

Women's Rights in India

An Analytical Study

of

**The United Nations Convention on the Elimination of All
Forms of Discrimination against Women (CEDAW)**

and

**The Indian Constitution, Legislations,
Schemes, Policies & Judgements**

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Introduction

Considering rising atrocities and discrimination against women, the United Nations Commission on the Status of Women (CSW), after more than thirty years of work, prepared 'The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)'. The CEDAW was adopted by the United Nations General Assembly (UNGA) on 18th December 1979, however, it came into force as an international treaty on 3rd September 1981. Today, around 189 countries have ratified CEDAW & 165 have ratified CEDAW-OP (Optional Protocol).

The work of the CSW has been instrumental in bringing to light all the areas in which women have been denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the CEDAW is the central and most comprehensive document. The text of the CEDAW was prepared by working groups of CSW during 1976 and extensive deliberations by a working group of the Third Committee of the General Assembly from 1977 to 1979. The drafting of the CEDAW declaration was also encouraged by the implementation of the recommendations of the World Conference of the International Women's Year held in Mexico City in 1975 by the World Action Plan. Therefore, the CEDAW document was adopted by the UNGA under resolution 34/180, to codify comprehensively international legal standards for women.

The spirit of the CEDAW is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women. The CEDAW spells out the meaning of equality and how it can be achieved. In doing so, the CEDAW establishes not

only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

The Convention consists of a preamble and 30 articles. In its preamble, the CEDAW explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". In its approach, the Convention covers three dimensions of the situation of women. In addition, and unlike other human rights treaties, the CEDAW is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

At least every four years, the States Parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the CEDAW. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country.

India ratified CEDAW on 9th July, 1993 committing a national agenda for the State Parties to end discrimination against women in India. However, India has not yet ratified the Optional Protocol to CEDAW. The CEDAW Committee considered the combined fourth and fifth periodic reports of India on 2nd July, 2014, during its 58th session.

Objective of the Study

The National Human Rights Commission (NHRC) is mandated under Section 12(f) of the Protection of Human Rights Act, 1993 "to

study treaties and other international instruments on human rights and make recommendations for their effective implementation.” In keeping with this mandate, the Research Division of NHRC was assigned the task to conduct the present analytical study.

For an 8 years old girl child somewhere in Madhya Pradesh whose parents could only afford one child's education and decided to let her brother take the chance; for the 20 years old woman somewhere in Gujarat who is on the verge of giving up writing emails to her employer to raise her remuneration to bring it at par with what her male colleagues receive; for the 28 years old in Haryana who is being forced to get married to the family who promised to pay her parents a hefty amount; for the 72 years old mother who lost her partner and is now forcefully being ousted from her home by her children - to them, their home country signing or ratifying an international document does not make a difference in their lives, all what matters to them is their own stories where they have to deal with vices such as gender-based discrimination, violence, unfairness at home and at workplace, and inequality in terms of opportunities and spaces to grow.

Henceforth, one of the most significant objectives of this study is basically to identify and share with the stakeholders, the status of implementation of CEDAW in India, the gaps between the articles of the CEDAW and the various Indian provisions that ensure protection of rights of the women. Also, to suggest recommendations and to send them to the concerned Ministries and Departments for taking action for remedying the identified gaps.

This analytical study is expected to be of value to the lawmakers, policy makers, executives, civil society, academicians and students of gender studies, human rights and related disciplines. It will inculcate a sense of interest and encourage the stakeholders to take remedial measures regarding women's rights. This study also comes with recommendations for all the enlisted gaps which will further guide the law-making and law-implementing agencies.





The NHRC Sub-Committee of Experts of the Study



With the objectives to include domain expertise, to ensure that no relevant information is omitted from the document and to bring together a brilliant team who could take up the task and successfully and responsibly complete it, a Sub-Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) was constituted under the chairpersonship of Smt. Jyotika Kalra, Hon'ble Member, NHRC in May 2020.

The rationale behind constituting the Sub-committee was also to have resource persons to examine whether the legislations, policies and schemes meet the requirements of the articles of the CEDAW and thereafter, make recommendations to fill the existing gaps. The recommendations would then be sent to the concerned ministries and authorities to take necessary action.

The domain experts who served as Members of the Sub-committee (Hereafter Members) and contributed to this study throughout include: Dr Indu Agnihotri former Director CWDS and former Special Monitor (Women), NHRC; Prof. (Dr.) Manoj Kumar Sinha, Director and Professor, IIL; Dr Charu Walikhanna, Advocate Supreme Court of India , Ex-Member, NCW; Ms. Madhu Mehra, Director, PLD and Advocate.

Throughout the writing of this document, other than the Members, expert contributions were made by distinguished special invitees such as: Ms Asha Kowtal, Gen. Secretary, All India Dalit Mahila Adhikar Manch (AIDMAM); Sh Ajeet Singh, Director, Guria (India); Ms Nishtha Satyam, former Deputy Country Representative, UN Women Office for India; Dr Vijay Raghavan, Professor, Tata Institute of Social Sciences; Prof. (Dr.) Neerja Bhatla, AIIMS; Ms. N Sarojini, Founder, SAMA - Resource Group for Women and Health; Ms Pompei Banerjee, Sanjog.

The NHRC In-house team that contributed to this study includes the former Secretary General of the NHRC, Shri Jaideep Govind; Shri Bimbadhar Pradhan, Secretary General, NHRC; Ms. Anita Sinha, Joint Secretary; Dr. M.D.S. Tyagi, Joint Director (Research); Dr. Seemi Azam, Research Officer and Junior Research

Consultants Ms. Atishya Kumar, Ms. Diana Thomas, Ms. Chandrali Sarkar, Ms. Nihal Kaur and Ms. Sakshi Thapar.

As per the Government guidelines and keeping in view the COVID-19 situation, a few meetings after the first meeting of the Sub-committee were organised online on Webex platform and as the situation allowed, they were converted into hybrid mode, i.e, the members or the special invitees who were present in New Delhi or those who found it convenient joined the meeting in-person in the Commission premises. Besides thirteen formal Sub-committee meetings, approximately fifty in-house meetings in the duration of seventeen months with the first meeting on 2nd June 2020 and the final meeting on 12th November 2020 were held under the chairpersonship of Hon'ble Member Smt. Jyotika Kalra. The general pattern was that an initial draft chapter was compiled, a copy of which was then emailed to the members seeking their contributions, comments, and suggestions. After incorporating them into the draft, a revised copy was shared with the members. A Sub-committee meeting would then be organised after that in which all members would meet and discuss their comments. Following this, the chapter would be finalised in the post-meeting of the internal team, a copy of which was shared with the members. The first meeting was concluded with the finalisation of the sub-themes on which various chapters would be written. Thereafter, all the consecutive meetings were dedicated to each chapter of the document.

Structure of the Study

This analytical study has been strategically structured to aid the understanding of the reader regarding CEDAW and the status of implementation of CEDAW articles in India. To begin with, the main content of the document has been classified into 9 theme based chapters.

Each chapter focuses on specified CEDAW Articles, for