



INDIA'S CONFORMITY TO CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): AN ANALYSIS

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ABSTRACT

Women's rights today have emerged as a rapidly developing field of international human rights. A major step forward in the promotion and protection of women's rights was the drafting and ratification of the United Nations Convention on Elimination of All Forms of Discrimination (CEDAW) in 1979. This is known as International Bill of Women's Rights.

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. The Bill has been signed by India and many other nations. Not only it is the most widely ratified international human rights treaty, it is a great landmark because for the first time, there was formal recognition of the fact that existing social practices often serve to restrict women's fundamental rights because they include elements of discrimination against women. CEDAW establishes women's rights on par with those of men including political participation (Article 7-8), education (Article 10), work (Article 11), health (Article 12), access to credit facilities (Article 13) and marriage, reproductive choice and divorce (Article 16). An attempt is being made in this paper to examine the measures adopted by the Government of India to give effect to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

KEYWORDS: *Discrimination, Human Rights, Promotion and Protection.*

INTRODUCTION

Women constitute about half of the world's population. Yet they are placed at various disadvantageous positions due to gender difference. They have been victims of violence, exploitation and discrimination. Rampant abuses against women have been excused, ignored, or taken for granted. Domestic Violence is regarded as a private matter only. Throughout the world, women are still relegated to second class status that makes them more vulnerable to abuse and less able to protect themselves from discrimination.¹ These pervasive inequalities lead to deprivation of human rights for women. Without human rights, women cannot have security of life and liberty; and a dignified existence. Even they cannot realize their full potential as human beings and they cannot function as full citizens, participating in all the processes that contribute to social progress. Women's rights today, have thus, emerged as a rapidly developing field of international human rights.

A major step forward in the promotion and protection of women's rights was the drafting and ratification of the United Nations Convention on Elimination of All Forms of Discrimination (herein referred to as CEDAW) in 1979. This is known as International Bill of Women' Rights. 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. The Bill has been signed by India and many other nations. Not only it is the most widely ratified international human rights treaty, it is a great landmark because for the first time, there was formal recognition of the fact that existing social practices often serve to restrict women's fundamental rights because they include elements of discrimination against women.

The CEDAW defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

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

- i. to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- ii. to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- iii. to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.²

CEDAW establishes women's rights on par with those of men including political participation (Article 7-8), education (Article 10), work (Article 11), health (Article 12), access to credit facilities (Article 13) and marriage, reproductive choice and divorce (Article 16).

The CEDAW is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.³ The signatories of the CEDAW have the responsibility of protecting women's rights by ending all types of gender based inequalities in their respective countries.

Twenty years later United Nations General Assembly adopted the Optional Protocol to CEDAW. This instrument enables individual women or groups of women who have exhausted domestic remedies, to petition to the UN Committee on Elimination of All Forms of Discrimination Against Women about violations of women's rights in states that are party to the CEDAW and the Protocol. India ratified CEDAW in 1993, with some reservations. The Government of India declared, for example, that it shall abide by certain articles in conformity with its policy of non-interference in the personal affairs of any community without their initiative and consent.⁴

An attempt is being made to examine the measures adopted by the Government of India to give effect to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These measures have been discussed under the following heads:

GENDER BUDGETING

Gender Budget Initiatives or Gender Responsive Budgets are tools and processes designed to facilitate a gender analysis in the formulation of government budgets and the allocation of resources. Gender budgets are not separate budgets for women, or for men. They are attempts to break down or disaggregate the government's mainstream budget according to its impacts on women and men. Budgets formed from a gender-neutral perspective ignore the different impacts on men and women because their roles, responsibilities and capacities in any society are never the same. These differences are generally structured in a way that leaves women at a disadvantage in society by creating inequality gaps. Therefore, they are an important tool for analyzing the gap between expressed commitments by governments and the decision-making processes involved in how governments raise and spend money.⁵

Gender responsive budgets refers to systematic examination of budget programmes and policies for their impact on men and women. The aim of gender budgeting is to address issues of social and economic discrimination faced by women.

In India, gender perspective on public expenditure has been gaining ground since the publication of the report of the Committee on the Status of Women in 1974. The Eighth Five Year Plan (1992-97) highlighted for the first time the need to ensure a definite flow of funds

from the general developmental sectors to women. The Ninth Five Year Plan (1997-2002) adopted Women Component Plan as one of the major strategies and directed both the Central and the State Governments to ensure “not less than 30 per cent of the funds/benefits are earmarked in all the women’s related sectors”.

But, it was in the Tenth Five Year Plan that the phrase ‘gender budgeting’ was used in a substantial manner. Gender budgeting exercise was first used in Union Budget of 2005 and since then several states 12 to 15 have been submitting gender budget statements along with their own budget documents.⁶In the Union Budget 2010, 33 Departments of Government of India came up with the Gender Budgeting statements.⁷

Apart from the budgetary allocations, a number of programmes have been initiated by the Government of India for economic empowerment of women. Programmes like Mahatama Gandhi National Rural Employment Gurantee Sceheme⁸ (MGNREGS) for wage employment and Swaranajayanti Grameen Swarozgar Yojna(SGSY) for self employment have gender components. In the year 2010 till October, women availed of more than 50 per cent of employment created under the Mahatama Gandhi National Rural Employment Guarantee Act (MGNREGA). Under the SGSY, 50 per cent of the self help groups in each block should be exclusively for the women.⁹ Similarly Swashakti¹⁰, Syamamsidha programmes¹¹ aimed at establishing self reliant women through self help groups to improve their access to and control over resources. Rashtriya Mahila Kosh¹² looks after the credit needs of women employed in informal sector. Programmes like STEP (Support to Training and Empowerment for Women) and Swavlamban and Women’s Empowerment and Livelyhood Programme in the Mid Gangetic Plains PRIYADARSHANI¹³ aim to train and improve skills of women employed in modern and traditional sectors of economy. These programmes enhance and broaden their employment opportunities, including self-employment opportunities and entrepreneurial skills. Scheme like ‘Swadhar’ has been designed with a more flexible and innovative approach to cater to the requirement of various types of women in distress in diverse situations under different conditions.¹⁴The Swadhar Scheme purports to address the specific vulnerability of each of group of women in difficult circumstances through a Home-based holistic and integrated approach. Launched in December 2007, the ‘Ujjawala’ is a comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking and Commercial Sexual Exploitation.¹⁵

POLITICAL PARTICIATION

Political Participation of women is very necessary as many issues like female foeticide, domestic violence, sexual harassment at work, women health, access to safe drinking water etc. can be appropriately represented and voiced by women only as they are most affected by it.

Conforming to provisions of CEDAW, the Government of India has ensured the political participation of women at grass root levels through its landmark constitutional amendments i.e. 73rd and 74th. These Acts ensure 1/3 of the total seats for women in all elected grass root level development bodies i.e. Panchayati Raj Bodies and Urban Local Bodies.¹⁶ It created an amazing change as 1.3 million women found themselves in positions of decisions making. Recently the Cabinet of the country has approved 50% reservation for women in Panchayati Raj Institutions¹⁷

by amending Article 243-D of the Constitution which has further enhanced their participation. The States of Bihar, Madhya Pradesh, Chattisgarh, Rajasthan and Himachal Pradesh have already implemented this provision in their states.¹⁸

Regarding the political participation of women at state and national levels, an effort has been constantly made through 108th Amendment Bill popularly known as Women Reservation Bill. It is a pending bill in India which proposes to reserve one third of all seats for women in the Lower house of Parliament of India i.e. the Lok Sabha and State Legislative Assemblies. Yet to get a green signal from the Lok Sabha, the Bill was passed by Rajya Sabha on March 9, 2010.¹⁹ There is lack of political will in the passage of Bill which needs to be addressed.

Regarding the participation of women at grass root levels we, all are aware that though formal provisions have been made but most women candidates are proxy and real power is wielded by the men. This problem needs to be addressed. The participation of women in State Legislative Assemblies has been on an average 4% from 1952-1999²⁰ while in Parliament it has been historically as low as 8-10%.²¹

EDUCATION

Education is considered to be a key to women empowerment as it creates self awareness and improves self-concept. It has positive correlation with improving health and economic status. Educated women are considerably more equipped to resist violence and discrimination.

India has made considerable strides in implementing the CEDAW provisions regarding education in the last decade. Right to Education, has become a Fundamental Act (by virtue of 86th Constitutional Amendment Act). Right to Education Act has recently been passed to ensure universalization of education. It came into force from April 1, 2010.²² Programmes like Integrated Child Development Service (ICDS)²³ and Sarva Siksha Abhiyan(SSA)²⁴ have ensured more resources, infrastructure (i.e.toilets, blackboards, rooms and benches) and trained faculty in schools which has not only led to increased enrollment but also reduced gender disparity in education. The NGO 'Pratham' in its 2010 Annual Status of Education Report (ASER) has found that 96.4% of girls in the age group 11-14 are enrolled in schools as compared to 96.67% boys.²⁵

HEALTH

Traditionally Indian women have faced adverse health circumstances in comparison to men. Adverse sex ratio, high infant mortality rates, chronic anemia and malnourishment, lack of reproductive health care, female foeticide, neurotic and health disorders all indicate low health status of women.

To comply with CEDAW provisions and to improve health status of women, a number of initiatives have been undertaken by the government. National Population Policy, 2000²⁶ has led to a paradigm shift as it stresses upon reproductive and child health care instead of traditional target based population control. Improved nutrition, health care and meeting contraceptive needs through 'CAFETARIA' approach is the main aim of the policy. The National ICDS is the

flagship programme in this regard. The Pre- Natal Diagnostic Techniques Act (PNDT), 2002²⁷ through blanket ban on sex determination tests, vigilant monitoring and stringent provisions aims to check the adverse sex ratio in the country. The Janani Suraksha Scheme (JSS)²⁸ replaced the National Maternity Benefit Scheme (NMBS) in 2005 and emphasizes on providing benefits to the pregnant women of below poverty line families and to encourage antenatal care, institutional deliveries and provision of post partum care.

LAWS AGAINST ATROCITIES ON WOMEN

Atrocities against women are the most visible form of gender oppression and inequality. Atrocities against women vary from traditional atrocities like Sati, Polygamy, Child Marriage, Infanticide, Prohibition of Widow Remarriage, Honour Killing, Dowry, Wife Beating, etc. to modern atrocities like eve teasing, sexual harassment at work place, female foeticide, indecent representation of women through mass media. A number of laws have been enacted by the Government of India in compliance with the provisions of CEDAW in this regard. Some of the important ones which includes:

1. The Protection of Women from Domestic Violence Act, 2005 is a comprehensive legislation to protect women from all forms of domestic violence. The Act also covers women who have been/are in relationship with the abuser and are subjected to violence of any kind - physical, sexual, mental, verbal or emotional. The Act has come into force with effect from 26-10-2006.²⁹
2. The Pre Natal Diagnostic Technique Act, 2002 puts a blanket ban on sex determination and is a punishable offence.
3. Amendment of IPC Section 376 wherein there is a provision of in camera trials of rape cases and shift of onus of proof is on the perpetrator.
4. Under the Indecent Representation of Women (Prohibition) Act (1986) if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing "indecent representation of women"; they are liable for a minimum sentence of 2 years. Further section 7 (Offenses by Companies) holds companies where there has been "indecent representation of women" (such as the display of pornography) on the premises, guilty of offences under this act, with a minimum sentence of 2 years.³⁰
5. In the Vishakha & Others v State of Rajasthan³¹, the Supreme Court of India has not only defined sexual harassment at the workplace but also lays down guidelines for its prevention and disciplinary action against the erring employee.

A Bill seeking to confer upon women protection against sexual harassment at work place has been drafted in consultation with National Commission for Women and prominent women civil society organization working in this field. The proposed new legislation seeks to cover women working in organised, unorganised and informal sectors and would have all essential provisions about the employers' obligations to prevent and redress sexual harassment at the workplace.³²

INSTITUTIONAL MECHANISM FOR PROTECTION AND ADVANCEMENT OF WOMEN

The growing international concern for women's issues motivated the Government of India to study the problems of women and to provide some measure of social security and status. The institutional mechanisms for the protection and advancement of women include different institutions set up by the Central Government, State Governments, and local Governments viz., Department of Women and Child Development (Central & State level), National Commission & State Commissions for Women, National Institute of Public Cooperation and Child Development, Central Social Welfare Advisory Board, State Social Welfare Advisory Boards (at the state level), Panchayat Raj Institutions & Urban Local Self Government bodies, National Human Rights Commission, Rashtriya Mahila Kosh, etc. National Commission for Women is *the apex national level organization of India with the mandate of protecting and promoting the interests of women*. The National Commission for Women (NCW), a statutory body, established in 1992, has the mandate to safeguard the rights and interests of women by ensuring Constitutional guarantees of equal status to women, review the existing legislations and monitor their effects on women, recommend suitable amendments and provide a forum for women for redressal of their grievances. Similarly, many States have enacted the State Commission for Women. State Commissions for Women have been constituted in 20 out of 28 States and 7 Union territories. The Government has been persuading the other States and Union Territories to constitute their respective State Commissions.³³ The Department of Women and Child Development has also been actively involved in disseminating information on CEDAW.

To conclude, the Government of India has undertaken various measures, through law, policies and programmes to address gender inequality and to eliminate discrimination against women and girl children and put the provisions of CEDAW into practice. Many laws and programmes are still being reviewed to repeal the discriminatory provisions. There are significant improvements on various indicators, which have been discussed at length, in the above paragraphs. In my view, a combination of strategies needs to be pursued for implementing the provisions of CEDAW in real spirit which includes more effective legislative actions by the government, legal awareness of the people which will enable their access to redressal system, training and sensitization of the functionaries involved in the issue of women protection, action at social level such as encouraging non-governmental organizations to generate public opinion on enforcement agencies and organizing gender awareness week etc.

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