterioration in the position of women. The birth of a daughter was looked down

upon as bad luck. Women were confined to their homes and therefore they remained uneducated. During this period child marriage, female infanticide, *pardah*, *sati* were the main social evils affecting the position of women. But at the same time motherhood was respected and a woman's devotion to her husband, children, and house was universally accepted as a positive value. It may be noted that the value given to wifely and maternal roles is part of traditional patriarchal subordination of women, as she is confined to these roles and not permitted roles in public life.

In the later stages especially in the late 19th and early 20th century due to the reform movement and the national movement, social consciousness among women was generated. The All-India Women's Conference was established in January 1927. The main concern of this Conference was to promote educational and social status of women. Mahatma Gandhi encouraged women to come out into public life and women of the middle classes came forward to take part not only in the independence struggle but also opted for outside employment in the 1930s and 1940s.

Moreover, the British administration of the nineteenth century took concrete steps to eradicate social evils afflicting society at that time. With the help of Indian reformers like Raja Ram Mohan Roy, it pronounced the abatement of *sati* as a criminal offence. Similarly, measures were taken to eradicate female infanticide. The point to be noted is that in both the cases the law was enforced by means of criminal sanctions. On matters of women's inheritance, marriage and the rights of married women, the law applied was a mix of ancient Hindu law and British law. For example, Hindu law nowhere did recognise the enforcement of a husband's conjugal rights; but when the principle of "restitution" was brought up, it was accepted even though it was taken from Anglo-Saxon law.

The second half of the nineteenth century witnessed several reforms regarding the position of women in Indian society. Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar started agitation for widow-remarriage, and were successful in getting the Hindu Widow's Remarriage Act passed in 1856. In Bombay, a Widow Remarriage Association was formed in 1861. Several acts were passed in the first half of this century regarding inheritance of property and marriage regulations. The following legislations have enhanced the status of Hindu women in matters of marriage, adoption and inheritance:

- 1) the Hindu Law of Inheritance (Amendment Act) of 1929;
- 2) the Hindu Women's Right to Property Act of 1937;
- 3) the Hindu Disability Removal Act of 1946,

The emergence of independent India, in fact, marks a watershed in the struggle for equality of status for women. The Constitution guaranteed equality before the law and the equal protection of the laws, non-discrimination and equality of opportunity as fundamental rights. Moreover, four legislations (The Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Minority and

Guardianship Act 1956 and Hindu Adoption and Maintenance Act 1956) enacted during 1955-56 removed to a very substantial degree the bias against women in the Shastric Hindu Law. The object of these legislations is to bring about change in the status and role of Hindu women and to ensure equality for them. But the relative success or failure of these attempts depends upon a variety of factors such as awareness of legislations and access to enforcing authorities.

The most important acts in the post-independence period are

- 1) The Special Marriage Act of 1954;
- 2) The Hindu Marriage Act of 1955;
- 3) The Hindu Succession Act and The Hindu Adoption and Maintenance Act of 1956;
- 4) The Dowry Prohibition Act, 1961;
- 5) The Maternity Benefits Act, 1961;
- 6) The Equal Remuneration Act, 1976; and
- 7) The Criminal Law Amendment, 1983.

Personal Law

One should try to interpret the extent to which the judicial process aided or impeded social change in relation to the status of women in India. In addition to non-implementation of legislation concerning women a recent trend is to take away rights which they have already enjoyed. Under pressure from orthodox Muslim leaders a law was passed taking away the right of maintenance from destitute Muslim women. It also highlights the nexus between political forces on the one hand and religious fundamentalism on the other.

Moreover, the division of society into the 'private sphere' and the 'public sphere' has constitutional recognition and legitimacy. Therefore, all matters relating to the family are treated as 'private' matters and governed by personal laws. Each community is governed by its own laws but the common feature in all the laws is that it promotes a family based on inequality between men and women. Under all these personal laws (with the exception of Khasi customary law) the man is the head of the family, he is the natural guardian of the children, the line of succession is through the male line and men and women do not have equal rights or access to property under the law (Working Group on Law, page 42).

The prevailing inequality within the family is often responsible for the tensions, which continue to be looked upon as problem of adjustment. It is only through the institutions of marriage and family that Indian women continue to suffer from certain disabilities which is reflective of their status in society.

Think it Over 1

Are Indian women accorded an inferior status in the Shastric Laws? Has there been any change in this regard over the centuries?

7.3 THE MARRIAGE SYSTEM

In India, marriage was considered a 'Samskara', in the Hindu code of life. Marriage was a religious bond, a sacrament and was considered a means of fulfilling the Hindu ideal of 'Dharma'. It was obligatory for a good Hindu to carry out the four Purusharthas and to attain 'Moksha'. The choice of a bride was within the prescribed rules of caste endogamy and Gotra exogamy; therefore, a bride from within the caste was to be chosen. The caste was interwoven with religion and the Hindu social structure was inextricably related to caste and joint family.

Prior to the passing of the Hindu Marriage Act, 1955 monogamy was the rule only for women. A male Hindu could take any number of wives. Full equality of sexes can hardly be possible in a legal system, which permits polygamy, and a social system, which tolerates it. Though the institution of polygamy has prevailed traditionally in India but now most marriages are monogamous by nature.

While bigamy has been made an offence and the second marriage should be void, bigamous marriages are still prevalent among Hindus. For example, in Manipur, even Government servants who are forbidden under the Government Servants Conduct Rules, are practising polygamy. In spite of their economic independence, women of Manipur have been unable to assert their social and legal rights.

In few districts of Goa, polygamy is permissible among Hindus under certain circumstances:

- 1) when the previous wife is childless up to the age of twenty-five years;
- 2) when there is no male issue from the previous wife till her 30th year or when the previous wife who is below 30 years does not conceive for ten years after her past conception;
- 3) in cases of judicial separation by wife and when there is no male issue.

But in the first two cases previous wife's consent is required.

Similarly, the Muslim law is also polygamous. Most Muslim countries such as Turkey, Iraq, Iran, Syria, Indonesia have introduced various reforms to control the misuse of polygamy. However, so far no legislative effort has been made in India to make amendments in the personal law of the Muslims thereby causing hardships to the Muslim women.

Marriage is regarded as a contract under the Muslim law for the purpose of procreation and legalising of children. A marriage is regarded as valid if all the conditions and formalities relating to marriage law have been properly fulfilled. A valid marriage confers on the wife the right to dower, maintenance etc., and creates reciprocal rights of inheritance between the husband and the wife. Among

the Sunnis, a marriage that is not valid may be either void (*batal*) or irregular (*frasiid*). A void marriage does not create any rights or obligations among the parties. The children of the union are illegitimate. An irregular marriage has no legal effect before consummation and it can be terminated by words showing intention to separate. The children of the union are legitimate but the irregular marriage does not create mutual rights of inheritance between the husband and the wife. But the distinction between valid, void and irregular marriages was eliminated and therefore, it was remarkably easy to misuse the law.

The development in post-independent India has cast away Muslim women from all influences of social justice, however inadequate these influences might be. The attitude of Government is not to initiate any reforms in Muslim law unless the demand for them comes from the community itself. Therefore, in the words of Mohammad Ghouse, "Muslim law relating to marriage and divorce and *waqf* has been made a 'supra-fundamental right, (Mohammad Ghose, "Personal Laws and the Constitution in India", in Tahir Mahmood (ed.), Islamic Laws in Modern India, 1972).

Despite all the shortcomings and limitations of the legal proceedings, the Special Marriage Act, 1954 provides a special form of marriage which can be taken advantage of by any person in India.

7.2.1 Special Marriage Act, 1954

Women and men of all communities have the choice of getting married under the Special Marriage Act, 1954, which came into force on 1st January 1955. It extends to the whole of India except the State of Jammu and Kashmir. The Act, also applies to all citizens of India domiciled in territories to which this Act extends but who are in the State of Jammu and Kashmir. This Act provides for 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. Hindus, Muslims, Christians or any citizen professing different religions may solemnize the marriage under this Act.

When the parties solemnize marriage under this Act, then for obtaining matrimonial remedies such as divorce, judicial separation, restitution of conjugal rights, etc., they have to take recourse to the provisions of the Act. For example, when one Muslim male and female solemnise marriage under this Act, their remedies do not lie in their personal laws but under this Act.

7.2.2 Conditions Relating to Special Marriage Act

A marriage between any two persons may be solemnised under this Act if at the time of marriage the following conditions are fulfilled, namely:

- 1) neither party has a spouse living;
- 2) neither party
 - a) is incapable of giving a valid consent as a consequence of unsoundness of mind, or

- b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children, or
 - c) has been subject to recurrent attacks of insanity.
- 3) the parties are not within the degrees of prohibited relationship;
- 4) the male has completed the age of twenty-one and the female the age of eighteen years.

The Special Marriage Act of 1954 provides for secular and civil marriage before a registrar. Moreover, the Special Marriage Act also introduced and clarified the grounds for divorce. It has been available to all Indian citizens who choose to register their marriages under this Act.

The activists of various women's organisation are of the view that compulsory registration of marriages should be implemented like the registration of births and deaths. In addition to this the Government should immediately start the process of enacting a Common Civil Code which will give equal rights to women in the family. This should include equal rights of inheritance to matrimonial property.

Think It Over - 2

What are the conditions relating to Special Marriage Act?
Is polygamy permissible among the Hindus in India? Narrate with suitable illustration.

7.4 HINDU WOMEN AND SUCCESSION

The problem of succession cannot be understood without reference to the law of joint family. Much has been written about the joint family system, especially the Hindu joint family system. The jointness of the family is reflected in the factors of commensality, common residence, joint ownership of property, etc. Researchers like F.G. Bailey, T.N. Madan have defined the term joint family to a group of relatives who form a property owning group-the coparcenary family. M.S. Gore, for instance, defines the joint family as a group of adult male coparceners and their dependents. The wives and young children of these male members are the dependents.

The female members have not been included in the category of the coparcenary. They have rights of residence and maintenance only as dependents.

The rights of women to succeed to any property vary from one religion to other depending on the personal laws followed by them. There is no uniformity in the succession law relating to women following different religions. Even in England English women did not enjoy equal rights in the property and succession until the Equity Courts started applying the principles of equity.

In India, women have a secondary status with regard to succession. This unequal status was sought to be removed by certain legislations governing different religions like the Hindu Women's Rights to Property Act, 1937; the Hindu Disposition of Property Act, 1916; The Hindu Inheritance (Removal of Disabilities) Act, 1928; The Indian Succession Act, 1925; and The Cochin Christian Succession Act, 1902.

7.4.1 Position of Hindu Women Before 1956

Until the passing of the Hindu Succession Act, 1956, two systems of inheritance dominated among patrilineal Hindus. In one system (called the *Mitakshara* school, adopted in most religions) a son has a vested interest in his father's ancestral property from the moment of his birth. The father cannot give away any part of this property to the detriment of his son's interest. Under the *Mitakshara* law, the law of succession is intimately connected with the special incidence of coparcenary properties. In coparcenary properties a son, son's and son's grandson acquire a right by birth. Thus only males can be coparcenarers.

The salient features of a *Mitakshara* coparcenary are the existence of community of interest, unity of possession and the right of survivorship among the coparcenarers. So long as the family is undivided, no individual coparcenar can claim that he is entitled to a specific share of the joint estate. His share is liable to increase by deaths and decrease by births. The *Karta*, i.e. the head of the family, who is usually the eldest among the coparcenarers manages the properties. The share of a coparcenar is ascertained only by partition.

Under the other system (the *Dayabhanga* school, adopted in Bengal and Assam) the father is the absolute owner of his share and has a right to alienate his property.

Added to these two systems was the matriarchal system, which prevailed in some southern states. Pre-independence India, therefore, had a number of different systems of succession among Hindus and in most of them, the position of the woman was one of dependence with barely any proprietary rights.

Among the patrilineal Hindus, some movable property is given to the daughters at the time of her marriage as *Stridhan* divided into two heads namely:

- a) *Stridhan*
- b) Woman's estate

Stridhan literally means woman's property. The Hindu law interpreted *Stridhan* as the properties received by a woman by way of gift from her relations. The Hindu woman had full rights of alienating the *Stridhan*, being its absolute owner. She could sell, gift, mortgage, lease or exchange the same in any manner she liked. On her death, all types of *Stridhan* passed to her own heirs and not to the heirs of her husband. Thus, a Hindu woman had unlimited rights, of enjoyment, alienation and possession in respect of *Stridhan* as its absolute owner.

The other type of property that could be devolved upon the Hindu woman was called "woman's estate". It was also called the estate. A Hindu woman could be the owner of woman's estate in the same way as any individual subject to two basic limitations:

- 1) she could not alienate the property, and
- 2) on her death, it devolved upon the next heir of the last full owner.

In other words, she had "limited estate" in respect of this kind of property. She had full powers of possession, management and enjoyment of such property but she had no power of transfer.

Therefore, the position of Hindu woman in relation to property and succession was not satisfactory and uniform.

7.4.2 Position of Hindu Women After 1956

With the passing of Hindu Succession Act of 1956, a uniform system of inheritance has been established. The individual property of a male Hindu dying intestate (having made no will), passes in equal shares between his son, daughter, widow and mother. *Male and female heirs have come to be treated as equal in matters of inheritance and succession.*

This Act also simplified the law by abolishing the different systems prevailing under the Mitakshara and Dayabhanga schools. The Act also extended to persons in south India previously governed by *Marumakkattayam* law. Another important feature for this Act is that any property possessed by a female Hindu is held by her as her absolute property and she has full power to deal with it the way she likes. This Act has also given a woman the right to inherit from the father as well as the husband. However, the benefit conferred on a woman is limited when compared to the rights of the male members who still have rights to coparcenary ancestral property by birth. *Daughters are not part of the coparcenary they have no birthrights.* The factor has contributed to continuing the inequality between sons and daughters. It should be noted that the Hindu Code Bill 1948 as amended by the Select Committee had suggested abolition of the right by birth.

Another discriminatory provision in the Act is the one relating to the right of inheritance to a dwelling house. It provides that where a Hindu dies intestate and his property includes a dwelling house wholly occupied by the members of the family, then the female heirs are not entitled to claim partition of it unless the male members choose to divide their shares in the dwelling house. Female heirs are entitled to only the right of residence. Even this right is restricted to unmarried and widowed daughters or those deserted by or separated from their husbands. A married daughter enjoys no such right (Section 23).

Certain states in India like Andhra Pradesh, Tamil Nadu and Maharashtra have alleviated the difficulty that arises by excluding the daughter's right to claim partition in coparcenary property. In order to confer equal rights on Hindu women:

along with the male members in the coparcenary under the Hindu Succession Act, 1956 they have passed laws to achieve the constitutional mandate of equality.

Think it Over 3

What were the major features of women's property rights in pre-independent India?

Has there been any change in relation to property and succession for Hindu women in India since Independence?

7.5 MUSLIM WOMEN AND SUCCESSION

The Muslim law of succession is basically different from the other indigenous systems of India. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property in lieu of maintenance. Every woman who inherits some property is its absolute owner like a man. There is no concept of either *Stridhan* or *women's estate*. Muslim women of course have some property rights but not equal rights with their brothers. Under their respective laws, the son gets twice the share of his sister. Thus, the male heir takes two shares and the female heir takes only one share. But, a daughter does not, however, by reason of her sex, suffer from any disability to deal with her share of the property. She is the absolute owner/master of her inheritance. The same rule applies to a widow or a mother. There is no such thing as a widow's estate as in Hindu law or the disabilities of a wife as under the older English common law.

A vast majority of Muslims in India follow the **Hanafi** doctrines of **Sunni** law which divide the heirs related to a deceased person by blood into three groups;

- 1) *Zav-il-Furuz* (the sharers or the Koranic heirs)—There are twelve sharers in number who are given specific shares. However, their shares are not permanently fixed as each heir may be affected by the presence of other sharers.
- 2) *The Asaba* (agnates or residuaries)—They are certain sharers who are excluded from taking their specified share, if a residuary of equal rank co-exists. In such a case they become residuaries. They are also called chronic residuaries.
- 3) *The Zav-il-Arham* (uterine relations)—The heirs who are neither sharers nor residuaries fall into the third category.

The sharers take the estate first; the remaining estate (or the whole of the estate in the absence of heirs of the first kind) is taken by the residuaries. If there are no sharers and residuaries the estate goes to the uterine relations.

The **Shia** law of inheritance divides heirs into two groups:

- 1) heirs by consanguinity, i.e., blood relations, and
- 2) heirs by marriage, i.e., husband and wife.

Among the blood relations mother, daughter, sister, grandmother, paternal aunt and maternal aunt are the females who are entitled to inherit the property of the deceased. They are called sharers. They take different shares depending on certain conditions, like existence of other sharers and relatives. Among the Shias, there is no separate class of heirs corresponding to the Distant Kindred of Sunni Law.

Think It Over 4

What are the major features of succession laws for Muslim women in India?

7.6 SUCCESSION AMONG CHRISTIAN WOMEN

The entire Christian law of succession is governed by the Indian Succession Act, 1925 which adopted two schemes. One scheme deals with the succession rights of Indian Christians, Jews and Parsis.

The first scheme entitles the widow and a lineal descendant a fixed share of one third of the property and the children have an equal right irrespective of sex. This law was amended to make the widow the sole successor of property in case of absence of any lineal descendant; and when the net value of the estate did not exceed five thousand rupees. But this provision has been denied to certain categories of persons. Moreover, Christians in Kerala and those outside are governed by different laws. The Travancore and Cochin Christian Succession legislations are based on the former notion of the Hindu law of inheritance, which discriminate against women.

The Christians of Goa are still governed by the Portuguese Civil Code which although it makes no differentiation on the basis of sex it relegates the widow to a very low position.

Like the Hindu law, there are separate rules for the devolution of the property of male and female Parsi intestate and the share of a male heir is double than that of a female heir. The Parsi daughter's share remains half of that of a son as in Muslim law but she is not given any protection against disinheritance.

Related with the issues of marriage, divorce and succession is the matter of maintenance which is also governed by personal laws. The rights of the women to maintenance vary according to the personal laws governing them.

Learn From Your Experience 1

Interact with few of your neighbours who may belong to any other religion rather than yours. Find out from them the norm of their succession and women's position therein.

7.7 MAINTENANCE

Section 125 of Criminal Procedure Code provides for speedy remedy against persons who neglect or refuse to maintain their wives, children and parents. The following persons are entitled to claim maintenance under certain circumstances.

- 1) **Wife**—A wife, who is unable to maintain herself, is entitled to claim maintenance. The term “wife” refers to a woman who has been divorced or has obtained divorce from her husband and has not remarried.
- 2) **Child**—A minor child, male or female, if unable to maintain itself is entitled to claim maintenance irrespective of whether such a child is legitimate or illegitimate.
- 3) **Mother**—A mother, unable to maintain herself is entitled to claim maintenance from her son.

Section 125 (1) Criminal Procedure Code required only a husband or a father or a son or a daughter (as the case may be) to pay maintenance to wife, child, father or mother. According to the Hindu Marriage Act, 1955, either a husband or a wife, if separated or divorced, can ask the other for alimony.

7.7.1 Hindu Women and Maintenance

Under the ancient Hindu law a person was under moral and social obligation to maintain the wife, aged parents and minor children. The Act of 1956, maintenance under the Hindu Adoptions and Maintenance Act, deals with the maintenance of wife, widowed daughter-in-law, children and aged parents on the satisfaction of certain conditions.

The Act defines maintenance as providing food, clothing, residence, education and medical attendance and marriage expenses in case of an unmarried daughter.

A Hindu wife is entitled to be maintained by her husband during her lifetime and she can even claim maintenance while living separately under certain circumstances. Under Section 18 of the Act the wife includes even a divorced wife. A widowed daughter-in-law is also entitled to maintenance from her father-in-law.

7.7.2 Maintenance of Muslim Women

Under the Muslim law a man is under an obligation to maintain his wife, children, parents and other relatives including step-relations.

According to the Mohammadan law, the wife may sue the husband for maintenance if he neglects her. She may approach the court under Sections 125-128, Criminal Procedure Code to order the husband to make a monthly allowance for her maintenance, but these provisions are applicable only during the

subsistence of marriage. A divorced wife is entitled to maintenance only during the period of *iddat*, which refers to the duration (equivalent to three months or till the delivery of a child in case of a pregnant woman), or the waiting period after which a new marriage is rendered lawful.

Maintenance of divorced Muslim women is governed by three laws namely:

- 1) Muslim Personal Law;
- 2) Section 135, Criminal Procedure Code, and
- 3) The Muslim Women (Protection of Rights on Divorce) Act, 1986.

A divorced woman is entitled to claim maintenance from her former husband during the *iddat* period only. The duration of *iddat* on divorce is three mensuration periods or if pregnant, till the delivery of the child.

Under Section 125 of the Criminal Procedure Code, the husband is obliged to maintain his wife who includes a divorced wife. The Supreme Court held that a divorced Muslim wife is entitled to maintenance even if she has already received the whole amount due to her under her personal law. In *Mohammad Ahmad Khan vs. Shah Bano* case, the Supreme Court reiterated its stand and "observed that the right available under Section 125 is a statutory right and remains unaffected and also overrides the provisions of personal law if there is any conflict between the two". However, the court observed that there is no such conflict between the provisions of Section 125 and the Muslim personal law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife in case she is unable to maintain herself.

The Muslim Women (Protection of Rights on Divorce) Act 1986, is the result of the controversy which erupted due to the *Shah Bano* judgement. Under this Act a divorced Muslim woman can claim maintenance from her former husband only when both the husband and the wife agree to be governed by the provisions of Sections 125 to 128 of Criminal Procedure Code even beyond the *iddat* period. Otherwise the husband is not liable to maintain his divorced wife beyond the *iddat* period.

Since Article 25 guarantees the fundamental right to practice, profess and propagate religion, it is argued that personal laws must prevail even at the cost of women's interest and rights and even if in the process they violate Article 14. The case of *Shah Bano* and the enactment of the Muslim Women's (Protection of Rights on Divorce) Act, 1986, reflects the lack of political commitment to women's issues. It also shows the nexus between political forces on the one hand and religious fundamentalism on the other.

It is evident from the above discussion and especially the *Shah Bano* case exemplifies that constitutional laws have not entirely extended equality and justice to women.

Hindu law was reformed substantially but the marriage laws of Muslims and Christians have not been reformed as per the requirements of the times. 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 his sister. The Syrian Christian women were till recently governed by the Travancore and Cochin Succession Acts but now they are governed by the Indian Succession Act 1956 which ensures to them equal rights to property.

7.7.3 Christian Women and Maintenance

In Christian law "the wife is entitled to 25 percent to 30 percent of her husband's income calculated on the basis of his earnings in the three years immediately preceding the decree of divorce" (The Law and Indian Women, A Study by the YMCA of India: p.20).

Article 15(1) clearly states, "The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them." And similarly Article 51 A(e) guarantees that, "It shall be the duty of every citizen of India, ...to renounce practices derogatory to the dignity of women." In order to fulfill the constitutional promises, a Uniform Civil Code for all citizens should be adopted by the year 2000 A.D. suggested by various women's groups.

Learn From Your Experience 2

You may be interacting with women from various religious communities. If possible, try to know from these women (one woman from each of these communities) their awareness about the laws of inheritance. Again try to know from them whether they assert or exercise their rights at all. Based on your collected information, develop a note on the status of inheritance among women in my area. You will enjoy doing this exercise.

7.8 CONCLUDING REMARKS

In independent India there have been several legal reforms. The constitution of India provides the broad basis for the political commitment by the state to secular laws. We have shown in this unit that since independence, several legal reforms have been made in India. Many of these reforms do not coincide with customary practices of various religious groups. However the state in India is yet to introduce a Uniform Civil Code. Personal laws of various religious groups still guide their social and cultural practices. These issues we have discussed in this unit in reference to the reforms in the laws relating to marriage, inheritance and maintenance among various religious communities. Reform however is a continuous process. It shows that we have a long way to go to achieve the secular facets of our personal laws.

7.9 CLARIFICATION OF THE TERMS USED

Caste : it is an indigenous social group which functions based on the principles of hierarchy, occupational specialisation, endogamy, purity and pollution.

- Agnates** : related by descent from a common male ancestor.
Alimony : an allowance paid under a court order by one spouse to another when they are separated; either before or after divorce.
Gotra : some class; people who trace descent from a common ancestor.
Monogamy : marriage of a person with one spouse at a time only.
Uterine : people who trace descent from a common female ancestress.

7.9 SOME USEFUL READINGS

Government of India; *National Perspective Plan for Women (NPP) (1988-2000 A.D.)*. Human Resource Development Ministry, New Delhi.

UNIT 8 LEGAL REFORMS FOR VIOLENCE AGAINST WOMEN

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8:0 AIMS AND PURPOSE

The main objective of this unit is to make the student familiar with those crimes that are perpetrated exclusively on women and come under the category of *Violence Against Women*. The committing of these crimes is considered violation of law to be meted out with legal punishment. After going through the unit, the students should be able to:

- explain the meaning and scope of "Violence Against Women";
- discuss the concept of "Domestic Violence" and the need for law;

- describe the various dowry-related crimes under different sections of the IPC and the introduction of law and further amendments concerning them;
- explain the legal provisions regarding crimes like rape, prostitution, sexual harassment and other forms of violence against women, and legal steps to be taken to make them gender sensitive.

8.1 INTRODUCTION

- All over the world women are discriminated in society, and one of the most potent form is the infliction of different types of violence on them. In this unit we discuss some of the important crimes which are regarded as "Violence Against Women" and existing legislation regarding them, though women also become victims of any other crimes like murder or robbery. Violence against the girl-child in particular is covered under each form of violence described. Section 8.2 explains the meaning and scope of "Violence Against Women" and some of the crimes identified in the Indian Penal Code (IPC) and those under the Special Laws (SL) along with the data on the existing situation of violence against women in the country. The following section, 8.3 deals with the concept of "Domestic Violence" and an urgent need for a law in this sphere. The section on rape, 8.5, discusses the rape laws and the legal changes that have been introduced in the course of time. Section 8.6 describes the issue of prostitution and some of the existing laws relating to trafficking in women in India. Sexual harassment and other offenses like sati, female infanticide and foeticide are dealt with in section 8.7. We expect that this unit will help you to articulate these issues more concretely.

8.2 VIOLENCE AGAINST WOMEN: MEANING AND SCOPE

Violence is described as a physical act of aggression of one individual or group against another or others. Violence against women means any act of violence which results in, or is likely to result in physical, sexual or psychological harm or suffering to women. This also include threats of such acts, coercion or arbitrary deprivation of liberty, in public or private life and violation of human rights of women in a violent situation. These are the more latent and unquantifiable aspects of aggression or invasion of the self by outside agents, namely emotional violence and other forms of cruelty which end up in suicide, self mutilation, negligence of ailments, sex-determination tests and denial of food (Country Report, 1995: p.98).

In India, women are guaranteed right to equality, freedom, opportunity and protection by the Constitution and several legislations. However, they continue to be victims of various forms of violence because of the male-dominated society, media images of violence, the increasing criminalisation of society as a

consequence of poverty, ignorance and illiteracy, poor enforcement of legal provisions, increasing consumerism and traditional values. Over the past decades, there has been a growing awareness of the phenomena of violence against women. Since the late eighties, writing, research and action of violence against women have become a component in debates and discourses world wide. Registration of crimes has also increased and also the awareness of legal provisions of women's rights.



Gender sensitisation for police person-an alternative methodology to deal with crime against women.

Courtesy : CSR, New Delhi.

The three major Acts which govern legal trials in India are (i) The Indian Penal Code (IPC), which lays down categories of offenses and stipulates punishment, (ii) The Criminal Procedural Code (CrPC), which lays down procedural rules for investigation and trial, and (iii) The Indian Evidence Act (IEA), which prescribes the rules of evidence to be presented in a trial. Crimes in which women alone are the victims come under the category of "Violence Against Women" and special laws are made to tackle them. The data for these has been collected since 1989 by the government of India through the National Crime Records Bureau.

8.2.1 Crimes Identified under the Indian Penal Code

- i) Rape (Sec. 376 IPC).
- ii) Kidnapping and Abduction for different purposes (Secs. 363-373 IPC).

- iii) Homicide for Dowry, Dowry deaths or their attempts (Secs. 302/304- B IPC).
- iv) Torture, both mental and physical (Sec. 498-A IPC).
- v) Molestation (Sec. 354-IPC).
- vi) Sexual harassment (Sec. 509 IPC).
- vii) Importation of girls (upto 21 year of age) (Sec. 366B IPC).

8.2.2 Crimes Identified under the Special Laws

Reprehensible social practices such as commission of sati, demand for dowry, trafficking of women for immoral purposes etc. are identified as offences punishable under the following special social enactments to safeguard women and their interests. Specifically these are:

- i) Commission of Sati (Prevention)-Act, 1987.
- ii) Dowry Prohibition Act, 1961.
- iii) Immoral Traffic (Prevention) Act, 1986.
- iv) Indecent Representation of Women (Prohibition) Act, 1986.

(Crime in India, 1995: National Crime Records Bureau, (NCRB) Ministry of Home Affairs, Chapter 7, Crime Against Women: pp. 219-240).

8.2.3 Crime Against Women: Some Vital Statistics

The following table gives the data on crimes against women between 1991 and 1995. It shows that the status of women in India has perhaps deteriorated over the years as crimes against them have been on the rise. However the rise in crime rates may also be due to increased reporting of offences against women

Sl. No.	Crime head	Years				
		1991	1992	1993	1994	1995
1.	Rape	9,793	11,242	12,351	12,351	13,754
2.	Kidnapping & Abduction	12,300	12,077	11,837	12,998	14,063
3.	Dowry death	5,157	4,962	5,817	4,935	5,092
4.	Torture	15,949	19,750	22,064	25,946	31,127
5.	Molestation	20,611	20,385	20,985	24,117	28,475
6.	Sexual Harassment	10,283	10,751	12,009	10,496	4,754
7.	Importation of Girls				167	191
8.	Sati (Prevention) Act				2	27
9.	Immoral Traffic (Prevention) Act				7,547	8,447
10.	Indecent Representation of Women				389	539
	Total	74,093	79,037	83,954	98,948	1,06,471

Source: *Crime in India, 1995*, NCRB, p.222

Madhya Pradesh, (M.P.) among different states and the Union Territories rank first as far as incidence and rate of crime against women are concerned. They are followed by Rajasthan, Maharashtra and Delhi, with places like Daman & Diu, Nagaland and Meghalaya recording a very low rate of crime against women. (You should also consult the statistics given in Unit 11 and 12 of this course).

Think it Over 1

There are several kinds of violence taking place in our society. What do you understand by "Violence against Women"? State the different categories of violence against women and identify the laws to deal with them.

8.3 DOMESTIC VIOLENCE: A NEED FOR LEGAL REFORMS

The family, and its operational unit, the household is the setting for much of the discrimination against women and girl children. In many cases, such violence is tolerated and it goes unreported. The girl child gets the worst of it facing physical, emotional and sexual assault. An extreme manifestation of it is female infanticide and foeticide. Many girls are married at a young age and wife "abuse" takes a different form here which is not between a man and a woman only but includes other family members as well. "Abuse" normally receives familial sanction and is institutionalised in various forms, ranging from long hours of labour, denial of food, neglect of ailment and verbal abuse to physical violence by the husband and other family members. Violence is committed on small pretexts ranging from saying that the woman speaks too much to dowry demands. The understanding of "domestic violence" is largely limited to "marital violence" which is often clubbed under the overall heads of "dowry" and dowry-related violence. The "sanctity" attached to the "home" and a sense of "shame" prevents the members from crying out aloud about it. Everything that happens in the house is viewed both by the members and also those outside it as "private" and this privacy must not be trespassed at any cost (MARG-"Within the Four Walls-A Profile of Domestic Violence", 1996).

There were public protests in cases of rape and dowry deaths in all major cities and towns in India during the early 1980s with a large number of women breaking their silence and speaking against these forms of violence. A demand was raised for a special enactment to deal with the issue of domestic violence but these were limited to dowry related violence.

8.3.1 Inadequacy in Law

So far, no specific law on "Domestic Violence" exists in the statute books. The numerous laws mentioned which protect the interests of those who end up being victims of domestic violence, are found scattered under various personal laws which, for example, treat domestic violence as a ground for divorce, or under

IPC, like cruelty against women by their spouses and relatives (Sec. 498 A) and dowry death (Sec 304B); or under the CrPC, like granting injunctions for protecting a victim of domestic violence from the victimiser (Sec 151).

Besides these, there are various special legislations for protecting women like the Dowry Prohibition Act (1964, amendment in 1984, 1986), the Sati (Prevention) Act (1987) and the Immoral Traffic (Prevention) Act (1950) (Discussed under relevant heads in the unit).

Thus each case tends to be treated individually for a specific legal problem. For example, a case of rape by a member of the family is dealt like any other case of rape under Sec. 376 IPC. Since it is not viewed as domestic violence, redressal of the victims of violence of this nature is not available, neither is the punishment of the victimiser any different. Besides this, many acts of violence, for example matrimonial abuse of a girl child, sometimes even leading to her death, or withdrawing of the child from school thereby denying it education do not come within the purview of the existing laws, nor is marital rape recognised by law (MARG, *ibid*: p. 56). It has been suggested by some lawyers that since there is no law on domestic violence, a woman can take a recourse to civil remedies. In the case of divorce, for example, which can be followed in both the civil and criminal courts, a woman may find it better to seek redress under civil law which would entitle her for maintenance, child custody, injunction against harassment and finally a divorce from her violent husband ("Legal Aid Hand book I", Lawyers Collective, 1992).

Learn From Your Experience I

Now you must be aware of various forms of domestic violence taking place in our society. Based on your first hand experience in the neighbourhood write a note on "Domestic violence on women in our society".

8.3.2 Need for A Law on Domestic Violence

There is therefore, a great need for a law on domestic violence and some organisations are working towards evolving such a law. The Lawyers Collective in India has formulated a model law against domestic violence in order to initiate a discussion. An attempt has also been made by the National Commission for Women (NCW) for drafting a bill on the "The Domestic Violence to Women (Prevention) Bill, 1994" to provide for the prevention of domestic violence to women and for matters connected therewith or incidental thereto (MARG, *ibid*: p.61).

8.4 DOWRY RELATED CRIME

The Dowry Prohibition Act was passed in 1961 to combat the practice of dowry. It was however, full of loopholes and could not prevent dowry-related crimes from accelerating.

8.4.1 What is Dowry?

In the Act dowry is defined as "any property or valuable security given or agreed to be given either directly or indirectly (a) by any party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or the other person, at or before or after the marriage".

8.4.2 Punishment for Dowry

The Act says that any person who gives or takes or who abets the giving or taking dowry shall be punished with a jail term which may extend to six months or with fine or with both. It is also an offence to demand, directly or indirectly from the parents or guardian of a bride any dowry and shall be similarly punished. (M. J. Antony, Landmark Judgements on Dowry Related Deaths, Indian Social Institute, 1998: p.1).

The Act however, excludes presents in the form of cash, ornaments, clothes and other articles from its purview. The offence was non-cognisable and bailable which made it a trivial offence (A. Flavia, Violence Against Women: Review of Recent Enactments, L. N. Mukhopadhyay (ed.), 1998: p.81-116).

8.4.3 Amendment to Criminal Law

In the early eighties, most cities of India witnessed public protests against the increasing number of dowry deaths as the menace spread to region and communities in which the phenomena was unknown. Apart from dowry deaths, suicides or murders, the incidents of wife beating, cruelty, torture and humiliation were on the rise. This made women's groups demand that wife abuse be treated as an offence. The Parliament responded with the Criminal law (Second Amendment) Act, 1983 which for the first time gave legal recognition to domestic violence making cruelty implicated by the husband or his relatives an offence (Sec. 198 A IPC).

The main features of the amended Act were the increase in punishment to five years and fine upto Rs. 10,000 or the value of dowry whichever is more, making the offence cognisable and introduction of provision for the girl's parents, relatives or social workers to file a complaint on the girl's behalf.

8.4.4 Dowry Death and IPC

The IPC was amended and became even more stringent as "dowry deaths". These were included in the list of offences in the IPC (S. 304-B). Its main features were: the fine was increased to Rs. 15,000, the burden of proving the offence was shifted to the accused, dowry was made a non-bailable offence, a ban was imposed on advertisements, and in the case of unnatural death, woman's property would devolve on her children and to the parents (Flavia Agnes, *ibid*: p.104-105).

Along with the amendment to the IPC, the provisions in the CrPC have also been changed. According to the new section 198 CrPC, a criminal court will take judicial notice of the offence under Section 498 of IPC (cruelty of husband) in circumstances when the woman herself or her relatives file a complaint. The punishment for subjecting a married woman to cruelty is a fine and imprisonment upto three years and the offence is "cognisable". In case of a suspicious death of a woman, the police will send the body to a doctor for examination and this can be done specially when the case involves suicide by a woman or her death under unusual circumstances within seven years of her marriage, or the request has been made on her behalf by any relative, or there is a doubt regarding the cause of death, or if the police officer or any person considers it imperative to do so. In such a case, the Magistrate can hold an inquiry on his own, apart from the police inquiry.

8.4.5 Amendment to the Indian Evidence Act

The Indian Evidence Act (1872) was also amended to provide that if a married woman commits suicide within 7 years of her marriage, the presumption in law will be that her husband or his relatives abetted the suicide (Section 113A) or in other words, the accused must prove that he is innocent. The Family Court Act, 1984 was another initiative to check increasing cases of domestic violence. Special Police Cells and All Women Police Stations have been set up in 12 states and Union Territories to deal with complaints under the new provisions though most of them operate like Counselling Centers (National Perspective Plan for Women; 1988; 101).

8.4.6 State of Dowry Deaths in India

Unfortunately, despite all these efforts dowry deaths and other dowry-related crimes have continued to increase over the years. In 1995, though in the country dowry deaths recorded a marginal increase in rate (0.6), the situation was worse in many states. Delhi had a high rate of 1.5, U.P. of 1.3 and Haryana 1.3 in 1995 (NCRB, 1995: 227). Increasing literacy, employment and awareness regarding legal provisions, stringent laws, their effective implementation, social movement and strengthening women's property rights could perhaps be some of the measures that may weaken the menace of dowry-related crimes.

You shall be able to learn more on this issue in unit No. 12 of this course.

Learn From Your Experience 2

Read the laws regarding dowry carefully. Take a small representative sample of people and collect their opinions about the practice of dowry. Analyse the reasons for its continuance and also what can be done towards removing its evil aspects.

8.5 RAPE LAWS

Rape is the most heinous of all crimes against women. The Indian Penal Code counts it as a severe crime, cognisable, non-bailable and liable for a stringent punishment (Section 375,376).

8.5.1 Element of Consent in Rape: A Problematic Area

According to Section 375 of the IPC, rape is committed when a man has sexual intercourse with a woman against her will or without her consent, with her consent but obtained through coercion, deception, unsoundness of mind or intoxication or with or without her consent when she is under 16, done against a woman's will when she is fully conscious and capable of consenting and is aware of what is being done and resists or objects to it.

However, it is extremely difficult to prove that "consent" was not given by the victim, this being the main criteria in proving rape cases. Many times a woman is forced to submit and there is no proof of skirmish, pulling, snatching as required to show it was not "consent". The Mathura case described ahead became problematic and contentious due to this aspect. The age of consent as defined by the law in 1860 was 10 years and raised to 12 after a demand though women wanted it to be 18 years. If a girl has not screamed when raped, she is said to be involved and if no injuries are found on the child's body, the "consent" factor helps the accused to win the case. Besides the issue of "consent", another problem is that the court asks for witnesses, which is a strange thing, as rape is not usually committed in the presence of others. Then the other hindrance is for the victim and her relatives where the society and law both make the victim feel guilty. In most of the cases, the girl's parents do not even lodge a complaint to save her reputation and her future.

8.5.2 Punishment

IPC Sections 375 and 376 relate to rape and punishment while IPC Sections 376A, 376B are for illicit intercourse of a public servant with a woman in his custody, like a superintendent of a jail, remand home etc., and Section 376C is related to illicit intercourse by the manager or doctor of a hospital with a patient. The Criminal Code of India does not recognise the concept of marital rape. Forced intercourse by a husband with a wife below 15 years of age is rape, leads to 2 years imprisonment. The offence of rape itself carries a sentence from a minimum of 7 years to a maximum of 10 years. Custodial and gang rape carry a minimum of 10 years. Custodial and gang rape and also in case where a man knows that a woman is pregnant and if a girl raped is less than 12 years of age carry a minimum of 10 years imprisonment (MARG, 1996: p. 95-8).

Despite all these efforts rape cases are constantly rising in the country reaching to 13, 754 in 1995 as compared to 9,793 in 1991 (See the chart in Section 8.2).

Madhya Pradesh reported the highest incidence in 1995 accounting for 22.7 percent of the All-India total, followed by Uttar Pradesh, Maharashtra and Bihar (NCRB, 1995, *ibid*: 229).

8.5.3 Amendment to Criminal Law Bill and Mathura Rape Case

Most of the laws dealing with the issue of rape remained unchanged in the statute books since 1860. The Law Commission had, in its 84th Report on Rape and Allied Offenses, proposed certain changes in the IPC, CrPC and the Indian Evidence Act. On the basis of its recommendations the government amended the law on rape and introduced the Criminal Law (Amendment) Bill 1980 which was ultimately passed as an Act in 1983 (NPP, *ibid*: 136-137).

The Amendment was the result of a sustained campaign against these laws following the infamous Supreme Court judgement in the Mathura case. Mathura was a 16-year old tribal girl who was raped by two policemen within a police compound. The Session Court acquitted the policemen on the ground that Mathura was habituated to sexual intercourse and hence she could not be raped. The High Court convicted the policemen and held that mere passive consent given under threat cannot be deemed as consent. The Supreme Court set aside the High Court judgement on the grounds that Mathura had not raised any alarm and there were no visible marks of injury on her body. The judgement triggered off a campaign for changes in rape laws as the judgement highlighted the fact that in a rape trial it is extremely difficult for a woman to prove that she did not consent beyond all reasonable doubt as was required under the criminal law. Their demands were that the burden of proving that woman had consented should be on the accused, and that a women's past sexual history and general character should not be used as evidence (Agnes, F. *ibid*: 84-85).

The Bill, however did not include any of the recommendations of the Law Commission regulating police power or about women's past sexual history. The demand that the onus of proof regarding consent should be shifted to the accused was accepted partially, only in cases of custodial rape. The important provision of the amendment was the addition of a new section which made sexual intercourse by persons in a custodial situation an offence even if it was with the woman's consent and introduction of a minimum punishment for rape ten years in cases of custodial rape, gang rape, rape of pregnant women and minor girls under twelve years of age, and seven years in all other cases.

Though not adequate, the amendment was welcomed by women's groups as a progressive beginning. However, the Supreme Court Judgement in 1989, in Suman Rani's case, a case of custodial rape, came as a jolt. The Supreme Court reduced the sentence from the minimum of ten years to five years and also the review petition filed by women's groups against the reduction of sentence was rejected. This brought into focus the need to review judicial trends in rape trials and possibly further amendments to fill in the lacuna in the rape laws and definitely their strict implementation (Agnes, F. *ibid*: 85-6). It may be noted that a Delhi

based follow-up on the impact of the amended Bill over a period of a decade show that the amendment has not made the difference as custodial rape cases tend to be withdrawn or dismissed before the trial for "lack of evidence" (Peoples Union for Democratic Rights, 1994, "Custodial Rape").

Think it Over 2
Are the prevailing laws sufficient and efficient enough to deal with rape cases?

8.6 PROSTITUTION AND TRAFFICKING IN WOMEN

The practice of prostitution, flesh trade or trafficking in women is one of the worst forms of violence against women. Despite various legal and constitutional provisions for gender equality and crime against women, prostitution is not illegal. The 64th Law Commission Report stated that prostitution could not be banned totally, perhaps because it has existed in India since time immemorial and receives social sanction in certain communities.

8.6.1 SITA

Suppression of Immoral Traffic in Women and Girls Act (SITA) 1956, was the first sustained legal effort to curb this social evil. It was passed with the basic objective to punish brothel keepers, procurers and pimps and prevent prostitution in or outside the vicinity of public places. The Act is applicable to men and women. There were provisions within the Act to penalise soliciting for clients and loitering by sex workers (prostitutes) but the clients as well as sex workers were not penalised as prostitution individually, independently and voluntarily does not constitute an offence according to SITA. The main purpose of the Act was to abolish or reduce commercialised vice, and traffic in women and girls.

There were however, certain loopholes in the Act as it put certain restrictions on sex workers, which force them to live in an unhealthy and degrading environment. Section 7(1) of SITA operated against the interest of sex workers while the partner could get away easily. Section 8(a) was the most common cause of police harassment (S. Saxena, 1995, Crime Against Women and Protective Laws: 259).

8.6.2 PITA

The Act was amended in 1978 and more recently in 1986 and is now entitled "The Immoral Traffic (Prevention) Act" (PITA), applicable to both women and men. Its objective was to do away with the loopholes that prevented the earlier Act from being effective, but like its predecessor, this Act does not declare prostitution illegal per se. Section 2 of this Act makes the definition of brothel to include any place used for the purpose of sexual exploitation or abuse. This broader definition makes it easier to prosecute the brothel keepers under Section 3 of the Act. Life imprisonment is the maximum punishment ordained when the

offence is committed against minors or children. Section 9 of this Act provides greater punishment to persons who cause, aid or abet the seduction of women or girls over whom they have authority or who are in their care and custody, for prostitution. Provision for protective and special courts for speedy trial are some of the encouraging changes that are sought to be achieved by the new Act. Section 5 of the Act provides the police and the magistrate the power to deal with inter-state offenses that include establishment of well-organised networks. It treats this activity as an aggravated form of crime providing for a minimum of 7 years imprisonment and a maximum of life sentence (S. Saxena, *ibid*: pp. 261-64).

The Act however, does not make any reference to juvenile sex workers, though certain legal provisions assist in preventing the crime against a girl child pertaining to prostitution. Section 366-A make the procuring of minor girls for illicit sexual intercourse illegal and Section 366-B make their importation an offence. Sections 372 and 373 (IPC) make selling and buying of girls of any age for purposes of prostitution a heinous crime for which 10 years imprisonment and fine can be awarded. These sections conjointly punish both the giver as well as the receiver of a minor girl for immoral purposes, illicit sexual intercourse or prostitution. Section 372 protects minors even against their own parents or other lawful guardians. Section 373 strikes at the keepers of brothels and all others who depend on the profits arising from the general prostitution of girls.

8.6.3 Efforts to Legalise

In recent years, a move to legalise prostitution is going on across the world. In 1997, an international conference of sex-workers was organised in Calcutta where efforts were made in this direction. The step to legalise prostitution as a profession and prostitutes as sex workers may solve some of their problems, especially what they face due to flaws in the legal provisions and because of the activities of those authorised to take action against them. But, a large number of women groups and other concerned citizens are against such a step which they feel, would institutionalise and perpetuate inequality, discriminations and injustice against women.

8.6.4 Some Statistical Profile

As of today, there has been a rise of 14.4 percent in case of "Importing of Girls" (Section 366-B, IPC) from 1994 to 1995 and the two states of Andhra Pradesh and Punjab alone constituted 47.6 percent of total cases at an all India level in 1995. Apart from this, "Immoral Trafficking" cases in Tamil Nadu and Karnataka constituted 82.4 percent at all India level (NCRB, 1995: p. 228). It is important that such activities are met with stern punishment and efforts are made towards steady rehabilitation of sex workers and their children.

Think Over 3

Is prostitution a crime in India? What constitutes a crime related to it?

What are the Acts passed to stop the trafficking in women?

What are the specific legal provisions for the trafficking of girl child?

8.7 SEXUAL HARASSMENT AND OTHER OFFENSES

In this section we focus on the sexual harassment, molestation and other crimes against women like sati, female foeticide and indecent representation of women.

8.7.1 Sexual Harassment and Molestation

Sexual harassment and "eve-teasing" are treated as low priority crimes, but women are exposed to these in every day life. Though "sexual harassment" recorded a marginal declining rate off 7 at an all India level between 1994 and 1995, in as many as 7 states and union territories the crime rate recorded was higher than the national average. In the same period, sexual harassment cases in Tamil Nadu, Maharashtra and Andhra Pradesh constituted 55 percent of the total reported cases in India. Crime rate for molestation increased by 0.4 in the same period, the highest being in Madhya Pradesh followed by Sikkim, M.P., Maharashtra, U.P. and Andhra Pradesh constituted 55.8 percent of the reported cases (NCRB, 1995: 227-28).

There are three Sections of the IPC 509, 294 and 354 which deal with such sexual harassment. According to Section 509 IPC, who ever intending to outrage the modesty of a woman, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both. Section 294 IPC punishes anyone who, to the annoyance of others does any obscene act or sings, recites or utters obscene songs in a public place, with three months imprisonment or fine or with both. For molestation Section 354 IPC punishes anyone who assaults or uses criminal force with an intent to outrage a woman's modesty. A prosecution for sexual harassment under Section 354 IPC requires two factors to be proved: (i) that the accused assaulted or used criminal force against a woman, and (ii) that such assault was with an intention or knowledge that it may or is likely to outrage the modesty of the woman. An offence of indecent assault on a woman cannot be complete unless there is the intention or the knowledge that the woman's modesty will be outraged.

The sexual harassment and molestation of women on roads, in colleges, in buses and in the place of work are common features. Despite being so rampant, very few incidents are reported and even fewer convicted. This is also because an act of sexual harassment and molestation is difficult to prove.

In certain situations of sexual harassment, like at the workplace there are no adequate laws to deal with such cases. A recent landmark judgement by the Supreme Court issuing guidelines to prohibit sexual harassment at workplace and directing the government to ensure that they are observed till the appropriate legislation is passed by the Parliament, is indeed a welcome move. This came as a result of the case filed by a group of women's organisations on behalf of a social worker allegedly raped in Rajasthan. Though a law in itself would not solve all the problems, it would at least give women a chance to get redressal.

8.7.2 Other Offenses

The following are some other offenses that are regarded crimes as against women.

- a) **Child Marriage:** Child marriages were banned in 1929 when the Child Marriage Restraint Act popularly known as Sharda Act was passed. But such marriages are still prevalent in most parts of rural India. They are responsible for a large number of child widows and also lead to suicides by young women or their being forced into committing a *sati*, an act which is usually glorified.
- b) **Sati:** *Sati*, the custom of burning widows on the funeral pyres of their husbands was banned in 1829. Roop Kanwar's murder in 1987 highlighted this issue. The response of the then Rajasthan Government, with its Ministers justifying the act, and administration supporting it was most horrendous. There were large protests by women's organisations all over the country against the murder of Roop Kanwar and her glorification as *sati*. As a consequence, in December 1987, Parliament passed Commission of *sati* (Prevention) Bill 1987. But the Bill did not incorporate some of the relevant suggestions by concerned women's groups. The most obvious infirmity of the Bill is the acceptance of *sati* as suicide. It lays down that the woman who tries to commit *sati* will be sentenced to six months imprisonment under Section 309 IPC. The Bill does not notice that the woman usually does not have a choice and also the term *sati* which tends to glorify the act could be replaced by another term which could signify that the act could be a forced one, in fact a murder.
- c) **Female Foeticide:** In the 1970s with the discovery of tests like amniocentesis used to discover foetal abnormalities, thousands of clinics sprang up to detect the sex of the unborn child. Couples on knowing that the sex of the foetus was female got it aborted. This was even easier with abortion being not only legal but condoned officially as a family planning method of birth control. According to a rough estimate between 1978 and 1984 about 79,000 female fetuses were aborted after the amniocentesis test.

There was loud protest by several women's organisations all over the country. Maharashtra was the first state to pass a law making the tests illegal followed by the centre. The decision raised a controversy on killing of female unborn child as crime on the one hand, and the right and freedom to choose on the other. The Act too has certain loopholes, like it does not state the specific disorders for which the test would be permitted, and at the practical level, it is flouted blatantly.

- d) **Kidnapping and Abduction of Women:** Section 366, IPC deals with kidnapping or abducting a woman to compel her to marry against her will or in order that she may be seduced to illicit intercourse. This section also prescribes punishment for any person who abuses his authority to criminally intimidate a woman or induce her to go from one place with intent that she may be forced or seduced to have illicit intercourse. Sections 366 A and 366 B, IPC deal with the procurement of minor girls for the aforesaid purpose. 'The cases of importation of girls' registered under Section 366-B, IPC, has shown a rise of 14.4 percent cases between 1994 and 1995. Andhra Pradesh

and Punjab alone constitute 47.6 percent of the total cases at an all India level (NCRB, 1995: 278). Sections 373 and 374 IPC deal with the buying and selling of minor girls for purposes of prostitution. In the year 1995, the crime rate at the national level for kidnapping and abduction was 1.5, .1 higher than that of 1994. The highest rate was in Rajasthan followed by Assam, while such cases in U.P. and Rajasthan constituted 35.2 percent of the total reported cases in 1995 (NCRB, 1995: 227-228).

- e) **Indecent Representation of Women:** The law relating to obscenity is codified in Sections 292, 293 and 294, IPC. In spite of these provisions there is a tendency to represent women indecently in publications, particularly advertisements. Under the scheme initiated by the government in 1984, a NRI could import a foreign feature film into India by paying to the government owned National Film Development Corporation (NFCD). A lot of sex and violence was brought through this despite two censorship checks and it soon became an organised racket. Indecent films, cabaret shows, pornographic magazines all do brisk business.
- f) A new law "**Indecent Representation of Women (Prohibition) Act**", 1986 was passed to combat these features. The Act vests the government with very wide powers, but it has not succeeded in curbing the evil. As shown in the chart in section 8.2, the cases of Indecent Representation of Women increased to 539 in 1995 from 389 in 1994, a percentage variation of 38.6. Andhra Pradesh and Maharashtra together constituted 86.5 percent of the cases in the country in 1995 (NCRB, 1995: 228).

Think it Over - 4

- 1) What sections of the Indian Penal Code apply to the following crimes against women?
 - a) Sexual Harassment
 - b) Molestation
 - c) Sati by a Woman
 - d) Kidnapping and Abduction of Women
 - e) Importation of Girls
 - f) Buying and Selling of Minor Girls for Prostitution
 - g) Obscenity
- 2) What are the laws relating to the following crimes against women:
 - a) Child Marriage
 - b) Trafficking in Women
 - c) Indecent Portrayal of Women
 - d) Sati
- 3) Which states of India rank first in the following crimes against women-rape, dowry deaths, torture/cruelty by husband and relatives, molestation, sexual harassment, kidnapping and abduction, importation of girls, immoral trafficking and indecent representation of women.

8.8 CONCLUDING REMARKS

In this unit we discussed various crimes against women. Beginning with the meaning and scope of violence the unit dealt with the issues of domestic violence, rape, prostitution, sexual harassment, molestation and other offenses like child marriage, sati, female foeticide, kidnapping and abduction of women and indecent representation of women. Different laws relating to each issue or crime against women were described along with their legal implications.

8.9 CLARIFICATION OF THE TERMS USED

Amniocentesis	: Test to detect the health condition of a foetus, mainly for testing any kind of abnormality. In India this is largely used to detect the sex of the unborn child.
Criminal Procedure Code	: Lays down procedural rules for investigation and trial.
Cognisable	: Judicial or legal, liable for punishment.
Female Infanticide	: The custom of killing female new born infants or babies. Banned in India but still prevalent in some regions.
Foeticide	: An act of destroying a foetus or unborn child in the mother's womb.
Indian Penal Code	: It lays down categories of offenses and stipulates punishment.
Trafficking in Women	: Buying and selling or trading in women and girls for sexual purposes.
Violence Against Women	: It includes those crimes which are perpetrated exclusively on women like rape and dowry related crimes.

8.10 SOME USEFUL READINGS

- Government of India, *Country Report IV th World Conference on Women*. Human Resource Development Ministry. New Delhi: G.O.I.
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UNIT 9 LABOUR LAWS

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9.0 AIMS AND PURPOSE

This unit proposes to introduce you to certain important labour laws which are crucial to protect the interest of women as workers. It is expected that after reading this unit, you should be able to:

- understand the context of women's work participation and the constitutional guarantees of gender equality for women both as citizens and as workers;
- explain various early laws and the ILO (International Labour Organisation) initiatives covering the interest of women workers;
- examine the various approaches to women workers as provided in the various Five Year Plans;
- analyse the various labour laws covering social security, welfare, working conditions, etc. of women workers; and
- explain the problems of implementation of these laws.

9.1 INTRODUCTION

This unit deals with the various labour laws in the context of the prevailing working conditions in which women workers work and constitutional safeguards provided for the women workers in India. Ideally, but not in practice women as citizens enjoy not only equal rights along with other citizens of the state, they are also entitled to have special protection in society for their development and empowerment. Various constitutional provisions have been made to meet these

twin objectives and labour laws are enacted accordingly to provide adequate protection to women's interests. In this unit we discuss at length some of these provisions.

We have also explained in this unit the process of growth of labour laws in India from a historical perspective. The ILO (International Labour Organisation) initiatives and its various-conventions providing protection to women workers are discussed. The various Five Year Plans in India have provided broad guidelines for labour welfare. These have also been briefly discussed in this unit. In the following sections we discussed the various labour laws explicitly contextualising them in the constitutional directives and provisions. In the last sections of this unit we discussed the problems of implementation of labour laws in India.

9.2 WOMEN'S WORK PARTICIPATION AND CONSTITUTIONAL GUARANTEES

"The status of any given sections of population in a society is ultimately connected with its economic position which (itself) depends on rights, roles and opportunities for participation in economic activities", as observed by the Committee on the Status of Women in India (CSWI: P. 148).



What is an economic activity? Does it need a relook!
Courtesy: Prof. Kapil Kumar, IGNOU, New Delhi.

Participation of women in economic activities is common in all countries, developed as well as developing. Due to advancement in education, science and

technology an ever increasing number of women are coming out of their homes for gainful employment. At present, roughly one third of the world's labour force is constituted by women, their proportion being highest in Europe and North America and relatively low in the Middle East and Asia. Even in the traditional village community consisting of cultivators, artisans and those performing menial services, women play a distinctive and accepted role in the process of earning a livelihood for the family. Their role in industry too has been significant and they constitute an important segment of our industrial work force. The main concern of this unit is with female workers in industry because our labour laws are enacted mainly for the industrial work force.

The NPP (National Perspective Plan) admits that "over the years there has been little structural change in the employment pattern of women in India".

- i) Only 14% of women are in full-time employment.
- ii) 90% of these are in the unorganised sector, of these 83% are in agriculture and construction.
- iii) Below 10% are in the organised sector.
- iv) The number of working women as percentage of total women in the working age group has been declining and is more or less stagnant in the recent two decades. Here it may be noted that even within the organised sector 90% of the women are employed in unskilled or semi-skilled jobs. The organised sector in India, which consists of public sector and non-agricultural private sector establishments, absorbs less than one eighth of the actual work force of the country.

9.2.1 Concentration in the Unorganised Sector

As indicated there has been a high concentration of women work force in the unorganised sector which is characterised by a high incidence of casual labour. Construction labour is a fairly large sector of casual work, employing women in substantial numbers. According to an estimate by the National Commission on Self-Employed Women, 94% of the total female work force operates within this highly exploited sector. Given the labour market conditions and the existing socio-economic environment, most of the female work force is in the informal, unorganised sector. Employment in this sector is characterised by low pay, long hours of work, low productivity, low skills and lack of job security. There are only a few labour or trade unions/organisations to facilitate the mobilisation of women workers and knit them into a conscious work force.

The organised sector takes advantages of this vulnerable position of the labour force in the unorganised sector. Large industries now find it advantageous to decentralise their production through small scale-registered units. The powerloom industry is a case in point where large segments of artisans and workers are not independent producers but are either employed on piece rate basis or controlled by advances or working on substantiate order for large industrial units" (Shramshakti: p.8-9).

Whether in the organised or unorganised sector, women workers face several constraints which account for their low status as workers. Absence or lack of

enforcement of social and labour legislation hampers women's access to basic employment benefits.

9.2.2 Oppressive Working Conditions

In the absence of adequate protective laws and lack of enforcement of the existing laws, women work under oppressive working conditions in the unorganised sector. However, women's oppression in the job market cannot be isolated from the prevailing situation of women's oppression in society. In a Conference of the Non-Aligned and Other Developing Countries on the Role of Women in Development, in May 1979, it was observed that:

"The roots of women's oppression and unequal position lie deep, within poverty, inequities and unequal utilisation and distribution of resources and power that characterise the present world order, as well as within oppressive social structures and obsolete attitudes that thrive on inequalities of all types".

The problems of women in India are manifold. More than 80% of them live in rural areas. Their lives, livelihood and status are deeply affected by policies relating to agriculture, water, resources, forests, land distribution and utilisation, and employment resulting from agricultural, industrial and technological policies. This is particularly true of poor rural women, especially those belonging to the SC and ST categories.

The present industrial and economic policies of the government again have been responsible for perpetuating the economic crisis among the masses, among whom women are the worst affected. Studies show that modernisation and mechanisation is tending to marginalise women in many sectors. They are also indications that agricultural modernisation/industrial growth policies have tended to widen gender disparities.

The whole move towards modernisation backed by the government in coir, beedi, matches, textiles, tobacco plantations, coal mines and other industries is resulting in a massive displacement of female labour. Between 1974 and 1981 alone 28.64 lakh workers of whom 14 lakhs were women, were displaced by the installation of powerlooms. In the textile, jute and mining industries the employment of women has declined by 30% to 60%. In the electronics, pharmaceuticals and heavy industries it has gone down by nearly 50%. A similar trend towards retrenchment is now emerging in the railways, banks, insurance and post and telegraphs (Working Group of Employment: 58).

Therefore, a perspective plan for women's development has to be related to the total perspective for national development. No development is possible if there exists any contradiction between the two. Hence the provisions of various existing labour laws and the amendments therein, have to be viewed in terms of these broad objectives and the objective of our Constitution which is to secure for all citizens-JUSTICE-social, economic and political and EQUALITY-of status and of opportunity.

In order to understand the growth of labour legislation related to female workers in India we should first of all make an attempt to highlight the different provisions mentioned in the Constitution of India which is the fundamental law of land.

9.2.3 Constitutional Provisions for Gender Equality

As discussed in units 4 and 5 that in view of the prevailing discrimination against women in our society, the Constitution of India provides a number of provisions to protect the interest of women and also to prohibit gender discrimination in the work place. In the sphere of Industrial Law, women have been assigned a special position in view of their unique social and biological responsibilities.

The Preamble specifically declares that one of the main purposes of the Constitution is to secure social, economic and political justice along with equality of status and of opportunity to all the citizens (irrespective of sex).

The Directive Principles of State Policy require that the State shall direct its policy towards securing:

- a) that the citizens, men and women, equally have right to an adequate means of livelihood;
- b) that there is equal pay for equal work of both men and women;
- c) that health and strength of the workers, men and women and the tender age of children are not abused and that the citizens are not forced by their economic necessity to enter avocations unsuited to their age and strength;
- d) the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement, and in other cases of undeserved want;
- e) the State shall make provisions for securing just and humane conditions of work and for maternity relief;
- f) the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial, or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Women's right to equality and participation in all spheres of national life and development is the basic principle of the Indian political tradition. This was acknowledged by the leaders of the national freedom struggle in the historic resolution on Fundamental Rights in 1931 and was reiterated by the Government of India in its resolution appointing the Committee on the Status of Women in India in 1974. Apart from reviewing the rights and status of women in the context of "changing social and economic conditions in the country and new problems relating to the advancement of women," the committee was asked to suggest further measures which "would enable women to play their full and proper role in the building of the nation."

Think It Over

You have studied the oppressive conditions in which women participate in the economic activities of society. It has also been realised that there should be some laws to provide protection to women workers. What has been the constitutional directive in this regard?

9.3 GROWTH OF LABOUR LEGISLATION

Though the bulk of the labour legislation has been enacted after independence, yet its origin can be traced to 1837 when, following the abolition of slavery in 1833, the British colonies started importing Indian labour under various types of contracts.

9.3.1 Early Industrial Laws: 1891-1911

The earliest attempts at labour welfare legislation in India were aimed primarily at regulating employment, particularly of children and women, and safety rather than at improving conditions of work, health and welfare. The first international labour conference that met at Berlin in 1890 recommended among other things, the regulation of women and child labour. Pressed by British employers that the recommendations of the Berlin conference be applied to India, the government set up a Factory Commission on whose recommendations the Indian Factories (Amendment) Act was passed in 1891. In this Amendment Act, weekly holidays and rest intervals for all workers were also introduced.



Working in small units - Are they economically secured?

Courtesy: CSR, New Delhi

The beginning of the modern industrial era, which started with the industrial revolution, brought about a tremendous change in the character of work assigned to women. The technological changes of the industrial revolution transformed

the process of production. In India it led to the destruction of cottage and village industries: the backbone of Indian economy. Unemployed village artisans migrated to the urban areas. They joined the urban working class. Economic compulsion forced women of the urban working class and many of the artisan class to work in factories, mills and mines as unskilled wage earners. Due to the changed economic scenario, the majority of working class women found it necessary to work outside the household in order to augment the family income.

During the early stages of industrial development in India, women and child workers were victims of long hours of insanitary conditions of work and low wages. The same working conditions were prevalent in India where for three decades of factory legislation from the First Factories Act in 1891 to the Act of 1911, the labour law only dealt with the hours and conditions of work of women and children. In the area of industry, women were given jobs for which they showed special aptitudes, such as reeling and winding in cotton textile and feeding and receiving in the roving department in the jute textile industry. These occupations later came to be regarded as 'women's jobs'.

In 1905, the Association for Labour Legislation, a forerunner of the ILO, held a conference at Berne and made a number of recommendations pertaining to working hours and working conditions of factory labour. Armed with these recommendations, interested parties in Britain revived their agitation for further factory legislation in India. A Textile Committee in India in 1906 and a Factory Commission in 1907 were set up, on whose recommendations the Factories Act, 1911 was passed. The new amending Act restricted the hours of work as given below:

Table Showing Hours of Work for Men, Women, and Children

TYPE OF WORKERS	TEXTILE FACTORIES	OTHER FACTORIES
MEN	12 Hours a day	No Restrictions
WOMEN	11 Hours a day	11 Hours a day
CHILDREN	6 Hours a day	7 Hours a day

(Imperial Gazette of India, 1908, Vol. 3: p. 197).

Employment in certain dangerous occupations and during night was prohibited for both women and children in this amended Act.

9.3.2 ILO Initiatives Since 1919

In 1919, the International Labour Organisation was set up which was a specialised agency in the field of labour. In their study of the "Law and Women's Work", the ILO described some of the special problems arising out of women's employment." (a) When a woman engages in manual work, she is exposed to special danger which threatens not only herself but also future generations. (b) In addition to her occupational tasks, there are a multitude of domestic tasks which she assumes; house keeping, the care of children and the repair of clothing for members of the family.

The ILO report also pointed out that a working woman would ruin her health if certain measures of social protection were not taken; that her attention to some extent, would be distracted from the collective interests of the workers, and that she may not put the extra effort in taking active part in the trade union movement, and that the prevailing situation would reduce her occupational value and her ability to defend her interests as a worker" (Introduction, p. VIII and IX).

The Royal Commission on Labour in its report in 1931 pointed to a number of shortcomings in the existing statute and suggested its revision. Accordingly, the Factories Act, 1934, was brought into existence which proved to be a landmark in the history of the growth of welfare legislation. The Act was amended, off and on, during and after the Second World War. It was, however, repealed by the Factories Act, 1948.

Women's work and women's employment therefore raise several social and economic problems of female labour. The international standards set by the ILO apply to both male and female workers but there are some instruments specifically concerned with the protection of women workers or embodying provisions applying specially to women. The ILO Conventions Nos. 4, 41 and 89 adopted in 1919, 1934, 1948 respectively are concerned with the night work of women in industrial employment. Convention 89 (1948) lays down that no women shall be employed during the night, being defined as a period of eleven consecutive hours including an interval of at least seven consecutive hours between 10 pm and 3 am.

Recommendation No. 13 (1921) deals with night work of women in agriculture; it states that they should have a rest period during the night of not less than nine hours which when possible should be consecutive.

Convention No. 4(1919) on the employment of women in mines of all kinds provides that no female shall be employed on underground work in any mine.

Think it Over 2

What are the major features of the Factories Act of 1891 and 1911? What protection did these Acts provide to women?

9.4 WOMEN WORKERS AND PLANNING IN INDIA

The Industrial Truce Resolution of 1948 declared that production was possible only with the maintenance of good industrial relations. This could be achieved only by paying due attention to the welfare of workers. The Resolution stressed that immediate attention be given to the problem of housing of industrial labour.

The First Five Year Plan suggested that labour problems should be approached from two angles, namely, the welfare of the working class and the country's economic stability and progress. It recommended that the basic needs of workers

for food, clothing, and shelter must be satisfied. The worker should enjoy improved health services, wider provisions of social security, better educational opportunities, and increased recreational and cultural facilities. The conditions of work should be such as to safeguard his health and protect him against occupational and other hazards. The Plan suggested that employees should enjoy statutory benefits at par with those in factories and plantations.

The First Five Year Plan envisaged welfare measures for women. To spearhead welfare measures, the Central Social Welfare Board (CSWB) was established in 1953 which symbolised the welfare approach to women's problems. The CSWB was also reflective of the community development approach, which envisaged for the first time, the need for organising women into Mahila Mandals or Women's Organisations.

In the Second Five Year Plan it was admitted that much remained to be done in various matters including industrial housing, and that progress could be only gradual. The plan also dwelt in detail on the welfare measures for women workers and stressed that greater attention should be paid to them for protection against injurious work, for provision of maternity benefits, and for opening of crèches for children. The Second Five Year Plan was closely linked with this overall approach to women's issues. The Plan recognised the need for the organisation of women as workers. It also perceived the social prejudices/disabilities that they suffered. It also suggested speedy implementation of equal pay for equal work and provision for training to enable women to compete for higher jobs.

The Third Plan stressed the need for a more effective implementation of statutory welfare provisions and highlighted the need for taking preventive steps and conducting regular surveys against exposures to occupational diseases. The Third Plan also highlighted the need for providing better living and working conditions in the case of agricultural labour and of unorganised industry. The Third Plan pinpointed female education as a major welfare strategy. In social welfare, the largest share was provided for expanding rural welfare services and condensed courses of education. The health programme concentrated on the provision of services for maternal and child welfare, health education, nutrition and family planning.

The Fourth Five Year Plan continued the emphasis on women's education. The basic policy was to promote women's welfare within the family as the base of operation.

The Fifth Five Year Plan emphasised the need to train women in need of income and protection. This Plan coincided with the International Women's Decade and the submission of the report of the Committee on the Status of Women in India (CSWI). The overall task of the CSWI was to undertake a comprehensive examination of all the questions relating to the rights and status of women in the context of changing social and economic conditions in the country and problems relating to the advancement of women.

Influenced by the era that heralded concepts of social justice, the Sixth Five Year Plan recognised women's lack of access to resources as a critical factor impeding their development and, among others, the programme providing joint pattas (titles) to men and women was initiated. However, though the Plan defined the magnitude of women's problems and suggested development strategies, the "Family" rather than "Women" remained the basic unit of development programming.

The Seventh Five Year plan operationalised the concern for equity and empowerment articulated by the International Decade for Women. For the first time, the emphasis was qualitative, focussing on inculcating confidence among women and training them for economic activity and employment. In keeping with the spirit of the Decade, which aimed at integrating women into mainstream national development, the Plan emphasized the need to open new avenues of work for women and perceives them as a crucial resource for the development of the country. The Plan acknowledged the long hours spent by women in activities within the household especially in the collection of fuel, fodder, water, etc., as well as their labour on the family farm or in family business. Currently, the Government of India has over twenty-seven schemes for women, some women specific and others both for the male and female population. These schemes are located in different departments and ministries of the Government of India.

Think Over 3

Have the issues of women workers been adequately focused in the Planning process in India? Has there been any shift in this focus?

9.5 LABOUR LAWS RELATING TO WAGES

Coming to the labour laws and their applicability to women labour in our country, these can be broadly classified in the following groups:

Laws relating to:

- 1) wages;
- 2) social security;
- 3) welfare;
- 4) working conditions; and
- 5) industrial relations.

In this section we shall be dealing with wage laws.

The economic conditions of workers are determined by the wages that they are able to earn. These earnings are the only form of their economic existence. But real earnings are phenomenally low in comparison to the cost of living. In 1961, the wages of only 45 to 49 percent of workers in Tata Iron and Steel Company were such as to meet their minimum needs. The All India Trade Union Congress

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BLOCK INTRODUCTION

BLOCK 3 : LAWS AND LEGAL REFORMS FOR GENDER EQUALITY

In the earlier blocks, you have been exposed to the Constitutional and Legislative Foundation for Gender Equality. Having studied this, the emphasis has been put on the Constitutional foundations for Gender Equality in India with special reference to various Mandates and Omissions as well as different Constitutional Amendments. The present Block deals with the laws and legal reforms for gender equality highlighting the aspects of Special Marriage Act, various forms of violence women encounter in their lives, labour laws etc.

Unit 7, besides understanding the marriage system and the rights of succession and maintenance among Indian women, tries to acquaint the students with some aspects of legal reforms affecting the status of women in India. The main focus of the Unit is to highlight the interface between the secular laws and that of the personal laws. After going through this unit, you would also realise the need for the immediate implementation of the Uniform Civil Code.

Unit 8 focuses not only on the various forms of violence incurred on women but an attempt has also been made to understand and explain the meaning and scope of "Violence Against Women". Various facts related to violence have been supported by vital statistics. Moreover, violence against the girl-child in particular is covered under each form of violence described. An urgent need for a stricter law is felt in the sphere of "Domestic Violence". Registration of crimes has also increased (which is a welcome step) and so is the awareness of legal provisions of women's rights.

In Unit 9 we have tried to introduce you to various labour laws in the context of the prevailing working conditions in which women workers work and which are crucial to protect the interests of women as workers. This unit also highlights some constitutional safeguards provided for the women workers in India and how far these reforms work towards gender equality for women, both as citizens and as workers. As you are already aware, in most of the under-developed countries women work under oppressive working conditions in the unorganised sector, therefore, they are entitled to have special protection in society for their development and empowerment. This unit also focuses on the various labour laws covering social security, welfare, working conditions of women workers etc. At the end of the unit, problems related with implementation of labour laws have been discussed to focus on the ineffectiveness of the laws in controlling the growing atrocities against women or ensuring equal rights for them.

Unit 10 discusses the laws and the schemes introduced for ensuring social security in India and its role in achieving gender equality. It focuses not only on the social security movement in India but also tries to highlight various legislations and government promoted schemes for ensuring social security. This unit is in fact, a continuation of the other units which center around various issues related to laws and legal reforms for gender equality through political and personal laws, criminal laws, labour laws and laws ensuring social security.

9.6.1 Social Security Acts

- 1) Employees Provident Fund and Misc. Provisions Act, 1952.
- 2) Employees State Insurance Act, 1961.
- 3) Maternity Benefits Act, 1961.
- 4) Payment of Gratuity Act, 1923.
- 5) Workmen's Compensation Act, 1923
- 6) Coal Mines Provident Fund and Misc. Provisions Act, 1948.

The Workmen's Compensation Act, 1926 was suitably revised. Social insurance programmes were developed for industrial workers. Provident Funds and gratuity schemes were introduced in most industries. Maternity legislation was overhauled. The Maternity Benefit Act of 1961, provides for maternity leave to women in factories, mines and plantation, including Government establishments. But the Employees State Insurance Act, 1948 does not provide for maternity leave for low paid workers, and neither in the Government nor in the agricultural sectors are there any legal rights for women.



Growing food for the society - Does the society care for the growers?

Courtesy : Prof. Kapil Kumar, IGNOU, New Delhi.

Protective legislation and maternity benefits have gone a long way in ameliorating the conditions of women labour. At the same time, these very measures have proved to be a disincentive for many enterprises to employ women. White collar

jobs in commercial houses, shops, hotels, tourism, etc., have added further fillip to women's employment. The changing family structure and value system as well as the economic needs and the spread of women's education have brought a large number of women into the job market, and the number of women job seekers is increasing.

Maternity Benefit : Article 42 of the Constitution of India directs the State to make provision for securing just and humane conditions of work and for maternity relief. In pursuance of this objective, the Parliament has passed the Maternity Benefit Act, 1961 to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity and other benefits. This enactment consists of thirty sections and has been amended in 1970, 1972, 1973, 1976, 1988 and recently in 1995 to make it more effective and beneficial for women. The Act is applicable to every establishment being a factory, mine or plantation and any other establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances [Section 2(a)]. This is applicable to every shop; establishments in which ten or more persons are employed on any day of the preceding twelve months [Section 2(b)]. The State Government is empowered to apply the provisions of this Act to any other establishment whether industrial, commercial, agricultural or otherwise by giving a notice of not less than two months.

According to Section 5 (1) of the Act every woman is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is, the period immediately before the day of delivery and the actual day of delivery and any period immediately after the day.

It needs to be appreciated that unlike men, employed women perform two roles—that of a career woman and of a housewife. Both the roles are equally demanding on her energies. Since a woman's role as a housewife is basic to the smooth functioning of our family and social systems, her work role needs to be modified so that role conflict is reduced to the minimum. It calls for a rethinking and restructuring of her work schedule outside the home, and giving her preference in certain kinds of occupations.

9.6.2 Social Welfare Measures

The need for organised welfare for industrial labour was forcefully brought out by the Textile Labour Inquiry Committee, which submitted its report, to the Government of Bombay in 1937. In pursuance of the report, the Government of Bombay addressed itself to formulate schemes for labour welfare, both inside and outside the factory. The Government felt that workers suffered from poverty and good employers should take care of their workers. They also felt that if employees were properly looked after, they would be stimulated to work better and would be loyal to the company. In some other situations, labour welfare activities were used as an inducement to attract labour and to stabilise the work force. Whatever the motives, the labour welfare movement got impetus as the employers started taking more and more interest in this activity.

Through its activities the NCW has been able to increase awareness amongst women and people at large on the role and functioning of the NCW as an effective instrument of change. Its initiatives have encouraged better social mobilisation of women and effective group action at various levels. In many cases it has been able to provide speedy justice to women. The NCW's sustained interaction with NGOs – government officials – resulted in reaching out to women at all socio-economic levels, including the grassroots level. Nowadays, NHRC, SC/ST Commissions, Media personnel, NGOs, Government Departments, seek to use the NCW as a Resource Centre for Information and know-how on women's issues.

6.7 CONCLUDING REMARKS

The NCW was set up specifically to be an autonomous statutory body, an independent Commission that would have the 'independence' to interact with the government – the state as well as society accountable for women's condition. It was even thought at one time to model it on the concept of the Lok Ayukt so that it would be particularly directed to redress discrimination against women, the inequality between men and women across all barriers.

In order to perform this role of acting as a guardian of women's rights to prevent as well as to make amends for injustice done to women, by definition it has to be genuinely independent both in its constitutional construction as well as in its operational instruments. It would be more effective if it is vested with some more investigative, prosecuting and implementing powers within the broad framework of our constitutional scheme of judiciary and executive and Parliamentary system of democracy.

6.8 CLARIFICATION OF THE TERMS USED

- NGO : Non-Government Organisation.
NHRC : National Human Rights Commission.
NSSO : National Sample Survey Organisation.

6.9 SOME USEFUL READINGS

- Government of India, (1990) *The National Commission for Women Act*. National Commission for Women. New Delhi.
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days in a week. No person can be allowed to work in a mine for more than ten hours in any day inclusive of overtime. The Government has, however, the power to make rules providing for exemptions in respect of these limitations under certain circumstances.

- 1) No woman shall notwithstanding anything contained in any other law, be employed:
 - (a) in any part of a mine which is below ground;
 - (b) in any mine above ground except between the hours of 6 AM and 7PM
- 2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

Plantation Act, 1951

Plantation Labour Act, 1951 also makes provision for safeguarding health of the workers by requiring employers in plantations employing 15 or more workers to provide facilities of drinking water, arrangements for proper conservancy and medical facilities; it also provides for welfare amenities like canteens, (if the number of workmen employed is 150 and above); crèches (if the number of female workers employed is 50 or more), recreational facilities, educational facilities (if the number of children between the ages six and twelve of the plantation employees is 25 and above), housing facilities and appointment of welfare officers to look after the welfare facilities etc.



Do the plantation workers get the stipulated social security as given in the Law?

Courtesy: Prof. Kapil Kumar, IGNOU, New Delhi.

Plantations employing 50 or more women are required to provide and maintain a suitable crèche for children below the age of six years of female employees. Section 25 of the Act forbids employment of women and children between 7pm and 6am. This provision does not however apply to midwives and nurses employed in such plantations. There are various other miscellaneous laws in the field of labour which cover various other aspects, e.g.

- 1) Apprentices Act, 1961
- 2) Dock Labourers Act, 1934
- 3) Dock Workers Act, 1948
- 4) Employment of Children Act, 1938
- 5) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

Learn From Your Experience 2

Visit a factory or a mine or a plantation to see the condition in which women labourers work. Try to find out whether the minimum working conditions are given to them.

9.8 PROBLEMS OF IMPLEMENTATION OF LABOUR LAWS

Various changes in personal laws or criminal laws and labour laws have been made to protect the rights of women and ensure their equality but unfortunately these laws prove to be ineffective in controlling the growing atrocities against women or ensuring their equal rights economically, politically or socially.

9.8.1 Ineffective Government Functionaries

Not only are the laws insufficient and ineffective but even the government functionaries appointed under the various laws like inspectors under the Factories Act or under the Contract Labour (Regulation and Abolition) Act have not performed their duties. Therefore, there should be an implementational machinery to bring actual relief to women workers wherever they are located. More changes are needed in the areas of labour laws since different studies have shown that both maternity benefits and minimum wages continue to be denied to women workers.

Therefore, changes should be made in the general laws relating to workers and laws which specifically apply to women workers so that women workers can live their lives with dignity.

9.8.2 Lack of Legal Awareness

Presently women are not fully aware of the productive and social worth of their labour and there is near total ignorance particularly at the grassroots level, about the various labour laws provided for them. Therefore, the Ministry for Labour should set up a standing committee especially for unorganised labour to promote and develop a strong organisational base to improve their working conditions.

Women workers employed in the free trade zones comprise a particularly vulnerable group due to the differentials in application of labour legislation in

these zones. Hence women's interests need to be protected in this area and support services provided.

Legal aid programmes for women have to be developed which should concentrate on the following areas:

- 1) to create legal awareness amongst the people and especially women, by making them aware of the rights and duties conferred upon them by various legal aid programmes;
- 2) to hold legal aid camps where lawyers provide free legal advice;
- 3) to conduct para-legal training programmes for social workers and voluntary agencies and mobilise them for supportive action.

Moreover, an independent agency at the center should be formed to follow-up the proper implementation of laws for women.

Think it Over 5

What are the major problems of implementation of labour laws relating to women? How can these problems be best solved?

9.9 CONCLUDING REMARKS

Women form an important segment of the marginalised sections of our society. Most women workers work in oppressive working conditions. The Constitution of India provides women special protection in view of their subjugated position in society and their special reproductive responsibilities. Accordingly various labour laws have also been enacted. In this unit, we have discussed some of the vital labour laws in terms of their locations within the constitutional provisions. Enactment of laws is not sufficient to provide women the required protection in our society. It needs a concrete political will from above and societal pressure from below for the implementation of the same.

9.10 CLARIFICATION OF THE TERMS USED

- Maternity Relief** : refers to leave given to pregnant women for fixed period of time.
- Organised Sector** : Formal sector having large scale operation, modern technology; regulated market, regulated labour and skilled labour etc.
- Segmentation of Labour** : division of labour.
- Unorganised Sector** : informal sector having small scale; unregulated market and unregulated labour etc.

9.11 SOME USEFUL READINGS

- CSWI (1974) *Towards Equality: Report of the Committee on the Status of Women in India*. New Delhi: Govt. of India.
- Government of India, (1988) *National Perspective Plans For Women's Development 1988-2000 AD*. New Delhi: MHRD.

UNIT 10 SOCIAL SECURITY

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10.0 AIMS AND PURPOSE

In this unit we will discuss the laws and the schemes introduced for ensuring social security in India and its role in achieving gender equality. After you have read this unit you should be able to:

- explain the concept of social security;
- understand the social security movement in India;
- describe the laws and schemes for achieving social security;
- evaluate the impact of these measures on ensuring gender equality;
- appreciate the limitations of law as one of the tools for ensuring gender equality; and
- understand the inherent weakness of a developing country like India with its manifold problems of poverty, population, industrialisation etc. to ensure social security.

10.1 INTRODUCTION

This unit introduces you to the concept of social security, the reasons for its emergence, the kinds of eventualities it covers and its general impact on the Indian population and on women in particular. This unit is a continuation of the other units in this block which focuses on the laws and legal reforms for gender equality through political and personal laws, criminal laws, labour laws and laws ensuring social security.

India being a secular and democratic country is guided in its administration, by principles of liberty, equality and justice to all without any distinction of caste, religion, sex, political opinion, place of residence, etc. To transform these objectives into reality, several laws have been enacted and various schemes have been implemented. For the purpose of this unit we will focus on social security legislations, their scope, limitations and impact on realising equality among all. The Constitution of India guarantees equality, both to men and women and ensures for them equal protection of the law. However men and women are biologically different from one another and in spite of guaranteed legal equality, they are treated differently, due to the prevailing social and cultural norms. Discrimination on the ground of sex even when based on social and cultural attributes leads to gender inequality. It is the function of law to ensure that gender equality is achieved for all.

Other units focus on different aspects of gender equality. We will therefore concentrate on and try to understand the role of law in ensuring social security and helping in achieving gender equality.

10.2 CONCEPT OF SOCIAL SECURITY

In this section we shall be dealing with the concept of social security, the reasons for its emergence, the underlying principles for its continued existence, coverage in different countries, extent of protection granted under the social security legislations and the categories of people covered under such schemes.

10.2.1 What is Social Security?

Social Security is a very old concept. However its emergence in the present form is of recent origin. In the changing socio-economic scenario, where individuals can no longer ensure security to their person for themselves or their dependants, the community and/or the State has to intervene in their lives to protect them.

The concept of social security is born out of problems of economic insecurity. It is concerned with attempts to secure an income for the family where its income is interrupted by unemployment, sickness, accident, retrenchment, and loss of support by death or by disability and also to meet the exceptional expenditures arising due to birth, marriage, education of children and/or death in the family. Social security measures in fact can broadly be regarded as income maintenance devices.

10.2.2 Underlying Principles of Social Security

In earlier days the provision of social security was looked after by the family system, particularly when it consisted of joint families in which several generations of people lived together under the same roof.

Disintegration of the joint family structure began with the advent of industrialisation and urbanisation. Family as a traditional support mechanism proved to be inadequate when faced with abnormal economic situations. In a nuclear family where the number of dependants exceeds the earners, it is very likely that poverty and destitution may be the fate of all members of the family. At a time of major disaster like the death of the breadwinner, unemployment or sickness, family resources do not last long unless there are sufficient savings to cope with such eventualities. Social security through state agencies becomes extremely important in such situations.



Victims of gender based social security?

Courtesy: Debal Singha Roy, IGNOU, New Delhi.

Need for social security also emerges out of the understanding that the eventualities like old age, disability and sickness etc. can be covered from the personal contributions made by way of taxes paid prior to the happenings of such contingencies. Another way of looking at social security measures is that society and the government are responsible for guaranteeing a decent standard of life to its citizens. Social security system is meant not only to prevent people from starvation and untimely death but also to assure them a full life. In other words, the aim of social security varies from universal protection against poverty but also includes security against the loss of an acquired standard of life.

State ensured social security might not cover all risks under it. Different states provide protection for certain contingencies and risks. While the states are taking initiative to cover these risks, social security has shifted away from the concept of charity and voluntarism to an institutional and secular concept that could be demanded through organised efforts of the people without any distinction of sex, class, caste or religion.

The concept of social security has two main ingredients. One is social assistance and the other is social insurance. The concept as it has come to stay shows a progressive shift from social assistance to social insurance. It is no longer the sole responsibility of the State to provide for all the contingencies. But the State along with the employees and the members of society together furnish the means for eventualities and meeting various risks.

Do You Know?

In Europe the concept of social security emerged out of the economic depression of the 1930s. Various governments realised the need to adopt and implement policies that would guarantee a decent standard of living to its citizens. Income security, medical care, family support for children, schemes that would support education, shelter, food, leisure etc. were attempted to be met. Different countries extended the scope of social security to cover different contingencies, ranging from sickness, disability, and old age to death and from child support to weddings and holidays.

In England the concept of social security could be traced to the enactment of 'The Poor Law' in the 16th century and its subsequent improvements culminating in the Beveridge Report after the Second World War. According to the law based on the Beveridge Report the term social security came to stand for income maintenance. The State was to take initiative in order to secure an income when it was interrupted by unemployment, sickness, accident, retrenchment or death of a person and to meet exceptional expenditures arising out of birth, death or marriage. From the cradle to the grave, became the scope of social security.

In the United States of America the central function of social security is to provide for cash income to individuals and families in a limited sector of the population under specified conditions. The scope of social security in the USA is much wider than the one covered under the Beveridge Report in England. Family support for children is one such extension.

Social security in Canada covers three broad contingencies. They are interruptions of earnings due to unemployment, sickness, permanent disability, old age, or premature death, occasional requirements of expenditures arising out of the need for medical care, funeral costs etc. and insufficiencies of income to meet the cost of child maintenance. Here it appears that the concept of social security is not merely to prevent death from starvation but to provide for the opportunity to lead a full life. Under this scheme of things health, education, food, shelter, leisure and cultural activities are also covered.

In Nordic countries seven major components are covered under social security schemes. Health including public health, medical treatment and sickness, old age and disability, occupational injuries, expenditure on employment and unemployment services, family welfare including anti-natal and post-natal care for mothers, schools, creches, school meals, home help, child support and holidays, public assistance and relief to military and war casualties.

All these contingencies have a social objective. It envisages a structure of society in which each member enjoys the highest material well being compatible with potential productive resources. Social security is no longer mere provision of cash benefit. These schemes are more comprehensive both in regard to the beneficiaries covered and the risks against which protection is provided. The concept of social security also has a complex economic connotation. It involves collection of large sums of money from the general population and allocation of these sums to various groups of beneficiaries.

In the coming sections we will study how this concept has evolved in India.

Think it Over 1

What are the underlying principles of Social Security? Can you find an answer?

10.3 SOCIAL SECURITY MOVEMENT IN INDIA

After understanding what social security is, and how it has flourished in some of the industrial, capitalist and socialist countries, we would now like to focus attention on the development of this concept in India, a developing, socialistic welfare country. The concept of social security has been a dynamic concept. Primarily it has been evolved around the needs of industrial workers. However, with the adoption of welfare state model in India, its scope has been extended to cover all sections of society in order to ensure that all citizens acquire a decent standard of life either through productive life or through social security measures. One of the major problems of developing countries is to raise the financial resources required for successful implementation of social security measures.

10.3.1 Historical Background

Social security in India has been understood as a form of social protection. It was available to the needy and the unfortunate ones in the joint family set up and in the caste system. An additional help was provided from individuals and institutions through the guilds, panchayats, orphanages, widow's homes and other charity centers. Joint families played a very crucial role in protecting their members against hardships arising out of various contingencies like unemployment, sickness, widowhood, old age, etc. The benefits covered were medical help to the sick, infirm, weak and the old, and food and shelter to orphans, widows and other needy persons. In the case of charitable institutions the corpus for such assistance was raised through donations and contributions from members of the community especially from wealthy and philanthropic individuals. This notion of help was primarily based on the concept of charity and not as a matter of right. This therefore had some drawbacks, e.g. help may not necessarily reach the most needy and the deserving persons.

Under the influence of modern industrial development, Indian society too underwent a gradual metamorphosis. Industrialisation introduced new form of a society based on class rather than on caste. With industrial revolution and its organised work force, the concept of social security also matured from charity to right.

10.3.2 Factors that led to the Social Security Movement in India

The initial understanding of the contemporary concept of social security revolved around the needs and requirements of industrial labour. However, historically it could be traced in its most rudimentary form as a social protection. To begin with, preventive measures like industrial safety requirements, vocational training and rehabilitation were considered to be the appropriate actions for meeting various contingencies of industrial life. Later it was realised that mere preventive measures were not sufficient to cover all the risks of industrial life, which a labourer may face. The Social security measures were designed to meet various eventualities in order to ensure that the labourers are not exposed to want and privation. Presently the concept is understood to cater not only to industrial labourers but also to all those who suffer from destitution and deprivation, including destitute women, the elderly and the poor.

According to the National Commission of Labour, social security envisages that the members of the community shall be protected by collective action against social risks, causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them. The underlying idea being that the citizen who has contributed or is likely to contribute towards the welfare of the country should be given protection against certain hazards of life. Generally the characteristics of the social security schemes are: to provide for benefit in cash and/or in kind such as medical relief. Beneficiaries, on being qualified, are entitled to the benefits as a matter of right; benefits are paid as a relief against temporary or permanent contingencies.

10.3.3 Nature of Social Security in Pre Independent India

Large-scale factories were started in India from 1850 onwards. Industrial development was slow and confined to the textile industry to start with. By 1881, the factory system had been firmly established in India. However, workers had not organised themselves well till about the 1920s. They continued to work under harsh and undignified conditions. The government showed little concern for their well-being.

The year 1877 registered the first unrest for the improvement of wages among the Indian workers in Nagpur at the Empress Mill. This led to the passing of the Factories Act in 1881. The first trade union was formed in 1890 as the Bombay Mill Hand's Association. Though this marks the beginning of the organised labour movement, it was neither well organised nor strong enough to fight for its demands. The government was not really interested in the welfare of the workers; therefore little or no attention was paid to social security and protection against socio-economic contingencies.

The Fatal Accidents Act 1885 required the employer to pay compensation to the worker or his dependants if it was proved that the accident was not due to obvious negligence on the part of workers.

This was in fact a period of unconcern towards the social security movement in India. However, with the formation of the International Labour Organisation in

1919, public opinion was created in favour of social security measures. There was some hectic, though haphazard, activity based on social justice thereafter. ILO influenced social legislations in India, both directly and indirectly. The Whitely Commission was appointed which led to the establishment of a powerful All India Trade Union Congress to represent in the ILO.

After the end of World War I and with the rise of nationalism in India, the British Government attempted to accommodate the just demands of the Indian leaders. The introduction of Dyarchy in the British provinces gave Indians a chance to administer subjects like education and local Government. This period witnessed the passing of two Act, viz. The Workmen's Compensation Act, 1923 and the Maternity Benefit Act in various provinces. This provided security against the disability caused during the course of employment and maternity benefit for women workers. Bombay presidency took the lead in passing the Bombay Maternity Benefit Act in 1929.

These Acts covered only a small fraction of the wage earners in this country. Even the Labour Investigation Commission of 1931 expressed the view that these measures need to be extended so as to cover not only urban factories but also mines, plantations and communications etc. Unfortunately, these Acts remained more on paper rather than being implemented in reality.

With the outbreak of World War II, there was an acute shortage of work force. Therefore under the Defence of India Rules, several concessions were made for the benefit of the working class. As a labour member of the Viceroy's council, Dr. Ambedkar could influence the government's labour policy. Further the Constitution of the Standing Labour Committee and the Indian Labour Conference provided a forum for discussing labour related issues.

The government directed its attention to the introduction of the sickness insurance scheme in India. The matter was referred to the then provincial governments. A majority of the provincial governments were sceptical about the success of this scheme due to the migratory nature of the workers and the non-availability of efficient medical services. The issue thus lapsed in spite of the realisation of its importance. The Government of India decided to pursue the matter in areas where medical services were made available and the employers and the employees contributed towards the scheme. A fresh proposal was therefore made by the provincial governments in 1935.

In 1937, the Bombay Government declared its vision regarding the protection of industrial workers by developing a comprehensive system of social insurance. A contributory scheme for health insurance was prepared. It had provisions for sickness and old-age benefits. The Bombay Textile Labour Enquiry Committee formulated a sickness insurance scheme, which was implemented in Bombay and Ahmedabad and later, extended to other provinces. The recommendations of the various Labour Enquiry Committees compelled the Government of India to take some steps in this direction. The government placed the recommendations before the Labour Minister's conferences of 1940, 1941 and 1943. Under the Chairmanship of Professor B.P. Adarkar, the Government appointed a

commission, to draw up a health insurance plan for workers in India. Around the same time, under the recommendations of the Tripartite Labour Conference, the Labour Investigation Committee was appointed under the Chairmanship of Shri.D.V. Rege to investigate the question of wages, earnings, employment, housing and social conditions. In addition to this, the Government of India appointed a Health Survey and Development Committee under the Chairmanship of Sir Joseph Bhoré.

The Adarkar plan was further modified by ILO experts and the modified plan was submitted as a bill in 1946. This was later passed as the Employees' State Insurance Act, 1948. The strong desire of providing protection against contingencies, viz. sickness, disability and maternity culminated in the formation of integrated schemes for social security planning in India after independence.

10.3.4 Nature of Social Security in Post-Independent India

After the adoption of the Constitution in 1950, and with the beginning of the era of planned development, the government realising the importance of social security measures for the working class, enacted a number of Acts for their welfare and protection against unwarranted contingencies of life.

This period marks a distinctive phase in the development of social security movement in India. For the first time an integrated scheme covering various contingencies of life, viz. employment injuries, sickness, maternity, etc. was introduced on a contributory basis. Some state governments adopted a new concept of social assistance by introducing schemes like old age pension for the aged and the destitute. Uttar Pradesh was the first state to introduce such a scheme. The Compulsory Provident Fund scheme was introduced in 1952 to cover all factories.

Several Acts have been enacted in India for ensuring social security for the weaker sections of the community. However there is no single comprehensive and integrated social security scheme, which would cover all the industrial employees in respect of various unwarranted contingencies. However, one has to bear in mind that the availability of economic resources is a decisive factor, which determines the shape and size of the governmental programme. The poorer the country, the greater is the need for social security measures but the lesser is the governmental capacity to finance the same. However, a minimum needs programme has to be evolved to take care of various contingencies of life which the common man faces.

Think it Over 2

The social security measures of pre-independent and post-independent India have their distinctive features. What are the commonalities and differences in the social security measures between two periods?

10.4 SOCIAL SECURITY LEGISLATION IN INDIA

In this section we intend to focus on the existing laws ensuring social security in India. Here we will study the scope of these Acts and the extent of various contingencies they cover. It is very important that we understand the efficacy of these laws and programmes. All the social security programmes have originated in the desire to do justice by providing protection and assistance to the people who cannot, for various reasons, protect themselves against unwarranted contingencies. Not all social security measures have a built in component, which could bring about and achieve gender equality. We will therefore cover the major social security measures in general.

10.4.1 The Workmen's Compensation Act, 1923

The Workmen's Compensation Act, 1923 is the first piece of social security legislation in India. It makes the employer liable for any injury suffered by the employee as a result of an accident arising out of and during the course of employment. The Act extends to workers in the whole of India except for certain specified categories of employees that have been exempted from the purview of the Act, e.g. members of the armed forces. However the government has the power to include any class of persons employed in hazardous occupations in its ambit. Wherever the Employees' State Insurance Scheme (ESI) is in force, this Act does not apply because the ESI Scheme provides benefits both in the event of disablement and of death.

Under this Act all the injuries arising out of and during the course of employment or from an occupational disease are covered. It is equally applicable to men and women employees. The Act seeks to compensate the employee for the loss of earning and earning capacity due to an accident.

The Act provides for timely help to workers and their families. The quantum of compensation depends on the monthly wages and the age of the workman at the time of disablement or death. In case of death, the minimum compensation is Rs.50,000/- and in case of permanent and total disablement, the minimum compensation is Rs.60,000/-.

10.4.2 Employees' State Insurance Act, 1948

This Act provides for medical care, cash allowance during sickness, maternity and injury during employment, pension for the dependants on the death of the worker due to injury in the course of employment and funeral expenditure of an insured person.

This Act is applicable to all factories other than seasonal factories, where 20 or more employees are working and the amount of their wages does not exceed Rs.1000/- per month. All those workers earning more than Rs.1000/- per month and those working for the Indian Army, Navy or Air Force are exempted from the purview of this Act. The application of the Act may be extended to any other establishment, by an appropriate government, after giving six months notice of its intention to do so.

This Act is applicable equally to men and women employees. The objective of the Act is to provide for medical assistance to the employee as well as to assist the family to cope with such a contingency.

10.4.3 Employee's Provident Fund Act, 1952

This Act applies to every establishment employing 20 or more workers. An establishment once covered under this Act shall continue to be governed by it, provided the total number of employees does not fall below 20. However, the Central Government has the authority to extent its application to any non-factory establishment and to establishments employing fewer than 20 workers.

The purpose of this Act is to provide for a better future for the industrial worker after his retirement and for the benefit of his dependants in case of death while in employment.

For the purpose of this Act, an employee is not only a person who has been employed directly by the employer, but also a person employed through a contractor. It also includes a person employed in connection with the work of the factory, thus bringing within its purview home based workers like a bidi worker, who rolls the bidis at home but his work is connected with the activity of the factory.

The Employees' Provident Fund Scheme provides for the payment of a certain amount to the employee after his retirement. The fund is created by contribution from employees and the employer in a certain specified proportion. An employee is also entitled to withdraw a certain amount from his own contribution in the case of certain contingencies e.g. children's education, their marriage or for the employees housing etc.

Under this Act, the Central Government may, by notification frame a scheme to be called the Employee's Family Pension Scheme for the purpose of providing family pension and life assurance benefits to the employees of any establishment or class of establishments to which this Act applies. A family pension fund is created by diverting 25% of the portion of the employer and employees' contribution from the Employees' Provident Fund with an additional contribution from the Central Government to meet all the expenses in connection with the administration of the Family Pension Scheme. Out of this fund a portion is paid as family pension to the survivors of employees who die while in service before reaching the age of superannuation.

10.4.4 The Maternity Benefit Act, 1961

This is one of the Acts that regulates the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefit and certain other benefits. The Act is applicable to all the establishments, where persons are employed for the exhibition of equestrian, acrobatic and other performances, as well as to every shop and establishment in a state, where 10 or more persons are employed or were employed on any day of the preceding 12 months.

The Act provides protection to pregnant women in the nature of leave with pay for a period of 6 weeks before and 6 weeks after confinement. Further payment of Rs.25/- as medical bonus is paid to the employee if the employer does not provide for the pre-natal and post-natal care. Nursing breaks of the prescribed duration are also allowed to the new mother, who is back on duty after delivery.

Learn From Your Experience 1

Very recently some changes are introduced in the Maternity Benefit Act. Try to collect this information from a female government employee and a female private sector employer. Also try to collect their opinion about the attitude of the employers on this Act. After collecting this information develop a note of about two pages on the awareness and obstacles in the Maternity Benefit Act. You may like to exchange your note with other students of this course in the Study Centre.

An employee, who is engaged in the social responsibility of procreation, deserves to receive certain benefits from the community and the employer where she works. Recently, the practice of granting paternity benefits to new fathers, for the responsibility they have to undertake for the care of the wife and the newly born child has also been introduced. This requirement is inevitable, where the nuclear family is becoming the norm.

10.4.5 Payment of Gratuity Act, 1972

This Act provides a scheme for the payment of gratuity as a token of appreciation for the services rendered during the period of employment. It covers employees engaged in factories, mines, oil fields, ports, plantations, railway companies, shops and other incidental establishments. For its application, this Act requires that there are 10 or more employees engaged on any day in the preceding 12 months in the concerned establishment.

Under this Act, gratuity shall be paid to an employee on the termination of his employment after he has rendered continuous services for not less than five years. The payment is made on his retirement or resignation or on his death or disablement due to accident or disease. This amount definitely helps the retiring person to plan for his old age or his survivors in case of his death.

10.5 GOVERNMENT PROMOTED SCHEMES FOR ENSURING SOCIAL SECURITY IN INDIA

In this section we propose to discuss the various social security schemes promoted either by the central government or by state governments. Several schemes have been introduced for providing protection against various contingencies. However not all these schemes have a bearing on gender perspective. We would like to focus on some of those social security schemes that are designed to lead to gender equality. For many of the schemes introduced by the central

government, the administration and implementation lies with the state governments. Not all the schemes that are introduced by the central government are implemented in all the states, and even where they are implemented they show variations in the manner in which they are implemented. Association of many of the voluntary organisations with the implementation of these schemes is a noteworthy feature of the success of many such schemes.

10.5.1 Integrated Rural Development Programme (IRDP)

This is a sponsored programme funded by the central government and the state government on a 50:50 basis. The objective of the programme is to assist small farmers, marginal farmers, and agricultural labourers with special safeguards to Schedule Castes, Schedule Tribes, women and children in rural areas. With the help of this scheme, the above-mentioned sections of the population are assisted to cross the poverty line by encouraging them to take up self-employment.



Poverty squeezing the options of life!
Courtesy : CSR, New Delhi.

The guideline for this programme defines 'poverty line' in terms of annual family income from all sources. A family is below the poverty line if the annual income of the family does not exceed Rs.6400/-. This programme helps a family to reach an annual income of Rs.6400/- and further raise its earning capacity by training, skill development and by providing raw material or financial assistance. The poorest of the poor are given priority as beneficiaries under this scheme.

Under this programme, a family is regarded as a unit. Therefore, the concept of gender equality among the members of the family is not focused upon here. However, there is an attempt to give equal access to the benefits arising from the various schemes under IRDP to both men and women.

10.5.2 Development of Women and Children In Rural Areas (DWCRA)

This is a sub-scheme of IRDP with the primary objective of focusing attention on the women members of rural families below the poverty line. The purpose of the scheme is to provide opportunities for self-employment to women. The need for this programme was felt because women members of the IRDP families were not able to avail of the benefits of IRDP.

The distinguishing feature of DWCRA is that it is a group strategy as against family as a unit of assistance under IRDP. The women members of DWCRA are to form groups of 10 to 15 women each for taking up economic activities suited to their skills, aptitudes and the local conditions. The group strategy was adopted to motivate rural women to come together and to break social bonds, which denied them opportunities of self-fulfillment and income generation.



Training for Gender Equality.
Courtesy: CWDS, New Delhi.

Under this scheme assistance is made available to a group of women, so as to cover a one-time grant of Rs.15000/-, being equally contributed by the state and

the central governments and the UNICEF. This assistance may be used for the purchase of raw material and for marketing efforts as also to pay an honorarium to a group organiser, infrastructural support for income generating activities and also for child care facility.

The programme lays utmost stress on training for motivation, attitudinal change and awareness building and thus leading to gender equality.

10.5.3 Jawahar Rozgar Yojana (JRY)

The primary objective of this programme is to generate additional gainful employment for unemployed and under-employed persons including both men and women. The assistance for this programme comes from the state and the central government on a 20 : 80 basis, for the purposes of social forestry, building bunds, drilling wells, developing land and terracing etc., building schools, balwadies and anganwadies.

The wages under JRY are paid on the basis of the Minimum Wages Act, 1948. Further the benefits of crèche; fresh drinking water, etc. are also to be made available to the workers.

10.5.4 Prime Minister's Employment Scheme

This scheme has been introduced to encourage and help educated unemployed persons to start their own business or enterprise. This scheme was to generate self-employment among urban and rural youth. Under this scheme, an entrepreneur is entitled to receive a loan for the project proposal up to the amount of one lakh rupees. A large target has been assigned to Maharashtra, where a large number of young men and women have taken benefit of this scheme.

Under this scheme, 15% or a maximum of Rs.7000/- of the amount comes from the central government in the form of assistance. Upto 95% of the estimated project amount can be raised as loan from the nationalised banks or finance institutions. Only 5% of the proposed estimate has to be raised by the individual concerned.

Assistance in the form of conducting training programmes, holding industrial fairs and providing consultations with experts is also covered under this scheme.

10.5.5 Women's National Development Fund

The National Development Fund has been constituted to help women to build their capacity and to encourage development among women. The main purpose of this fund is to help poor women to build their own resources in order to bring about social change. It can be used to generate employment, to raise funds, to help in releasing mortgages and to provide for social needs on sudden requirement. Involvement of local voluntary organisations is encouraged under this scheme.

10.5.6 Welfare Schemes for Women

Several schemes have been introduced for the welfare of women. Under these schemes various supportive mechanisms have been introduced to help women in difficult situations to cope with their lives. Following are some examples of such schemes.

- Institutional Support for Destitute Women
- Maher (Maika) Yojana
- Rescue Homes
- District Dakshata Samiti
- Training Institutes for Women
- Scholarship for Professional Training
- Assistance for Self Employment
- Assistance to Illiterate Women for their Daughter's Wedding
- Rehabilitation of Devadasis
- Educational support for the Children of Devadasis
- Hostels for Working Women
- Crèches for Children
- Saving Incentive Scheme for Women
- Reservations for Women in Government and Semi-Government Undertakings.

Think it Over 3

The Government of India has initiated various schemes for social security of women in India. Highlight the major features of these schemes. In your opinion is there any scope of improvement in these schemes?

10.6 SOCIAL SECURITY AND GENDER EQUALITY

In the earlier two sections, we have studied some of the Acts and the schemes that attempt to achieve social security for a certain group of people under certain conditions. In this section we would like to focus our attention on finding out the extent of gender equality attempted to be guaranteed through these social security measures. It is very important to understand the difference between gender-neutral and gender-focused approach of laws and policies. Most of the Acts and the schemes apply to men and women without any distinction. It is therefore expected that both women and men be equally benefited by them. Unfortunately that is far from the reality. In a patriarchal stratified society like that of India, women rarely receive any benefits even when they are specifically meant for them. The Maternity Benefit Act is meant to provide special benefits for women. Unfortunately, there is a tendency to avoid providing these benefits by searching for loopholes in the Act, either by keeping the total number of working women below the eligible number or by not employing young, newly married women in the undertaking.

10.6.1 Limitations of Social Security Measures for the Purpose of Achieving Gender Equality

In most of the social security laws, the focus is on labourers in organised sector e.g. factory, company, government offices etc. The contingencies of sickness, old age, accidents, etc. that the organised workers face is covered under these laws. However 90% of working women are engaged in the unorganised informal sector, mainly as self employed or casual workers. Both these categories are not covered under the earlier mentioned Acts. Therefore the women, who benefit under the Acts, are only those who are engaged in the organised sector or those who are related to the men who are working in the organised sector. When women benefit under the latter category, it is merely as a by-product of the existing legal system. Here women do not receive any benefit as a matter of right but merely as a recipient of the rights of male relatives.

Under the government sponsored schemes the situation is slightly better. Under most of the schemes, women are specifically mentioned as beneficiaries. Those women who qualify under the schemes are entitled to the benefits provided under them. The purpose of the schemes has been to help women to upgrade their skills, expand their resources, and generate opportunities for a better life and to create an atmosphere of healthy and equal status among men and women.

Gender equality is not the same as gender neutrality. The laws and the policies that do not refer to gender, do not necessarily lead to gender equality. Most of the times they are gender biased. They are biased in favour of men and perpetuate the socially assigned role models for women. The whole issue of gender justice is revealed in the approach of regarding women as a "vulnerable section of the society". Social security legislations and schemes therefore have not been successful in achieving gender equality in India.

Equality as understood by men and women are proved to be different. The gender-neutral concept of equality merely perpetuates inequality among men and women. A mere gender-neutral concept is in fact blind to the gender perspective. The social security measures mentioned in this unit have laudable objectives. However, the available economic resources, the political will, the administrative expenses etc. pose difficulties in achieving gender equality.

It is well accepted that law is an instrument of social change. However, it has inherent limitations for changing many of the social norms. The Child Marriage Restraint Act and the Dowry Prohibition Act are just a few examples where enactment of laws has not changed the reality. There are still child marriages conducted in public with pomp and show. Where a social worker taking objection to a child marriage in a village in Rajasthan is raped as a punishment and the perpetrators of the crime of rape as well as child marriage escape, such laws are of little help for legal action. It is known to all that taking and giving of dowry is an offence. Yet this offence is committed rampantly among the rich and the poor, the educated and the illiterate, in cities and in villages and among law makers and law implementers.

What this really shows is that, though the law is an instrument of social change, it has its own limitations. Law is incapable of bringing about change in conditions of long standing traditions and practices. In such situations, law can merely provide a guideline, which the ideal society should follow. Practices like child marriage, dowry, gender bias and discrimination can change slowly as they involve a great effort at changing age-old attitudes. Fear of punishment is not a sufficient deterrence in continuing these practices. Spreading awareness of this social evil along with strict implementation of the legal provisions may bring about the desired results.

Further, developing countries like India have manifold problems of their own, e.g. population growth, poverty, great disparities among the members of the community, pressure of industrialisation, unemployment, resource crunch, backwardness, illiteracy, etc. An attempt to ensure social security to all those who are working in the organised sector, by the very size of the population, becomes a burdensome proposition. If this were to extend to the entire population desirous of receiving the social security benefits, the country may not be able to stand the economic burden arising out of such added responsibility. However a country cannot take this up as a defence for inaction and shirk from its responsibilities towards its citizens. It must persist in its efforts steadily and vigorously.

These are some of the limitations and drawbacks encountered in the process of ensuring social security to all needy people and the establishment of gender equality.

Think it Over 4

Are the Social Security measures in India sufficient and efficient enough to bring about gender equality in society? Read the previous section of this unit very carefully to get an answer to this question.

10.7 CONCLUDING REMARKS

In this unit we have discussed the various dimensions of social security measures. We began with conceptual clarification of the terms and the underlying principles of this concept. We also discussed the process of emergence of social security in India. Here we discussed the main features of social security measures in pre- and post-independent India. The contents of the Social Security legislations and schemes initiated by the Government of India are discussed at great length. While the gender dimension is covered in most of the sections, in the last part of the unit we discussed the limitations of the social security measures in India in general.

10.8 CLARIFICATION OF THE TERMS USED

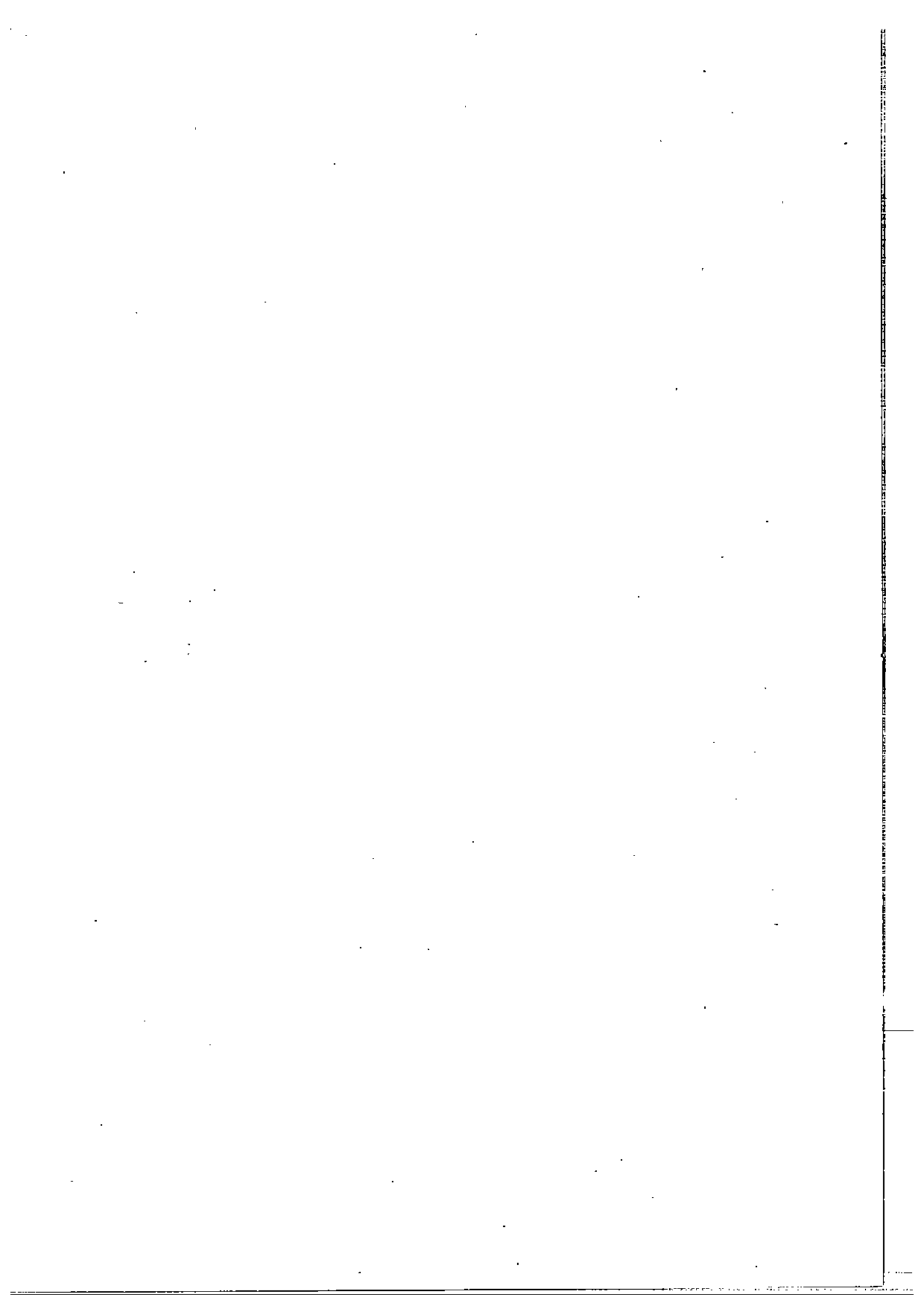
- Charitable Institutions** : Institutions work for greater wellbeing for society without making a profit.
- Developing Countries** : Those countries of the world who are having a lower level of GDP (Gross Domestic Product) than those of the developed countries and are striving to achieve high rate of growth than the existing one.

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उत्तर प्रदेश
राजर्षि ठण्डन मुक्त विश्वविद्यालय

CWED -03

Constitutional and Legislative Foundations for Gender Equality

Block

4

WOMEN'S MOVEMENT AND LEGAL CHANGE

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BLOCK INTRODUCTION

BLOCK 4: WOMEN'S MOVEMENT AND LEGAL CHANGE

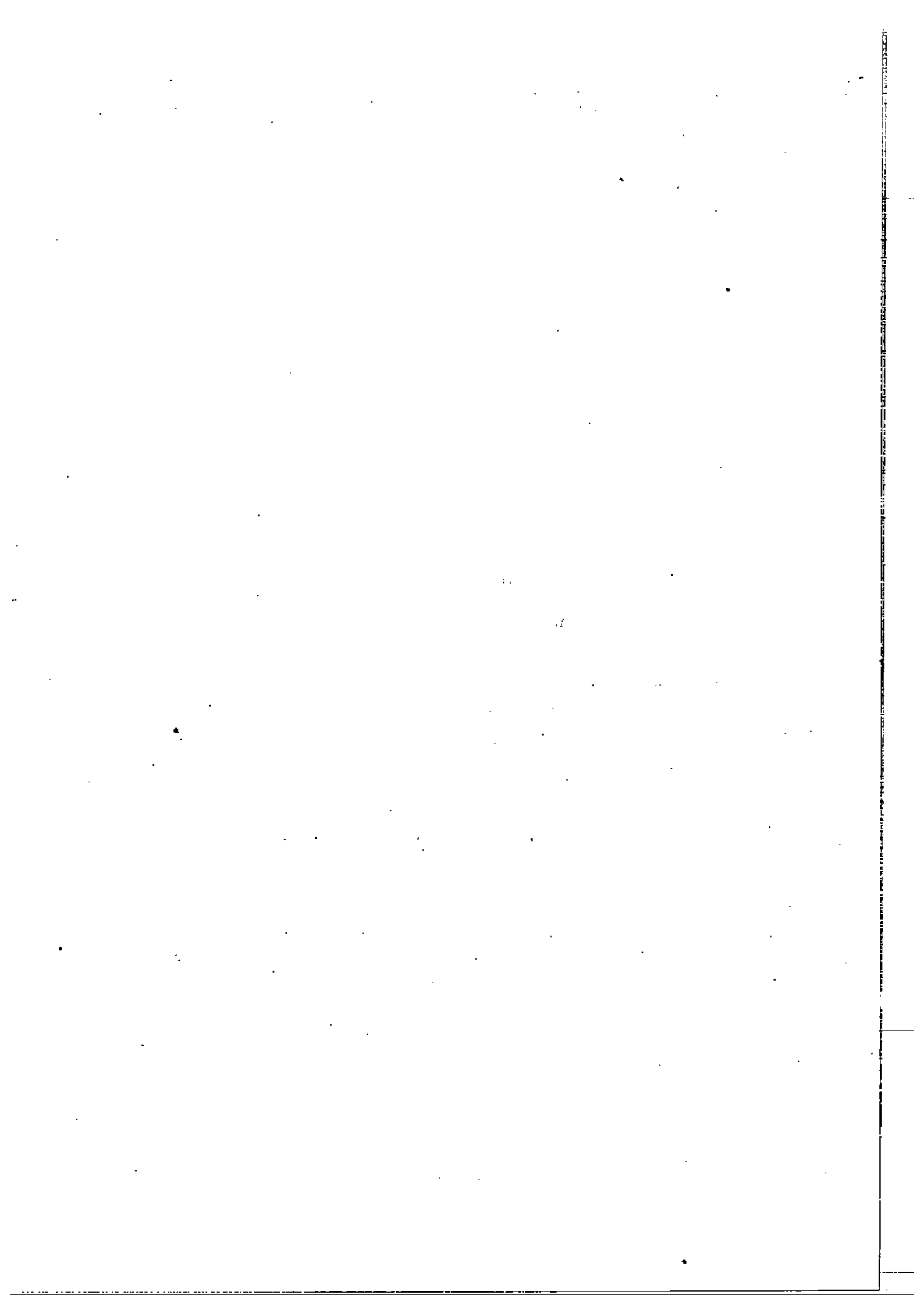
This block is an extension of the last block which dealt with the laws and legal reforms for gender equality. As you will notice, this block is an expansion of especially the Unit No.8 which centered around the issue of "Violence against Women". It is not an unknown fact that right from the birth itself, for many women life holds various threats of violence. Despite the introduction of various constitutional provisions, women continue to be the victims of domestic violence, family violence, violence at the work place etc.

Rape is the extreme form of violence against women. In Unit 11 we have discussed not only the legal definition of rape but also the various legal provisions made to enable women to fight against this crime. Suitable examples and court cases have been pointed to bring to light different loopholes existing in the legal system. This unit has also been supported with statistical analysis and tables depicting the heinous act by close relatives also.

Unit 12 focuses on another form of violence i.e. Dowry which has acquired a draconian proportion during the recent times. A section of scholars and women activists are questioning the relevance of the institution of dowry in India. Various legal provisions have been introduced to curb this practice but in vain.

Having studied Block 1 and 2 and the above units you must be very well aware of the limitations of the legal system. Keeping in mind these limitations, activists interested in the welfare of women and families agitated for separate family courts for settlement of family disputes. This is what Unit 13 deals with. It explains the need for family courts and also the features of these courts. Suitable examples have been cited to make the students understand the functioning of these courts in a proper manner.

The concluding unit of this block discusses various legal aspects of women's rights and gender equality. It examines the area of customary rights and common law practices to analyze and explain the relationship between customary rights and democratic rights. Illustrative examples from different parts of the country are also cited to explain this relationship. It will be evident to you that there is a lot of unevenness in women's social rights as customarily defined.



UNIT 11 RAPE

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11.0 AIMS AND PURPOSE

Rape is the extreme form of violence against women. Various legal provisions are made to enable women to fight against this crime. After reading this unit you should be able to:

- explain the legal frame of reference in which rape as a crime is dealt with;
- analyse the issues of evidence in rape case and punishment to the rapist;
- discuss the provisions relating to protection and compensation to the rape victims;
- describe the phenomena of rape with the help of state and national level statistics and some examples, and
- highlight the various measures undertaken to check rape in Indian society.

11.1 INTRODUCTION

Rape necessarily has an element of male physical desire else the crime would not be possible. But rape has been taking place in our society not only as the

extreme expression of physical desire but accompanied with it coercion and physical violence as the mechanism of control of and threat to women especially to working class and dalit women. It has also emerged as a mode of "teaching a lesson" to an individual woman or to a community as a whole. In recent years, in the context of extensive transformation of our society caused by the rapid spread of mass-communication networks, urbanisation, industrialisation, migration, etc. the incidence of rape has increased substantially. The state has enacted various laws to prevent such crimes and give proper punishment to the rapist. In this unit we will discuss various laws, and court judgements on rape. We begin this unit with a legal definition on rape and its various types. Evidence plays a crucial role in rape cases. We have discussed this issue at length. The aspects of punishment to the rapist, and compensation and protection to rape victims are also analysed in this unit. In the last two sections of this unit we have discussed some vital statistics on rape and measures to control rape.

11.2 CRIME AGAINST WOMEN : CONCEPT AND TYPES

Notwithstanding the equality guaranteed through by the Constitution, for many women life holds various threats of violence. The threat of violence on women manifests itself right before their life begins, continues to scar early life, follows in the married life as domestic violence. Violence also endangers women as victims of rape and worse than that end in murder and even suicide in some cases. Although women are guaranteed equality, freedom, equality of opportunity and protection by the Constitution and several legislations, nonetheless they continue to be the victims of domestic violence, family violence, violence in the community and at work places.

Rape constitutes a very aggressive and brutal form of sexual oppression amongst the crimes specifically committed against woman. In many countries this crime has been included in the category of heinous offences by law enforcing agencies and is regularly and closely monitored by senior officers. Unfortunately, while on the one hand there is a national debate on about 1/3rd reservation of women in parliament, and on various legislations in the offing regarding empowerment of women in social, economic and political spheres on the other hand, there has been increase in crimes specifically committed against women in the past few years. As a matter of fact, violence against women is a major obstacle in their progress, development and empowerment. In India, the rise in crimes against women is acquiring disturbing proportions.

Although women can be victims of any crime, the crimes in which only women are the victims and which is directed specifically against women are characterised as "Crime against Women".

Theoretically speaking crime against women can broadly be classified into two categories:

- 1) Crimes identified under the Indian Penal Code (IPC)
 - a) Molestation
 - b) Sexual harassment
 - c) Rape
 - d) Kidnapping and abduction for different purposes.
 - e) Homicide for dowry, dowry deaths or attempts at dowry death.
 - f) Torture (mental and physical).
 - g) Importation of girls up to 21 years of age.
- 2) The crimes identified under the special laws;
 - a) Commission of Sati Prevention Act, 1987.
 - b) Dowry Prohibition Act, 1961.
 - c) Immoral Traffic Prevention Act, 1936.
 - d) Indecent Representation of Women (Prohibition Act, 1986).

The aim of this paper is to present the problem of rape in detail. Before an attempt is made to understand the legal dimensions of rape, it would be proper to throw light in brief on the concept of molestation as well as sexual harassment. A better understanding of these two concepts will help us in understanding the problem of rape more meaningfully.

Molestation

This is broadly covered under section 354 of IPC, which reads as assault, or criminal force on women with intent to outrage her modesty. The legal definition is as under:

“Whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty”.

The essential ingredients of an offence under Section 354 IPC are:

- a) that the person assaulted must be a woman;
- b) that the accused must have used criminal force on her;
- c) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

Legally speaking ‘woman’ under this section denotes a female human being of any age. *It may be noted that what constitutes an outrage to female modesty is nowhere defined.*

The punishment for an offence under section 354 IPC shall be imprisonment of either description for a term, which may extend to 2 years or with fine, or with both.

Sexual Assault

Earlier, this section was also known as “eve-teasing”. Section 509 of IPC deals with the ingredients of sexual assault. According to Section 509, “Whoever intending to insult the modesty of any woman, utters any word, makes any sound

or gesture or exhibits any object, intending that such word or sound shall be heard or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both". In order to constitute an offence under Section 509 there must be some proven intention against some woman whose modesty has been outraged e.g. a letter containing lewd and filthy suggestions in a closed envelope sent to a woman amounts to insulting the modesty of a woman.

Think It Over 1

What do you mean by "Crimes against Women"? Can you categorize them?

11.3 RAPE: A HEINOUS CRIME AGAINST WOMEN

The legal provisions for rape underwent major changes after the Mathura custodial rape case in 1979 when the Supreme Court of India (*Tukaram V State*) reversed the judgment of the High Court and acquitted two policemen of charge of raping a young tribal girl while she was in their custody. The two policemen were acquitted by the Supreme Court on the grounds that the prosecution has not proved that the woman did not consent to sexual intercourse. Rape is the only crime where the victim has to prove non-consent. Four law teachers wrote an open letter to the Chief Justice protesting against the judgement. The judgement sparked off wide scale protests throughout the country. A systematic campaign was also launched by women's organisations to change the rape laws. The Law Commission in the 84th report on rape and allied offences proposed certain changes in the Indian Penal Code (IPC), Criminal Procedure Code (Cr. P.C.) and the Indian Evidence Act (IEA). On the basis of these recommendations, the Govt. amended the law of rape and introduced the Criminal Law Amendment Bill in 1980, which was ultimately passed as an Act in 1983. We now deal with the provisions of law regarding rape as per the amended law and as it stands today.

11.3.1 The Legal Definition

The legal definition of rape is stated under section 275 IPC. As per Section 375 "A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

- 1) Against her will.
- 2) Without her consent.
- 3) With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- 4) With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is the man to whom she is or believes herself to be lawfully married.
- 5) With her consent, when at the time of giving such consent by reason of unsoundness of mind or intoxication of the administration by him personally

- or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- 6) With or without her consent, when she is under sixteen years of age.

Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Sexual intercourse by a man with his own wife, the wife not being under 15 years of age is not rape.

The offence of rape has been included in the category of heinous offences as it leaves a permanent scar on a woman as she lives the rest of her life under great mental torture.

For the purpose of this offence, the word 'man' denotes a male human being of any age and 'woman' denotes a female human being of any age.

11.3.2 Gang Rape

In cases of gang rape the proof of completed act of rape by each accused on the victim of rape is not required. Involvement of group of persons is not necessary; even if two persons commit rape they would come within the mischief of gang rape [S.376 (g), Explanation 1].

11.3.3 Attempt to Commit Rape (376 /511 IPC)

An indecent assault upon a woman does not amount to attempt to rape unless it is established that there is determination in the accused to fulfil desire in spite of resistance. An assault with intention to commit rape is different from an intention to have improper connection. Every criminal act of rape or an attempt thereof does involve an indecent assault. In order to amount to an attempt to commit an offence, the act of the accused must have proceeded beyond the stage of preparation. If the act of accused does not constitute anything beyond preparation and falls short of an attempt, he may escape the liability under section 376/511 IPC.

11.3.4 Custodial Rape

In recent years there have been several cases of custodial rape. It is defined as follows in Section 376 (2), B, C, and D (IPC).

Whoever

- a) being a police officer commits rape;
 - i) within the limits of the police station to which he is appointed, or
 - ii) in the premises of any station house whether or not situated in the police station to which he is appointed, or
 - iii) on a woman in his custody or in the custody of a police officer subordinate to him, or
- b) being a public servant takes advantage of his official position and commits

- rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him, or
- c) being on the management or on the staff of a jail, remand house or other place or custody established by or under any law for the time being in force or of a woman or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand house, place or institution;
 - d) being on the management or on the staff of a hospital takes advantage of his official position and commits rape on the woman of that hospital or,
 - e) commits rape on a woman knowing her to be pregnant or commits rape on a woman when she is under 12 years of age or;
 - f) commits gang rape.

Think it Over 2:

What is the legal definition of rape?
Can rape be categorized? What is a custodial rape?

11.4 EVIDENCE AND PUNISHMENT

While discussing the legal provisions of rape, it is very important to discuss the following aspects of evidence, which have bearing on the conviction of an accused.

11.4.1 Some Important Aspects of Evidence

- a) The disclosure of the names of the culprits by the prosecution to the doctor at the medical examination is of no consequence.
- b) Versions of women who are victims of rape are normally accepted since a victim of rape would not tell a lie at her own cost. The evidence of the victim of rape stands on par with the evidence of an injured witness, hence corroboration of her testimony is not necessary.
- c) Where the evidence of the prosecutrix (rape victim) is found reliable and credit-worthy, the mere fact that one material witness in the case has not been examined is not fatal to the prosecution of the case.
- d) In case of rape, where the victim is a child below 10 years exact details of the incident are not expected from her. The Court has to take into consideration and record its finding on the totality of the circumstances available on record.
- e) Merely because some of the prosecution witnesses have turned hostile is no ground for disbelieving other witnesses examined and their evidence has to be considered independently.
- f) Where the evidence is reliable, disclosure of the offence of rape with delay by the prosecutrix would not affect her version.
- g) Notice should not be taken of minor discrepancies, which do not hit the basic case. Acquittal of the accused on the grounds of defects in investigation is not justified.
- h) The character of reputation of the victim has no relevance either in the matter of adjudging the guilt of the accused or imposing punishment under section

376. Such factors are wholly alien to the very scope and object of Section 376 and can never serve either as mitigating or extenuating circumstances for imposing the minimum sentence with the aid of the provision of Section 376.

- i) Absence of medical report has no consequence as far as trial of an accused is concerned. For example, if the prosecutrix and her husband belong to the backward community living in a remote area and do not know that they should rush to the doctor after the occurrence of the incident, the absence of medical report is of no consequence, if other evidence on the record is believable.
- j) The mere fact that in medical examination, no injury is found on the male organ of the accused is not sufficient to reject the allegations of forcible intercourse by the accused. Mere absence of injury on the accused would not prove his innocence.

11.4.2 Important Supreme Court Judgements on Evidence

The testimony of the prosecutrix corroboration of the incident by the rape victim has always been a bone of contention in legal proceedings. Many a time, the conviction of an accused in a rape case has been considered illegal because it is based on the uncorroborated testimony of the prosecutrix. However, the following Supreme Court judgments have made it very clear that if a conviction is based on the evidence of a prosecutrix without corroboration, it will not be illegal on that sole ground.

- a) **Rameshwar Kalyan Singh Vs. State of Rajasthan:** In this famous case, the Supreme Court held that corroboration is not essential before there can be a conviction. The only rule of law is that this rule of prudence must be present to the mind of judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that their must in every case, be corroboration before a conviction can be allowed to stand.
- b) **In Sheikh Zakir Vs. State of Bihar:** The Supreme Court held that if a conviction were based on the evidence of prosecutrix without any corroboration it would not be illegal on that sole ground.
- c) **In Bhargavada Bhojin Bhai Hirqi Bhai Vs. State of Gujarat:** The Supreme Court observed that corroboration is not the *sine-qua non-for a conviction* in a rape case. In the Indian context, of sexual mores, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should evidence of the girl or the woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.

Thus from the above judgments of the apex court, it is clear that the corroboration or testimony by the prosecution during trial has been considered insignificant as far as it relates to the conviction of the accused. This wisdom of the apex court has its moorings in the Indian socio-cultural milieu. A girl or a woman in a tradition bound society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity has even occurred. As a

matter of fact she would be conscious of the danger of being socially ostracized by society including her own family members, relatives, friends and neighbours.

11.4.3 Punishment for Rape

Under Section 376 IPC a person guilty of rape can be punished with either imprisonment for life or with imprisonment of either description for a term, which may extend to 10 years. There are two choices open before the court. The first one is to award imprisonment for life, if the court feels that imprisonment for life will be excessive, then it will be second choice of awarding imprisonment for a term, the maximum limit of which has been fixed as ten years.

Where a rape is committed by middle aged person with a minor girl aged 10 years, exemplary and deterrent sentence is called for.

Do You Know? 1

The court stated in a famous judgement of State of Maharashtra Vs. Chander Prakash Kewal Chand Jain (1990) that when rape has been committed by a police official, the punishment must in such cases be exemplary. But only a year earlier in 1989 Suman Rani Case, the Supreme Court awarded the two guilty police constables only five years imprisonment instead of the ten years awarded by the Session and the High Court. On the grounds that the young girl who had eloped with her lover was of a "lewd" and "lascivious" character and that there was a week's delay in her lodging a complaint (FIR) (Prem Chand and Others Vs. State of Haryana).

The sum and substance of the argument is that keeping in view the nature of the offence and the accused, the court has discretion to enhance or reduce the punishment depending upon the case being dealt with.

Think it Over 3

Are the legal provisions on evidence sufficient to prove the crime of rape?

Do You Know? 2

In some cases, the court has released many accused persons on probation for good conduct.

Examples

- a) **In Radha Raman Shankar Vs. State of W. Bengal:** An accused aged 20 years without previous conviction to his credit was found guilty under section 376. In view of the circumstances of the case he was released on probation for good conduct.
- b) **In Premchand Vs. State of U.P.:** A 12 year child found guilty of offence of rape under section 376 was granted probation for good conduct.
- c) **In Bhadreshwar Loying Vs. State of Assam:** The 12 year old accused was found guilty under section 376/511 of rape on a girl aged 7 years. In view of age, character and antecedents he was granted probation under section the Offenders Act, 1958.

11.5 COMPENSATION AND PROTECTION TO THE VICTIMS OF RAPE

In a famous judgement of Delhi Domestic Working Women Forum Vs. Union of India (1995) – the court held that compensation could also be awarded to a victim of rape by orders of court. In another famous judgement of Budhistava Gautam vs. Subra Chakravorti it is held that the court can even award interim compensation.

Section 228 A (IPC) protects the victims of rape from press reports, which mention their names and other particulars in embarrassing details.

As per S. 228A(I) IPC whoever prints or publishes the name of any matter which may make known the identity of the person against whom an offence under section 376A, 376B, 376C or 376D is alleged or found to have been committed shall be prosecuted with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

11.6 MEASURES TO CONTROL RAPE

Important steps have been taken by the government of India to control and monitor the incidence of crimes against women.

11.6.1 Commissioner for Women's Rights

The Department of Women and Child Development has initiated to set up an office of the National Commissioner for Women's Rights (NCWR). The main objective of the NCWR would be:

- i) to monitor the incidence of crimes against women;
- ii) review crime statistics relating to registration, investigation of cases of violence against women at the national and state levels; and
- iii) to monitor the effective prosecution and expeditious disposal of these cases;

The department has also requested the state government to set up District Committees for protection of women's rights to monitor and expedite disposal of cases of atrocities against women. The committees, it is proposed, would consist of the District and Session Judge, DM (District Magistrate) SP (Supt. of Police) Deputy Director of Prosecution and others.

11.6.2 Review of Laws Affecting Women

The Deptt. of Women and Child Development has been entrusted with the responsibility of acting as the nodal agency for review of all laws, to remove provisions which may be discriminatory to women under the Special Action Plan, 1996, of the government. The National Commission for Women (NCW), which has a mandate to review the legislations affecting women, has been

requested to carry out the review of laws relating to women. The Commission has completed a review of 10 laws and forwarded its recommendations to the concerned ministries/departments to take further action to amend these laws. The following laws are under review:

- i) The Dowry Prohibition Act.
- ii) Indecent Representation of Women (Prohibition) Act, 1986.
- iii) The Commission of Sati (Prevention) Act, 1987.
- iv) The Immoral Traffic (Prevention) Act.

11.6.3 Supreme Court's Guidelines

The Hon'ble Supreme Court in its order dated 13.08.97 has passed a landmark order laying down the guidelines to be followed by employers for tackling incidence of sexual harassment of women at the work place and in other institutions. The guidelines issued by the Supreme Court include setting up of a Complaint Redressal Forum in all work places and amendment of the disciplinary/conduct rules governing employees by incorporating the guidelines. The Supreme Court order has been circulated to all Ministries and departments of the Government of India, state governments, women development corporations, and the NCW for compliance.

Do You Know? 3

Supreme Court Guidelines Against Sexual Harassment of Women at work place.

11.6.4 Mass Awareness Programme by NCW

The NCW has undertaken a major task to provide relief to aggrieved women and assist and equip women in general, to protect themselves against all sorts of violence and atrocities they are so often subjected to. NCW has adopted a holistic multi-pronged approach consisting of:

- i) generation of legal awareness among women (and masses in general) thus equipping them with the knowledge of their legal rights;
- ii) assisting women in redressal of their grievances through complaints, litigation and counselling cell set up by the commission;
- iii) facilitating speedy delivery of justice to women by organizing Parivarik Mahila Lok Adalats in different parts of the country;
- iv) review of existing provisions of the Constitution and other laws affecting women and recommending amendments thereto, suggesting remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislations.

Think it Over 4

What are the steps taken by the Government of India and NCW to deal with the rape case? Would you like to suggest some other steps in view of your own observation?

11.7 STATISTICS AND SOME EXAMPLES

There has been a very systematic and detailed analysis of rape cases year wise by National Crime Record Bureau. In order to understand the magnitude of this problem, a perusal and discussion about some concrete facts is very necessary. This section has been divided into two parts -- first part deals with the national figures of rape while the second part deals with the rape cases committed in the metropolitan city of Delhi. In this section an attempt will also be made to analyze categories of accused and present some concrete examples.

11.7.1 National Figures

National figures of rape are available upto 1995 only. The frequency of rape cases have also doubled during the decade 1985-95 (from 7,289 in 1985 to 13,754 in 1995) recording an increase of 88.7% over 1985.

Incident of crime committed against women from 1991-95 may be seen in chart and Table 'A'.

In the year 1995, at All India level 1,06,471 cases were registered under crime against women (where women alone were the victims) compared to 98,948 cases in 1994 and 83,954 cases in 1993. In absolute numbers the figure indicates an upsurge of 7.6% in this year over 1994.

Perusal of Table 'A' shows that there has been a consistent increase in rape cases since 1991 till 1995.

Table 'B' shows the state, UT (Union Territory) and city wise number of rape cases reported during the year and age profile of victims in such cases. The table reflects that during 1995, a total of 13,754 cases were reported, as compared to 13,208 cases in 1994. As in the past Madhya Pradesh reported the highest incidence (3,119) accounting for 22.7% of all India total. This was followed by UR (1,808) cases with a share of 13.1%, Maharashtra (1,362) sharing 9.4% and Bihar (1,312) cases sharing 9.5%. Among the UTs, Delhi reported the highest (372) accounting for 9.6% of UTs total and contributing 2.7% towards all India.

Age Profile of Rape Victims: At the national level, the age profile of victims of rape may be seen in Table 'C'.

At the national level it is clear that 7752 victims of rape were in the age group of 16-30 years accounting for 56.3% of total victims (13,774) and this trend is persistent.

Child Rape

The incidence of child rape pedophilia averaged around 2 cases per day in the country. Such cases rose from 734 in 1994 to 747 in 1995 thereby showing a marginal increase of 1.3%.

Account from 1992-95 is as under:

1992	4.5%
1993	5.2%

1994	5.6%
1995	5.4%

About 71% of such cases were reported in only 5 states and one U.T.

M. P.	107
Maharastra	120
W. Bengal	78
A. P.	77
U. P.	76
Delhi	71

11.7.2 Rape Cases in Delhi

A comparative analysis of crime against women in Delhi for last 5 years since 1993 to 1998 may be seen in Table 'D'.

The table shows that there has been a persistent increase in crime against women from 1993 to 1997. While the year 1998 has shown a decline, the figures for rape have shown increase from 1993 to 1997.

Table 'E' shows the figures of relationship of the accused with the victim for the year 1997 and 1998. The relationship of the accused has been classified into the following categories:

- 1) **Relatives**
 - a) Father
 - b) Step Father
 - c) Ex-husband
 - d) Uncle
 - e) Cousin
 - f) Brother-in-law
- 2) **Other known persons**
 - a) Neighbour
 - b) Friend
 - c) Servant
 - d) Landlord
 - e) Tenant
 - f) Employer/Co-worker
 - g) Instructor/Tutor
 - h) Barber
 - i) Doctor
 - j) Policemen/DIG
 - k) Priest/Tantrik.
- 3) **Not known persons**

The analysis shows that the maximum number of cases in the year 1997 has been committed by neighbours i.e. (288). Another remarkable feature is the involvement of other known persons, which is 54 while 36 accused persons were tenants. The most significant aspect of the statistics is the involvement of

59 persons who are not known. This has something to do with the over increasing population of Delhi, increasing the presence of strangers in the city.

Do You Know? 3

Rape cases in Delhi:

Year	Nos
1995	377
1996	491
1997	544
1998	894

Eye teasing is increasing in Delhi at the rate of 17.7%.

Source: HINDU 2.8.99

The shocking and pathetic aspect of statistics has been the case of incest rape (by father), which was 13 in 1997 and 15 in 1998. Any incidence of sexual harassment, including rape, is a traumatic experience for the victim. One can imagine the extent of trauma, compulsion and dilemma of a rape victim when it is committed by the relatives of the victim and an extreme case when the relative turns out to be none other than the father himself. We would like to share with you an example of an incest rape.

Poonam (name changed), a 17 year old girl belonged to a family of two sisters and one brother. She was the eldest. Her father was an employee in the Defence services. She used to get training in serving etc. in a Mother Teresa Charitable Trust. The girl was noticed upset by one of the sisters of the Trust. After lot of persuasion and confidence building exercise by the sister, Poonam broke down and narrated the entire story and the manner in which she was subjected to sexual harassment by her father under perpetual threat and fear. The sexual assault was so regular that Poonam has to finally abandon her house and to take shelter in a missionary. Poonam was reluctant to file a complaint before police against her father. After a lot of persuasion by the sister, the Trust brought this incident to the notice of a women's voluntary organisation who approached Police for legal action and protection to the victim. On the formal complaint of Poonam, a case of rape was registered. The subsequent details and investigation of the case further revealed horrifying and sad details of Poonam's mental agony. The medical examination of Poonam revealed three months pregnancy. Poonam's father told us that she left the house by bringing it to the notice of her father. The crookedness of Poonam's father can be imagined by the fact that after Poonam left her house forever, he lodged a complaint in the police that her daughter has been kidnapped by one of the boys of the locality. When Poonam's father came to know about her pregnancy, she was advised by the parents to pass the blame on a nearby teenaged boy who once tried to tease Poonam. Poonam's father was finally arrested by police and sent to jail. One can imagine the amount of trauma which Poonam had to undergo, the courage which she must have mustered to report against her own father. We are very sure that there must be many more such Poonams who must have subjected and surrendered themselves to the beastly act of their primary relatives without uttering a word resentment.

TABLE - 'A'
VICTIMS OF RAPE UNDER DIFFERENT AGE GROUPS DURING 1995
(STATE, UT & CITY-WISE)

S.NO	STATE/UT	NO. OF CASES REPORTED	NUMBER OF VICTIMS			
			BELOW 10 YEARS	10-16 YEARS	16-30 YEARS	30 YEARS AND ABOVE
(1)	(2)	(3)	(4)	(5)	(6)	(7)
STATES:						
1.	ANDHRA PRADESH	556	77	245	412	122
2.	ARUNACHAL PRADESH	25	0	0	17	8
3.	ASSAM	588	17	140	398	73
4.	BIHAR	1312	29	320	739	124
5.	GOA	19	3	8	8	0
6.	GUJARAT	309	17	78	174	39
7.	HARYANA	311	27	83	167	32
8.	HIMACHAL PRADESH	116	18	35	51	12
9.	JAMMU & KASHMIR	109	1	11	72	5
10.	KARNATAKA	263	23	57	153	31
11.	KERALA	260	13	89	144	20
12.	MADHYA PRADESH	3119	107	828	1710	474
13.	MAHARASHTRA	1302	120	386	702	154
14.	MANIPUR	12	2	1	9	0
15.	MEGHALAYA	17	6	1	10	0
16.	MIZORAM	41	3	4	27	7
17.	NAGALAND	16	0	0	13	3
18.	ORISSA	353	4	97	369	83
19.	PUNJAB	96	6	25	30	15
20.	RAJASTHAN	1039	26	98	680	132
21.	SIKKIM	3	0	3	0	0
22.	TAMIL NADU	268	19	37	193	19
23.	TRIPURA	75	2	16	37	20
24.	UTTAR PRADESH	1808	76	408	1037	187
25.	WEST BENGAL	787	78	212	374	69
	TOTAL	13267	673	3253	7976	1929
UNION TERRITORIES						
26.	A & N ISLANDS	3	1	0	3	1
27.	CHANDIGARH	5	2	0	2	1
28.	D & N HAVELI	1	0	0	0	1
29.	DAMAN & DIU	2	0	1	1	0
30.	DELHI	372	71	63	319	23
31.	LAKSHADWEEP	0	0	0	0	0
32.	PONDICHERY	2	0	1	1	0
	TOTAL (UTS)	387	74	63	216	26
	TOTAL (ALL-INDIA)	13754	747	3320	7752	1955
CITIES						
33.	AHMEDABAD	3	0	33	0	0
34.	BANGALORE	22	1	13	18	3
35.	BHOPAL	32	1	26	24	10
36.	BOMBAY	210	30	86	83	11
37.	CALCUTTA	54	10	14	25	5
38.	COIMBATORE	1	0	0	1	0
39.	DELHI	303	68	53	163	21
40.	HYDERABAD	41	10	27	4	0
41.	INDORE	25	3	5	14	4
42.	JAIPUR	22	5	9	6	2
43.	KANPUR	44	8	10	24	2
44.	KOCHI	7	0	1	3	1
45.	LUCKNOW	19	3	7	18	1
46.	LUDHIANA	11	3	4	3	1
47.	MADRAS	11	3	2	6	0
48.	MADURAI	7	0	1	6	0
49.	NAGPUR	56	11	16	26	3
50.	PATNA	26	0	0	21	5
51.	PUNE	66	6	13	41	3
52.	SURAT	16	2	4	10	0
53.	VADODARA	7	0	0	2	5
54.	VARANASI	4	0	2	2	0
55.	VISHAKHAPATNAM	7	2	1	4	0

Source: Crime in India, NCRB, 1995

24A

TABLE 'B'
(For Delhi)
CRIME AGAINST WOMEN

Rape

	1993	1994	1995	1996	1997	1998
DOWRY	127	158	167	133	148	126
RAPE	315	322	377	484	544	438
MOLESTATION OF WOMEN	259	291	521	694	675	653
406 IPC (RELATED TO DOWRY)	299	170	60	20	16	22
498-A IPC (CRUELTY BY HUSBAND OR IN-LAWS)	809	985	1042	862	855	771
DOWRY PROHIBITION ACT	10	13	15	4	10	10
KIDNAPPING/ABDUCTION OF WOMEN	562	693	877	925	930	978
EVE-TEASING	2108	1668	2796	2059	1686	1192

Source: *Crime in India, NCRB, 1995*

TABLE 'C'
VICTIMS OF RAPE BY AGE-GROUPS DURING 1991-95
AND PERCENTAGE CHANGES DURING 1995 OVER 1994

SLNO.	YEAR	BELOW 10-YEARS	10-16 YEARS	16-30 YEARS	30 YEARS & ABOVE	TOTAL OF ALL AGE-GROUPS
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	1991	1099	2630	5377	1319	10425
2.	1992	532	2581	7000	1621	11734
3.	1993	634	2759	7038	1792	12223
4.	1994	734	3244	7442	1798	13218
5.	1995	747	3320	7752	1955	13774
6.	Percentage change in 1995 over 1994	1.8	2.3	4.2	8.7	4.2

Source: *Crime in India, NCRB, 1995*

TABLE 'F'
ANALYSIS OF RAPE CASES 1997.
(UPTO DECEMBER 31ST)

C	UPTO DATE 01/01/97 TO 31/12/97	
1)	CASES REGISTERED	544
2)	CASES WORKED OUT	496
3)	PERSONS ARRESTED	663
4)	RELATIONSHIP OF THE ACCUSED WITH VICTIM	
i)	RELATIVES	
a)	FATHER	13
b)	STEP FATHER	4
c)	EX-HUSBAND	2
d)	UNCLE	8
e)	COUSIN	4
f)	BROTHER-IN-LAW	8
ii)	OTHER KNOWN PERSONS	
a)	NEIGHBOUR	288
b)	FRIEND	13
c)	SERVANT	5
d)	LAND-LORD	21
e)	TENANT	36
f)	EMPLOYER/CO-WORKER	16
g)	BY INSTRUCTOR/TUTOR	4
h)	BARBER	1
i)	DOCTOR	2
j)	POLICE PERSONNEL/D.H.G.	3
k)	PRIEST/TANTRIK	3
ii)	NOT KNOWN PERSONS	
		59
5)	NUMBER OF ACCUSED	
i)	SINGLE	427
ii)	DOUBLE	68
iii)	MULTIPLE	49
6)	ELOPEMENT	148
7)	AGE GROUP OF VICTIM	
i)	UPTO 12 YEARS	111
ii)	12 TO 16 YEARS	175
iii)	16 TO 18 YEARS	94
iv)	18 TO 25 YEARS	93
v)	ABOVE 25 YEARS	71
8)	SOCIAL STATUS OF VICTIM	
i)	LOWER	341
ii)	MIDDLE	198
iii)	UPPER	5
iv)	AFFLUENT	-

Source: Crime in India. NCRB, 1995

DELHI TABLE 'F'
ANALYSIS OF RAPE CASES 1998
(UPTO 31ST DECEMBER)

Rape

C	UPTO DATE 01/01/97 TO 31/12/97	
1)	CASES REGISTERED	544
2)	CASES WORKED OUT	496
3)	PERSONS ARRESTED	663
4)	RELATIONSHIP OF THE ACCUSED WITH VICTIM	
i)	RELATIVES	
a)	FATHER	13
b)	STEP FATHER	4
c)	EX-HUSBAND	2
d)	UNCLE	8
e)	COUSIN	4
f)	BROTHER-IN-LAW	8
ii)	OTHER KNOWN PERSONS	
a)	NEIGHBOUR	288
b)	FRIEND	13
c)	SERVANT	5
d)	LAND-LORD	21
e)	TENANT	36
f)	EMPLOYER/CO-WORKER	16
g)	BY INSTRUCTOR/TUTOR	4
h)	BARBER	1
i)	DOCTOR	2
j)	POLICE PERSONNEL/D.H.G.	3
k)	PRIEST/TANTRIK	3
ii)	NOT KNOWN PERSONS	
		59
5)	NUMBER OF ACCUSED	
i)	SINGLE	427
ii)	DOUBLE	68
iii)	MULTIPLE	49
6)	ELOPEMENT	148
7)	AGE GROUP OF VICTIM	
i)	UPTO 12 YEARS	111
ii)	12 TO 16 YEARS	175
iii)	16 TO 18 YEARS	94
iv)	18 TO 25 YEARS	93
v)	ABOVE 25 YEARS	71
8)	SOCIAL STATUS OF VICTIM	
i)	LOWER	341
ii)	MIDDLE	198
iii)	UPPER	5
iv)	AFFLUENT	

Source: Crime in India. NCRB, 1995

SL. NO.	CRIME HEAD	YEAR					Percentage Variation ij. 1995 over	
		1991	1992	1993	1994	1995	1991	1994
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Rape	9,793	11,112	11,242	12,351	13,754	40.4	11.3
2.	Kidnapping & abduction	12,300	12,077	11,837	12,998	14,063	14.3	8.2
3.	Dowry death	5,157	4,962	5,817	4,935	5,092	-1.3	3.2
4.	Torture	15,949	19,750	22,064	25,946	31,127	95.2	20.0
5.	Molestation	20,611	20,385	20,985	24,117	28,475	38.1	18.1
6.	Sexual Harassment	10,283	10,751	12,009	10,496	4,756	-53.7	-54.7
7.	Importation of Girls	-	-	-	167	191	-	14.4
8.	Sati Prevention Act	-	-	-	2	27	-	1250
9.	Immoral Traffic (Prevention) Act	-	-	-	7,547	8,447	-	11.9
10.	Indecent Representation of Women	-	-	-	389	539	-	38.6
Total	74,093	79,037	83,954	98,948	1,06,471	43.7	76	

Source: Crime in India. NCRB, 1995

Learn From Your Experience - I
 Consult any newspaper of last one year to collect information on all the rape cases reported there. Based on the information given on the Newspaper, prepare a table on types of Rape, victims and the accused of our society and write a note on rape victims.

11.8 CONCLUDING REMARKS

From the discussion it is clear that the problem of rape has got significant attention under the provisions of Indian Penal Code. Formation of committees to look into the complaints of sexual harassment in offices/work place pursuant to the Supreme Court judgement in Vishakha and Others, various awareness and

education campaigns launched by the National Commission for women, massive exposure of women's problems and their sufferings by electronic and print media, the awareness of women towards their rights themselves and the role played by some of the NGOs and many more factors have helped in highlighting the issue. Despite certain progressive amendments of the rape law, it may be noted that notwithstanding protests, S.155(4) A, Indian Evidence Act remains on the statute books. It includes a specific provision that in a prosecution for rape "it may be shown that the prosecutrix was of a generally" immoral character. This virtually cancels the legal benefits to rape victims and continues to encourage defence lawyers to take up the state and fallacious plea that the victim was of a "loose" moral character (see Suman Rani case above). Rape thus is a crime where, unless it is a minor, it is the victim who is blamed legally and socially for the crime, worse, she is condemned and ostracised for a crime perpetrated by the rapist against her will and consent. Until Indian society changes its double standard of sexual morality for men and women (only women are morally and socially required to preserve their chastity), law and law courts, which all too often share this double standard of morality, will continue to do less than justice to rape victims. This is clearly shown by the abysmally low conviction rate for rape and the number of cases withdrawn at a pre-trial stage. Capital punishment has failed to act as a deterrent to heinous offences. In fact, report shows that judges are less likely to convict if the punishment is too severe. Hence enhanced punishment for including capital punishment may prove counter productive and possibly result in even fewer convictions. Nevertheless, the struggle for justice for rape victims has and will continue. The SAARC workshop on women held in Dhaka has taken several positive steps to curb the crimes against women in general. They have really spelt out concrete ways in which policy planners can begin to translate the vision of equality and gender justice into social reality.

11.9 CLARIFICATION OF THE TERMS USED

Accused	:	the defendent on a criminal charge.
Milieu	:	surroundings; location or setting.
Prosecutrix	:	a person who is under prosecution.
Testimony	:	a declaration of truth or fact; evidence given by a witness.

11.10 SOME USEFUL READINGS

- Chanana, Karuna (ed.) (1988) *Socialisation, Education and Women: Exploration in Gender Identity*. New Delhi: Orient Longman Ltd.
- Government of India, (1974) *Towards Equality: Report of the Committee on the Status of Women in India*. Ministry of Education and Social Welfare. New Delhi.

UNIT 12 DOWRY

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12.0 AIMS AND PURPOSE

By reading the earlier units of this course you must have realised that women in our society have been made subject to various forms of crimes. Dowry is an important manifestation of this crime. This unit aims to introduce you with the legal dimension of this issue. After reading this issue you should be able to:

- discuss the social dimension of this problem;
- explain the various provisions of the Dowry Prohibition Act and the IPC on this issue; and
- examine the various governmental and non-government efforts to prevent this crime in our society.

12.1 INTRODUCTION

Women have been very unequally placed in our society. To provide legitimacy to these unequal positions various institutional arrangements have also been evolved. Over a period of time these institutions have paved the way to commit crimes against women in the society. The institution of dowry provides a broad base, in its recent form, for crimes against women. There have been several legal interventions by the state to prevent such crimes. In this unit we have analysed the laws related to the prevention of dowry in our society. As dowry

has a social context we have discussed the social dimensions of this problem at the very outset. The Dowry Prohibition Act 1961 has made several provisions for punishment. The Indian Penal Code has also made several provisions. We will discuss all these provisions in this unit. In recent years there have been several governmental and non-governmental efforts for the prevention of dowry and dowry deaths. We have discussed some of these efforts in the last section of this unit.

12.2 DOWRY: A CRIME AGAINST WOMEN

Despite several provisions of equality guaranteed to women through the Constitution, women in India are exposed to various forms of violence and threats in their lives. While there is an attempt to enhance the socio-economic status of woman and her role in development of the country, various types of crimes against woman have adversely affected the pace of such positive measures. Dowry is one of the such crimes against women. This form of crime has two dimensions: (1) pre-marital and (2) post-marital. The pre-marital dimension of dowry reflects the state of agony and depression of a girl and her family members who always try to find the most suitable mate for their wards before marriage. On the other hand, the post-marital stage of dowry is more painful which continues in the life of a woman after her marriage. Keeping in view the magnitude of the problems and seriousness of the crimes related to dowry, special laws and stringent legal provisions were added in Indian Penal Code, which is a dowry related section.

12.2.1 What is Dowry?

According to the Chamber's Dictionary (28th ed.) the definition of dowry is as under:

"The property which a woman brings to her husband at marriage, sometimes used for dower, sometimes a gift given to or for a wife at marriage ..."

According to William J. Goode "Dowry" is a sum of money or property brought to the marriage by the girl. It is given by her family, but to whom it is given varies from one culture to another. For example, in western countries, it was generally given to the groom who could use it under certain restrictions or even have the full disposal of it. In rural Ireland, the dowry was in fact given to the groom's father who then handed over his land to the groom and his bride.

As a matter of fact, the concept of dowry in Indian society and culture is very old. This figured in one of the forms of marriage, which even Manu has discussed in the ancient Hindu text. According to Manu, Asura marriage is actually a marriage by purchase, which was declared as unlawful by Manu.

Sociologically, the emergence of the concept of dowry can be seen in two famous forms of marriage i.e. hypergamy (Anuloma) and hypogamy (Pratiloma). While

the pratiloma form of marriage of a woman to a man from a lower caste is not permitted as per ancient Hindu law, anuloma form of marriage permits a woman to marry in her own higher sub caste and above her caste. This practice promotes the prospective placement of brides in good families. Under the Anuloma form of marriage as the girl was always from the lower sub-caste or caste groups, they were supposed to bring dowry in economic terms to fill the social gap.

Over a period of time, dowry has emerged as a very important social evil and has assumed draconian dimensions. The whole institution of dowry has undergone radical changes and emerged as a major impediment to woman's emancipation to the issue of gender equality in modern times. It is precisely in this backdrop, that the social evil of dowry came under heavy formal legal scrutiny where obnoxious practices of giving and taking dowry have become punitive as per law. But by equating giver and receiver of dowry as offenders, the effectiveness of the Dowry Prohibition Act is weakened. Such an equation is perverse for it is well known that in Indian society, due to the inferior status of women, the brides family is socially compelled to give a dowry.

12.2.2 Dowry Related Violence in India

As per national data available through National Criminal Record Bureau (NCRB) upto 1995, dowry deaths recorded a marginal increase in 1995 compared to the preceding year. The UT (Union Territory) of Delhi (1.5), U.P. (1.3) and Haryana (1.3) continued to maintain a higher rate.

Similarly, torture (cruelty by husband and his relatives) suffered by a woman showed an increase in crime rate by 0.5 in 1995 (i.e. from 2.9 in 1994 to 3.4 in 1995). As a matter of fact, this form of crime continued to be the major crime in all crimes reported against women in 1995. Maharashtra reported a significantly higher rate, followed by Rajasthan.

Year-wise data related to dowry death and torture may be seen in Annexure 'A'. Perusal of the figures shows that there has been a consistent increase in cases related to dowry death and torture since 1991. The incidence of crime related to dowry death and torture and its total share in crimes committed against women may also be seen in Annexure 'B'. Annexure 'C' shows the incidence of dowry death and torture reflecting states and UTs contributing more than 5% towards various forms of crimes committed against women.

The break-up of cases registered under the Dowry Prohibition Act may be seen in Annexure 'D' since 1991 till 1995. The figures reflect an increasing trend of cases under this Act. The bulk of the cases (90% of total) have been reported from the states of Bihar (1982), U.P. (653), Karnataka (337), T.N. (319) and Orissa (249).

National break-up of cases under dowry deaths and torture may be seen at Annexure 'E', while Annexures 'F' and 'G' reflect incidence, rate, percentage

contribution to all India crimes committed against women during 1994 and 1995 respectively.

From the perusal of figures of all the crimes committed against women in various annexures, it is evident that dowry deaths and torture continue to be two major crimes committed against women in India.

12.2.3 Dowry Deaths in Delhi: Recent Trends

- 1) Annexure 'H' reflects the number of cases since 1993 up to 28.2.99 of all crimes committed against women. The perusal of the figures show that there has been an increasing trend of dowry death and torture from 1993 up to 1997, while the year 1998 has shown a decreasing trend under both these heads.

Learn From Your Experience - I

Consult the news item on dowry from any national or regional daily as appeared in last six months. Based on the collected information from the newspaper write a note on 'Dowry Deaths in our Society'.

12.3 THE DOWRY PROHIBITION ACT

In 1961, Dowry Prohibition Act was enacted by the Parliament to prohibit the practice of giving and taking of dowry.

12.3.1 Legal Definition

As per Sec. 2 of the Act, "Dowry is any property or valuable security given or agreed to be given either directly or indirectly:

- a) by one party to a marriage to the other party to the marriage.
- b) by the parents of either party to marriage or by any other person to either party to the marriage or to any other person at or before or after the marriage in connection with the marriage of the said parties but does not include dower or 'meher' in case of persons to whom the Muslim personal law (Shariat) applies.

Under Section 3 of the same Act any person who gives or takes or abets the giving or taking of dowry shall be punishable with imprisonment for a time which shall not be less than 6 months but which may extend to 2 years and with fine which may extend to 10 thousand rupees or the amount of the value of such dowry whichever is more.

However, the above penal section does not apply under the following circumstances:

- a) Presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf) provided that such presents are entered in a list mentioned in accordance with the rule made under this Act.
- b) Presents which are given at the time of the marriage to the bridegroom (without any demand having been made on that behalf) provided that such presents are entered in a list maintained in accordance with the rule made under this Act.
- c) Presents, made by or on behalf of the bride or any person related to the bride which are of customary nature and whose value is not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.

12.3.2 The Punishment

Under Section 4 of the Act, any person who demands directly or indirectly from the parents or other relatives or guardians of the bride or bridegroom as the case may be, any dowry shall be punishable with a term not less than 6 months which may extend to 2 years and fine which may extend to 2000/- rupees.

Despite the enactment of the Act in 1961, the incidence of dowry and its evil practice continues in society. The demand for dowry assumes more inhuman and vulgar forms, where young lives are lost due to excessive harassment by parties concerned for demand of dowry after marriage. In order to effectively curb such practices on the recommendation of a joint committee of both the houses of Parliament in 1983, the criminal laws have been amended and Section 498 A was added to deal with acts of cruelty by a husband or relatives of the husband.

Think it Over 1.

- What is the legal definition of dowry?
Does this definition apply to all circumstances?

12.4 DOWRY UNDER I.P.C.

In the earlier section we discussed dowry as perpetuated under dowry prohibition Act. Let us examine its status as under Indian Penal Code.

12.4.1 Punishment under Section 498A

Whoever being the husband or the relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term, which may extend to 3 years and shall be liable to fine. For the purpose of this action 'cruelty' means:

- a) any willful act which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or health (whether mental or physical) of the woman, or;

- b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12.4.2 Punishment under Section 304B

Where the death of the woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty/harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death.

Following are important ingredients of this section:

- a) the death of a woman should be due to burns, or bodily injury or otherwise than under normal circumstances;
- b) such deaths should have occurred within seven years of her marriage;
- c) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- d) such cruelty or harassment should be for or in connection with demand of dowry.

12.4.3 Scope of Applicability of Section 498 A and 304 B

Every kind of harassment not covered: It is not that harassment of every type of cruelty would attract Section 498A. The complainant has to establish conclusively that the beating and harassment in question was with a view to force her to commit suicide or to fulfill an illegal demand of dowry.

In a court judgement Tarsem Singh Vs. Amit Kaur 1995, it was held that a husband who does not call his wife back to the matrimonial home does not thereby cause any harassment.

Mere harassment or mere demand for property etc. is not cruelty. It is only where harassment is shown to have been caused for the purpose of coercing a woman to meet such demand that it amounts to cruelty has been made punishable under this section.

Jurisdiction: A wife, maltreated for dowry was sent back to her father where she became ill because of shocks and after effects of cruelty. The court having jurisdiction at the place was held competent to entertain a complaint u/s 498A in respect to cruelty.

Compounding of Complaint: In a famous judgement of D. Jayalanhu Vs. State it was held that (in complaint u/s 498A) compromise between husband and wife

was permissible even though the offence is non-compoundable. It added that in exceptional circumstances only the High Court could permit compounding of non-compoundable case under its inherent powers.

Suicide by Mistress: If the cruelty or harassment of the kind described in Section 498A is meted out to a mistress, which leads her to commit suicide, the section would cover her case also.

Cruelty by Vexatious Litigation: In a case where out of vindictiveness the husband instituted vexatious litigation against her wife and she was feeling humiliated and tortured by reason of execution of search warrant and seizure of personal property, it was held that the section was wide enough to encompass a cruelty committed through an abuse of the litigation process.

Refusal to Return Stridhan: In a case where the husband and the father-in-law pushed out a Hindu woman from the marital home and refused to return her ornaments, money and clothes despite repeated demands it amounted to an offence of criminal breach of trust as defined in Sections 405 and 406 IPC.

Learn From Your Experience 2

You must be attending several marriages. Select any four marriages for your investigation to collect information on (a) types of dowry given (b) conditions under which dowry given (c) whether either party of the marriage is aware for the punishment on dowry. Based on your information write a note on Dowry and Punishment in our Society.

12.5 PROTECTION UNDER INDIAN EVIDENCE ACT

In order to provide protection to the aggrieved Section 113A was added in the Indian Evidence Act by Act 46 of 1983. This section has been added basically to raise presumption regarding abetment of suicide by a married woman to the following effect.

Wherever there is a question as to whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband, and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband and such relatives of her husband had subjected her to cruelty, the court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband.

Similarly, as per Section 113B of Indian Evidence Act – when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for or in connection with any demand for dowry, the court shall presume that such person has caused the dowry death.

12.6 EFFORTS MADE BY THE GOVERNMENT AND NON-GOVERNMENT AGENCIES

India's first Prime Minister, Pt. Jawaharlal Nehru, rightly said, "Legislation cannot by itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may give that push and have that educative facts as well, as the legal sanctions behind it which will help public opinion to be given a certain shape." Let us examine what are the various efforts made by the governmental and non-governmental agencies for implementation of these laws cited above.

- a) *Creation of Crime Against Women Cell (CAW)*: Many states have set-up many crime against women cells to deal with the problems of women related to their domestic affairs. The CAW cell has attempted to settle marital-discord cases amicably to the extent possible e.g. in Delhi in year 1998, 7200 complaints were received in the CAW Cell at Nanakpura and the 9 other CAW cell in the District. Out of these 1564 cases, the settlement/reconciliation was brought about by the efforts of the offices of these cells. It is important to point out that registration of cases was recommended only in 8.9% of total complaints received by the cell. In Delhi, special helpline (Tel. No.) installed in the central PCR has been extending very valuable assistance to women in distress. During the year 1998, 1063 calls were received through helpline. In 384 cases, police help was rendered, in 14 instances criminal cases were registered. In 448 cases advice was given to the caller for their queries and the rest were found to be bogus calls.
- b) *Pariwarik Mahila Lok Adalats*: The desire to provide speedy justice to women led to the development of Parivarik Mahila Lok Adalats (PMLAs) by the National Commission for Women. They are organised on the lines of the Lok Adalats with the help of NGOs and legal aid boards at state and District levels. The effort has been fairly successful in getting justice delivered to women in respect of family disputes. The Commission has been overwhelmed by the proposals received from NGOs and legal aid boards for organising Mahila Adalats. The types of cases which are handled by PMLAs are: pending cases, pre-litigation cases, legal advice in respect of legal/judicial matters such as matrimonial disputes, criminal cases, labour, motor-accident cases and dowry harassment etc. During 1997 and 1998, the National Commission for Women organised 30 Adalats in 12 States.

From the above discussion in the last pages, about the problem of dowry we can safely draw following conclusions:

- a) Firstly, the problem of dowry has been treated as important not only by the framers of law but also at time by law enforcement agencies. In order to punish the culprits in dowry related violence, dowry specific Sections 498A and 304B have been duly supplemented by relevant sections of the Indian Evidence Act so that the culprits do not get benefit of legal lacunas on technical grounds.

- b) The analysis of dowry related violence has reflected that such cases are taking place even in highly socially mobile families where the level of education and awareness is also very high. This is the most unfortunate part.
- c) Women's organisations, NGOs, NCW and other feminist groups have indeed taken several measures to reduce the menace of dowry related violence through several positive measures. Such measures and wide scale awareness about this problem has indeed affected the pattern of reporting on this crime in many places.

Although there are sufficient legal provisions to curb the menace of dowry related violence, they are not enough to stop such evils in society. There is a need to approach this problem through various other forms like mass awareness, education, and media coverage of accused persons etc. This is a problem, which not only requires concern and sympathy but also an empathy.

Think it Over 2

What are the various efforts made by the government and non-government agencies for the prevention of dowry deaths in India. Are these efficient and sufficient enough?

12.7 CONCLUDING REMARKS

In recent years there has been a crucial debate among a section of women activists on the issue of relevance of the institution of dowry in India. A section of scholars are of the view that (a) ours is a traditional society, b) in spite of legal provisions women do not claim their share of parental property, c) many of our women are not even aware of their entitlement to these properties etc. Against this backdrop it is argued that the institution of dowry has a positive contribution in providing a share of parental properties to girls. This argument however does not hold true in view of gradual commercialisation of the institution of marriage and increasing marginalisation of women in our society. It has taken the form of barbaric crime leading to the death of several innocent girls. It needs to be objected to as it leads to a devaluation of women in the society. The various legal provisions provide the basis to urge a struggle against this crime. In this unit we have tried to introduce you with these legal provisions.

12.8 CLARIFICATION OF THE TERMS USED

Anuloma : marriage of a women into a higher caste or subcaste.
 NGOs : Non Government Organisations

12.9 SOME USEFUL READINGS

Government of India (1988) National Perspective Plans for Women's Development 1988-2000 A.D. New Delhi: Govt. of India.
 Haksar, Nandita (1986) *Demystification of Law for Women*. New Delhi: UNESCO. "Women and Violence: A Country Report".

UNIT 13 FAMILY COURTS

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13.0 AIMS AND PURPOSE

This unit deals with the various aspects of the Family Courts Act, 1984 and the Rules made by the State Government for implementing the Act. After studying this unit you should be able to:

- explain the need for Family Courts;
- enumerate the matters which fall within the jurisdiction of the Family Court;
- discuss the role of the Counselling Centre;
- explain the distinctive features of Family Courts;
- discuss the shortcomings of Family Courts and the problems in the implementation of the Family Courts Act.

13.1 INTRODUCTION

When society was not very complex, any dispute related to family matters was settled within the family, and if the problem could not be settled, it was taken to the caste or village council. All decisions taken there were binding on both the parties and even the punishment decided upon was accepted without any questioning. At times, such a problem could also be taken to the king, who was the executive as well as the judicial head of his kingdom.

As society became increasingly complex, the need for a formal system for dispersion of justice in both civil and criminal matters became evident. With the advent of British rule in India, laws relating to civil as well as criminal offenses were codified and courts were established for dispersion of justice by judges, through the interpretation of the existing laws. In India, the Supreme Court is the highest body to which an appeal can be made, if one is not satisfied with the judgments passed at the lower courts.

Generally common people approach courts of justice with some reservation. The atmosphere in the courts is extremely formal and therefore intimidating, the cost of hiring the services of lawyers is prohibitive, and the entire process is long drawn resulting in considerable delay in getting a judgment. In fact, in Marathi there is a proverb which says, "No wise person should ever approach any court".

In matters related to family disputes, problems get magnified because of their sensitive nature. The fear of social stigma becomes a deterring factor because of the general lack of confidentiality in court procedures.

Keeping in view the limitations of the legal system, activists interested in the welfare of women and families agitated for separate family courts for settlement of family disputes. It was further elaborated that in these family courts emphasis should be laid on conciliation for achieving socially desirable results. It was expected that in these family courts, rigid rules of procedures and evidence would be eliminated. The Law Commission in its 59th report (1974) also emphasized that in dealing with family disputes, courts should adopt an approach that was different from the one adopted in ordinary civil proceedings. However, hardly any effort was made by most courts to adopt the conciliatory procedures. It was, therefore considered necessary to establish family courts for speedy settlement of family disputes, adopting the conciliatory approach.

13.2 THE FAMILY COURTS ACT, 1984

Enacted by the Parliament of India in 1984, the Family Courts Act provides for the establishment of family courts by State Governments, with a view to promote conciliation and securing speedy settlement of disputes relating to marriage and family matters and other related issues. This law extends to the whole of India, except the State of Jammu and Kashmir. It was first published in the Gazette of India, dated 14th September, 1984, after receiving the assent of the President of India.

The Family Courts Act was brought into force with effect from 1st December, 1986 by notification in the Official Gazette. This date was different for different States.

13.2.1 Jurisdiction of Family Courts

- 1) The Family Court has jurisdiction to carry out suits and proceedings concerning the following matters:
 - i) nullity or annulment of marriage;
 - ii) validity of a marriage or the matrimonial status of any person;
 - iii) property of either party to the marriage;
 - iv) circumstances arising out of a marital relationship;
 - v) legitimacy of any person;
 - vi) maintenance;
 - vii) guardianship, custody of and access to any minor.

- 2) A Family Court also has the jurisdiction exercisable by a Magistrate of the First Class:
 - a) relating to an order for maintenance of wife, children and parents under the Code of Criminal Procedure, 1973 (2 of 1974); and
 - b) such other jurisdiction as maybe conferred on a Family Court by any other enactment.

13.2.2 Establishment of Family Court

According to the Family Courts Act, the State Government, after consultation with the High Court, is to establish a Family Court for every area in the State comprising a city or town whose population exceeds one million. The State Government can also establish Family Courts in other areas, if necessary. It can also increase, reduce or alter the limits of the jurisdiction of a Family Court in the State in consultation with the High Court and notification published in the Official Gazette.

If a Family Court has been established in any area, the District or any Subordinate Civil Court does not have any jurisdiction of any suit or proceeding related to any matter which comes under the jurisdiction of the Family Court. No Magistrate in the area of jurisdiction of a Family Court has or can exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974).

All suits and proceedings pending before any District Court or Subordinate Court which fall within the jurisdiction of the Family Court will stand transferred to it on the date on which it is established.

13.2.3 The Judges of the Family Court

Any person appointed as a judge to the Family Court has to fulfil the following qualifications:

Should have held a judicial office in India or the office of a Member of a Tribunal or any post under the Union or a State requiring special knowledge of Law for at least seven years.

OR

Should have worked for at least seven years as an Advocate of a High Court or of two or more such Courts in succession.

In addition to the above qualifications, laid down in the Family Court Act, 1984, the Central Government, with the concurrence of the Chief Justice of India, has laid down the following additional qualifications for the appointment of a judge to a family court (and published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (I) dated 2nd June 1988):

- i) *a Post-graduate degree in Law with specialization in Personal Law.*

OR

a Post-graduate degree in Social Science, such as Master of Social Welfare, Sociology, Psychology, Philosophy with a degree in law.

- ii) *At least seven years experience in field work/research or of teaching in a Government Department or in a College/University or comparable academic institute with special reference to problems of women and children.*

OR

Seven years experience in the examination and/or application of Central/ State Laws relating to marriage, divorce, maintenance, guardianship, adoption and other family disputes.

13.2.4 The Procedure

- a) **Efforts for Settlement:** In the first instance, the Family Court makes all efforts to assist and persuade the parties involved in any suit or proceeding for arriving at a settlement, wherever it is possible to do so consistent with the nature and circumstances of the case.

For this purpose, the Family Court follows appropriate procedures, subject to any rules made by the High Court of the concerned State. If there is any reasonable possibility of arriving at a settlement, the Family Court may adjourn the proceedings to give enough time for bringing about such a settlement.

- b) **General Procedure:** Depending on the nature of the case, generally the procedures followed in the Family Court are those laid down in the Code of Civil Procedure, 1908 (5 of 1908) or the Code of Criminal Procedure 1973 (2 of 1974), as appropriate. The Family Court is not prevented from laying down its own procedure with a view to arrive at a settlement.
- c) **In Camera:** All suits or proceedings to which the Family Court Act applies are held in camera, if the Family Court so desires and are held in that way, if either party so desires. This means that members of the public are not allowed inside the Court, when the suit or proceeding is being conducted.
- d) **Assistance of Medical and Welfare Experts:** The Family Court is entitled to secure the services of a medical expert and/or any person who the court thinks fit for the purpose of assisting the Family Court in discharging its functions.
- e) **Right to Legal Representation:** No party to a suit or proceeding is entitled as of right to be represented by a legal practitioner (lawyer/pleader). In the interest of justice, the Family Court may seek the assistance of a legal expert.
- f) **Evidence:** The Indian Evidence Act, 1872 is applicable to the Family Court. In addition, the Family Court may receive as evidence any report, settlement, documents, information or matter that may, in its opinion, assist to deal effectively with a dispute.

In suits or proceedings before a Family Court, it is not necessary to record the evidence of witnesses at length. The judge himself/herself records a memorandum of the substance of what the witness says or gets is recorded by a Court functionary. This memorandum is then signed by the witness and the Judge and forms part of the record. If the evidence is of a formal character, it could be given by an affidavit, and in exceptional cases, be read in evidence before a Family Court in any suit or proceeding. A person giving such an affidavit could be summoned and examined by the Family Court about the facts contained in the affidavit, on an application of any of the parties to the suit proceeding.

- g) **The Judgment:** The judgment of the Family Court contains a brief statement of the case, the point for determination, the decision of the Family Court on this point and the reasons for this decision.

A decree or an order passed by a Family Court has the same force and effect as a decree or order of a Civil Court and is executed in the same manner prescribed by the Code of Civil Procedure 1908 (5 of 1908), for the execution of decrees and orders.

When the order passed by a Family Court is under the Code of Criminal Procedure, 1973 (2 of 1974), it is executed in the manner prescribed for execution of such an order by that code.

A decree or an order passed by a Family Court can either be executed by the same Family Court or can be sent to another Family Court or ordinary Civil Court for execution.

- h) **Appeal:** Either party to the suit or proceeding can appeal to the High Court against the judgment or order passed by the Family Court. Such an appeal can be filed only with the consent of the concerned parties, within a period of thirty days from the date of the judgment or order of a Family Court. Such an appeal will be heard by a Bench consisting of two or more judges.
- i) **Rules:**
 - a) With the concurrence of the Chief Justice of India, the Central Government can make Rules prescribing the other qualifications for appointment of a judge to a Family Court. Every rule made by the Central Government under the Family Courts Act has to be approved by both the Houses of Parliament.
 - b) The State Government has the power to make rules for carrying out the purposes of the Family Courts Act. These rules have to be made in consultation with the High Court and have to be notified in the Official Gazette. Every rule made by the State Government under this Act has to be laid before the State Legislature as soon as possible after it is framed.

Think it Over 1

What is the need for family courts in India?

What are the different matters that fall within the jurisdiction of the Family Court?

As pointed out earlier, State Governments have the power to frame rules for implementing the Family Courts Act. Thus, the Family Court Act of the Central Government provides the broad framework and the State Rules provide the details regarding how the Act is to be implemented. In the next section we shall provide the family courts rules initiated by the state of Maharashtra as illustration.

The Family Court Rules made by the Government of Maharashtra are described in detail in the following sections to illustrate how the Family Court Act is implemented in this state.

13.3 THE MAHARASHTRA FAMILY COURTS RULES, 1987 AND 1988

Two sets of Family Courts Rules issued by the Government of Maharashtra are available. These rules could be considered under three broad headings: (1) The Counselling Centre; (2) Legal Advice to the Concerned Parties; (3) Guardianship of Children.

13.3.1 The Counselling Centre

Each Family Court has a Counselling Centre attached to it. Each such Centre has a Principal Counsellor and other counsellors who are appointed by the High Court, in consultation with a recognised institution of social sciences or social work. Persons having a master's degree in social work, and a minimum experience of two years are eligible for appointment as counsellors.

The Counsellor entrusted with a petition assists and advises the parties regarding the settlement of any dispute between the parties. The Counsellor also helps the parties to arrive at a conciliation.

The Counsellor, while discharging his/her duties is entitled to pay home visits to any of the parties; interview relatives, friends and acquaintances of either or both parties, seek information from the employer of any of the parties and refer the parties to an expert in medicine, psychiatry, etc.

All information collected by the Counsellor is considered as confidential. This includes any statement made before the Counsellor or any notes or report prepared by the Counsellor. The Counsellor cannot be called upon to disclose all this before any court, except with the consent of both the parties. These notes, reports or statements or any material with the Counsellor does not form a part of the evidence before the court nor can the Counsellor be asked to give evidence in the Family Court on the basis of all this material. The Counsellor, however, can submit to the Court a report relating to the home environment of the parties concerned, their personalities and their relationship with their child or children. Such a report assists the Court in deciding the question of custody or guardianship of any child or children of the marriage. The Counsellor can also submit a report to the Court relating to home environment, income or standard of living of the party or parties concerned, in order to assist the Court in determining the amount of maintenance, and/or alimony to be granted. The Court may also request the Counsellor to submit to it a report on any other subject in order to assist the Court in adjudicating upon the matter before it. If the parties make a request for a copy of such a report, it is supplied to them and the parties can make their submission on it. The Counsellors cannot be called upon to give evidence nor can he/she be cross examined in respect of the report. The Counsellor also submits to the Court a brief memorandum regarding the outcome of the proceeding before him/her.

When the parties arrive at a settlement before the Counsellor, this settlement is put in writing and signed by the parties and countersigned by the Counsellor. On the basis of this settlement, the Court pronounces a decree or order, unless the court finds that the terms of the settlement are not governed or regulated by conscience or are unlawful or are contrary to public policy.

The Counsellor has the right to supervise the placement of children in the custody of a party and is entitled to pay surprise visits to the home where the child is

placed. If the Counsellor finds the arrangements relating to the custody of a child or children need alteration, he/she makes a report to the Court. The Court then issues orders, as considered fit after giving notice to the parties to appear before it. Even if the couple is reconciled and the matter is no longer pending in the Court, the Counsellor is entitled to supervise and assist such a couple.

It could happen that in the course of conciliation proceedings before the Counsellor or Court, cohabitation between the parties takes place. This is not deemed to condone the matrimonial offence.

13.3.2 Legal Advice to the Concerned Parties

A party is entitled to take legal advice at any stage of the proceedings, either before the counsellor or before the Court. A party in indigent circumstances is entitled to free legal aid and advice. For this purpose, the Court maintains a panel of lawyers who are willing to render free legal aid and advice.

The Court can also seek the assistance of legal experts, if necessary. For this purpose, a list of experts, who are willing to assist the Court, is prepared. They are paid fees and expenses by the State Government.

13.3.3 Guardianship of Children

All applications for guardianship are to be filed before the Family Court, except for those applications over which the High Court has jurisdiction.

In deciding a guardianship petition, the Court may take assistance of a social welfare agency or agencies for the scrutiny of the petition. The agency/agencies could be asked for a report on the matter by the Court.

Detailed rules have been framed for any petition for guardianship filed by a foreigner. An important provision is that no petition for guardianship by a foreigner would be entertained, unless the Family Court is satisfied that adequate attempts for at least three months (or any other period that the Court deems fit) had been made to place the child in an Indian home. Other rules for foreigners relate to such matters as follows:

- i) Permission from the country where the petitioner resides, for the child to enter the country;
- ii) An undertaking by a recognised family welfare agency of the concerned country to supervise the child in the home of the petitioner until the child is legally adopted.

With respect to the last condition, the Court has to satisfy itself that the child can be legally adopted by the foreigner by filing the petition for guardianship under the law of the country where he/she resides. The Court may also direct a foreign petitioner to give a bond for an amount that it thinks proper for the return of the

child to India in case of any difficulty. The Court also ensures the financial security of the minor by passing appropriate orders at the time of granting a petition for guardianship. A copy of every guardianship order appointing a foreigner as a guardian has to be forwarded to the Ministry of Social Welfare, Government of India and the Cultural Affairs Department of the State Government.

All petitions for guardianship have to be accompanied by several documents including two recommendations from respectable members of the community, financial position of the petitioner, health certificate of the petitioner and his/her spouse, a health certificate and a Child Study Report of the child proposed to be taken in guardianship, and a declaration from the proposed guardian and his/her spouse, if any, expressing their willingness to take the child in guardianship. A Home Study Report prepared by an approved family welfare agency or a suitably trained social worker has to be submitted along with the petition, if it is being made by a person who is not a natural parent or a natural guardian of the child.

In the case of a child placed in guardianship, the Court may, at any time, direct a Counsellor attached to the Court to supervise the placement of the child and submit report(s) to the Court.

All these details related to Guardianship of children are given here to highlight the manner in which the interests of children in guardianship, including girl children, are safeguarded.

Think it Over ?

What is the role of the Counselling Centre attached to the Family Court?

13.4 FAMILY COURTS: A CRITIQUE

Several distinctive features of Family Courts can be highlighted. On the other hand, critics have pointed out the shortcomings in the functioning of Family Courts and in the implementation of the Family Courts Act. Both views need to be taken into account.

13.4.1 Distinctive Features of Family Courts

Several arguments in favour of Family Courts and their functioning could be put forward by highlighting their distinctive features.

- a) **A Social Problem:** A litigation in regard to all matters concerning the family, whether divorce, maintenance, alimony, custody of children or financial support for them, is not viewed in terms of failure or success of legal actions, but as a social problem needing a solution. Human considerations are expected to outweigh everything else.

- b) **Broad-based Service:** The Family Court provides a broad-based service to families in trouble in the sense that the concerned parties as well as social worker/ Counsellors, welfare agencies, psychiatrists, legal and medical experts, etc. are all engaged in finding out a solution to any family problem.
- c) **The Role of Counsellors:** A very important role is played by Counsellors attached to the Family Court. They provide family counselling aimed at reconciliation and other services required for the purpose. They listen to both the parties and in that sense their role is quite different from that of a lawyer, who pleads the case from the point of view of his/her own client. The Counsellors also investigate the facts of the case.
- d) **Speedy Disposal of Cases:** All attempts are made to dispose off the cases speedily; within the framework of the law.
- e) **Confidentiality:** The utmost confidentiality is observed in all matters related to the cases. All cases are carried out in camera, with no member of the public allowed inside the Court.
- f) **Informality:** The procedure of the Court is carried out in an informal atmosphere. The Family Court dispenses with the services of a lawyer "..... no party to a suit or proceeding before a Family Court shall be entitled as of right to be presented by a legal practitioner". No detailed recording of the evidence is done.
- f) **Legal Aid:** The auxiliary services provided by the Family Court include Legal Aid Services to those who cannot afford the services of a lawyer.
- h) **Enforcement Services:** In addition to counselling services, investigative services and legal aid services, the family Court provides Enforcement Services as one of the auxiliary services of the Family Court. For instance, if the Court has passed an order regarding maintenance or the custody of a child to one of the parties, the Enforcement Service of the Family Court is responsible for ensuring the enforcement of all such court orders, so that the execution proceedings do not drag on for months or even longer.
- i) **Conclusion:** In conclusion it may be said that the Family Court's first concern appears to be preservation of the family. In this direction, all attempts are made to stabilize the marriage and solve problems arising out of family disputes. Where a marriage has irrevocably broken down, the Family Court does dissolve it but with efforts made to ensure maximum fairness and minimum bitterness, distress and humiliation experienced by both parties. In these efforts, the assistance of specialised persons and agencies is taken. In many ways, Family Courts have been viewed as specially beneficial to women in trouble having problems within the marriage and the family.

13.4.2 Some Shortcomings in the Functioning and Implementation of the Family Courts Act

Several times the Family Courts Act and the functioning of Family Courts have been criticized on many counts. Some of these points need to be considered.

- a) **Counsellors:** It has been pointed out that sometimes Counsellors do not have enough legal knowledge, leading to delay in dispensing justice.

Counsellors have also been blamed for interfering with the legal process. The reports prepared by them have often been found to be inadequate, but have been accepted by the Judges because of the heavy burden they themselves carry. These critics have suggested that legal practitioners, with some experience, should be appointed as Counsellors and that this change would assist the Judges in dispensing justice speedily. Some critics have been even gone so far as to suggest that the Family Courts Act should be amended to cancel the appointment of Counsellors attached to the Family Court, as they do not serve any useful purpose.

- b) **Conciliation:** It has been argued that by the time the petition is filed in the Family Court, matters have already reached serious proportions. What purpose would then be served by making futile attempts to bring about conciliation between the two parties?
- c) **Qualifications of Judge:** According to a later Notification in the Gazette of India, those having a post-graduate degree in Social Sciences with a degree in Law, with seven years experience in allied fields are eligible for appointment as judges in Family Courts. It is argued that merely having a degree in Law does not qualify a person for carrying out the responsibilities of a Judge in any Court. Actual experience as a legal practitioner is required for gaining insights into the interpretation of the finer points of laws and legal procedures. Thorough knowledge of "Case Law" is also essential.
- d) **False Evidence:** In cases of divorce by mutual consent, a marriage certificate has to be produced. If this is not available, a printed wedding invitation is accepted by the Court as proof of marriage. As is well known, such printed invitations can be easily obtained. In many cases, a divorce is granted to a man and a woman who have never been married to each other. There is no legal mechanism to stop such frauds. The practice of attaching photographs, attested by a Notary to the petition, followed in the Family Court in Pune, Maharashtra, could perhaps solve the problem to some extent. It has been suggested that this practice needs to be adopted in all the Family Courts.
- e) **Load of Work:** All petitions which fall under the jurisdiction of Family Courts, according to the Family Courts Act have to be filed with the Family Court, if there is one in the area. Even such pending cases in other Courts are transferred to the Family Court. This increases the load on any one Family Court leading to considerable delay in the dispensation of justice.
- f) **Representation by Legal Practitioners:** According to the Family Courts Act, lawyers normally do not have any place in any Family Court. It is only in special cases that permission is granted to a lawyer to plead the case of his/her client in Court.

It is argued that common people do not have any understanding of the law, Court procedures, etc. It is further argued that this ignorance leads to concentration of power in the Counsellors and Court officials that is detrimental to the interests of the common people. Such a situation could lead to injustice and harassment.

- g) **Appointment of Judges:** Appointment as a Judge of a Family Court is not considered as a prestigious position by the legal profession. Though women are preferred as judges to the Family Court, ambitious men and women,

legal practitioners both consider the position unacceptable because it is thought to have a limited scope for career advancement. In such circumstances, it is not unlikely that at least a few incompetent persons would be appointed as Judges of Family Courts.

- h) **Women's Organisations and Inexperienced Lawyers:** Several women's organisations are at present involved in helping women to carry out their cases in the Family Court. Such organisations cannot afford the fees of competent senior lawyers nor do such lawyers have the time to give their services to these organisations. The result is that often inexperienced lawyers work for such organisations. The interest of the concerned parties is not served by such an arrangement.
- i) **Jurisdiction of the Family Court:** Only marriages under the Hindu Marriage Act and Special Marriages Act come under the jurisdiction of the Family Court. Christian and Parsee marriages and matters related to Muslim marriages do not fall in the jurisdictions of the Family Court.
- j) **Family Court as a Court of Law:** It is argued that a Family Court is after all a Court of law. Therefore, the procedures and the process of dispensing justice have to be appropriate to any Court. These conditions are in many cases not applicable to a Family Court.

Think it Over 3

- 1) In what way are the Family Courts beneficial to women in trouble, having problems with the marriage and the family?
- 2) Critically examine the provisions of the Family Courts Act as they relate to the following:
 - a) Efforts at settlement;
 - b) Right to legal representation

13.5 CONCLUDING REMARKS

The Family Courts Act, 1984 provides for establishment of Family Courts by State Governments in any city with a population of one million, with a view to promote conciliation and speedy settlement of disputes relating to marriage and family matters as well as other related matters. Several distinctive features of Family Courts could be highlighted. Litigation with regard to all matters concerning the family are viewed as constituting a social problem needing a solution rather than as a legal case to be won or lost. The Family Court provides a broad-based service to families in trouble. Counsellors attached to the Family Court provide counselling services to both parties of the dispute and also investigate the facts of the case. Strict confidentiality is observed in all matters related to the case, and the proceedings are carried out in camera. The procedures of the Family Court are carried out in an informal manner. No party to a suit or proceeding before a Family Court is entitled as a matter of right to be represented by a legal practitioner, except by special permission. The parties are entitled to

legal aid services as well as services for the enforcement of the orders of the Court. Though the prime concern of the Family Court is the preservation of the family, through efforts at conciliation, the marriage is dissolved by the Court in cases where the marriage has broken irrevocably, with efforts made to cause the minimum distress and humiliation to the concerned parties. In many ways, the Family Courts have been viewed as specially beneficial to women in trouble having problems within the marriage and the family.

Several limitations and weaknesses in the Family Courts Act itself and in the implementation as well as the working of Family Courts have also been pointed out. Most of the limitations in the implementation of the Act and the working of the Courts which could be limitations of the Family Courts Act itself are, however, bound to continue. These issues include the qualifications required for appointment as a judge to the Family Court, the role of the Counsellors attached to the Family Court and their required qualifications, and the clause in the Family Courts Act which does not entitle the parties by right to be represented by lawyers intensify as more people gain experience of dealing with the Family Courts Act and the Family Courts established under it. The need for a large number of Family Courts all over the country is more than evident.

13.6 CLARIFICATION OF THE TERMS USED

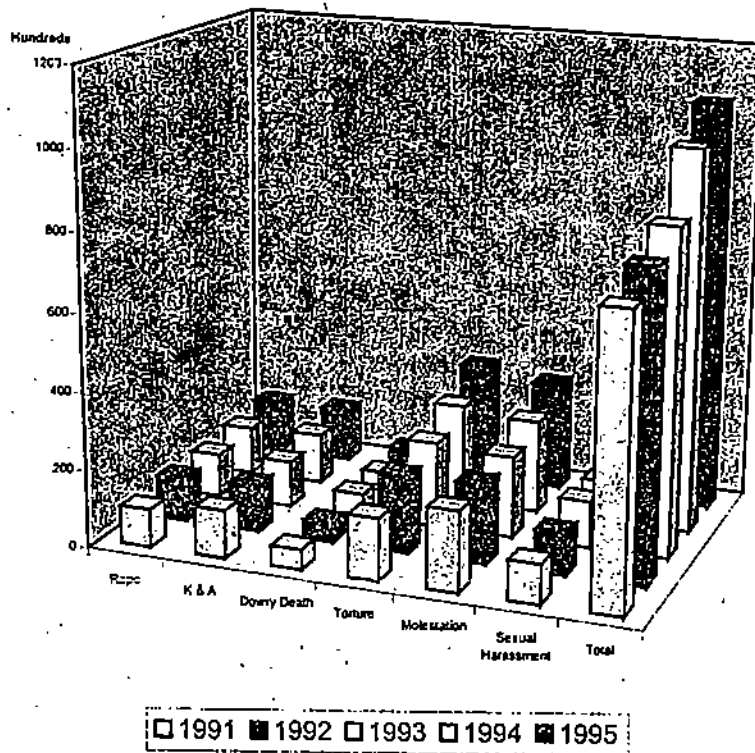
Family Courts	: The Family Courts Act, enacted by the Parliament of India in 1984 provides for the establishment of Family Courts by State Governments, with a view to promote conciliation and securing settlement of disputes related to marriage and family matters and other related issues.
In Camera	: Members of the public are not allowed inside the Court, when the suit or proceeding is being conducted.
Counsellor	: A professionally trained social worker working in the Counselling Centre, attached to the Family Court. He/she provides family counselling to both the parties, aimed at reconciliation. The Counsellor also investigates the facts of the case.
Enforcement Services:	The service provided by the Family Court for ensuring the enforcement of all Court orders.

13.7 SOME USEFUL READINGS

- CSWI (1974) *Towards Equality, Report of the Committee on the Status of Women in India*. New Delhi: Govt. of India.
- Government of India, (1998) *National Perspective Plan for Women*. Govt. of India. New Delhi.

Annexure 'A'

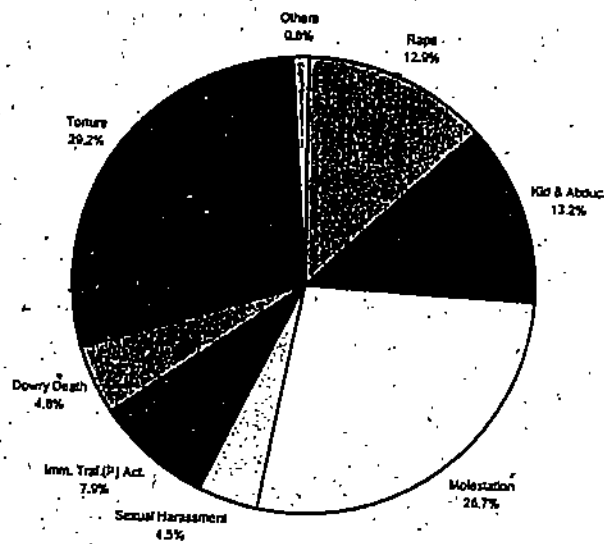
INCIDENCE OF CRIMES COMMITTED AGAINST WOMEN DURING 1992 TO 1995



Source : Crime in India. NCRB, 1995

Annexure 'B'

INCIDENCE OF CRIMES COMMITTED AGAINST
WOMEN DURING 1995



Source : *Crime in India. NCRB, 1995*

Annexure 'C'

State and Uts contributing more than 5 per cent towards various forms of Crimes committed against Women during 1995

Sl.No.	Crime Head	More than 10%	Between 5-10%	Total of Cots.3 & 4
(1)	(2)	(3)	(4)	(5)
1.	Rape	Madhya Pradesh -22.7 Uttar Pradesh -13.1	Maharashtra -9.9 Bihar -9.5 Rajasthan -7.5 Andhra Pradesh -6.2 West Bengal -5.7	74.6
2.	Kidnapping and Abduction	Rajasthan -18.3 Uttar Pradesh -16.6	Assam -8.0 Madhya Pradesh -7.3 Gujarat -6.9 Bihar -5.9 Maharashtra -5.6	68.6
3.	Dowry Death	Uttar Pradesh -36.3	Maharashtra -9.2 Madhya Pradesh -8.2 Bihar -7.5 Rajasthan -7.2 Andhra Pradesh -7.1	75.5
4.	Torture (cruelty by husband or his relative)	Maharashtra -28.1 West Bengal -10.7 Rajasthan -10.3 Uttar Pradesh -10.2	Andhra Pradesh -9.1 Madhya Pradesh -8.5 Gujarat -6.2	83.1
5.	Molestation	Madhya Pradesh -25.8 Maharashtra -12.2	Andhra Pradesh -9.4 Uttar Pradesh -9.2 Rajasthan -7.4 Orissa -5.1	69.1
6.	Sexual Harassment	Tamil Nadu -22.7 Maharashtra -17.0 Andhra Pradesh -16.2 Madhya Pradesh -16.1	Haryana -6.2	78.2
7.	Importing of Girls	Andhra Pradesh -33.5 Punjab -14.1 Gujarat -11.0	Madhya Pradesh -8.9 Maharashtra -6.8 West Bengal -6.3 Haryana -5.2	85.8
8.	Immoral Traffic (Prevention) Act	Tamil Nadu -60.5 Karnataka -21.9	Maharashtra -6.6 Andhra Pradesh -6.0	95.0
9.	Indecent Representation of Women Act	Andhra Pradesh -66.2 Maharashtra -20.2	Bihar -5.2	91.6

Source : Crime in India. NCRB, 1995

Annexure 'D'

Dowry Prohibition Act.

The following table provides the details on cases registered under Dowry Prohibition Act during 1991-95

Sl.No.	Year	Cases Registered	% change over previous year
(1)	(2)	(3)	(4)
1.	1991	1841	-14.6
2.	1992	2102	14.2
3.	1993	2679	27.5
4.	1994	2435	-9.1
5.	1995	2814	15.6

Source : Crime in India. NCRB, 1995

Annexure 'E'

**Incidence (I), Rate (R) and Percentage Contribution to All-India (P) of
Crimes Committed Against Women During 1993
(State & UT-Wise)**

Sl.No.	State/UT	Dowry Deaths			(Torture) Cruelty of Husband & his Relatives		
		I	R	P	I	R	P
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
STATES:							
1.	ANDHRA PRADESH	575	0.8		2053	3.0	9.3
2.	ARUNACHAL PRADESH	0	0.0		3	0.3	0.0
3.	ASSAM	19	0.1		209	0.9	0.9
4.	BIHAR	338	0.4		356	0.4	1.6
5.	GOA	2	0.2		16	1.3	0.1
6.	GUJARAT	114	0.3		1428	3.3	6.5
7.	HARYANA	166	1.0		293	1.7	1.3
8.	HIMACHAL PRADESH	18	0.3		160	3.0	0.7
9.	JAMMU & KASHMIR	20	0.2		3	0.0	0.0
10.	KARNATAKA	266	0.6		1153	2.5	5.2
11.	KERALA	10	0.0		381	1.3	1.7
12.	MADHYA PRADESH	370	0.5		1500	2.2	6.8
13.	MAHARASHTRA	746	0.9		6746	8.2	30.6
14.	MANIPUR	0	0.0		1	0.1	0.0
15.	MEGHALAYA	0	0.0		1	0.1	0.0
16.	MIZORAM	0	0.0		0	0.0	0.0
17.	NAGALAND	0	0.0		0	0.0	0.0
18.	ORISSA	254	0.8		201	0.6	0.9
19.	PUNJAB	147	0.7		41	0.2	0.2
20.	RAJASTHAN	369	0.8		1984	4.3	9.0
21.	SIKKIM	0	0.0		0	0.0	0.0
22.	TAMIL NADU	79	0.1		254	0.4	1.2
23.	TRIPURA	5	0.2		41	1.4	0.2
24.	UTTAR PRADESH	1952	1.3		2905	2.0	13.2
25.	WEST BENGAL	256	0.4		2187	3.1	9.9
	TOTAL (STATES)	5706	0.7		21916	2.5	99.3
UNION TERRITORIES							
26.	A & N ISLANDS	0	0.0		14	4.9	0.1
27.	CHANDIGARH	3	0.4		11	1.5	0.0
28.	D & N HAVELI	1	0.7		4	2.7	0.0
29.	DAMAN & DIU	0	0.0		3	2.7	0.0
30.	DELHI	107	1.0		113	1.1	0.5
31.	LAKSHADWEEP	0	0.0		0	0.0	0.0
32.	PONDICHERRY	0	0.0		3	0.4	0.0
	TOTAL (UTs)	111	0.9		148	1.2	0.7
	TOTAL (ALL INDIA)	5817	0.7		22064	2.5	100.0

Source : Crime in India, NCRB, 1995

Annexure 'F'

25A

**Incidence (I), Rate (R) and Percentage Contribution to All-India (P) of
Crimes Committed Against Women During 1994
(State & UT-Wise)**

Sl.No.	State/UT	Dowry Deaths			(Torture) Cruelty of Husband & his Relatives		
		I	R	P	I	R	P
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
STATES:							
1.	ANDHRA PRADESH	396	0.6	8.0	2295	3.3	8.8
2.	ARUNACHAL PRADESH	0	0.0	0.0	3	0.3	0.0
3.	ASSAM	13	0.1	0.3	293	1.2	1.1
4.	BIHAR	296	0.3	6.0	483	0.5	1.9
5.	GOA	0	0.0	0.0	16	1.3	0.1
6.	GUJARAT	105	0.2	2.1	1563	3.6	6.0
7.	HARYANA	191	1.1	3.9	351	2.0	1.4
8.	HIMACHAL PRADESH	4	0.1	0.1	140	2.5	0.0
9.	JAMMU & KASHMIR	3	0.0	0.0	11	6.0	0.0
10.	KARNATAKA	120	0.1	1.4	1159	2.4	4.0
11.	KERALA	9	0.0	0.2	550	1.8	2.1
12.	MADHYA PRADESH	354	0.5	7.2	1815	2.6	7.0
13.	MAHARASHTRA	519	0.6	19.5	2165	4.4	27.4
14.	MANIPUR	0	0.0	0.0	1	6.1	0.0
15.	MEGHALAYA	0	0.0	0.0	0	0.0	0.0
16.	MIZORAM	0	0.0	0.0	1	0.1	0.0
17.	NAGALAND	2	0.1	0.0	0	0.0	0.0
18.	ORISSA	169	0.5	3.4	361	1.1	1.4
19.	PUNJAB	117	0.5	2.4	87	0.4	0.3
20.	RAJASTHAN	298	0.6	6.0	2277	4.8	8.8
21.	SIKKIM	0	0.0	0.0	0	0.0	0.0
22.	TAMIL NADU	83	0.1	1.7	247	0.4	1.0
23.	TRIPURA	6	0.2	0.1	45	1.5	0.2
24.	UTTAR PRADESH	1977	1.3	10.1	3943	2.2	15.2
25.	WEST BENGAL	85	0.1	1.7	3037	4.2	11.7
	TOTAL (STATES)	4795	0.5	97.2	25783	2.9	99.4
UNION TERRITORIES							
26.	A & N ISLANDS	1	0.3	6.6	3	0.9	0.0
27.	CHANDIGARH	3	0.4	0.1	14	1.9	0.1
28.	D & N HAVELI	0	0.0	0.0	7	4.7	0.0
29.	DAMAN & DIU	0	0.0	0.0	0	0.0	0.0
30.	DELHI	132	1.2	2.7	136	1.3	0.5
31.	LAKSHADWEEP	0	0.0	0.0	0	0.0	0.0
32.	PONDICHERRY	4	0.5	0.1	3	0.3	0.0
	TOTAL (UTs)	140	1.1	2.8	163	1.3	0.6
	TOTAL (ALL INDIA)	4935	0.5	100.0	25946	2.9	100.0

Source : Crime in India. NCRB, 1995

Annexure 'G'

**Incidence (I), Rate (R) and Percentage Contribution to All-India (P) of
Crimes Committed Against Women During 1995
(State & UT-Wise)**

Sl.No.	State/UT	Dowry Deaths			(Torture) Cruelty of Husband & his Relatives		
		I	R	P	I	R	P
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
STATES:							
1.	ANDHRA PRADESH	362	0.5	7.1	2821	3.9	9.1
2.	ARUNACHAL PRADESH	0	0.0	0.0	1	0.1	0.0
3.	ASSAM	44	0.2	0.9	485	2.0	1.6
4.	BIHAR	383	0.4	7.5	622	0.7	2.0
5.	GOA	2	0.2	0.0	13	1.9	0.0
6.	GUJARAT	61	0.1	1.2	1926	4.3	6.2
7.	HARYANA	218	1.2	4.3	426	2.4	1.4
8.	HIMACHAL PRADESH	6	0.1	0.1	219	3.9	0.7
9.	JAMMU & KASHMIR	5	0.1	0.1	35	0.4	0.1
10.	KARNATAKA	202	0.4	4.0	1488	3.1	4.8
11.	KERALA	21	0.1	0.4	787	2.5	2.5
12.	MADHYA PRADESH	417	0.6	8.2	2640	3.7	8.5
13.	MAHARASHTRA	471	0.5	9.2	8760	10.2	28.1
14.	MANIPUR	0	0.0	0.0	0	0.0	0.0
15.	MEGHALAYA	0	0.0	0.0	0	0.0	0.0
16.	MIZORAM	0	0.0	0.0	0	0.0	0.0
17.	NAGALAND	0	0.0	0.0	0	0.0	0.0
18.	ORISSA	196	0.6	3.8	554	1.6	1.8
19.	PUNJAB	130	0.6	2.6	133	0.6	0.4
20.	RAJASTHAN	369	0.8	7.2	3202	6.6	10.3
21.	SIKKIM	0	0.0	0.0	0	0.0	0.0
22.	TAMIL NADU	94	0.2	1.8	345	0.6	1.1
23.	TRIPURA	7	0.2	0.1	57	1.9	0.2
24.	UTTAR PRADESH	1850	1.2	36.3	3165	2.1	10.2
25.	WEST BENGAL	89	0.1	1.7	3319	4.5	10.7
	TOTAL (STATES)	4927	0.5	96.8	31006	3.4	99.6
UNION TERRITORIES							
26.	A & N ISLANDS	0	0.0	0.0	2	0.6	0.0
27.	CHANDIGARH	1	0.1	0.0	18	2.3	0.1
28.	D & N HAVELI	1	0.6	0.0	5	3.1	0.0
29.	DAMAN & DIU	0	0.0	0.0	0	0.0	0.0
30.	DELHI	160	1.5	3.1	95	0.9	0.3
31.	LAKSHADWEEP	0	0.0	0.0	0	0.0	0.0
32.	PONDICHERRY	3	0.3	0.1	1	0.1	0.0
	TOTAL (UTs)	165	1.2	3.2	121	0.9	0.4
	TOTAL (ALL INDIA)	5092	0.6	100.0	31127	3.4	100.0

Source : Crime in India, NCRB, 1995

Annexure 'H'
Crime Against Women

	1993	1994	1995	1996	1997	1998	1999
Dowry Death	127	158	167	133	148	126	18
Rape	315	322	377	484	544	438	45
Molestation of Women	259	291	521	694	675	653	80
406 IPC (Related to Dowry)	299	170	60	20	16	22	4
498-A IPC (Cruelty by Husband or In-Laws)	809	985	1042	862	855	771	133
Dowry Prohibition Act	10	13	15	4	10	10	2
Kidnapping/Abduction of Women	562	693	877	925	930	978	153
Eve-Teasing	2108	1668	2796	2059	1686	1192	257

Source : Crime in India. NCRB, 1995

UNIT 14 GENDER EQUITY AND CUSTOMARY RIGHTS

Contents

- 14.0 Aims and Purpose
- 14.1 Introduction
- 14.2 Basic Concepts and Debates
- 14.3 Gender Equality and Customary Rights in Economic Sphere
 - 14.3.1 Rights to Property
 - 14.3.2 Rights to other Kinds of Economic Resources
- 14.4 Gender Equity and Customary Rights in Social and Political Spheres
 - 14.4.1 Modernisation and Customary Choice of Relationship
 - 14.4.2 Supernaturalism and Gender Divide
 - 14.4.3 Customary Rights and Political Space
- 14.5 Customary Rights and Democratic Rights
- 14.6 Concluding Remarks
- 14.7 Clarification of the Terms Used
- 14.8 Some Useful Readings

14.0 AIMS AND PURPOSE

In the earlier units of this block we have discussed various legal aspects of women's rights and gender equality. In this unit we shall be dealing with the roles of customary rights in gender equality in India. After reading this unit, you should be able to:

- discuss the concept of gender equality;
- examine the elements of gender equity in customary rights in the economic sphere;
- analyse the form of gender equity in customary rights in the social and political sphere; and
- explain the relationship between customary rights and democratic rights.

14.1 INTRODUCTION

This unit goes beyond the realm of legal rights and liabilities of women in the recognised public sphere, and examines the area of customary rights and common law practices to see whether and to what extent concepts of gender equity are addressed there. We examine in this context the dynamics of this relationship in the economic, social and political spheres. The manifestations of this dynamic relationship are also examined, taking illustrative examples from different parts of the country. It is expected that the learner will be able to imbibe, on the completion of this unit, an appreciation of the complexities of this relationship,

which in turn, will enable her (him), to approach the ongoing debate on this issue in a professional manner.

14.2 BASIC CONCEPTS AND DEBATES

The field of customary rights is a new and unexplored area of research for both the Women's Movement and Women's Studies. The women's movement and the struggle for gender equity has traditionally taken place in a secular democratic framework that has drawn more intellectual strength from western concepts of rationality than from tradition or custom. In fact there has been a tendency to dismiss the entire realm of tradition as 'backward looking' and thus, fit for rejection. It has been the tortured history of the struggle for just personal laws for all women that have today forced us to reopen the question of gender equity and customary rights.

In the late sixties and early seventies, the somewhat naïve idealisation of the demand for a common civil code for all Indian women was subscribed to by most of those in the forefront of the women's struggle. The outdated personal laws of different religious communities was supposed to be responsible for many of the disabilities women faced in their day to day lives. This articulation came in for some shock in the late eighties, when it was realised, in the face of fundamentalist hijacking of this demand and the fundamentalist assumption that the desired 'common civil code' should be based on the civil code of the majority community. The women's movement had to reject the 'universally accepted and egalitarian model' of the proposed new 'common civil code'.

The women's movement had been in the forefront of the struggle against the anti woman dogma and legal practice of the major religions in India. However, through two decades of this struggle had also emerged an understanding that the various personal laws as were codified, were not necessarily comprehensive; and that 'other' opinions, 'other' interpretations were possible for much of the codified law. In the late eighties, also, from the experience of activists working in many tribal and far-flung areas, there had begun to emerge an appreciation of the vast variety and complexity of customary laws and rights enjoyed by women in different areas and communities. It was felt that many of these rights and common law practices gave more spaces to women, and were more gender egalitarian than official codified law. The impetus to examine these customary rights and to assess their implications was born out of this experience. It is still too early to come to any conclusions on the issue. The entire experience has however, exposed the limits of our knowledge of the differences and dichotomies of Indian women's lives, and has been a lesson in humility.

In general it may be said, however, that the lower down the caste and economic hierarchy, the more equal are the relations between the sexes, especially where men and women work together in the fields, and in farm labour gangs. In many areas also where the pre Aryan heritage is relatively stronger, status between the sexes is less hierarchical.

Think it Over 1

What are customary rights? How are they related to women's issues?

14.3 GENDER EQUITY AND CUSTOMARY RIGHTS IN THE ECONOMIC SPHERE

We can discuss this subject under two major heads, viz., women's property rights, and women's rights to other kinds of economic entitlements.

14.3.1 Women's Property Rights

Property rights are a central aspect of economic entitlements, and it is worthwhile discussing this in some detail. From all available evidence, it seems that there is much variation in the rights that women enjoy to property of any kind in India. Land is one of the most important kinds of immovable property, and the common experience is that women from any of the mainstream communities do not have first access to land rights, although there are class, caste, and local differences in this regard. Even for the mainstream Hindu community, there is much difference in this regard. There is difference for example, in the property rights of widows, even between the two recognised schools of Dayabhaga and Mitakshara. This also has regional implications. While the Mitakshara system is accepted over most of the country, the Dayabhaga system with somewhat greater recognition of the property rights of widows prevails in Bengal and Assam. However, the variation is much greater when we turn to tribal or tribalised society.

Field workers from the Jharkhand and Chhattisgarh areas report that widows do enjoy recognised rights to land inheritance in several of the communities/tribes there, although, for example in Chhattisgarh they have rights to own and cultivate, but not to sell or otherwise alienate the land. The many tribes of the Jharkhand region have different positions on this. Some, like the Ho do not give any land rights to women; in the seventies, this was challenged in the Supreme Court by some women activists. Others like the Santhals, and again in some parts of south Bihar, give restricted rights to daughters, provided they do not alienate the land and do not marry "Dikus" (outsiders). However, official Santal law as codified in the Gantzer Settlement of 1927-35 and as interpreted in the Santal Pargana Tenancy Act of 1949, does not give any land rights to women.

In this context the situation in the matrilineal communities, like the Nayars of Kerala, and the Khasis of the Meghalaya hills is worth examining. Among the Nayars, property traditionally passed on the female line, and the homesteads were designated by the female 'owner' of the household. Women stayed in their natal homes on marriage, and husbands had visiting rights, or women took on 'sambandam partners for long or short periods. Under the influence of the mainstream Hindu societal norms, the system is all but breaking down now, and

many Nayar marriages are patrilocal today, although property in land still does pass through the female line.

The Khasis of the northeast are a strongly matrilineal tribe, where landed property and other forms of inheritance pass through the youngest daughter, although all children enjoy rights of residence in the natal home. Married men may live in their wives' homes, but have use rights in their sister's homes. Among the neighbouring Garo tribe, where women and men both have land rights, and a daughter has a choice of either staying in her natal home or moving to a new one, as well among the Khasis, land rights do give women a strong fall back position within marriage and other social interaction.

14.3.2 Rights to other Kinds of Economic Resources

One can also look at other kinds of economic entitlements that women enjoy in different societies apart from land and property. There is not much documentary evidence, however among the Santhals and the Mundas, women enjoy gathering rights in the forest, and have the right to spend the income from gathering. Behind this arrangement however, there may be recognition that women are responsible for the upkeep of the family, and in fact often use the income from gathering for this purpose. The latter arrangement, i.e. the shouldering of the brunt of family upkeep by women, is also the case, in many non-tribal societies, but the latter do not carry with the load, an entitlement on any specific non-agricultural income. Among the Khasis and the Garos, women do most of the work in agriculture and cattle rearing, and have important traditional entitlements in agro-management. Women's dominant role in household management does give them a position of strength in these societies, although there are limits on this position, as we shall see later.

It is important at this stage also to examine the interface of customary law and various attempts that have been made to codify it from time to time. Colonial administration did make a few efforts to collect information on local customs and to codify it, for example, an 1880 publication "Digest of Customary Law in the Punjab" was edited by W.H. Rattigan, and was based on a wide ranging survey of information on inheritance, adoption, use of common land and the rights of proprietors in different parts of Punjab. However, such attempts, even when they were made, were heavily dependant on the information supplied by upper caste village elite, and village elders, who were doubtless unfailingly male. These efforts were not only not sensitive to the customary economic rights of women; they sometimes took away even the rights that did exist. A recent study (Jassal, 1998) has shown that the Awadh Taluqdari succession Act of 1869, by restricting Taluqdari inheritance according to the principle of primogeniture, seriously eroded the customary rights of Taluqdari women. Although privileges were conferred by this Act on the male members of their class, women lost their traditional rights of inheritance and making endowments. The strengthening of patriarchal control was manifested in a wide range of situations; the limited estate of widows, vulnerability at the hands of estate bureaucracy, intervention

of the court of wards in the case of female headed taluqs; and women's unpreparedness in terms of education and skills to cope with officialdom and courts. Since the principle of primogeniture dictated women's position as providers of heirs to the guddee, in fact rules about purdah and patriarchal control became even stricter in taluqdari families after the passage of this Act.

Learn From Your Experience 1

There are several customary economic rights for women in every community. Enquire from the elderly members of your community what are these customary economic rights. Has there been any deterioration of these rights in recent years? Based on the collected information write a small note on the Customary Rights for women in our community.

14.4 GENDER EQUITY AND CUSTOMARY RIGHTS IN THE SOCIAL AND POLITICAL SPHERE

When we turn to the social sphere, we find there is again a lot of unevenness in women's social rights as customarily defined. While the dominant image of the Indian woman (of any community) is that of subservience to a patriarchal social order and strict controls in public and private life, in reality, this image is lived out only among the higher castes and limited social strata.

14.4.1 Modernisation and Customary Choice of Relationships

In middle orders or lower caste society, as well as in tribal society, all kinds of spaces have been traditionally accessed by women, and many more options exercised with regard to choice of relationships, their modalities and their termination. We see very interesting examples of this in the Chhattisgarh region, where except among Brahmins and a few other high castes, societal rules are heavily influenced by tribal and non-caste Hindu society. The ordinary woman in Chhattisgarh does not practice purdah or any kind of seclusion, and takes full part in public production systems. Although first marriages are arranged by families, there is no major exchange of either dowry or bride price. In case of incompatibility, either partner can terminate the relationship, and second or subsequent relationships have full social acceptance and can be contracted quite simply by a man gifting bangles to the woman. This gives rise to the nomenclature 'churi pratha' for this system. We find that in this region, women's fallback position within marriage is fairly good. This system was fairly egalitarian, because the freedom existed on both sides, and because with both men and women working in agriculture or forestry, neither was economically dependant on the other completely. However, women had an in built restriction in accessing this freedom, because according to customary law, child custody was vested in the husband, unless specially negotiated otherwise through the jati (caste) panchayats. Some changes are apparent with sanskritization tendencies in society, and some abuse is today seen of this freedom in men walking out of marriages leaving women

with the burden of caring for their common children on their own. At a time when economic spaces are shrinking with the onset of modernization and mainstreaming, this can be problematic for women.

14.4.2 Supernaturalism and Gender Divide

An area where customary law has not been favourable for women has been in the spiritual-supernatural area. Many tribal societies, like those in the Jharkhand region or the society of Chhatisgarh, have a concept of women casting evil supernatural spells on crops or people, variously called the 'dayan' or the 'tonhi'. These same societies also have a concept of men accessing supernatural powers, but this makes him the baiga or medicine man, to be feared and propitiated to ward off natural disaster or cure the sick. The dayan on the other hand is to be punished and driven out of civil society, and forms of castigating the dayan can include stoning, beating, public humiliation or even murder. Many activists and writers have pointed out (e.g. Kelkar and Nathan) that this belief system is used by the forces of patriarchy to systematically disentitle women from their economic or political rights in society. Single women, widows, or women who are 'different' are most often victims of this belief system. In recent years, there have been many cases reported from the Jharkhand and Chhatisgarh areas where female heads of households have been brutally attacked on the pretext of being tonhis, and where the ulterior motive has later been found to be one of grabbing the property or other resources controlled by these women.

14.4.3 Customary Rights and Political Space

An important issue that needs to be addressed seriously is the nature of the space, if any, that customary law and customary rights give to women in the political sphere. Here, the almost universal experience is that this space is extremely restricted, and that this is so even in societies where women enjoy significant economic space according to customary rights. Among the Nayars, even when the matrilineal system was at its most pristine, management of family affairs were entrusted to a male member of the female household head's clan called the karnavan. Among the Khasis, although women have a strong role in the management of their household's social and economic affairs, they are not represented in the tribal durbar (governance council), which exercises effective political control over the affairs of the clan. This intriguing feature is explained by the clan members as being indicative of a social division of labour where anything connected with domestic sphere—the family, farming systems, and lineage—was in the women's domain, and anything connected with external relations—defence, extra territorial negotiations, or governance—was in the male domain.

It appears, therefore, that economic equity or even economic preponderance does not necessarily guarantee political equity, and that as far as political equity is concerned, women are at a disadvantage as a general rule. Since gender equity is ultimately a political issue, this also raises questions about the extent to which customary rights can be an inevitable mascot of gender equity.

14.5 CUSTOMARY RIGHTS AND DEMOCRATIC RIGHTS

Although there are visible limits to full gender equity even in gender friendly customary rights, there is no doubt that there are many instances in which customary rights guarantee to women a measure of gender equity not experienced in mainstream community based personal laws. Some of the tribal and other customary rights enjoyed by women in different parts of the country also indicate that these are based on a social organisation where gender hierarchies are less established and a time perhaps when patriarchal state formation was not fully developed. Thus the customary rights do often have an element of gender equity by virtue of the level of social organisation that they represent, although conscious articulation of gender equity may not be present. It is also possible for the same reason for customary rights to have contradictory elements like the belief in witches.

However, it is in the development of democratic historical processes and democratic values that the idea of gender equity was born, and where the historical struggle for women's equality has been located. It is in the course of this struggle that the movement has challenged many of the social institutions of our times, and has sought to transform them in the quest for gender equity. We do realise today that these institutions are based on processes that have gone hand in hand with the development of patriarchy in our society. It is this realisation that has led us to look for elements of gender equity in customary rights. However, we find today that unless new value systems are consciously built up, old institutions transformed and new institutions sought to be constructed on the basis of these values, gender equity cannot be ensured. Today it is our duty to examine social institutions, locate pre patriarchal elements in them and draw strength from them, and at the same time deepen the struggle for values of gender equity in the work that we do and the society we build.

14.6 CONCLUDING REMARKS

Documentary evidence is very scanty in the area of customary rights of women. There is much scattered reference in ethnographic material, but this suffers from the drawback that these questions were not the focus of enquiry when the ethnographic research was undertaken. A good idea for university students to build up an understanding as well as a body of data on the subject would be through project fieldwork, and collaborative research with regional universities with this particular line of inquiry in mind.

Again this backdrop of limited information we have tried to give you some basic information about the customary rights of women in Indian society. We have started this unit with a small discussion on the concept of customary rights and their relationship to the issue of gender equality in India. We discussed the

elements of customary rights with reference to the economic and social rights of women in the society. The socio-political implications of the processes of sanskritisation and modernisation on women's customary rights are also discussed here.

14.7 CLARIFICATION OF THE TERMS USED

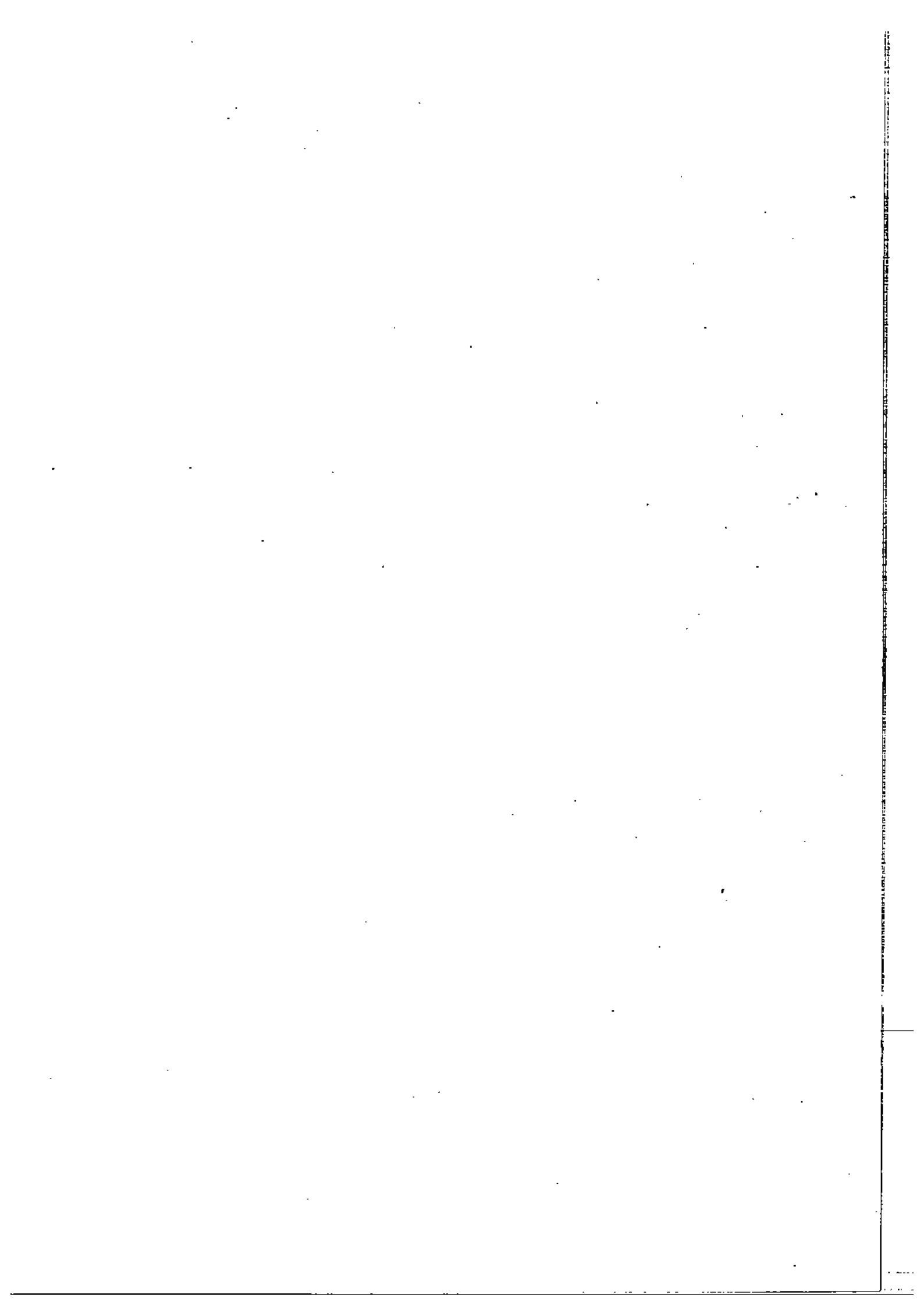
- Fundamentalists** : having a conservative and orthodox thinking; adherence to one ideology only.
- Movement** : the organised action of a group of people with a common ideology.
- Primogeniture** : the right of an eldest son to succeed to the estate of his ancestor to the exclusion of all others.
- Sanskritisation** : the process by which a low caste Hindu or tribal group changes its customs and way of life in the direction of a high twice born caste.

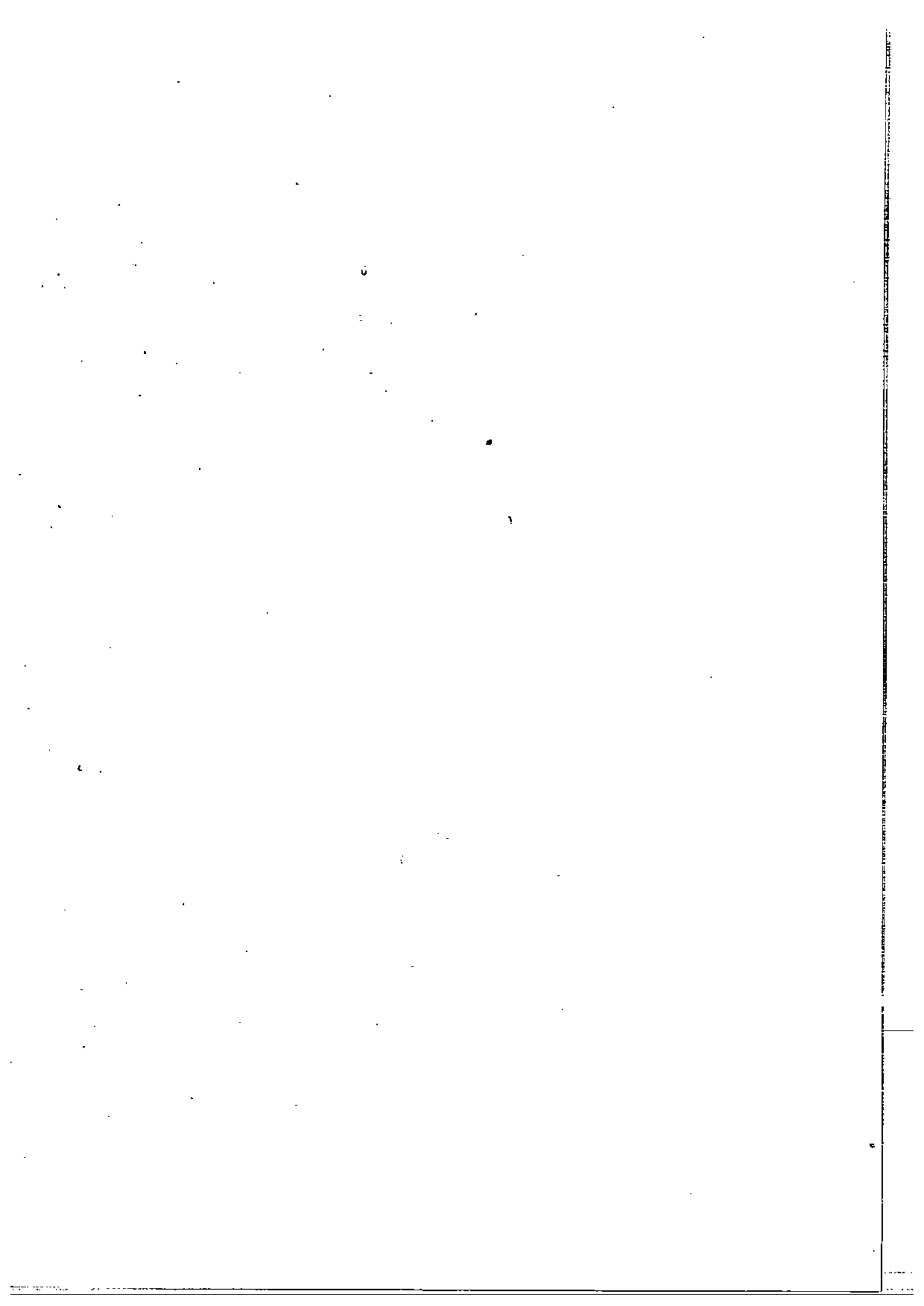
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