

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**

2021



राष्ट्रीय मानव अधिकार आयोग, भारत
NATIONAL HUMAN RIGHTS COMMISSION, INDIA

National Human Rights Commission

Manav Adhikar Bhawan
C-Block, GPO Complex, INA
New Delhi- 110023, India

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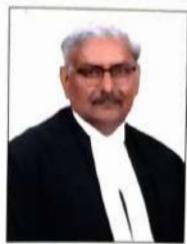


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Justice Arun Mishra
Chairperson



National Human Rights Commission
Manav Adhikar Bhavan, C Block
GPO Complex, INA, New Delhi-110023 India
Phone: 91-011-24663201, 24663202
Fax: 91-11-24651329
E-mail: chairnhrcc@nic.in

Foreword

In its 28 years of journey, the National Human Rights Commission has relentlessly endeavoured to fulfill its mandate of the protection and promotion of human rights as enunciated in The Protection of Human Rights Act, 1993. During the same year, on 9th July, India ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Since its ratification, several important legislations such as The Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, etc., have been enacted.

The Constitution of India promises equality before the law to both men and women. It also promises the right to life with dignity and personal liberty to all. The Constitution empowers the Government(s) to take affirmative actions, especially for women, so as to enable them to enjoy the fruits of development. Several legislations for women covering different areas like health, reproductive benefits, education, right to property, employment are in place to achieve the goal of gender equality. In *Vineeta Sharma vs. Rakesh Sharma, (2020) 9 SCC 1*, it was laid down that a daughter is a coparcener by birth like a son and enjoys equal rights in coparcenary property.

In order to ensure effective implementation of CEDAW, investment in quantitative and qualitative interventions will bring desired outcomes on various issues. With the surfacing of newer, more complex forms of injustice and discrimination against women, the Commission has devised new means and ways to ensure gender equality. Providing safety, justice and equal opportunities for women are at the core of human development.

The Commission undertook the analytical study of all forms of gender discrimination (CEDAW) *vis-a-vis* the Indian legislations, schemes, policies, and also considered leading judgements. The study is an endeavour to remove all forms of discrimination and ensure gender equality. It identifies the gaps, *inter-alia*, in the implementation of the legislations, policies, and recommends measures to abridge them.

I would fail in my duty if I do not compliment the painstaking efforts and hard work of the chairperson of the Sub-committee on CEDAW, Smt. Jyotika Kalra, Member, the Sub-committee members, special invitees, and the research team of the Commission, for undertaking such a comprehensive study.

The signature of Justice Arun Mishra, written in black ink.

Arun Mishra



राष्ट्रीय मानव अधिकार आयोग

NATIONAL HUMAN RIGHTS COMMISSION

मानव अधिकार भवन, सी-ब्लॉक, जीपीओ कम्प्लेक्स, आईएनए, नई दिल्ली-110 023
Manav Adhikar Bhawan, C-Block, GPO Complex, INA, New Delhi-110 023
Phone : 91-11-24663207, 24663208



JYOTIKA KALRA
Member, NHRC

Preface

After successfully conducting the comparative study of UNCRC, I was nominated to carry out a comparative study on CEDAW by the Hon'ble Chairperson, NHRC which I overwhelmingly accepted. Along with the Sub-committee members (SCM), who are domain expert and special invitees, having special knowledge, we started the work in May 2020. During the first meeting, document was divided into nine thematic chapters. Thereafter, because of COVID-19 induced lockdown, physical meetings were not possible, nevertheless "*Chalpade jab kadam, to manzil ko to panyege hee*" we continued the work and kept meetings online.

SCM & special invitees were requested to share the Constitutional provisions, legislations, schemes, policies and leading judgments, etc., related to the particular thematic chapters. Meetings were fixed after taking consent from the members, the team of Research Division, NHRC used to assemble in room no. 508, (video conferencing), a Junior Research Consultant (JRC) would sit on the computer and the screen was shared with the members. During the meetings, the SCM & special invitees used to discuss the subject and dictate their suggestions. The proceedings of the meetings were typed on the spot. While screen sharing, the JRC used to surf on the internet and copy the contents. The Members also shared their comments in the chat box of the meeting which usually lasted for about two to three hours.

After the meetings, the chapters were fine-tuned, of which final version was shared with the members requesting them for further suggestions, preferably in 'Track Changes Mode'. Inputs were incorporated in a tabular form and shared again. In most of the meetings, there were at least 5 participants who would connect online and 6 participants joining in person. There were times when I had to exercise my veto to intervene and conclude the discussion so as to ask the participants to dictate the suggestions.

After receiving the draft of the chapter, the NHRC team would share it on Google Drive, sit on at least three computer screens at a time and rework on it. The most challenging job has been selecting the most appropriate words so that the ideas are conveyed in the same sense in which the Committee proposed. This study was finalized during in-house meetings in which the chapters were re-checked for any grammatical errors, verification of factual data and formatting. Towards the conclusion of this study, the in-house team continued to work on it, and also identified the respective Ministries or Departments to which the major recommendations would be sent for necessary action.

All the participants have worked really hard on each chapter. I hope this journey becomes a beginning of an era of serious action in furtherance of India's commitment towards achieving the standards set by the CEDAW. I am confident that on achievement of these standards, women in India would be in better position to serve our country.

Jyotika Kalra

Acknowledgement

बिम्बाधर प्रधान, भा.प्र.से.
महासचिव
Bimbadhar Pradhan, IAS
Secretary General



राष्ट्रीय मानव अधिकार आयोग
मानव अधिकार भवन, सी-ब्लॉक,
जीपीओ कम्पलेक्स आईएनए, नई दिल्ली-110 023 भारत
NATIONAL HUMAN RIGHTS COMMISSION
Manav Adhikar Bhawan, C-Block,
GPO Complex, INA, New Delhi-110023 India



ACKNOWLEDGEMENTS

A milestone was achieved with the adoption of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979. It gave all the United Nations Member States a template to eliminate all forms of discrimination against women. The CEDAW recognises the vulnerability of women and addresses their issues with a holistic approach to ensure a world where gender equality prevails. It is concerned with civil, political, economic, socio-cultural, and health rights. These are basically interdependent provisions and essential components.

India ratified the CEDAW in 1993. In continuation of the objective, the Commission initiated the analytical study on 1st May 2020 with the constitution of the NHRC's Sub-committee on CEDAW.

My sincere thanks to Smt. Jyotika Kalra, Member of the Commission who took the responsibility of chairing the Sub-committee and special thanks to each of the Sub-committee members, Dr. Indu Agnihotri, Dr. Charu Walikhanna, Dr. Manoj Kumar Sinha, and Ms. Madhu Mehra for their valuable contribution towards finalising this study. During the entire process, inputs were also provided by various other domain experts namely Dr. Vijay Raghavan, Mr. Ajeet Singh, Ms. N. Sarojini, Dr. Neerja Bhatla, Ms. Pompi Bannerjee, Ms. Nishtha Satyam, and Ms. Asha Kowtal who have contributed meaningfully with their valuable insights.

We also acknowledge the role of the former Secretary General of the NHRC, Shri Jaideep Govind for getting the study initiated and special thanks to Ms. Anita Sinha, Joint Secretary, Dr. M.D.S. Tyagi, Joint Director (Research), Dr. Seemi Azam, Research Officer and other officers of the Commission who were associated with the study. The Junior Research Consultants, Ms. Atishya Kumar, Ms. Diana Thomas, Ms. Chandrali Sarkar, Ms. Sakshi Thapar, and Ms. Nihal Kaur have also contributed immensely in preparation of this document. I place on record my deepest appreciation for the officials of the National Informatics Centre team, General Administration, and Establishment Section for providing the requisite support.

The recommendations made by the Sub-Committee would be sent to the concerned Ministries and Departments of Government(s) for taking necessary actions.


Bimbadhar Pradhan



List of Abbreviations

| | | |
|-----|---------|--|
| 1. | A | Article |
| 2. | AHTUs | Anti-Human Trafficking Units |
| 3. | ANMS | Auxiliary Nurse Midwives |
| 4. | ART | The Assisted Reproductive Technology (Regulation) Bill 2020 |
| 5. | BL | Bonded Labour |
| 6. | CCL | Child Care Leave |
| 7. | CEDAW | Convention on Elimination of all forms of Discrimination against Women |
| 8. | CrPC | The Code of Criminal Procedure, 1973 |
| 9. | DLSA | District Legal Services Authorities |
| 10. | ECS | Electronic Clearing System |
| 11. | ERA | Equal Remuneration Act, 1976 |
| 12. | G | Gaps between CEDAW and Indian Laws |
| 13. | GDP | Gross Domestic Product |
| 14. | GER | Gross Enrolment Ratio |
| 15. | GOI | Government of India |
| 16. | HAMA | The Hindu Adoption and Maintenance Act, 1956 |
| 17. | HSA | Hindu Succession Act, 1956 |
| 18. | HIV | Human Immunodeficiency Virus |
| 19. | HWCs | Health and Wellness Centers |
| 20. | ICDS | Integrated Child Development Scheme |
| 21. | ICMR | Indian Council of Medical Research |
| 22. | IFS | Indian Foreign Service |
| 23. | ILO | International Labour Organisation |
| 24. | ISMWA | Inter-State Migrant Worker Act, 1979 |
| 25. | ITPA | The Immoral Traffic (Prevention) Act, 1956 |
| 26. | JJ | Juvenile Justice Act, 2015 |
| 27. | MP | Madhya Pradesh |
| 28. | MBA | Maternity Benefits Act, 1961 |
| 29. | MCD | Municipal Corporation of Delhi |
| 30. | MEA | Ministry of External Affairs |
| 31. | MGNREGA | Mahatma Gandhi National Rural Employment Guarantee Act, 2005 |
| 32. | MHA | Ministry of Home Affairs |
| 33. | MHRD | Ministry of Human Resource Development |

| | | |
|-----|----------|---|
| 34. | MLAs | Member of Legislative Assemblies |
| 35. | MMR | Maternal Mortality Rate |
| 36. | MoH&FW | Ministry of Health and Family Welfare |
| 37. | MOU | Memorandum of Understanding |
| 38. | MoWCD | Ministry of Women and Child Development |
| 39. | MoYA | Ministry of Youth Affairs and Sports |
| 40. | MTPA | Medical Termination of Pregnancy Act, 1971 |
| 41. | NCDC | National Cooperative Development Corporation Act, 1962 |
| 42. | NCW | National Commission for Women |
| 43. | NFHS | National Family Health Survey |
| 44. | NGO | Non-Governmental Organisation |
| 45. | NGRCA | The National Gender Resource Centre in Agriculture |
| 46. | NHM | National Health Mission |
| 47. | NHP | National Health Policy |
| 48. | NHRC | National Human Rights Commission, India |
| 49. | NIA | National Investigation Agency (Amendment) Act, 2019 |
| 50. | OSCS | One Stop Centers |
| 51. | PCM | Prohibition of Child Marriage Act, |
| 52. | PHC | Primary Health Centres |
| 53. | PLFS | Periodic Labour Force Survey |
| 54. | PM-JAY | Pradhan Mantri Jan Arogya Yojana |
| 55. | POSH Act | Sexual Harassment of Women at Workplace (Preventions Prohibition and Redressal) Act, 2013 |
| 56. | PWDS | Persons with Disabilities |
| 57. | R | Recommendations |
| 58. | Ref | Reference |
| 59. | RMNCH+A | Reproductive- Maternal- Neonatal- Child and Adolescent Health |
| 60. | RTE | Rights of Children to Free and Compulsory Education Act, 2009 |
| 61. | S | Section |
| 62. | SC | Scheduled Cast |
| 63. | SC | Supreme Court |
| 64. | SEDGs | Socio-economic disadvantaged groups |
| 65. | SEZs | Special Economic Zones |
| 66. | SHGs | Self Help Groups |
| 67. | SITA | The Suppression of Immoral Traffic in Women and Girls Act, 1956 |
| 68. | SLSA | State Legal Services Authorities |
| 69. | SPEM | State Poverty Eradication Mission |
| 70. | ST | Scheduled Tribe |
| 71. | STEP | The Support to Training and Employment Programme for Women |
| 72. | UP | Uttar Pradesh |
| 73. | U/S | Under Section |
| 74. | UGC | University Grants Commission |
| 75. | UWSSA | Unorganized Workers Social Security Act, 2008 |
| 76. | WP | Writ Petition |



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

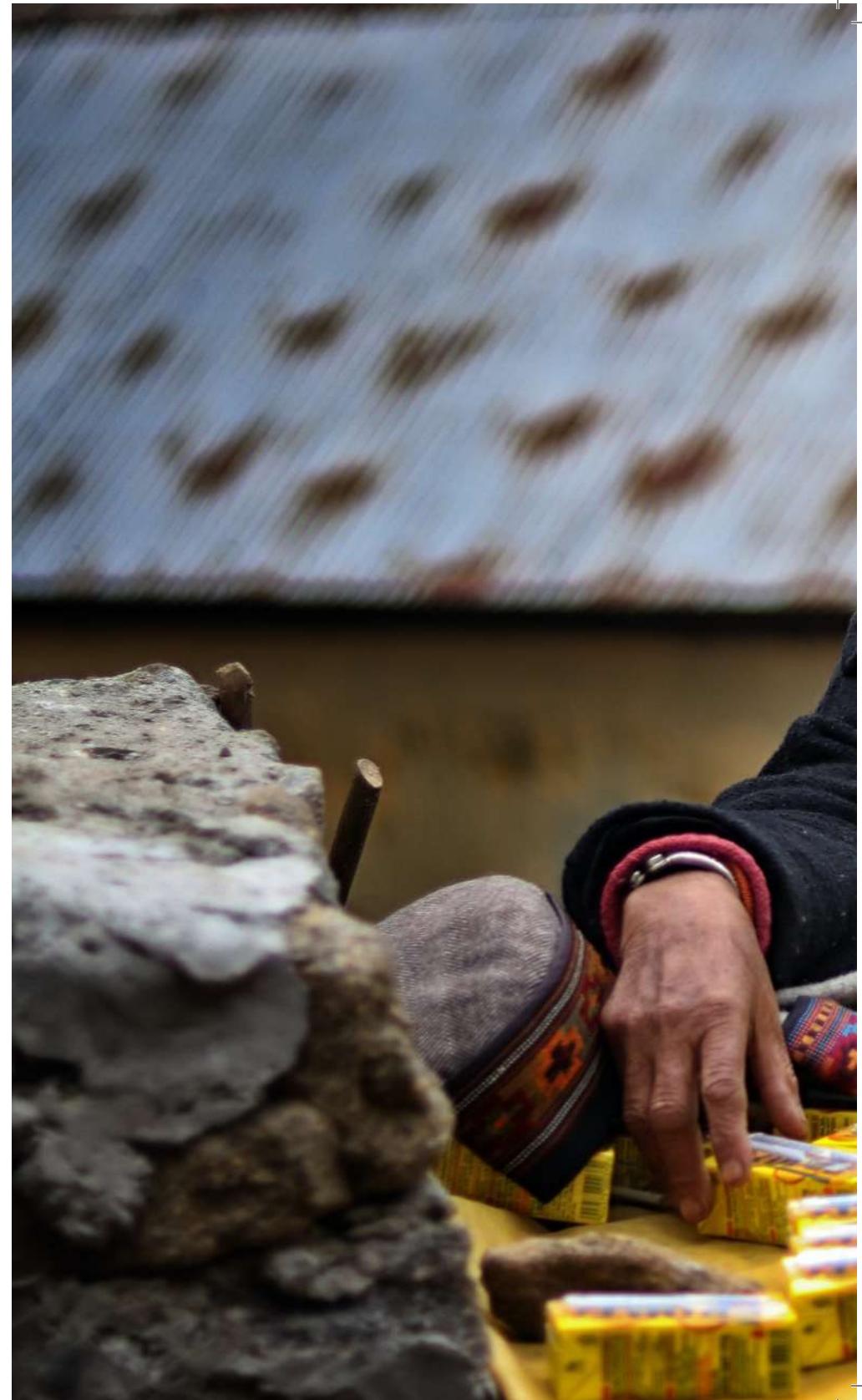
The National Human Rights Commission (NHRC) is mandated under Section 12(f) of the Protection of Human Rights Act, 1993 “to

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.

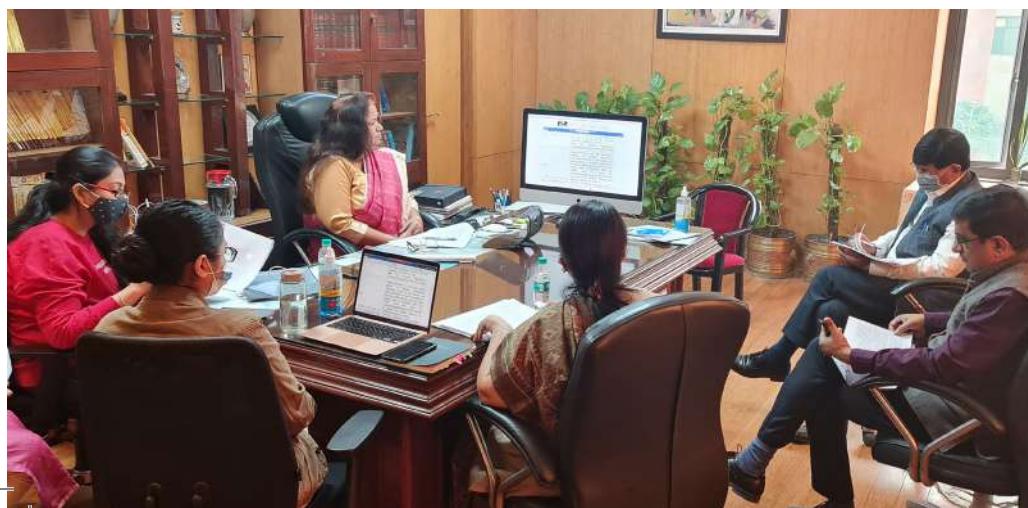
Henceforth, one of the most significant objectives of this study is basically to identify and share with the stakeholders, the status of implementation of CEDAW in India, the gaps between the articles of the CEDAW and the various Indian provisions that ensure protection of rights of the women. Also, 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, ILI; 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 Pompi 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

example, the CEDAW A.1 to A.5 have been dealt with in the first chapter titled “Equality and Nondiscrimination.” In all the chapters, the first column mentions the relevant CEDAW Article(s) in brief, whereas the complete article has been reproduced in the footnote. The second column contains the corresponding provisions in the Constitution of India, Legislations, Policies, Schemes, Reports, and Judgements. The last column contains the identified gaps between the CEDAW article and its implementation in India which are denoted by ‘G’ and its corresponding recommendations made by the NHRC, are denoted by ‘R’.

Wherever any entry in the second column has been repeated in the later chapter, it is mentioned briefly and is followed by ‘(Supra: Chapter number where it was primarily referred)’. In such cases, including instances where only a certain section/subsection/subsubsection is added due to its relevance, a footnote has been provided where that section or the article can be viewed in its entirety.

Summary of the Chapters

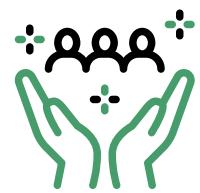
The first chapter, CEDAW A. 1 to A. 5. - ‘Equality and Non-discrimination’ identified the gaps in realisation of equality and non discrimination towards women in India and gave the corresponding recommendations for the same; the second chapter, CEDAW A. 6 - ‘Trafficking and Sexual Exploitation’ identified the gaps in different trafficking related legislatures and gave its corresponding recommendations; the third chapter, CEDAW A. 7 - ‘Political and Public Life’ majorly dealt with the abysmal representation of women in the upper echelons of the lawmaking and low representation of women in judiciary; the fourth chapter, CEDAW A. 8, 10 & 11 - ‘Education and Employment’ dealt with the infrastructure at primary and rural

schools, technical education, social welfare schemes, MGNREGA, and falling female labour force participation, representation of women at international levels, et cetera; the fifth chapter, CEDAW A. 12 - ‘Health and Reproductive Rights’ came up with the recommendations for increasing the health budget, implementation of the national health policy and the directions issued by the Supreme Court regarding sterilisation camps, et cetera; the sixth chapter, CEDAW A. 9, 15 & 16 - ‘Marriage, Family and Legal Rights’ dealt with different age of brides and bridegrooms in different legislatures, mother not being given the status of guardian, child marriage, et cetera; the seventh chapter, CEDAW A. 13 - ‘Social and Cultural Life’ emphasised upon sports with special focus on women; the eighth chapter, CEDAW A. 14 - ‘Women in Rural Areas’ covers topics such as maternal mortality rate, primary health centres, child marriage, gender digital divide, et cetera; the ninth chapter deals with the Procedural Aspects of CEDAW covered in CEDAW A. 17 to A. 30, as to how the Committee on CEDAW would function and the obligations of the State Parties toward the objective of fulfilment of CEDAW. Finally, the study concludes with highlighting the major recommendations of this analytical study, it also mentions the respective ministries from whom action taken report on the recommendations would be sought.

This study examined quite a number of Articles of the Constitution of India, legislations, policies and judgements and finally a total of thirty-three Articles of the Constitution of India, fifty-four different legislations, a total of sixty-three policies, reports, schemes, Programmes, Advisories, MOUs, Rules and Regulations, and finally a total of forty-nine leading judgements have been relied upon for identification of the gaps.

Feedback and suggestions on the contents of the study may please be sent on dsr.nhrc@nic.in





Equality and Non-Discrimination

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
|--|---|--|
| <p>Article 1</p> <p>The term “discrimination against women” shall mean:</p> <p>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 in respect of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹</p> <p>Article 2</p> <p>States Parties to condemn discrimination against women in all its forms, and, to this end, undertake to:</p> <p>(a) Embody the principle of the equality of men and women in their national constitutions or other appropriate legislation;</p> | <p>CONSTITUTION:</p> <p>A. 12⁶ : Definition.—In Part III of the Constitution dealing with Fundamental Rights, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities.</p> <p>A. 14⁷ : Ensures equality before the law and equal protection of the laws by the State.</p> <p>A. 15⁸ : Prohibits discrimination on grounds of religion, race, caste, sex or place of birth-</p> <ul style="list-style-type: none"> (1) State not to discriminate on grounds of religion, race, caste, sex or place of birth or any of them. (2) No citizen to be subjected to any disability, liability, restriction or condition, on grounds of religion, race, caste, sex or place of birth or any of them with regard to access to public spaces and facilities. (3) Empowers the State to make special provisions for women and children. (4) Empowers the State to make special provisions for the advancement of socially backward classes of citizens or Scheduled Castes and Scheduled Tribes. (5): <p>A.16⁹ : Equality of Opportunity in matters of Public Employment-</p> <ul style="list-style-type: none"> (1) Ensures equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. | <p>The Constitution of India and legislations guarantee equality including making a provision for affirmative actions in favour of women; and especially prohibits discrimination against women, particularly in relation to State. However, in reality, women's enjoyment and exercise of equal rights remain restricted in all spheres of life including social, economic, and political, among others. Some significant gaps in the realization of equality and non-discrimination along with the corresponding recommendations are as follows:</p> <p>G1: 48.5% of the Indian population is women, but only 27.4% of women are in the workforce. Women hold only 14.39% of seats in Lok Sabha (2019-2024)</p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| <p>(b) Adopt legislative and other measures, including sanctions, prohibiting all discrimination against women;</p> <p>(c) Establish legal protection of the rights of women through national tribunals/public institutions against any act of discrimination;</p> <p>(d) Refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;</p> <p>(e) Take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;</p> <p>(f) Take all appropriate measures to modify or</p> | <p>(2): Prohibits discrimination on the grounds of religion, race, caste, sex, etc. in employment or appointment to any office under the State.</p> <p>(3):</p> <p>(4):</p> <p>LEGISLATIONS:</p> <ol style="list-style-type: none"> 1. Protection of Human Rights Act, 1993: To provide for the constitution of NHRC¹⁰ for better protection of human rights. 2. National Commission for Women Act, 1990: To provide for the constitution of NCW¹¹ for the protection of women's rights. 3. Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989: Legislation to check and deter crimes against SC/ST. 4. Indecent Representation of Women (Prohibition) Act, 1989: Prohibits indecent representation of women through advertisement or in publication, etc. 5. Maternity Benefit Act, 1861: Regulates the employment of women for certain periods before and after childbirth and to provide maternity benefit. <p>Maternity Benefit Act (MBA), 1961 and Maternity Benefit (Amendment) Act, 2019:</p> <p>a. S. 5: Provides all the maternity benefits available to a woman working in an organised sector and the amount of leave available to</p> | <p>and 8.8% women in Rajya Sabha (2010). During 2011-15, female MLAs in the State Legislative Assemblies were 8.4% and female candidates were 7.3%. The data shows that there is a continued low representation of women in the upper echelons of law-making affirmative actions. [CEDAW A.3 and A.7(b)]</p> <p>R1: To improve the representation of women in the upper echelons of law-making, affirmative actions are required including legislature to reserve 33 per cent seats for women in Lok Sabha, and in all State Legislative Assemblies.</p> <p>G2: Fundamental Rights as enshrined in the Constitution are only enforceable against the State. Thus, only the State has an obligation not to discriminate on the</p> |

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| <p>abolish existing laws, regulations, customs and practices which constitute discrimination against women;</p> <p>(g) Repeal all penal provisions which constitute discrimination against women.²</p> <p>Article 3</p> <p>States Parties shall take all appropriate measures including legislation, in all fields, to ensure the full development and advancement of women.³</p> <p>Article 4</p> <p>1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination.</p> | <p>her.</p> <p>b. S. 9: Provides for paid leave in case of miscarriage.</p> <p>c. S. 12: States that it is unlawful to discharge/dismiss a woman absent from work due to her pregnancy in accordance with the Act.</p> <p>6. Industrial Disputes Act, 1947: Provided for same wages and other facilities to women workers and provision of creches, feeding intervals, etc. at the workplace.</p> <p>7. Equal Remuneration Act (ERA), 1976: S. 4: States that the employer has to pay equal remuneration to men and women workers for same work or work of a similar nature.¹²</p> <p>8. The Companies Act, 2013: As per the second Proviso to Section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, every listed company, every public company having paid-up share capital of Rs. 100 crore or more, and every public company having a minimum turnover of Rs. 300 crore or more, makes provision for at least one woman director.</p> <p>POLICIES AND REPORTS:</p> <p>1. The Committee on the Status of Women in India, 1971: Undertook a comprehensive review of women's status in India in all spheres. 'Towards Equality,' its report made extensive recommendations to address discrimination and marginalization of women. and gave useful guidelines for the formulation of social</p> | <p>basis of sex. However, there is a vacuum in law with regards to the prohibition of discrimination against women by any private person, organization or enterprise. [CEDAW A.2 (e)]</p> <p>R2: This legislative vacuum should be filled by enacting appropriate legislation(s).</p> <p>G3: Several prevailing customs and practices that perpetuate discrimination against women are out of the purview of the legislative framework. [CEDAW A.2 (f)]</p> <p>R3: Efforts should be made to discourage prejudices and eliminate customs and practices that discriminate against women by enacting appropriate legislation(s) and other necessary social measures to be taken.</p> <p>G4: Despite legislations</p> |

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| <p>2. Adoption by States Parties of special measures, aimed at protecting maternity shall not be considered discriminatory.⁴</p> <p>Article 5</p> <p>States Parties shall take all appropriate measures to:</p> <p>(a) Modify the social and cultural conduct of men and women, with a view of achieving the elimination of prejudices and customary and all other practices;(b) Ensure that family education includes the understanding of maternity as a social function and the common responsibility of men and women in the upbringing and development of their children, with the interest of the children as the primordial consideration in all cases.⁵</p> | <p>policies and mechanisms to address gaps in equality for women. Committee looked into Constitutional, legal and administrative provisions and their impact on women, especially rural women and also suggested measures to enable women to play their role in building up the nation.</p> <p>2. National Policy for the Empowerment of Women, 2001: The goals of the policy are-</p> <ul style="list-style-type: none"> • Advancement, development and empowerment of women; • Equal access to participation and decision making for women in social, political and economic life of the nation; • Mainstreaming gender perspective in the development process. • Building and strengthening partnerships with civil society, particularly women's organizations. <p>3. Draft National Policy for Women, 2016: Titled 'Articulating a Vision for Empowerment of Women,' the policy states that, the empowerment of women can only be achieved when advancement in the conditions of women is coupled with their ability to influence the direction of change through equal opportunities in all spheres of life, including political life.</p> <p>4. Report of the High-Level Committee on Status of Women, 2015: The Committee's mandate was to undertake a comprehensive study on the status of women since 1989, and to evolve appropriate policy interventions based on a contemporary</p> | <p>ensuring equal opportunities for women, the unavailability of adequate and quality crèches for children of working women discourages them from joining workplaces. [CEDAW A.3]</p> <p>R4: Crèches for children should be ensured at/near the workplace/home to enable and encourage women to work.</p> <p>G5: Despite reservations for women as Independent Directors under the Companies Act, 2013, there are only a few women in leadership positions, especially at the board level and many positions are lying vacant. [CEDAW A.3]</p> <p>R5: The vacancies reserved for women in the board should be filled up in a time-bound manner.</p> |

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| | <p>assessment of women's economic, legal, political, educational, health and socio-cultural needs. One of the key recommendations includes ensuring at least 50 per cent reservation of seats for women in the local bodies, State Legislative Assemblies, Parliament, Ministerial levels and all decision-making bodies of the government.¹³</p> <p>JUDGEMENTS:</p> <ol style="list-style-type: none"> 1. <i>Charu Khurana V/s UOI</i> (2015) 1 SCC 192: A female Petitioner was refused membership as a make-up artist in the Cine Costume Make-up Artists and Hair Dressers Association, the rules of which allowed only men to be make-up artists. The Court held that the Petitioner could not be denied membership, as discrimination on grounds of gender was a clear violation of her right to equality and denial of "her capacity to earn her livelihood which affects her individual dignity 2. <i>The Secretary, Ministry of Defence v. Babita Puniya & Ors.</i> MANU/SC/0194/2020: Women engaged on Short Service Commissions in the Army seek parity with their male counterparts in obtaining PCs. SC, allowed women a permanent commission in Army. 3. <i>Kush Kalra vs Union Of India & Anr.</i> on 5 January 2018: Institutional discrimination by UOI against women by not recruiting them into the Indian Territorial Army. Delhi High Court opened the doors of TA for women. | |

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| | <p>4. <i>State of Jammu and Kashmir and Ors. v. Susheela Sawhney and Ors.</i> AIR 2003 J&K: The bench, in the landmark judgement on 7 October 2002, held by a majority view that the daughter of a permanent resident of Jammu and Kashmir will not lose her status as a permanent resident upon her marriage to a person from outside the state.</p> <p>5. <i>MCD v. Female Workers Special Leave Petition (Civil) 12797 of 1998</i>: SC held that the maternity benefit is applicable to all casual workers and daily wage workers.</p> | |



¹Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean 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.

²Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate

means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute

discrimination against women;

- (g) To repeal all national penal provisions which constitute discrimination against women.

³Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

⁴Article 4

- 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- 2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

⁵Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of

their children, it being understood that the interest of the children is the primordial consideration in all cases.

⁶Article 12

Definition.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

⁷Article 14

Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁸Article 15

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. 2 [(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

⁹Article 16

Equality of opportunity in matters of public employment.—(1) There shall be equality of

opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office ³[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

4[(4A) Nothing in this article shall prevent the State from making any provision for reservation ⁵[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

6[(4B) Nothing in this article shall prevent the State

from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

1[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

¹⁰NHRC- National Human Rights Commission

¹¹NCW- National Commission for Women

¹²Equal Remuneration Act (ERA), 1976:Section 4.

Duty of employer to pay equal remuneration to men and women workers for same work or work of a

similar nature.- (1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature. (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers: Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her before the commencement of this Act.

¹³ <https://wcd.nic.in/documents/hlc-status-women>

¹⁴ https://rajyasabha.nic.in/rsnew/publication_electronic/reserv_women_pers2008.pdf





Trafficking and Sexual Exploitation

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| <p>Article 6¹:</p> <p>States Parties shall take all appropriate measures including legislation, to suppress:</p> <ul style="list-style-type: none"> • All forms of traffic in women • Exploitation of prostitution of women. | <p>CONSTITUTION:</p> <p>A. 23: Prohibition of traffic in human beings and forced labour (1) Prohibits traffic in human beings and begar² and other similar forms of forced labour and provides that any contravention of this provision is a punishable offence.³ (2)....</p> <p>A. 39⁴: The State shall, in particular, direct its policy towards securing— (a)..... (b)..... (c)..... (d)..... (e) The health and strength of workers be it an adult or a child should not be abused. No citizens should be forced by economic necessity to enter avocations unsuited to their age or strength. (f).....</p> <p>LEGISLATIONS:</p> <p>1. Indian Penal Code</p> <p>S.370: Trafficking of Persons⁵: (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or</p> | <p>G1: ITPA, 1956 deals with sexual exploitation and prostitution of women and yet does not provide a comprehensive definition of human trafficking and other forms of trafficking. (CEDAW A.6)</p> <p>R1: Trafficking should be defined in the ITPA. The definition of Trafficking U/s 370 of IPC, which covers exploitation, recruitment, transportation, etc., by means of threat or force may be followed.</p> <p>G2: There is no definition of 'Victim' in the ITPA. Further, U/s 2(aa) of ITPA, 'child' means a person who has not completed the age of 16 years. Further, U/s 2(cb) of ITPA, minor means a person who has completed the age of 16 years but has not completed the age of</p> |

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| | <p>persons, by -</p> <p>firstly, - ...</p> <p>secondly, - ...</p> <p>thirdly, - ...</p> <p>fourthly, - ...</p> <p>fifthly, - ...</p> <p>sixthly, - ...</p> <p>S.370A: Exploitation of a Trafficked Person⁶:</p> <p>(1) Whoever believes that a minor has been trafficked, engages such a minor for sexual exploitation shall be punished.</p> <p>(2) Whoever has reasons to believe that a person has been trafficked, engages such a person for sexual exploitation shall be punished.</p> <p>2. The Immoral Traffic (Prevention) Act (ITPA), 1956:</p> <p>This Act makes trafficking and sexual exploitation of persons for commercial purposes a punishable offence.</p> <p>S.2:</p> <p>(a) brothel⁹ - A place used for the purpose of sexual exploitation for the gain of another.</p> <p>(aa) child¹⁰ - A person who has not completed the age of sixteen years.</p> <p>(cb) minor¹¹ - a person, who has completed the age of sixteen years but has not completed the age of eighteen years.</p> | <p>eighteen years. (CEDAW A.6)</p> <p>R2: ‘Victim’ should be defined in the ITPA and the definition of ‘Victim’ as provided U/s 2(wa) of Cr PC may be followed. While the definition of ‘child’ as provided U/s 2(12) JJ Act, 2015 i.e. a ‘child means a person who has not completed 18 years of age should be uniformly followed both for child and minor in the ITPA.</p> <p>G3: Protective Home, U/s 21 of the ITPA and other provisions do not provide for monitoring of such homes. Further, the Act does not provide for community-based rehabilitation measures like skill development and employability on a long term basis for the trafficked victims.(CEDAW A.6)</p> |

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| | <p>(f) prostitution¹⁰ – sexual exploitation or abuse of a person for commercial purposes.</p> <p>S.3: Keeping a brothel or allowing premises to be used as a brothel is punishable by law.¹¹</p> <p>S.5: Whosoever procures or takes a person for the sake of prostitution shall be punished with imprisonment up to three years and may also be fined up to two thousand rupees.¹²</p> <p>S.7: Any person who carries on prostitution in or in the vicinity of a public place shall be punishable with imprisonment for a maximum term of three months.¹³</p> <p>S.9: Any person who aids or abets the seduction of a person for prostitution is punishable with imprisonment for not less than seven years up to life.¹⁴</p> <p>S.21: The State Government has the power to establish and maintain as many Protective Homes or corrective institutions in accordance with the license issued under this section.¹⁵</p> <p>S.22A: The State Government has the power to establish Special Courts if it finds it necessary for the purpose of providing speedy trial.¹⁶</p> <p>3. Bonded Labour System (Abolition) Act, 1976</p> <p>S.2:</p> <p>(e) bonded labour¹⁷: Any labour rendered under the bonded labour system.</p> <p>(f) bonded labourer¹⁸: A bonded labourer who incurs or has or is</p> | <p>R3: Provision for periodic monitoring and social audits of the Protective Homes should be incorporated in the Act so as to check incidents of sexual abuse and violence and ensure community-based rehabilitation through skill development and employability of the victims.</p> <p>G4: The ITPA does not address the issue of trafficking for the purpose of bonded labour. Further, it does not provide for the survivors to register a case of trafficking for the purpose of bonded labour thereby depriving them of compensation as per the Bonded Labour Act. (CEDAW A.6)</p> <p>R4: Trafficking for the purpose of forced labour should be linked with the BL Act as it would ensure</p> |

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| | <p>presumed to have incurred a bonded debt.</p> <p>(g) bonded labour system: means a system of forced or partly forced labour under which a debtor enters into an agreement with the creditor in consideration of advance obtained by him and/or for other reasons.</p> <p>S.4: Bonded Labour system stood abolished from the commencement of this Act.²⁰</p> <p>4. The Transplantation Of Human Organs And Tissues Act, 1994</p> <p>The Act makes provision for the removal of human organs without authority, for commercial dealings in human organs, for illegal dealings in human tissues etc.</p> <p>5. Devdasi System Abolition Acts :</p> <ul style="list-style-type: none"> • Karnataka Devadasis (Prohibition of Dedication) Act, 1982 • Maharashtra Devadasi System (Abolition) Act, 2000 • Tamil Nadu Devadasis (Prevention of Dedication) Act, 1947 • The Telangana Devadasis (Prohibition Of Dedication) Act, 1988. • The Andhra Pradesh Devadasis (Prohibition Of Dedication) Act, 1988 <p>6. National Investigation Agency (Amendment) Act, 2019</p> <p>NIA Act, 2008 was amended in 2019. The amended Act empowered the Agency to investigate offences related to human trafficking. It further empowered the Agency to investigate such offences on foreign soil subjected to international treaties and domestic laws.</p> | <p>compensation to victims as per Central Sector Rehabilitation Scheme.</p> <p>G5: States lack monitoring and regulating systems to prevent fake and fraudulent placement agencies due to which domestic workers get trafficked into commercial sexual exploitation and forced labour. (CEDAW A.6)</p> <p>R5: The State Parties should put in place adequate monitoring and regulating systems to closely monitor the functioning of private placement agencies to prevent trafficking.</p> <p>G6: The Transplantation of Human Organs and Tissues Act, 1994 is presently not aligned with the trafficking of persons. As a matter of fact, persons are also trafficked for the purpose of organ trade. (CEDAW A.6)</p> |

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| | <p>SCHEMES:</p> <p>1. Ujjawala Scheme:</p> <p>The Scheme was launched in 2019 for the prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of victims of trafficking for commercial sexual exploitation. The objective of the scheme is to prevent the trafficking of women and children for commercial sexual exploitation through social mobilization and involvement of local communities, awareness generation programmes, generation of public discourse through workshops/seminars and such events and any other innovative activity.²¹</p> <p>2. Central Sector Scheme for Rehabilitation of Bonded Labours, 2016:</p> <p>In cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trafficking etc. or in cases of differently-abled persons, or in situations where the District Magistrate deems fit, the rehabilitation assistance shall be Rs 3 lakhs, out of which at least Rs 2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and Rs 1 lakh shall be transferred to the beneficiary account through ECS.</p> <p>3. A comprehensive scheme for the establishment of integrated Anti Human Trafficking Units (AHTUs) and capacity building of responders, including training of trainers for strengthening the law enforcement response to human trafficking in India to take up the crusade against all criminal aspects of the crime of human trafficking particularly in women and children as a national mission</p> | <p>R6: The present ITPA should be in alignment with the Transplantation Act.</p> <p>G7: There is a lack of coordination among the stakeholders and state functionaries while dealing with the cases related to human trafficking which results in poor investigation and further victimisation of the trafficked persons. (CEDAW A.6)</p> <p>R7: State Advisory Committee to prevent Human trafficking and rehabilitation victims should be set up along the lines of the Central Advisory Committee. Ensure combined training and coordinated approach by the police, Department of Social Welfare and Women and Child Development, DLSA, SLSA, Ministry of Labour</p> |

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| | <p>mode project.</p> <p>ADVISORIES ON HUMAN TRAFFICKING:</p> <ol style="list-style-type: none"> 1. MHA Advisory on Preventing and Combating Human Trafficking in India, 2009 2. MHA Advisory on Human Trafficking as organized crime, 2012 3. MHA Advisory on preventing and combating human trafficking in India – dealing with foreign nationals, 2012 4. Advisory on Preventing and combating human trafficking especially during the period of COVID-19 pandemic, 2020 5. The National Human Rights Commission issued the advisory on ‘Combating Human Trafficking in context of the Covid-19 Pandemic’ in 2020 to help the Central Ministries and State Government(s) in ensuring the promotion and protection of the rights of the victims/survivors of human trafficking. <p>MOU:</p> <ul style="list-style-type: none"> • Between India and Bangladesh, signed in 2015, on bilateral cooperation for the prevention of Human trafficking especially for combating trafficking in women and children; rescue, recovery, repatriation and reintegration of victims of trafficking. • Between India and Myanmar, signed in 2019, on enhancing bilateral cooperation between both the countries for prevention of trafficking in persons. | <p>and other stakeholders while dealing with trafficking cases.</p> <p>G8: The functioning and jurisdiction of NIA are not clear. For example, how will NIA operate, which court will have the jurisdiction to try trafficking cases, NIA’s link with AHTUs, further in case of duplication whether the jurisdiction of NIA or ITPA will prevail, needs to be clarified. (CEDAW A.6)</p> <p>R8: Relation between NIA Act and ITPA should be specified in both the laws.</p> <p>G9: Since the establishment of AHTUs is by way of a scheme, the setting up of the AHTUs at the district level is not legally enforceable. (CEDAW A.6)</p> <p>R9: ITPA be amended to provide for the establishment</p> |

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| | <p>JUDGEMENTS:</p> <ol style="list-style-type: none"> 1. Budhadev Karmaskar v. State of West Bengal [(2011) 10 SCC 283]: The Supreme Court held that sex workers/prostitutes are also entitled to a life of dignity in view of Article 21 of the Constitution. The Court directed the Government to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. 2. Upendra Baxi v. State of Uttar Pradesh [(1986) 4 SCC 106]: The Supreme Court emphasized on the conduct of proper rehabilitation programmes and vocational training for the inmates of protective homes established under SITA, 1956 (amended and now ITPA) so that the inmates are able to look after themselves and they do not slip into prostitution on account of economic want. The Government of Uttar Pradesh was directed to initiate proper follow-up action with a view to ensure the inmates are not taken back to the brothels. 3. People's Union for Democratic Rights v. Union of India [(1982) 3 SCC 235]: While focussing on the issue of minimum wage, the Supreme Court observed that Article 23; right against forced labour' should include the right to minimum wages. 4. Kajal Mukesh Singh v. State of Maharashtra [2020 SCC On Line Bom 954]: The Bombay High Court observed while hearing a matter related to the detention of three female sex workers that there is no provision under the Indian law that makes prostitution per se a criminal offence or punishes a person because he/she indulged in prostitution. | <p>of AHTUs at the district level as stated in the scheme.</p> |

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| | <p>5. Neeraja Chaudhary v. State Of M.P [AIR 1984 SC 1099] and Bandhua Mukti Morcha vs Union of India & Others [1984 AIR 802] – Both the cases illustrate major judgements related to bonded labour system. In the first case, it was observed that it is not enough to identify and release bonded labourers but they must also be rehabilitated. While the second case upheld Article 21 right to live with human dignity and condemned exploitation in the form of bonded labour.</p> <p>6. Gaurav Jain v. Union of India (1997) 8 SCC 114 – A PIL regarding setting up of educational facilities for the children of prostitutes. The quote gave comprehensive directions regarding the rescue and rehabilitation of prostitutes and their children in society.</p> <p>7. Vishaljeet v. Union of India 1990 SCC (3) 318 – A PIL against forced prostitution Devdasi and Jigin traditions. The SC issued appropriate directions regarding the rehabilitation of prostitutes and their children.</p> | |

¹Article 6:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

²Veth (or Vethi or Vetti-chakiri, from Sanskrit visti), also known as Begar (from Persian), was a system of forced labour practised in pre-independence India, in which members of populace were compelled to perform unpaid work for the government.

³23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2)

Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

⁴Article 39:

Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities

to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

⁵Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—
firstly, - using threats, or
secondly, - using force, or any other form of coercion, or
thirdly, - by abduction, or
fourthly, - by practising fraud, or deception, or
fifthly, - by abuse of power, or
sixthly, - by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1. - The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. - The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for

life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

⁶(a) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(b) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished With rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

⁷includes any house, room, [conveyance] or place or any portion of any house, room, [conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes;

⁸means a person who has not completed the age of sixteen years;

⁹ means a person who has completed the age of sixteen years but has not completed the age of eighteen years;

¹⁰ means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly.

¹¹ Punishment for keeping a brothel or allowing premises to be used as a brothel.—

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or
(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

[(2A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person

referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or
(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.]

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

¹² Procuring, inducing or taking [person] for the sake of prostitution.—

(1) Any person who—

(a) procures or attempts to procure a [person], whether with or without [his] consent, for the purpose of prostitution; or 1[person], whether with or without 2[his] consent, for the purpose of prostitution; or ”

(b) induces a [person] to go from any place, with the intent that [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or 1[person] to go from any place, with the intent that 3[he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or ”

(c) takes or attempts to take a [person], or causes a [person] to be taken, from one place to another with a

view to [his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a [person] to carry on prostitution, [person] to carry on prostitution," [shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;] [***]

(3) An offence under this section shall be triable—

(a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made; or 1[person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such 1[person] is made; or ”

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

¹³(1) Any [person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational

institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.] [(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.]

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or
(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or
(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine 34 [which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which

may extend to one year: Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled. Explanation.—For the purposes of this sub-section, “hotel” shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).] [(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.]

¹⁴(1) When any person having been convicted—
(a) by a court in India of an offence punishable under this Act or punishable under section 363, section 365, section 366, section 366A, section 366B, section 367, section 368, section 370, section 371, section 372 or section 373 of the Indian Penal Code (45 of 1860), with imprisonment for a term of two years or upwards; or
(b) by a court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act or under any of the aforesaid sections with imprisonment for a like term, is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court, such court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from such residence after release be notified according to rules

made under section 23 for a period not exceeding five years from the date of expiration of that sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers or revision.

(4) Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

¹⁵(1) The State Government may in its discretion establish [as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions], when established, shall be maintained in such manner as may be prescribed.—

(1) The State Government may in its discretion establish 4[as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions], when established, shall be maintained in such manner as may be prescribed.”

(2) No person or no authority other than the State Government shall, after the commencement of this Act, establish or maintain any [protective home or corrective institution] except under and in accordance with the conditions of a licence issued under this section by the State Government.

(3) The State Government may, on application made to it in this behalf by a person or authority issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a [protective home or corrective institution] and a licence so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act: Provided that any such condition may require that the management of the 86 [protective home or corrective institution] shall, wherever practicable, be entrusted to women: Provided further that a person

or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such licence: [Provided also that a person or authority maintaining any corrective institution at the commencement of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978 (46 of 1978), shall be allowed a period of six months from such commencement to make an application for such licence.]

(4) Before issuing a licence the State Government may require such officer or authority as it may appoint for this purpose, to make a full and complete investigation in respect of the application received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.

(5) A licence, unless sooner revoked, shall remain in force for such period as may be specified in the licence and may, on application made in this behalf at least thirty days before the date of its expiration, be renewed for a like period.

(6) No licence issued or renewed under this Act shall be transferable.

(7) Where any person or authority to whom a licence has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government is not satisfied with the condition, management or superintendence of any 4[protective home or corrective institution], the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded, revoke the licence by order in writing: Provided that no such order shall be made until an opportunity is given to the holder of the licence to show cause why the licence shall not be revoked.

(8) Where a licence in respect of a [protective home

or corrective institution] has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.

(9) Subject to any rules that may be made in this behalf, the State Government may also vary or amend any licence issued or renewed under this Act.

[¹⁶(9A) The State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a protective home to another protective home or to a corrective institution or an inmate of a corrective institution to another corrective institution or to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case: Provided that,—
(a) no [person] who is transferred under this sub-section shall be required to stay in the home or institution to which [he] is transferred for a period longer than 7[he] was required to stay in the home or institution from which [he] was transferred;
(b) reasons shall be recorded for every order of transfer under this sub-section.]

(10) Whoever establishes or maintains a [protective home or corrective institution] except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to one thousand rupees and in the case of second or subsequent offence with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

¹⁶If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan

Magistrates, in such district or metropolitan area.³[22A. Power to establish special courts.—(1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan Magistrates, in such district or metropolitan area.”

(2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.

(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.

(4) Subject to the foregoing provisions of this section a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure, 1973 (2 of 1974), and the provisions of the Code shall apply accordingly in relation to such courts. Explanation.—In this section, “High Court” has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).]

¹⁷means any labour or service rendered under the bonded labour system.

¹⁸means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt.

¹⁹(g) “bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,— (i)

in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, on such advance, or (ii) in pursuance of any customary or social obligation, or (iii) in pursuance of an obligation devolving on him by succession, or (iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or (v) by reason of his birth in any particular caste or community, he would-- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or (3) forfeit the right to move freely throughout the territory of India, or (4) forfeit

the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under 3 which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

²⁰Abolition of bonded labour system.- (1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.
(2) After the commencement of this Act, no person shall-- (a) make any advance under, or in pursuance of, the bonded labour system, or (b) compel any

person to render any bonded labour or other form of forced labour.

²¹Objective of the Scheme - To prevent trafficking of women and children for commercial sexual exploitation through social mobilization and involvement of local communities, awareness generation programmes, generate public discourse through workshops/seminars and such events and any other innovative activity. To facilitate rescue of victims from the place of their exploitation and place them in safe custody. To provide rehabilitation services both immediate and long-term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including counselling, legal aid and guidance and vocational training. To facilitate reintegration of the victims into the family and society at large. To facilitate repatriation of cross-border victims to their country of origin.

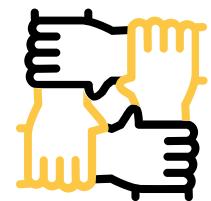








Maharani Ahilya Bai Holkar



Political and Public Life

Article 7:

States Parties shall take all appropriate measures to:

- Eliminate discrimination against women in the political and public life of the country;
- Ensure to women, on equal terms with men, the right to:
 - a. Vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
 - b. Participate in the formulation and implementation thereof of government policy and to hold public office and perform all public functions;
 - c. Participate in

CONSTITUTION:

1. **A. 14:** Equality before Law. (**Supra: Chapter 1**)
2. **A. 15:** No Discrimination. (**Supra: Chapter 1**)
3. **A. 16:** Equality of Opportunity in Public Employment. (**Supra: Chapter 1**)
4. **A. 19:** Guarantees to all citizens freedom of speech and expression; assemble peacefully; to form association; move freely; reside in any part of the country; to practice any profession.²
5. **A. 40:** State to take steps to organise village panchayats³ and endow them with such powers and authority to enable them to function as units of self-government.⁴
6. **A. 243D⁵:** Reservation of seats-
 - (1): In direct elections of Panchayat, seats to be reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in proportion to their population in that Panchayat.
 - (2): Out of these reserved seats, one-third shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes.
 - (3): In direct elections of Panchayat, not less than one-third of the total number of seats shall be reserved for women.
 - (4): The office of the Chairperson in the Panchayat at the village or any other level to be reserved for the SC, the ST and women.
7. **A. 243T⁶:** Reservation of seats-
 - (1): In direct elections of every Municipality, seats to be reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in proportion to

G1 (and R1): Poor representation of women in the upper echelons of law-making, i.e., parliament and state legislative assemblies. (**Supra: Chapter 1**) [CEDAW A. 7(b)]

G2: Ineligibility and consequent disqualification of women to contest elections on the grounds of lack of educational qualification deprives women for no fault of theirs. [CEDAW A. 7(a) and A. 7(b)] (Ref: Rajbala V/s State of Haryana)¹¹

R2: As per 2020, only around 66% of women are literate in India as compared to 82% of men.¹² Considering the grass-root realities regarding the literacy of women, especially adult women, legislatures, need to be more sensitive in imposing disqualifying criteria on women to contest election for lack of educational qualification till particular level of literacy of women is achieved .

G3: Studies show that about 43%

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| <p>non - governmental organizations and associations concerned with the public and political life of the country.¹</p> | <p>their population in that Municipality.</p> <p>(2): Out of these reserved seats, one-third shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes.</p> <p>(3): In direct elections of every Municipality, not less than one-third of the total number of seats shall be reserved for women.</p> <p>(4): The office of the Chairperson in the Municipality at the village or any other level to be reserved for the SC, the ST and women.</p> <p>(5):</p> <p>(6):</p> <p>8. A. 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.⁷</p> <p>LEGISLATIONS:</p> <p>1. The Representation of the People Act, 1951: The conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State for all persons, without any kind of discrimination.</p> <ul style="list-style-type: none"> • Every state, (except the ones mentioned in A. 243M) has enacted State legislature providing for the reservation to women in the Panchayat in furtherance of A. 243D of the Constitution e.g., the Rajasthan Panchayati Raj Act, 1994. • Every state, (except the ones mentioned in A. 243ZC) has enacted its own legislature providing for the reservation to women | <p>of women in politics found entry through their politically active families rather than their individual capabilities and efforts. Gender stereotyping within families and in public life, lower literacy rate, lower financial autonomy, lower social status, lower exposure to public life etc. pose immense challenges for women's political participation.¹³ [CEDAW A. 7(b)]</p> <p>R3: <i>The socio-cultural barriers that women negotiate within families and in public life need to be changed. Awareness about the importance of equal participation of women in the development of the nation is required through educational institutions, religious, social and political leaders, civil society organisations, etc. The Draft National Policy for the Empowerment of Women, 2016 needs to be finalised and implemented.</i></p> <p>G4: There are only 4 female</p> |

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| | <p>in the local bodies in furtherance of A. 243T of the Constitution e.g., the Delhi Municipal Corporation Act, 1957.</p> <ul style="list-style-type: none"> 2. The Companies Act, 2013: Provision for Women Directors in Listed Companies and Public Companies (<i>Supra: Chapter 1</i>) 3. National Commission for Women Act, 1990: To monitor implementation of laws relating to women (<i>Supra: Chapter 1</i>) 4. Protection of Human Rights Act, 1993: Provides for the constitution of the National Human Rights Commission, India (NHRC) for the protection of human rights. (<i>Supra: Chapter 1</i>) 5. The Industrial Relations Code, 2020: Provides many safeguards for women including equal remuneration, maternity benefits and a workplace with the required facilities for women. 6. Registration of Societies Act, 1860: Provides for registration of NGOs; treats women at par with men to be a member or office bearer of an NGO. 7. Foreign Contribution (Regulation) Act, 2010: Enables women at par with men to raise funds from foreign sources for running NGOs working for the welfare of people including women's empowerment and leadership. <p>POLICIES:</p> <ul style="list-style-type: none"> 1. Committee on the Status of Women in India (1971) (<i>Supra: Chapter 1</i>) 2. National Policy for the Empowerment of Women, 2001 (<i>Supra:</i> | <p>Supreme Court Judges against the sanctioned strength of 34 (2021). No female Chief Justice of India has been appointed to date. There are only 80 women judges against sanctioned 1113 Judges in High Courts (7.2%) and only 17 designated female Senior Advocates against 703 (2.4%) men in the Supreme Court. [CEDAW A. 7(b)]</p> <p>R4: Supreme Court should make efforts to increase the number of female judges and senior advocates.</p> <p>G5: Statutory bodies established to protect and promote the rights of women are neither autonomous of the government, nor adequately resourced to enable them to participate actively in public life and to serve the purpose of their establishment. [CEDAW A. 7(b)]</p> <p>R5: There is a need for ensuring autonomy and adequate resourcing of the statutory</p> |

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| | <p>Chapter 1)</p> <p>3. Report of High-Level Committee on Status of Women, 2015 (Supra: Chapter 1)</p> <p>4. Draft National Policy for Women, 2016 (Supra: Chapter 1)</p> <p>JUDGEMENTS:</p> <p>1. <i>Rajbala v. the State of Haryana</i> (2016) 1 SCC 463: The Supreme Court upheld the constitutional validity of the Haryana Panchayati Raj (Amendment) Act, which stipulates that individuals contesting panchayat elections must have at least passed Class 10 (Class 8 for women and Dalit candidates).</p> <p>2. <i>Javed v. State of Haryana AIR</i> 2003 SC 3057: The Supreme Court upheld the constitutionality of a law that prohibits anyone with more than two living children from holding certain public offices in the Panchayati raj local government system of the state of Haryana.</p> <p>3. <i>C.B. Muthamma v. UOI</i> 1979 SCC (4) 260: The Supreme Court struck down the service rules of IFS officers stating that if a woman marries then the employer will have the right to terminate her services.</p> | <p>bodies established to protect and promote the rights of women in line with the Paris Principles relating to the National Human Rights Institutions.¹⁴</p> |

¹Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

²Article 19

Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions [or co-operative societies]; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; [and] * * * *(g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by

the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,— (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

³Panchayat is an institution of self-government constituted under A.243D for rural areas.

⁴Article 40:

Organisation of village panchayats.—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.

⁵Article 243D: Reservation of seats—

(1) Seats shall be reserved for—
(a) the Scheduled Castes; and
(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the

total number of offices of Chairpersons in the 97 Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

⁶ Article 243T: Reservation of seats-

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. 102

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the

Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

⁷ Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—

The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 2 [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

⁸ <https://wcd.nic.in/documents/hlc-status-women>

⁹ Javed v. State of Haryana AIR 2003 SC 3057

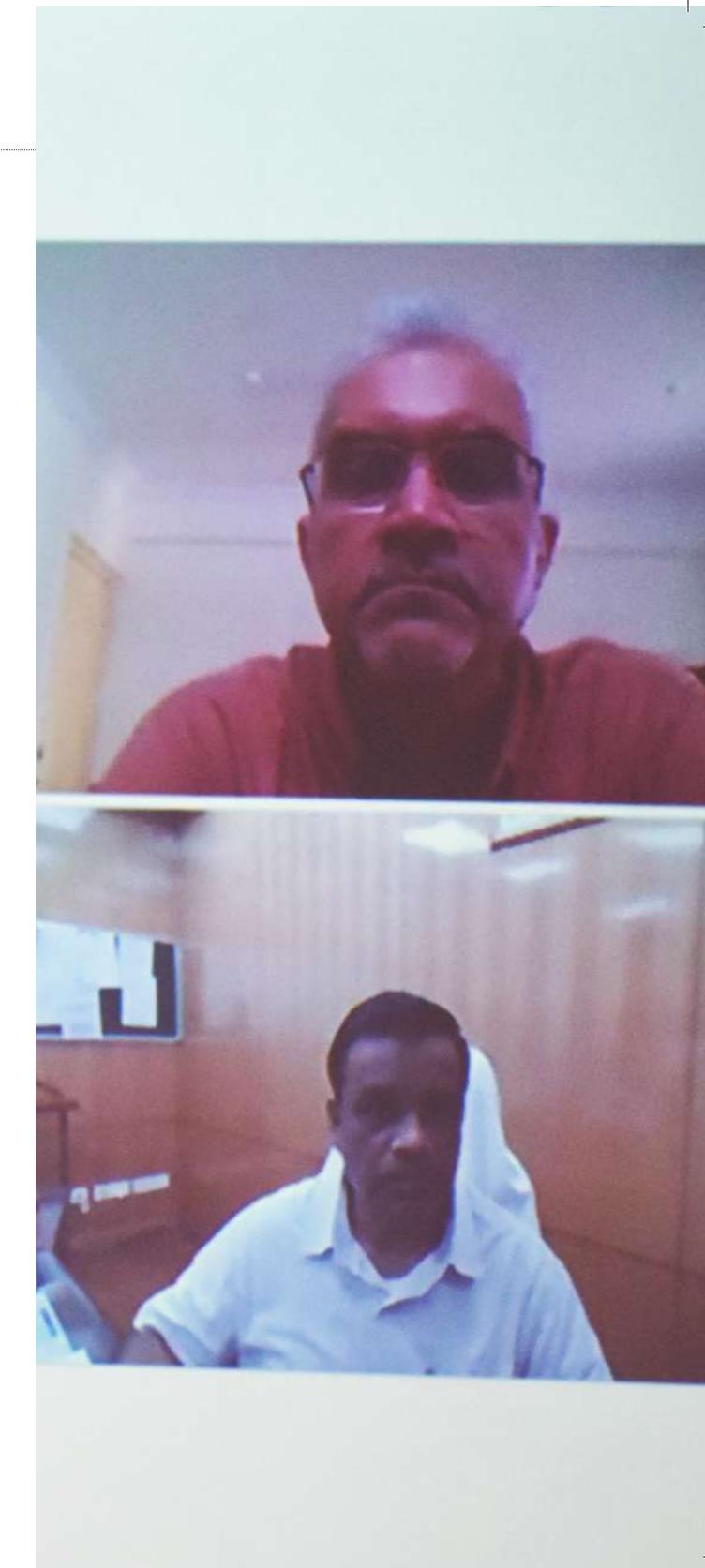
¹⁰ United Nations Document on International Day for the Elimination of Violence Against Women, 25 November, 2020.

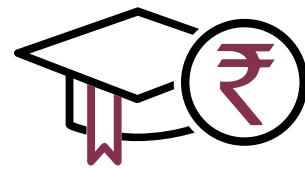
¹¹ Rajbala v. State of Haryana (2016) 1 SCC 463

¹² Global Gender Gap Report, 2020 by World Economic Forum.

¹³ The Politics of Access: Narratives of Women MPs in the Indian Parliament- Shirin M. Rai, University of Warwick, Political Studies, 2021- Vol 60, p.195-212

¹⁴ General Assembly resolution 48/134 of 20 December 1993





Education and Employment

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| <p>Article 8: International Representation States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.¹</p> <p>Article 10²: Education The States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular (a) The same conditions for career and vocational guidance, equal rights and opportunities in education of</p> | <p>CONSTITUTION:</p> <ol style="list-style-type: none"> 1. A.14: Right to Equality before law⁴ (Supra: Chapter 1) 2. A. 15: Non-Discrimination⁵ (Supra: Chapter 1) 3. A. 15 (3): Special provisions for women and children. (Supra: Chapter 1) 4. A. 16: Equality of opportunity in matters of public employment.⁶ (Supra: Chapter 1) 5. A.21: Protection of life and personal liberty.—No person to be deprived of his life or personal liberty except according to procedure established by law.⁷ 6. A. 29: Protection of Interest of minorities⁸ <ol style="list-style-type: none"> 1. ... 2. No citizen to be denied admission into any educational institution maintained by the State on grounds only of religion, race, caste, language or any of them. 7. A.30: Right of minorities to establish and administer educational institutions.⁹ 8. A. 39: Certain principles of policy to be followed by the State:¹⁰ <ol style="list-style-type: none"> (a) the citizens, men and women equally, have the right to an adequate means of livelihood; (b) the ownership and control of the material resources of the community to best subserve the common good; (c) ... | <p>G1: Despite parity in primary school enrolment, the drop-out rate and gender gap for girl's education is higher, especially in rural areas. [CEDAW A. 10(e) and (f)]</p> <p>R1: Infrastructure in schools, especially rural areas should be improved including provision of separate toilets for boys and girls. Menstrual hygiene should also be ensured in the schools to encourage enrolment and retention of girl (adolescent) students in schools especially in rural areas.</p> <p>G2: There is lower proportion of girls/ women students in technical education/ professional programmes especially where the cost</p> |

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| <p>all categories including pre-school, general, technical, professional and higher technical education in rural as well as urban areas;</p> <p>b) Access to same curricula, the same examinations ;</p> <p>(c) Elimination of stereotyped concepts of the roles of men and women at all levels of education;</p> <p>(d) The same opportunities to benefit from scholarships and study grants;</p> <p>(e) The same opportunities for access to programmes of continuing education especially aimed at reducing gender gap in education;</p> <p>(f) Reduction in female student drop-out rates;</p> <p>(g) The same opportunities to participate actively in sports and physical</p> | <p>(d) equal pay for equal work for both men and women;</p> <p>(e) the health and strength of workers, men and women, are not forced by economic necessity to enter avocations.</p> <p>9. A. 42: The State shall make provisions for securing just and humane conditions of work and for maternity relief.¹¹</p> <p>LEGISLATIONS:</p> <p>1. Right of Children to Free and Compulsory Education Act (RTE), 2009:</p> <ul style="list-style-type: none"> a) S. 3: Government to provide free and compulsory elementary education from age group of 6-14 years to each child including textbooks, uniforms, stationery items and special educational material for children with disabilities in order to reduce the burden of school expenses as stated under Rule 4.¹² b) S. 17: Prohibits all kinds of physical punishment and mental harassment.¹³ <p>2. The National Commission for Women Act, 1990:</p> <ul style="list-style-type: none"> a) S.10(h): undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres.¹⁴ <p>3. Inter-State Migrant Workmen Act (ISMWA), 1979:</p> <ul style="list-style-type: none"> a) S. 13: Provides that two workmen doing the same or similar kind | <p>of education is higher. [CEDAW A. 10(a) and (d)]</p> <p>R2: Higher enrolment of girls/ women in technical education/ professional programmes can be ensured by taking affirmative actions including scholarships to the girls/ women students.</p> <p>G3: Schemes related to education of girls sometimes have clauses which indirectly uphold or foster patriarchy. Schemes linking with age/marriage promote a role expectation for girls with regard to marriage. (Sukanya Samridhi Yojana) [CEDAW A. 10]</p> <p>R3: The welfare schemes should be gender neutral and there should not be any conditional clause regarding marriage of the</p> |

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| <p>education;</p> <p>(h) Access to educational information to ensure the well-being of families, including information and advice on family planning.</p> <p>Article 11³:</p> <p>Employment:</p> <p>1. The States parties shall take all measures to eliminate discrimination and ensure equality of men and women in the field of employment in particular:</p> <p>(a) the right to work is an inalienable right of all human beings;</p> <p>(b) the right to the same employment opportunities;</p> <p>(c) the right to free choice of profession and employment; equal right to promotion and job security and the right to</p> | <p>of work in an establishment the wage rates, holidays, hours of work and other conditions of service need to be the same.¹⁵</p> <p>b) S.16: Provides that the contractor has to provide certain facilities to workmen like equal pay for equal work irrespective of sex.¹⁶</p> <p>4. Equal Remuneration Act (ERA), 1976 :</p> <p>a) S. 4: Provides for equal pay for equal work.¹⁷ (<i>Supra: Chapter 1</i>)</p> <p>5. The Plantations Labour Act, 1951:</p> <p>a) S. 12: Provides for the facility of a crèche in every plantation with fifty women workers or more.¹⁸</p> <p>b) S. 15: Every employer under this Act has to provide suitable accommodation to workers and their family.¹⁹</p> <p>c) S. 32: Provides for maternity benefits like allowance.²⁰</p> <p>6. Mahatma Gandhi National Rural Employment Guarantee Act (2005) (MGNREGA)</p> <ul style="list-style-type: none"> It guarantees livelihood security in rural areas by giving 100 days of wage employment on demand to every household. While the nodal Ministry concerning the MGNREGA is the Ministry of Rural Development, however, the ground level execution of the Scheme is undertaken by the Gram Panchayats. This law is particularly important for women workers as it reserves at least one-third of workdays for women; creating opportunities for unskilled manual labour; mandating that work be provided locally, and stipulating the provision of on-site child care for | <p>girls.</p> <p>G4: Despite there being laws ensuring labour welfare and social security to workers, a large number of workers remain outside the purview of these laws which mainly cover the workers in the organised sector. Nearly 94% of the women workers are in the unorganised sector like brick kilns, construction and agricultural work, as such they do not get benefit of these laws. [CEDAW A. 11(1)(d) & (e)]</p> <p>R4: The labour welfare and social security including payment of equal wages to workers should be ensured and measures should be taken to include the unorganised sector in legislations</p> |

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| <p>receive vocational training;</p> <p>(d) the right to equal remuneration, benefits and equal treatment in respect of work;</p> <p>(e) the right to social security, including with respect to retirement, unemployment, etc. as well as paid leave;</p> <p>(f) the right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.</p> <p>2. States Parties shall prevent discrimination against women on the grounds of marriage or maternity and take appropriate measures to:</p> <p>(a) prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy, maternity leave or marital status;</p> | <p>children under 6 years of age.</p> <p>7. Unorganised Workers Social Security Act (UWSSA), 2008: S. 3: Provides that the Central Government may notify social welfare schemes when deemed fit on subjects including health and maternity benefits.²¹</p> <p>8. The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996:</p> <p>a) S. 22: Provides for the constitution of State Welfare Boards. Further, S.22 (g) provides Boards to make payment of maternity benefits to the female beneficiaries.²²</p> <p>b) S. 35: Provides for crèche where more than fifty female workers are employed.²³</p> <p>9. The Companies Act, 2013: Provides for compulsory women independent directors under S. 149(1).²⁴ (<i>Supra: Chapter 1</i>)</p> <p>10. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH), 2013: The Act prohibits sexual harassment of women at the workplace and gives an inclusive list of circumstances that can be classified as sexual harassment at the workplace.²⁵</p> <p>11. Maternity Benefit Act (MBA), 1961 and Maternity Benefit (Amendment) Act, 2017²⁶ (<i>Supra: Chapter 1</i>)</p> <p>a) S. 5: Prescribes different maternity benefits to working women in an organised sector including paid leave.²⁷</p> | <p>with special emphasis on women workers in unorganised sector.</p> <p>G5: There is no employment guarantee scheme like MGNREGA (which ensures 33% reservation for women) in urban areas of India. [CEDAW A. 11(1)(a) & (b)]</p> <p>R5: There should be an employment guarantee scheme/Act in the urban areas making reservation for women on the lines of MGNREGA.</p> <p>G6: S.5 and S.6 of the UWSSA does not explicitly provide for representation of women in the Social Security Board at national as well as state level. [CEDAW A. 11]</p> <p>R6: Make specific</p> |

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| <p>(b) introduce maternity leave with pay or comparable social benefits;</p> <p>(c) encourage provision of social support services to enable parents to combine family obligations with work responsibilities, particularly by establishment of child-care facilities;</p> <p>(d) provide special protection to women during pregnancy in types of work harmful to them;</p> <p>3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge.</p> | <p>b) S. 9: Provides for paid leave in case of miscarriage.²⁸</p> <p>c) S. 12: Provides discharge/dismissal of a woman absent from work due to her pregnancy is unlawful, provided due procedures have been followed.²⁹</p> <p>RULES AND REGULATIONS:</p> <ol style="list-style-type: none"> 1. UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions, 2009: <ol style="list-style-type: none"> a) Clause 3: Defines what constitutes 'Ragging'. Includes sexual abuse and homosexual assaults.³⁰ b) Clause 7: Provides the nature of offences that are penalised under the regulations.³¹ <p>POLICIES, SCHEMES AND PROGRAMMES:</p> <ol style="list-style-type: none"> 1. National Policy on Education, 1986: The National Policy on Education, 1986, aimed at ensuring a national system of education which implies that up to a given level, all students irrespective of the caste, creed, sex and location, have access to the education of a comparable quality.³² 2. National Education Policy, 2021 aims to bring transformational reforms in schools and higher education systems including universalisation of education . <p>a) Chapter 4 -</p> | <p>provision for women as a member in the boards at both national as well as state levels.</p> <p>G7: Over 90% of women are in the informal economy where regulatory frameworks are mostly absent as such POSH Act is poorly implemented, including setting up of Local Committees, etc. [CEDAW A.11(1)(f)]</p> <p>R7: Local Committees should be set up and POSH Act should also be included in the Labour Codes.</p> <p>G8: The domestic workers remain outside the purview of all the statutory labour enactments ensuring social security. [CEDAW A. 11(1)(e)]</p> |

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| | <ul style="list-style-type: none"> ● Clause 4.23: Gender sensitivity including certain other subjects and skills should be learned by all students.³³ ● Clause 4.28: Ethical and Constitutional values including gender sensitivity to be taught from a young age.³⁴ <p>b) Chapter 6 is on “Equitable and Inclusive Education: Learning for All”. This part specifically mentions gender gap in education and the constant decline in admission of women and transgender persons from Grade 1 to Grade 12.</p> <ul style="list-style-type: none"> ● Clause 6.8 envisages setting up of a Gender Inclusion Fund to build the nation’s capacity to provide equitable quality education for all girls as well as transgender students and Special Education Zones for disadvantaged regions, and groups.³⁵ ● Clause 6.14 envisages training of teachers with an element of gender sensitisation.³⁶ ● Clause 6.20 focuses on an inclusive curriculum with human rights and gender equality at its centre.³⁷ <p>c) Chapter 14 is titled “Equity and Inclusion in Higher Education” and clause 14.4.1 under it mentions specific steps to be taken by both State and Central Governments to ensure equality and inclusion in higher education institutions. This includes enhancing gender balance in admissions.³⁸</p> <p>3. Mahila E- haat: Launched in 2016 by the Ministry of Women and Child Development is an online marketing platform that leverages technology to help aspiring women entrepreneurs, self-help groups, and NGOs to showcase their products and services.</p> | <p>R8: The domestic workers should be included in the statutory labour enactments.</p> <p>G9: The Female Labour Force Participation Rate, i.e., the share of working women (who report either being employed or being available for work) has fallen to a historic low of 23.3% in 2017-18. There is also a fall in work participation rates among rural women by 7 percentage points from 24.8% to 17.5%. (PLFS data for 2017-18) [CEDAW A.11(2)]</p> <p>R9: The State should encourage women participation in workforce by taking affirmative actions like demystifying gender stereotypes, ensuring enabling and inclusive environment like</p> |

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| | <p>4. Swadhar Greh: Launched by Ministry of Women and Child Development in the year 2015 Supports the women victims, in need of institutional support for rehabilitation. It envisages providing shelter, food, clothing and health as well as economic and social security for these women.</p> <p>5. The Support to Training & Employment Programme for Women (STEP): Launched as a ‘Central Sector Scheme’ in 1986-87 and administered by the Ministry of Women and Child Development. Provides skills to women (above the age of 16) to help take up gainful employment through training programmes.</p> <p>6. Mahila Shakti Kendras: Started in 2017 under the Ministry of Women and Child Development to empower rural women with opportunities for skill development, employment, digital literacy, health and nutrition.</p> <p>7. Working Women Hostel Scheme: The Government of India being concerned about the difficulties faced by such working women, introduced a scheme in 1972-73 of grant-in- aid for construction of new/expansion of existing buildings for providing hostel facilities to working women in cities, smaller towns and also in rural areas where employment opportunities for women exist</p> <p>8. Childcare leave (CCL): is granted to government women employees and single fathers for a maximum period of two years (730 days) during their entire service for taking care of their minor children (up to eighteen years of age).</p> | <p>social support services and maternity benefits. Female labour force participation be improved by providing reservation to women, wherever required.</p> <p>G10: Inadequate number of working women’s hostels disables women from joining workplaces. [CEDAW A.11]</p> <p>R10: Adequate number of hostels should be made for working women which would encourage women to join workplaces.</p> <p>G11: Women workers are recruited as part of a pair or family units, especially in brick kiln and sugarcane industries. The practice of paying wages to the head of the family at piece rates, without ensuring any independent</p> |

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| | <p>9. Nai Roshni Scheme: Launched by Ministry of Minority Affairs in 2012, the scheme is targeted to cover women belonging to all minorities notified under Section 2 (c) of the National Commission for Minorities Act 1992 for empowering women.</p> <p>10. Beti Bachao Beti Padhao: Launched in 2015 to make girls socially and financially self-reliant through education. It was unleashed with an objective of addressing the declining Child Sex Ratio (CSR) and other issues related to the women empowerment. This is a joint initiative of Ministry of Women and Child Development, Ministry of Health and Family Welfare and Ministry of Education.</p> <p>11. Sukanya Samridhi Yojana: A saving scheme launched in 2015 as part of the Government initiative Beti Bachao, Beti Padhao campaign, in which accounts can be opened in post offices and designated banks in the name of the baby girl for the purpose of education and marriage.</p> <p>12. Kishori Shakti Yojana: Launched in 2007 by the Ministry of Women and Child Development. It seeks to empower adolescent girls, so as to enable them to take charge of their lives. It seeks to provide them with an opportunity to realize their full potential.</p> <p>13. CBSE Merit Scholarship Scheme for Single Girl Child: The objective of CBSE merit scholarship scheme is to provide scholarships to the meritorious Single Girl child Students.</p> <p>14. Post Graduate Indira Gandhi Scholarship for Single Girl Child: In order to achieve and promote girls education, UGC introduced a post</p> | <p>wage for the women who participate in the labour of production, remains unchecked despite legal provisions. [CEDAW A. 11(1)(d)]</p> <p>R11: <i>The practice of employing a couple as one unit and payment of wage to the couple as one unit should be declared unlawful.</i></p> <p>G12: Family obligations including childcare responsibilities are exclusively discharged by the mothers, as the childcare leave are available only to women employees. [CEDAW A. 11(2)(c)]</p> <p>R12: <i>Childcare leave facilities should be shared by both the parents so that both men and women are able to carry out</i></p> |

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| | <p>graduate scholarship with an aim to compensate direct costs of girl education to all levels especially for such girls who happen to be a single girl child in their family.</p> <p>15. National Scheme of Incentives to Girls for Secondary Education: The centrally sponsored scheme was launched in May 2008 under the Ministry of Education, to give incentive to girls students. The objective of the scheme is to establish an enabling environment to promote enrolment and reduce drop out of girls belonging to SC/ST communities in secondary schools and ensure their retention up to the 18 years of age.</p> <p>16. Ladli Scheme: Affected by how the girl child is treated in the society, the Government of Haryana came up with the Ladli scheme to bring changes in the attitude of people towards girl children, while eliminating cases of female foeticide. The scheme offers Rs. 5,000 per year for a time period of 5 years as financial incentive to all the residential parents of Haryana.</p> <p>17. Sabla: The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG) Sabla is a centrally sponsored program of Government of India initiated on April 1, 2011 under Ministry of Women and Child Development.</p> <p>18. Kasturba Gandhi Balika Vidyalaya Scheme for Girls Education: It is a scheme launched in July 2004, for setting up residential schools at upper primary level for girls belonging predominantly to the SC, ST, OBC and minority communities. The scheme is being implemented in educationally backward blocks of the country where the female rural</p> | <p>family obligations with work responsibilities.</p> <p>G13: It is a prevalent practice in private sector organisations to terminate pregnant women to avoid giving maternity benefits to them. [CEDAW A. 11(2) (a)&(b)]</p> <p>R13: Maternity Benefit Act should be uniformly and effectively implemented in both public and private sectors.</p> <p>G14: Given the socio-cultural realities of India, only a few women get a chance to represent India at international levels or to work for international organisations. The women representing the State at international level, including in delegations, postings, assignments, committees,</p> |

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| | <p>literacy is below the national average and gender gap in literacy is above the national average.</p> <p>19. Scheme of Strengthening Education among Scheduled Tribe (ST) Girls in Low Literacy Districts: Launched by Ministry of Tribal Affairs in 2008, the scheme aims to bridge the gap in literacy levels between the general female population and tribal women. The scheme facilitates 100% enrolment of tribal girls in the identified Districts or Blocks, more particularly in Naxal affected areas and in areas inhabited by Primitive Tribal Groups (PTGs), and reducing drop-outs at the elementary level by creating the required ambience for education.</p> <p>20. Saakshar Bharat: A centrally sponsored scheme of the Department of School Education and Literacy, Ministry of Human Resource Development (MHRD), in September 2009. It aims to further promote and strengthen Adult Education, especially of women, by extending educational options to those adults who have lost the opportunity of access to formal education</p> <p>21. The National Mission for Empowerment of Women: was launched by the Government of India in 2010 with the aim to strengthen overall processes that promote all-round development of women. Users can find detailed information about the welfare schemes and programmes, mission team, research studies etc. Details of activities related to poverty alleviation, economic empowerment of women, health nutrition, gender rights etc. are also available.</p> <p>REPORT:</p> | <p>commissions, multi-lateral agencies is also very low. [CEDAW A. 8]</p> <p>R14: State should take affirmative actions to ensure adequate representation of women at international level including participation in the work of international organizations.</p> <p>G15: India is a party to several International Human Rights Treaties, however, nomination of women by the State to the monitoring bodies under various Human Rights Treaties and special mechanisms remains negligible. In almost 30 years, India has fielded only one woman as a member of the CEDAW Committee. [CEDAW A.8]</p> |

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| | <p>1. COMMITTEE ON SUBORDINATE LEGISLATION (2017-2018) TWENTY-EIGHTH REPORT: The Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 framed under Article 309 of the Constitution</p> <p>JUDGEMENTS :</p> <ol style="list-style-type: none"> 1. C. B. Muthamma v. Union of India and others (1979): Supreme Court set aside the Government regulation which mandated a women officer working in the Ministry of External Affairs to seek permission of the government before getting married. (Supra: Chapter 1) 2. Padmaraj Samarendra v. State of Bihar AIR 1979 Pat 266: The Patna High Court upheld the allotment of seats for girl students in Medical Colleges stating that the requirement in the State for a large number of lady doctors and the mental aptitude and psychological background of lady patients for treatment of gynaecological diseases and obstetric services by lady doctors. 3. Rajesh Kumar Gupta v. State of U. P. AIR 2005 SC 2540: The Supreme Court justified the reservation of 50% of seats for female candidates also for the selection for special Basic Teachers Certificate (BTC) training course as a large numbers of young girls below the age of 10 years were taught in primary schools and it would be preferable that such young girls are taught by women. 4. Vishakha v. State of Rajasthan AIR 1997 SC 3011 - SC addressed the issue of sexual harassment at workplace and held that right to work includes right to work with dignity. | <p>R15: The State should endeavour to increase nomination of women to the monitoring bodies under various Human Rights Treaties and special mechanisms, including the CEDAW Committee.</p> <p>G16: The Draft National Policy for Women, 2016, refers to collaboration with universities at the international level and towards realization of Constitutional and International commitments to gender equality and social justice. However, the Policy does not specify any overt action to be taken for realization of the international commitments including that of CEDAW. [CEDAW A. 8]</p> |

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| | <p>5. <i>The Secretary, Ministry of Defence v. Babita Puniya</i> MANU/SC/0194/2020: The Supreme Court allowed Female Army Officers to have equal entitlement as Male Army Officers, in terms of exercising the option to avail a Permanent Commission in the Army. (Supra: Chapter 1)</p> <p>6. <i>Air India v. Nergesh Meerza</i> AIR 1981 SC 1829: The Supreme Court struck down the provision in Air India and Indian Airlines Regulations stipulating retirement of the air hostess on her first pregnancy, as unconstitutional, void and violative of Article 14.</p> <p>7. <i>Municipal Corporation of Delhi v. Female Workers (Muster Roll)</i> AIR 2000 SC 1274: The Supreme Court held that the benefits under the Maternity Benefits Act, 1961, should be extended to employees of the Municipal Corporation who are casual workers or workers employed on daily wage basis.</p> <p>8. <i>Charu Khurana v. Union of India</i> (2015) 1 SCC 192: The Supreme Court struck down as ultra vires the bye-laws prohibiting women to work as makeup artists on the ground of being violative of fundamental rights. (Supra: Chapter 1)</p> <p>9. <i>Government of A.P. v. P.B. Vijayakumar</i> AIR 1995 SC. 1648: The Supreme Court upheld a service rule that preferred women in recruitment to public employment to the extent of 30% of posts stating that making special provision for women in respect of employments or posts under the State is an integral part of Article 15(3) of the Constitution of India.</p> | <p>R16: The National Policy for Women, should specifically lay down a road map for addressing international commitments including Article 8 of CEDAW, i.e. representation of women at international level.</p> |

¹Article 8:

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

²Article 10:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

- (f) The reduction of female student drop-out rates and the organization of programmes for girls and who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

³Article 11:

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

- 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

⁴Article 14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁵Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

- (3) Nothing in this article shall prevent the State from

making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

⁶Article 16. Equality of opportunity in matters of public

employment: (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

[(4A) Nothing in this article shall prevent the State from making any provision for reservation[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten percent of the posts in each category.]

⁷Article 21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁸Article 29. Protection of interests of minorities.—

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

⁹Article 30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not

restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

¹⁰**Article 39.** Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- 3[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

"**Article 42.** Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief.

¹²**Section 3.** Right of child to free and compulsory education.—[(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood

school till the completion of his or her elementary education.]

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

[(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.]

¹³**Section 17.** Prohibition of physical punishment and mental harassment to child.—(1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

¹⁴**Section 10.** Functions of the Commission.—(1) The Commission shall perform all or any of the following functions, namely:—undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their

advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity.

¹⁵**Section 13.** Wage rates and other conditions of service of inter-State migrant workmen.—(1) The wage rates, holidays, hours of work and other conditions of service of an inter-State migrant workman shall,—

- (a) in a case where such workman performs in any establishment, the same or similar kind of work as is being performed by any other workman in that establishment, be the same as those applicable to such other workman; and
- (b) in any other case, be such as may be prescribed by the appropriate Government:

Provided that an inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948 (41 of 1948).

(2) Notwithstanding anything contained in any other law for the time being in force, wages payable to an inter-State migrant workmen under this section shall be paid in cash.

¹⁶**Section 16.** Other facilities.—It shall be the duty of every contractor employing inter-State migrant workmen in connection with the work of an establishment to which this Act applies,—

- (a) to ensure regular payment of wages to such workmen;
- (b) to ensure equal pay for equal work irrespective of sex;
- (c) to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;
- (d) to provide and maintain suitable residential accommodation to such workmen during the period of their employment;
- (e) to provide the prescribed medical facilities to the

workmen, free of charge;

(f) to provide such protective clothing to the workmen as may be prescribed; and

(g) in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.

¹⁷Section 4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.—(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers: Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her before the commencement of this Act.

¹⁸Section 12. Creches.—(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve

months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers.

Explanation.—For the purposes of this sub-section and sub-section (1A), “children” means persons who are below the age of six years.

(1A) Notwithstanding anything contained in sub-section (1), if, in respect of any plantation wherein less than fifty women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction.

(2) The rooms referred to in sub-section (1) or sub-section (1A) shall—
(a) provide adequate accommodation;
(b) be adequately lighted and ventilated;
(c) be maintained in a clean and sanitary condition; and
(d) be under the charge of a woman trained in the care of children and infants.

(3) The State Government may make rules prescribing the location and the standards of the rooms referred to in sub-section (1) or sub-section (1A)] in respect of their construction and accommodation and the equipment and amenities to be provided therein.

¹⁹Section 15. Housing facilities.—It shall be the duty of every employer to provide and maintain necessary housing accommodation—
(a) for every worker (including his family) residing in

the plantation;

(b) for every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation: Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family of a deceased worker who, immediately before his death, was residing in the plantation.

²⁰Section 32. Sickness and maternity benefits.—(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer—

(a) in the case of sickness certified by a qualified medical practitioner, sickness allowance, and
(b) if a woman, in the case of confinement or expected confinement, maternity allowance, at such rate, for such period and at such intervals as may be prescribed.

(2) The State Government may make rules regulating the payment of sickness or maternity allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable, and in framing any rules under this section the State Government shall have due regard to the medical facilities that may be provided by the employer in any plantation.

²¹Section 3. Framing of scheme.—(1) The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to— (a) life and disability cover; (b) health and maternity benefits; (c) old age protection; and (d) any other benefit as may be determined by the Central Government.

(2) The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).

(3) The Central Government may, by notification, amend the Schedules annexed to this Act.

(4) The State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to— (a) provident fund; (b) employment injury benefit; (c) housing; (d) educational schemes for children; (e) skill upgradation of workers; (f) funeral assistance; and (g) old age homes.

²²**Section 22. Functions of the Boards.**—(1) The Board may— (a) provide immediate assistance to a beneficiary in case of accident; (b) make payment of pension to the beneficiaries who have completed the age of sixty years; (c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed; (d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit; (e) give such financial assistance for the education of children of the beneficiaries as may be prescribed; (f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed; (g) make payment of maternity benefit to the female beneficiaries; and (h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable

as grants-in-aid to any local authority or employer shall not exceed— (a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or (b) such amount as may be prescribed, whichever is less: Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

²³**Section 35. Crches.**—(1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers. (2) Such rooms shall—(a) provide adequate accommodation; (b) be adequately lighted and ventilated; (c) be maintained in a clean and sanitary condition; (d) be under the charge of women trained in the care of children and infants.

²⁴**Section 149. Company to have Board of Directors.**—(1) Every company shall have a Board of Directors consisting of individuals as directors and shall have— (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors: Provided that a company may appoint more than fifteen directors after passing a special resolution: Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

²⁵**Section 3. Prevention of sexual harassment.**—(1) No woman shall be subjected to sexual harassment at any workplace. (2) The following circumstances, among other circumstances, if it occurs, or is

present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:— (i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment ; or (iii) implied or explicit threat about her present or future employment status; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety.

²⁶Also see, Domestic Workers Regulation of Work and Social Security Bill, 2017 and Draft National Policy for Domestic Workers still in preliminary stage.

²⁷**Section 5. Right to payment of maternity benefit.**—(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Explanation.—For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration. Explanation.—For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, 2 [the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further that where a woman dies during this period, the maternity benefit shall be payable payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the Child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the

case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

²⁸Section 9. Leave for miscarriage, etc.—In case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy

²⁹Section 12. Dismissal during absence of pregnancy.—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may,

within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).

³⁰Clause 3. What constitutes Ragging - Ragging constitutes one or more of any of the following acts:

- a. any conduct by any student or students whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness a fresher or any other student;
- b. indulging in rowdy or indisciplined activities by any student or students which causes or is likely to cause annoyance, hardship, physical or psychological harm or to raise fear or apprehension thereof in any fresher or any other student;
- c. asking any student to do any act which such student will not in the ordinary course do and which has the effect of causing or generating a sense of shame, or torment or embarrassment so as to adversely affect the physique or psyche of such fresher or any other student;
- d. any act by a senior student that prevents, disrupts or disturbs the regular academic activity of any other student or a fresher;
- e. exploiting the services of a fresher or any other student for completing the academic tasks assigned to an individual or a group of students.
- f. any act of financial extortion or forceful expenditure burden put on a fresher or any other student by students;
- g. any act of physical abuse including all variants of it: sexual abuse, homosexual assaults, stripping, forcing obscene and lewd acts, gestures, causing bodily harm

or any other danger to health or person;

h. any act or abuse by spoken words, emails, post, public insults which would also include deriving perverted pleasure, vicarious or sadistic thrill from actively or passively participating in the discomfiture to fresher or any other student;

i. any act that affects the mental health and self-confidence of a fresher or any other student with or without an intent to derive a sadistic pleasure or showing off power, authority or superiority by a student over any fresher or any other student.

³¹**Clause 7.** Action to be taken by the Head of the institution.- On receipt of the recommendation of the Anti Ragging Squad or on receipt of any information concerning any reported incident of ragging, the Head of institution shall immediately determine if a case under the penal laws is made out and if so, either on his own or through a member of the Anti-Ragging Committee authorised by him in this behalf, proceed to file a First Information Report (FIR), within twenty four hours of receipt of such information or recommendation, with the police and local authorities, under the appropriate penal provisions relating to one or more of the following, namely;

i. Abetment to ragging; ii. Criminal conspiracy to rag; iii. Unlawful assembly and rioting while ragging; iv. Public nuisance created during ragging; v. Violation of decency and morals through ragging; vi. Injury to body, causing hurt or grievous hurt; vii. Wrongful restraint; viii. Wrongful confinement; ix. Use of criminal force; x. Assault as well as sexual offences or unnatural offences; xi. Extortion; xii. Criminal trespass; xiii. Offences against property; xiv. Criminal intimidation; xv. Attempts to commit any or all of the above mentioned offences against the victim(s); xvi. Threat to commit any or all of the above mentioned offences against the victim(s); xvii. Physical or psychological humiliation; xviii. All other offences following from the

definition of "Ragging". Provided that the Head of the institution shall forthwith report the occurrence of the incident of ragging to the District Level Anti-Ragging Committee and the Nodal officer of the affiliating University, if the institution is an affiliated institution. Provided further that the institution shall also continue with its own enquiry initiated under clause 9 of these Regulations and other measures without waiting for action on the part of the police/local authorities and such remedial action shall be initiated and completed immediately and in no case later than a period of seven days of the reported occurrence of the incident of ragging.

³²**Clause 3.2** The concept of a National System of Education implies that, up to a given level, all students, irrespective of caste, creed, location or sex, have access to education of a comparable quality. To achieve this, the Government will initiate appropriately funded programmes. Effective measures will be taken in the direction of the Common School System recommended in the 1968 Policy.

³³**Clause 4.23.** While students must have a large amount of flexibility in choosing their individual curricula, certain subjects, skills, and capacities should be learned by all students to become good, successful, innovative, adaptable, and productive human beings in today's rapidly changing world. In addition to proficiency in languages, these skills include: scientific temper and evidence-based thinking; creativity and innovativeness; sense of aesthetics and art; oral and written communication; health and nutrition; physical education, fitness, wellness, and sports; collaboration and teamwork; problem solving and logical reasoning; vocational exposure and skills; digital literacy, coding, and computational thinking; ethical and moral reasoning; knowledge and practice of human and Constitutional values; gender sensitivity; Fundamental

Duties; citizenship skills and values; knowledge of India; environmental awareness including water and resource conservation, sanitation and hygiene; and current affairs and knowledge of critical issues facing local communities, States, the country, and the world.

³⁴**Clause 4.28.** Students will be taught at a young age the importance of "doing what's right", and will be given a logical framework for making ethical decisions. In later years, this would then be expanded along themes of cheating, violence, plagiarism, littering, tolerance, equality, empathy, etc., with a view to enabling children to embrace moral/ethical values in conducting one's life, formulate a position/argument about an ethical issue from multiple perspectives, and use ethical practices in all work. As consequences of such basic ethical reasoning, traditional Indian values and all basic human and Constitutional values (such as seva, ahimsa, swachchhata, satya, nishkam karma, shanti, sacrifice, tolerance, diversity, pluralism, righteous conduct, gender sensitivity, respect for elders, respect for all people and their inherent capabilities regardless of background, respect for environment, helpfulness, courtesy, patience, forgiveness, empathy, compassion, patriotism, democratic outlook, integrity, responsibility, justice, liberty, equality, and fraternity) will be developed in all students. Children will have the opportunity to read and learn from the original stories of the Panchatantra, Jataka, Hitopadesha, and other fun fables and inspiring tales from the Indian tradition and learn about their influences on global literature. Excerpts from the Indian Constitution will also be considered essential reading for all students. Basic training in health, including preventive health, mental health, good nutrition, personal and public hygiene, disaster response and first-aid will also be included in the curriculum, as well as scientific explanations of the detrimental and damaging effects of alcohol, tobacco,

and other drugs.

³⁵Clause 6.8. In addition, the Government of India will constitute a 'Gender-Inclusion Fund' to build the nation's capacity to provide equitable quality education for all girls as well as transgender students. The fund will be available to States to implement priorities determined by the Central government critical for assisting female and transgender children in gaining access to education (such as the provisions of sanitation and toilets, bicycles, conditional cash transfers, etc.); funds will also enable States to support and scale effective community-based interventions that address local context specific barriers to female and transgender children's access to and participation in education. Similar 'Inclusion Fund' schemes shall also be developed to address analogous access issues for other SEDGs. In essence, this Policy aims to eliminate any remaining disparity in access to education (including vocational education) for children from any gender or other socio-economically disadvantaged group.

³⁶Clause 6.14. The awareness and knowledge of how to teach children with specific disabilities (including learning disabilities) will be an integral part of all teacher education programmes, along with gender sensitization and sensitization towards all underrepresented groups in order to reverse their underrepresentation.

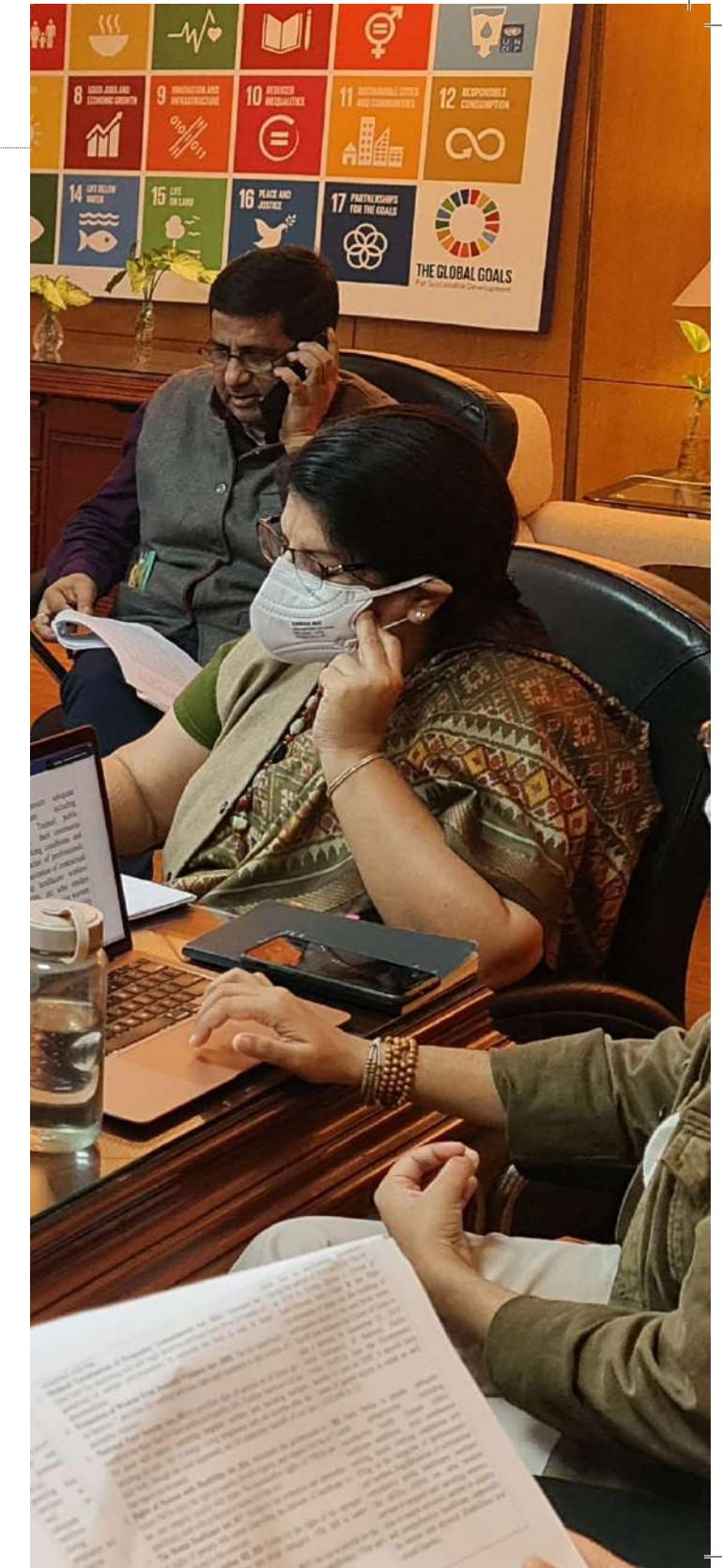
³⁷Clause 6.20. Students will be sensitized through this new school culture, brought in by teachers, trained social workers and counsellors as well as through corresponding changes to bring in an inclusive school curriculum. The school curriculum will include, early on, material on human values such as respect for all persons, empathy, tolerance, human rights, gender equality, non-violence, global citizenship, inclusion,

and equity. It would also include more detailed knowledge of various cultures, religions, languages, gender identities, etc. to sensitize and develop respect for diversity. Any biases and stereotypes in school curriculum will be removed, and more material will be included that is relevant and relatable to all communities.

³⁸Steps to be taken by Governments

- (a) Earmark suitable Government funds for the education of SEDGs
- (b) Set clear targets for higher GER for SEDGs
- (c) Enhance gender balance in admissions to HEIs
- (d) Enhance access by establishing more high-quality HEIs in aspirational districts and Special Education Zones containing larger numbers of SEDGs
- (e) Develop and support high-quality HEIs that teach in local/Indian languages or bilingually
- (f) Provide more financial assistance and scholarships to SEDGs in both public and private HEIs
- (g) Conduct outreach programmes on higher education opportunities and scholarships among SEDGs
- (h) Develop and support technology tools for better participation and learning outcomes.

³⁹The field of diplomacy has remained 'by men' and 'for men'. Currently, there are 176 women IFS officers out of a total of 815. Indian Foreign Services has only sanctioned 850 posts as opposed to 6500 IAS and 4843 IPS post.





Health and Reproductive Rights

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| <p>Article 12¹:</p> <p>Health</p> <p>1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care, in order to ensure equal access to health care services, including those related to family planning.</p> <p>2. States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services as well as adequate nutrition during pregnancy and lactation.</p> | <p>CONSTITUTION:</p> <ol style="list-style-type: none"> 1. A. 14: Ensures equality before the law and equal protection of the laws by the State. (<i>Supra: Chapter 1</i>) 2. A. 21: No person to be deprived of his life or personal liberty except according to procedure established by law. (<i>Supra: Chapter 4</i>) 3. A. 39(e): State to follow principles of policy securing the health and strength of workers, men and women, and children, are not forced by economic necessity to enter vocations unsuited to their age or strength. (<i>Supra: Chapter 2</i>) 4. A. 42: State to make provisions for securing just and humane conditions for work and for maternity relief. (<i>Supra: Chapter 4</i>) 5. A. 47: State to raise the level of nutrition and the standard of living of its people and to improve public health.² <p>LEGISLATIONS:</p> <ol style="list-style-type: none"> 1. Maternity Benefit Act, (MBA), 1961 and Maternity Benefit (Amendment) Act, 2017: An Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit along with other benefits. After the amendment in 2017, the limit for mandatory paid leaves has been increased from 12 weeks to 26 weeks. (<i>Supra: Chapter 1 and Chapter 4</i>) | <p>G1: The health budget of the Union Government is very low. It saw only an abysmal rise from 1.2% of its GDP in 2014–2015 to 1.8% in 2020–2021. Further, the share of the budget for the National Health Mission (NHM) in the total health budget of the Union Government has also declined from 60.25% in 2018–19 to 52.12% in 2020–21, thus, adversely affecting the quality of healthcare services including reproductive healthcare services as well. [CEDAW A. 12]</p> <p>R1: The National Health Policy, 2017 recommended, public health spending should be increased to 2.5% of GDP by 2025. In order to ensure that the healthcare systems in India improve, especially the maternal and reproductive health services, it is necessary to implement the recommendations of the National Health Policy, 2017.</p> <p>G2: As many as 363 deaths had taken place due to sterilisation procedures during the period of 2010 to 2013. The</p> |

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| | <p>2. Medical Termination of Pregnancy Act, 1971: Provides the legal framework for making medical termination of pregnancies by RMPs and for matters connected with that.</p> <p>3. Medical Termination of Pregnancy (Amendment) Act, 2021: Increases the time limit for accessing safe and legal abortion services from 20 to 24 weeks (of gestation) in certain circumstances. It removes the limit in case of foetal abnormalities.</p> <p>4. Protection of Women from Domestic Violence Act, 2005: The Act specifically in Section 7 provides for medical services, care and treatment to the victims of domestic violence.</p> <p>5. National Food Security Act, 2013: It provides that all people at all times get access to the basic food for their active and healthy life. Further, Section 4 of the Act deals with matters concerning pregnant women and lactating mothers including (a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi; and (b) maternity benefit of not less than rupees six thousand.</p> <p>6. Rights of Persons with Disabilities Act, 2016: Mandates the government to ensure PWDs enjoy the right to equality, life with dignity, and respect for his or her own integrity equally with others. The reproductive rights of PWDs are specifically dealt with in Section 10 of the Act.</p> <p>7. The Mental Healthcare Act, 2017: Provides for the protection and promotion of rights of persons with mental illness during the delivery of healthcare in institutions and in</p> | <p>SC in 2016 in <i>Devika Biswas v. Union of India</i>⁵ directed both Union & the State Governments to phase out the holding of sterilization camps in the next three years. The SC also directed the Union of India to take a decision by December 31, 2016 about finalisation of National Health Policy (NHP). In case the Government decides to have an NHP, it should keep issues of gender equity in mind as well. [CEDAW A. 12]</p> <p>R2: State Parties to ensure adequate health infrastructure including reproductive health. Trained public healthcare workforce, their continuous training, decent working conditions and filling up the vacancies of professionals and workers. Regularization of contractual reproductive public healthcare workers like ASHAs, ANMs, etc who renders services to pregnant and lactating women. Also to ensure universal access to quality and comprehensive healthcare especially for women with physical disabilities and mental illnesses.</p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| | <p>the community.</p> <p>8. Surrogacy (Regulation) Bill, 2020: Provides for the rights of the surrogate mothers and the children born through surrogacy. (The bill is under consideration of the Parliament.)</p> <p>9. HIV & AIDS (Prevention and Control) Act, 2017: An Act to provide for the prevention and control of the spread of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome.</p> <p>POLICIES & SCHEMES:</p> <ol style="list-style-type: none"> 1. Janani Suraksha Yojana, 2005, MoH&FW: Aims at reducing maternal and neonatal mortality by promoting institutional delivery of pregnant women. 2. National Health Mission, 2013: Aims to protect the reproductive health rights of women including Reproductive-Maternal-Neonatal-Child and Adolescent Health (RMNCH+A) Services based on the concept of a continuum of holistic care. 3. National Health Policy of India, 2017, MoH&FW: Aims to achieve the highest possible level of health and well-being and universal access to good quality health care services. It recommends increasing health expenditure to 2.5% of GDP by 2025.³ Further, it provides gender-sensitive, effective, safe, and convenient healthcare services. 4. Health Data Management Policy under National Digital Health Mission, 2017: Aims to digitize healthcare in India. | <p>G3: The Matru Vandana Yojana (Maternity Benefit Program), 2017, to support lactating mothers and pregnant women by compensating them for loss of wages during their pregnancy has been able to reach less than a third of the eligible beneficiaries.⁶ Further, the benefit is restricted to only the first living child, thereby, excluding the majority of pregnant women in the country. [CEDAW A. 12(2)]</p> <p>R3: The eligibility conditions stipulated for availing the benefits of the Matru Vandana Yojana (reproductive health services) should be made easier so as to ensure that the benefit reaches to all of its eligible beneficiaries. Women should be given benefits for the first two live births as was provided under the previous maternity benefit scheme ‘Indira Gandhi Matritva Sahyog Yojana.’</p> <p>G4: The health status of rural women especially the maternal mortality rate (MMR) which is 113 (SRS 2016-18) is</p> |

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| | <p>5. Pradhan Mantri Matru Vandana Yojana, 2017, MoWCD: Provides for a cash incentive of Rs 6000/- to be transferred directly to the bank/post office account of pregnant women and lactating mothers for their first living child.</p> <p>6. Ayushman Bharat Yojana, 2018, MoH&FW: A centrally sponsored scheme, jointly funded by the Union and the State Governments, offering services to about 50 crore people. Ayushman Bharat has two interrelated components: (1) Health and Wellness Centres (HWCs) and (2) Pradhan Mantri Jan Arogya Yojana (PM-JAY).</p> <p>7. Charter of Patient's Rights formulated by National Human Rights Commission and adopted by the Government of India suggests basic rights to be ensured for everyone seeking care in both Government and private health facilities including:</p> <ul style="list-style-type: none"> - Right to Information - Right to records and reports - Right to Emergency medical care - Right to Informed consent - Right to confidentiality, human dignity and privacy - Right to second opinion - Right to transparency - Right to Non-discrimination - Right to Safety and quality care - Right to referrals and appropriate transfers | <p>quite poor. The lowest MMR for the same period is 43 in Kerala, and the highest MMR is 215 in Assam. [CEDAW A. 14(2)(b)]</p> <p>R4: Primary health centres and health infrastructure should be improved to ensure equitable access to antenatal care, nutritious food and supplements like folic acid, iron, and calcium. Identification of high risk pregnancies and timely referral to higher centres as required. Timely availability of fully equipped ambulances should also be ensured. Benefits provided under ICDS be also strictly followed.</p> |

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| | <ul style="list-style-type: none"> - Right to protection for patients entering clinical trials etc.⁴ <p>8. To encourage family planning, there are incentives in the form of monetary and other reliefs to women and men by different State governments.</p> <p>JUDGMENTS:</p> <ol style="list-style-type: none"> 1. Suchita Srivastava v. Chandigarh Administration: (2009) 11 SCC 409: The Supreme Court upheld women's reproductive autonomy as a fundamental right including the reproductive rights of mentally challenged women. 2. Laxmi Mandal v. Deen Dayal Harinagar Hospital: W.P. (C) No. 8853/2008: The Delhi High Court upheld that the right to health includes the right to access and receive a minimum standard of treatment and care in public health facilities. 3. Sandesh Bansal v. Union of India; W.P. (C) 9061/2008: High Court of Madhya Pradesh ruled that the primary duty of the Government is to ensure that all women survive pregnancy and childbirth. 4. Devika Biswas v. Union of India: (2016) 10 SCC 726: SC held that the freedom to exercise reproductive rights would include the right to make a choice regarding sterilization. | |

¹Article 12:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

²Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

³2.1 Goal The policy envisages as its goal the attainment of the highest possible level of health and

wellbeing for all at all ages, through a preventive and promotive health care orientation in all developmental policies, and universal access to good quality health care services without anyone having to face financial hardship as a consequence. This would be achieved through increasing access, improving quality and lowering the cost of healthcare delivery.

2.4.3.1 Health finance

- a. Increase health expenditure by Government as a percentage of GDP from the existing 1.15% to 2.5 % by 2025.
- b. Increase State sector health spending to > 8% of their budget by 2020.
- c. Decrease in proportion of households facing catastrophic health expenditure from the current levels by 25%, by 2025

⁴<https://nhrc.nic.in/document/charter-patient-rights>

⁵Devika Biswas v. Union of India (2016) 10 SCC 726

⁶<https://www.thehindu.com/news/national/maternity-scheme-reaches-only-one-third-of-beneficiaries/article30009783.ece>





Marriage, Family and Legal Rights

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| <p>Article 9:</p> <p>1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.</p> <p>2. State Parties shall grant women equal rights with men with respect to the nationality of their children.¹</p> <p>Article 15:</p> <p>1. States Parties shall accord women equality with men before the law.</p> <p>2. States Parties shall accord to women, in civil matters, a legal capacity identical to</p> | <p>CONSTITUTION:</p> <p>1. A. 5: Citizenship at the commencement of the Constitution: Every person who has his domicile in the territory of India and was either born or whose parents were born in the territory of India; or has been a resident for not less than five years shall be a citizen of India at the commencement.⁴</p> <p>2. A. 6: Rights of citizenship of certain persons who have migrated to India from Pakistan: Relates to rights of citizenship of certain persons who have migrated to India from Pakistan and rights of citizenship of certain migrants to Pakistan.⁵</p> <p>3. A. 7: Rights of citizenship of certain migrants to Pakistan: Those who migrated after the 1st day of March 1947 to Pakistan shall not be deemed to be citizens of India.</p> <p>4. A.13: Laws inconsistent with or in derogation of the Fundamental Rights:</p> <p>A. 13(3)(a): a “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.⁶</p> <p>5. Clause 3 of Sixth Schedule: Powers of the District Councils and Regional Councils to make laws: Gives power to the District and Regional Council as formulated under the Schedule to make laws for certain subjects like marriages, social customs, etc.⁷</p> <p>LEGISLATIONS:</p> | <p>G1: India has separate legislations relating to marriage for different religions. The age of marriage for bride is 18 years and bridegroom is 21 years (The Special Marriage Act, 1954) as the condition prescribing the age of marriage has not been uniformly provided in all legislations. [CEDAW A. 16(2)]</p> <p>R1: Endeavours should be made to have a uniform age of bride and bridegroom for marriage across various marriage related legislations for the bride as well as for the bridegroom.</p> <p>G2: In legislations, age of marriage for bride is 18 years and bridegroom is 21 years without there being any scientific reasons for the same. [CEDAW A. 16(2)]</p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| <p>that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.</p> <p>3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.</p> <p>4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.²</p> <p>Article 16:</p> <p>1. State Parties shall take</p> | <p>1. Citizenship Act, 1955:</p> <ul style="list-style-type: none"> a) S. 3: U/s 3(1)(c)(ii), citizenship is granted at birth to a child if either parent is an Indian citizen and the other is not an illegal migrant.⁸ b) S. 4: Citizenship by Descent ⁹ c) S. 5(1)(d): Citizenship by registration to minor children of persons who are citizens of India. d) S. 5(1)(c): Citizenship by registration: A person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;¹⁰ <p>2. The Citizenship (Amendment) Act, 2019:</p> <ul style="list-style-type: none"> a) S. 2: Proviso added to the original section thereby removed the illegal immigrant status of persons belonging to certain communities for the purposes of this Act.¹¹ <p>3. The Citizenship Rules, 1956:</p> <p>Rule 17, Form XII Form of application for naturalisation mentions only the ‘father’s name’ in respect of such minors that are registered under Section 5(1)(d).¹²</p> <p>4. Hindu Marriage Act, 1955:</p> <ul style="list-style-type: none"> a) Section 5- Provides the conditions for a Hindu marriage between two Hindus, including the age of marriage i.e. the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years, at the time of the marriage;¹³ b) Section 7- A Hindu marriage may be solemnized in | <p>R2: The age for the bride and bridegroom should be the same, as recommended by the Law Commission Report No. 205. The NHRC has also recommended for fixing the same age of bride and bridegroom.¹⁸</p> <p>G3: Although some of the legislations related to marriage have put minimum age of the bride and bridegroom as a condition for marriage but no legislation has specified that if the condition for the age of marriage has not been met, the marriage would be illegal or void ab initio. [CEDAW A. 16(2)]</p> <p>R3: In compliance with Article 16 (2) of CEDAW, the marriages which do not adhere to the prescribed age of marriage should be declared illegal in all</p> |

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| <p>all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure the same right to women:</p> <ul style="list-style-type: none"> (a) To enter into marriage; (b) To freely choose a spouse; (c) And responsibilities during marriage and at its dissolution; (d) And responsibilities as parents, irrespective of their marital status, in matters relating to their children,; (e) To decide freely and responsibly the number of children and spacing of their children; (f) And responsibilities with regard to guardianship, trusteeship, adoption of children; | <p>accordance with the customary rites and ceremonies.¹⁴</p> <ul style="list-style-type: none"> c) Section 13- Provides the grounds for divorce.¹⁵ d) Section 13-B- Divorce by mutual consent.¹⁶ e) Section 26- Court may pass such interim orders and make such provisions as it may deem just and proper with respect to the custody, maintenance and education of minor children.¹⁷ <p>5. The Special Marriage Act, 1954:</p> <ul style="list-style-type: none"> a) Section 4 - Conditions relating to solemnization of marriage between any two persons irrespective of their religion, including age of marriage i.e. the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage; b) Section 27- Provides the grounds for divorce c) Section 28- Divorce by mutual consent d) Section 38- Court may pass such interim orders and make such provisions as it may deem just and proper with respect to the custody, maintenance and education of minor children. <p>6. Indian Divorce Act, 1869 Law relating to marriage and divorce governing Christians:</p> <ul style="list-style-type: none"> i) Section 10 - Grounds for dissolution of marriage ii) Section 10A - Dissolution of marriage by mutual consent. iii) Sections 41to 44 - Court may pass such interim orders and make such provisions as it may deem proper with respect to the custody, maintenance and education of minor children. | <p><i>legislations relating to marriage.</i></p> <p>G3: The Dissolution of Muslim Marriages Act, 1939, dealing with the rights of Muslim women to seek dissolution of her marriage, does not provide for important conditions relating to marriage like age of marriage and custody of children etc. [CEDAW A. 16(2)]</p> <p>R3: Endeavours should be made to provide for the conditions of marriage including age of marriage, custody of children and other related matters in the legislation.</p> <p>G4: Only father (not mother) is the natural guardian as per Section 6 of The Hindu Minority and Guardianship Act, 1956. [CEDAW A. 16(1)(f)]</p> |

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| <p>(g) The same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation;</p> <p>(h) The same rights for both spouses in respect of the ownership and disposition of property.</p> <p>2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage to be specified and registration of marriages in an official registry to be made compulsory.³</p> | <p>8. Parsi Marriage and Divorce Act, 1936:</p> <ol style="list-style-type: none"> 1. Section 32- Grounds for divorce 2. Section 32B- Divorce by mutual consent 3. Section 49- Court may make such provisions in the decree as it deems just and proper with respect to any joint property of husband and wife. <p>9. The Muslim Personal Law (Shariat) Application Act, 1937:</p> <p>a) Section 2- Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, marriage, dissolution of marriage, guardianship etc., the rule of decisions in cases where parties are Muslims Provisions related to personal laws including marriage, guardianship, etc. where the parties are Muslims shall be the Muslim Personal Law (Shariat).</p> <p>10. The Dissolution of Muslim Marriages Act, 1939:</p> <p>An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law.</p> <p>11. The Muslim Women (Protection of Rights on Marriage) Act, 2019:</p> <p>Section 3 states that any pronouncement of talaq (talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce) by a Muslim husband upon his wife, by words, either spoken or written or in electronic form is null and illegal. Section 4 criminalises the same and prescribes</p> | <p>R4: Mother should also be a natural guardian along with the father under the HAMA, 1956.</p> <p>G5: Husband is a guardian for a minor wife as prescribed under Section 6(c) of Hindu Minority and Guardianship Act, 1956. [CEDAW A. 16]</p> <p>R5: The law of husband being the guardian for a minor wife should be deleted. Despite Prohibition of Child Marriage Act, 2006, child marriages continue to be solemnized. In case of dispute between husband and a minor wife, husband should not be her guardian, her guardian should be her father/mother. Pick from final</p> <p>G6: Form XV under Rule 17 of Citizenship Rules, 2003 mentions only the ‘father’s name’ in respect of such minors who are registered</p> |

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| | <p>imprisonment up to 3 years</p> <p>12. Hindu Minority and Guardianship Act, 1956:</p> <ul style="list-style-type: none"> a) Section 6 (a): States father is the natural guardian of a minor boy or unmarried girl. b) Section (6)(c): The natural guardian of a minor married girl is the husband. Further, the natural guardian of a Hindu minor has the power to take decisions regarding realization, protection or benefit of the minor's estate. c) Section 13: Welfare of the minor to be of paramount consideration in the appointment and declaration of any person as guardian of a Hindu minor by the court <p>13. The Hindu Adoption and Maintenance Act of 1956 (HAMA, 1956):</p> <ul style="list-style-type: none"> a) Section 20 (1): Hindu is bound to maintain his/ her legitimate or illegitimate children. b) Section 20 (2) states a child may claim maintenance from his or her father or mother so long as the child is a minor <p>14. Criminal Procedure Code, 1973:</p> <p>Section 125: Provides that any person having sufficient means needs to provide maintenance of his legitimate or illegitimate minor children unable to maintain themselves</p> <p>15. The Guardianship and Wards Act, 1890:</p> <p>Section 24: Duties of the guardian is to look after the support, health and education, and such other matters of the child.</p> | <p>under Section 5(1)(d). [CEDAW A. 16(1)(d) & (f)]</p> <p>R6: In Form XV, in place of 'father's name', mention "father's or mother's name". (This form overlooks a situation, where the applicant maybe mother/guardian/single parent.)</p> <p>G7: The scheme of One Stop Centre (OSC) provides for a comprehensive response to gender-based violence faced by women most commonly by married women. However, the ground level realities indicate that the victims are unable to avail these facilities due to lack of awareness and accessibility of these centres. [CEDAW A. 16]</p> <p>R7: Awareness should be generated about the OSCs through mass media, Government institutions such as the Primary Health</p> |

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| | <p>16. Prohibition of Child Marriage Act, 2006:</p> <p>With a view to restrain solemnization of marriage of minor children, Child Marriage Restraint Act was enacted in 1929. This Act though restrains the solemnization of child marriage but did not declare them to be void or invalid. The NHRC undertook a comprehensive review of the then existing Act and in its annual report 2001-2002, recommended for comprehensive amendments. To give effect to recommendations, The Prohibition of Child Marriage Act, 2006 was enacted and as per Section 3, child marriage is voidable at the option of contracting party being a child. Section 12 of the Act declares the marriage to be void in certain circumstances like marriage by force, compulsion, or deceitful means. As per the Act, ‘child’ means a person who, if a male, has not completed 21 years of age and if a female, has not completed 18 years of age.</p> <p>JUDGEMENTS:</p> <ol style="list-style-type: none"> 1. Inter-caste marriage/Honour Killings <ul style="list-style-type: none"> • Lata Singh v. State of Uttar Pradesh (2006) 5 SCC 475: SC upheld the right to marry a person of her own choice and remarked that: “This is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes.” • A Shafin Jahan v. Ashokan KM AIR 2018 SC 35: Kerala High Court had annulled the marriage of a 24-year-old girl Hadiya. While dismissing this order, the Supreme Court held that “The choice of a partner, whether within or outside marriage, lies within the | <p>Centres, Anganwadi centres, etc. Further, integrating the OSCs with the Women Helpline Number 181, formation of a taskforce for monitoring the functioning of OSCs as recommended by the NHRC in its workshops on OSCs held on September 26, 2017 and on December 29, 2020.</p> <p>G8: Although PCM Act prohibits child marriage, still legal framework dealing with marriage, rape and sexual assault on children have contradictory provisions because of which PCM Act cannot be effectively implemented. [CEDAW A. 16(2)]</p> <p>R8: Contradictions in legal provisions dealing with marriage, rape and sexual assault on children should be removed. Further, there</p> |

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| | <p>exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution.”</p> <p>2. Same rights during marriage</p> <ul style="list-style-type: none"> • <i>Gurnaib Singh v. the State of Punjab</i> (2013) 7 SCC 108 The Supreme Court held that “A daughter-in-law is to be treated as a member of the family with warmth and affection and not as a stranger with despicable and ignoble indifference. She should not be treated as a housemaid. No impression should be given that she can be thrown out of her matrimonial home at any time.” <p>3. Dissolution of marriage & Petition for Divorce</p> <ul style="list-style-type: none"> • <i>Shayara Bano v. Union of India</i> (2017) 9 SCC 1 The Supreme Court held that the practice of instantaneous triple talaq (<i>talaq-e biddat</i>) at the option of husband and without wife’s consent is violative of Articles 14, 15, 21, 25 of the Constitution of India. <p>4. Decriminalization of adultery</p> <ul style="list-style-type: none"> • <i>Joseph Shine v. Union of India</i> 2018 SCC On Line SC 1676: The Supreme Court held that section 497 of IPC is violative of Article 14, 15, 21 of the Indian Constitution as it treats men and women unequally since women cannot prosecute their husbands for adultery. <p>5. After divorce-maintenance of children</p> <ul style="list-style-type: none"> • <i>Padmaja Sharma v. Ratan Lal Sharma</i> (2000) 4 SCC 266 The | <p>should be a uniform law to deal with sexual intercourse with a wife who happens to be a child.</p> |

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| | <p>Supreme Court held that the mother is equally responsible to pay towards the maintenance of the child. Both the parents have to contribute proportionate to their salaries. For instance: If the salary of the husband is twice as much as that of the wife, then they are bound to contribute in that proportion.</p> <ul style="list-style-type: none"> • <i>ABC v. The State (NCT of Delhi)</i> (2015) 10 SCC 1: The Supreme Court upheld the guardianship rights of an unwed mother and stated that if the father has exhibited no concern towards his offspring, then it would be futile to give him any legal recognition. <p>6. Joint Custody of child</p> <ul style="list-style-type: none"> • <i>KM Vinaya v. B Srinivas</i> MFA.NO.1729/2011 (G & W) The Karnataka High Court ruled that both parents are entitled to get custody “for the sustainable growth of the minor child”. In doing so, the parents were directed to share equally the education and other expenditures. <p>7. Right to enjoyment of property in matrimonial home/shared household</p> <ul style="list-style-type: none"> • <i>S.R. Batra v. Taruna Batra</i> (2007) 3 SCC 169 SC held that a wife is entitled to claim the right to residence only in a shared household, and a shared household would only mean the house belonging to or taken by the husband, or the house which belongs to the joint family of which the husband is a member, but will not cover the property owned by her in-laws. <p>8. Ownership of property- Streedhan</p> <ul style="list-style-type: none"> • <i>Krishna Bhattacharjee v. Sarathi Choudhury</i> (2016) 2 SCC 705 | |

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| | <p>SC held that a wife living separately from the husband even under a decree of judicial separation can claim her stridhan back from the husband under Section 12 of the Protection of Women from Domestic Violence Act. This is because stridhan does not become a joint property and the husband has no title or independent dominion over the property as owner.</p> <ul style="list-style-type: none"> • <i>Rashmi Kumar v. Mahesh Kumar Bhada</i> (1997) 2 SCC 397 SC held that streedhan is not joint property of wife & husband but absolute property of the wife. The husband has no right in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. <p>9. Differential bar of minimum age for marriage</p> <ul style="list-style-type: none"> • <i>Ashwini Kumar Upadhyaya</i> (PIL- Delhi HC) and <i>Abdul Manna</i> (PIL-Rajasthan HC) PENDING The petitions state that differential bar of minimum age between men and women discriminate against women and contravenes with the fundamental principles of gender equality, gender justice and dignity of women and breaching Articles 14, 15 and 21 of the Constitution. Both Delhi High Court and Rajasthan High Court had sought a reply of Centre on the said petition filed by Ashwini Kumar and Abdul Mannan respectively. <p>10. Compulsory registration of marriage</p> <ul style="list-style-type: none"> • <i>Seema v. Ashwani Kumar</i> 2006(2) SCC 578 SC directed the States and the Central Governments to take steps on compulsory registration of marriage. | |

¹Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

²Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

³Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full

consent;

- (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

⁴Article 5. Citizenship at the commencement of the Constitution: At the commencement of this Constitution, every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of

India.

⁵Article 6. Rights of citizenship of certain persons who have migrated to India from Pakistan: Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Article 7. Rights of citizenship of certain migrants to Pakistan: Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and

every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

“Article 13. Laws inconsistent with or in derogation of the fundamental rights: (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

73. Powers of the District Councils and Regional Councils to make laws: (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved

forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of jhum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

(i) marriage and divorce;

(j) social customs.

(2) In this paragraph, a “reserved forest” means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

8Section 3. Citizenship by birth.—(1) Except as provided in sub-section (2), every person born in India—

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where:

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

9Section 4. Citizenship by descent: (1) A person born outside India shall be a citizen of India by descent,—

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service

under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless-

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India: Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,-

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), whichever is later; or
(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), [any person] born outside undivided India who

was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

105. Citizenship by registration.- (1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:-

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and 3 [is ordinarily resident in India for twelve months] immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an 4 [Overseas Citizen of India Cardholder] for five years, and who 5 [is ordinarily resident in India for twelve months] before making an application for registration.

Explanation 1.-For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if-

(i) he has resided in India throughout the period

of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.-For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.]

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from

the commencement of the Constitution or the date on which he was so registered, whichever may be later.

[(6) If the Central Government is satisfied that circumstances exist which render it necessary to

grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.]

"Amendment of Section 2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:—

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"

¹²Form of application for naturalisation: (1) An application for a certificate of naturalisation shall be made in Form XII to the Collector within whose jurisdiction the applicant is ordinarily resident and the Collector shall transmit every such application to the Central Government through the State Government along with his report. (2) Such application shall be accompanied by (i) duty stamped affidavits from the applicant and two respectable Indian citizens testifying to the character of the applicant and the correctness of the statements made in the application; and (ii) a certificate to the effect that the applicant has an adequate knowledge of one of the languages specified in the Eighth Schedule to the Constitution. Explanation.—An applicant shall be considered to have adequate knowledge of the concerned language if he can speak or understand or read or write that language.

¹³Section 5. Condition for a Hindu Marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: (i) neither party has a spouse living at the time of the marriage; (ii) at the time of the marriage, neither party,— (a) is incapable of giving a valid consent of it in 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 or epilepsy; (iii) the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage; (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two; (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two

¹⁴Section 7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. (2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

¹⁵13. Divorce— (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the

ground that the other party—

- (i) has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or
- (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or
- (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- (ii) has ceased to be a Hindu by conversion to another religion; or
- (iii) has been incurably of unsound mind, or has suffered continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.— In this clause—

- (a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and include schizophrenia;
 - (b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or
 - (iv) has been suffering from a virulent and incurable form of leprosy; or
 - (v) has been suffering from venereal disease in a communicable form; or
 - (vi) has renounced the world by entering any religious order; or
 - (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;
- Explanation.— In this sub-section, the expression "desertion" means the desertion of the petitioner by

the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly.

(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-
(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upward after the passing of a decree of restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground-
(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before the commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition;
(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

or
(iii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, (78 of 1956), or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, (Act 2 of 1974) or under corresponding Section 488 of the Code of Criminal Procedure, (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or
(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.- This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Law (Amendment) Act, 1976.

¹⁶Divorce by mutual consent.-
(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made earlier

than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

¹⁷Section 26. Custody of children- In any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

¹⁸NHRC National Conference on Child Marriage, 2018



Social and Cultural Life

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| <p>Article 13:</p> <p>States Parties shall take all appropriate measures to eliminate discrimination against women in areas of economic and social life in order to ensure in particular:</p> <ul style="list-style-type: none"> (a) The right to family benefits; (b) The right to bank loans, mortgages, and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.¹ <p>Note 1: Aspects pertaining to family benefits (a) have been covered under Chapter- 8.</p> <p>Note 2: Aspects pertaining to economic life (b) have been covered under Chapter- 4.</p> | <p>CONSTITUTION:</p> <ol style="list-style-type: none"> 1. A. 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. (<i>Supra: Chapter 1</i>) 2. A. 21: Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law. (<i>Supra: Chapter 4</i>) 3. A. 29: Protection of interests of minorities. <ul style="list-style-type: none"> (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2)..... (<i>Supra: Chapter 4</i>) 4. A. 51A: Fundamental duties - It shall be the duty of every citizen of India— <ul style="list-style-type: none"> (a)..... (b)..... (c)..... (d)..... (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; (f) to value and preserve the rich heritage of our composite culture; | <p>G1: Confining the role of the Union Government to merely supplementing the efforts on sports and leaving the primary efforts completely on the State government has led to the uneven development of sports across the country and the non-emergence of sports as a national priority. This in turn also adversely impacts the participation of women in sports. [CEDAW A. 13(c)]</p> <p>R1: Transferring of the subject of sports from the List II - State List to the List III - Concurrent List in the Seventh Schedule may be considered. Further, item sports be shifted from the present Constitutional place, where it is clubbed with entertainment and amusement as sports is a key instrument of youth development including that</p> |

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| | <p>(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;</p> <p>(j).....</p> <p>(k).....</p> <p>5. Seventh Schedule (A. 246) List II - State List, Entry 33: Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.</p> <p>6. Eleventh Schedule (A. 243 G): Powers, authority and responsibilities of Panchayats - Entry 21: Cultural Activities</p> <p>7. Twelfth Schedule (Article 243W): Powers, authority and responsibilities of Municipalities:</p> <p>Entry 3: Planning for Economic and Social Development</p> <p>Entry 13: Promotion of Cultural, Educational, and Aesthetic Aspects</p> <p>LEGISLATIONS:</p> <ol style="list-style-type: none"> 1. Sati Prohibition Act, 1829 (Repealed); The Commission of Sati (Prevention) Act, 1987: The Act provides for effective prevention of commission of Sati (burning alive of widow on the funeral pyre of her husband) and its glorification. For the glorification of Sati, punishment is imprisonment or fine. 2. The Tamil Nadu Devadasis (Prevention of Dedication) Act, 1947 (and other State Acts): Prohibits the dedication of girls as Devadasis. (Supra: Chapter 2) 3. The Prohibition of Child Marriage Act, 2006: Provides for | <p>of women.</p> <p>G2: Women face several constraints in sports than men² including gender pay gap^{3,4} bias in receiving sports awards and difference in prize money, absence of family support, lack of training facilities, lack of provision for dietary allowance, issues related to sexual harassment and the absence of sexual harassment complaints committees, etc.⁵ [CEDAW A. 13(c)]</p> <p>R2: Discrimination in pay and prize money should be removed. Awareness should be created at school-level to promote women in sports; adequate training and dietary allowance should be ensured to women. Safe workplace including effective implementation of POSH Act.</p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| | <p>prohibition of solemnization of child marriage. (Supra: Chapter 6)</p> <p>POLICIES :</p> <ol style="list-style-type: none"> 1. The SO975(E) by the Ministry of Information and Broadcasting notified Women's sporting events including Women's Hockey and Women's Tennis as sporting events of national importance. 2. National Sports Development Code, 2011: Apart from other aspects, the Code promotes sport for men and women and holding of regular national championships in all categories both for men and women. 3. National Sports Policy, 1984/2001: The National Sports Policy aims to pursue inclusion of "Sports" in the Concurrent List of the Constitution of India and introduction of appropriate legislation for guiding all matters involving national and inter-state jurisdiction. The policy aims at enhancement of the participation of women in sports. 4. National Youth Policy, 2013: Youths are defined as persons in the age group of 13 to 35 years; the policy recognizes four thrust areas in which Gender Justice is one of them. 5. Khelo India (National Sports): National Programme for development of sports inter-alia includes a dedicated vertical 'sports for women' which provides for financial assistance for holding sports competition for women. Under the Talent Search & Development vertical of Khelo India Scheme, 1344 women Khelo India athletes have been supported out of the total 2741 athletes | <p>G3: The functioning of Law enforcement Agencies in certain States in the name of preserving cultural values violates the rights of women to access public spaces and partake in social and cultural expression towards their partner. This violates their right to life & personal liberty, results in stigma, loss of mobility, community backlash, and forced marriage to restore honour. [CEDAW A. 13(c)]</p> <p>R3: The State Parties should ensure an enabling environment where women are free to access public spaces and have the freedom of social and cultural expression.</p> <p>Article 14:</p> <ol style="list-style-type: none"> 1. States Parties shall take |

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| | <p>with a vision to include sports culture and achieve sporting excellence through mass participation of women in sports.</p> <p>6. Online training programme exclusively for women Physical Education Teachers and Community Coaches, an initiative which is a convergence of the Beti Bachao, Beti Padhao (MoWCD) and Fit India by Ministry of Youth Affairs and Sports (MoYA) programmes launched on 8th March 2021, aims to empower women teachers in primary, secondary and senior secondary schools by giving them fitness training so that they can, in turn, empower students, especially the girl child.</p> <p>7. Ministry of Youth Affairs and Sports constituted a committee to look into the complaints regarding “Sexual Harassment of women at work place” to ensure safety of women in sports.</p> <p>8. NITI Aayog’s National Coaching Scheme especially encourages women in sports.</p> <p>JUDGEMENTS:</p> <p>1. Indian Young Lawyers’ Association v. State of Kerala (<i>Sabarimala case</i> - (2019) 11 SCC 1): The Supreme Court declared unconstitutional the Sabarimala Temple’s custom of prohibiting women in their ‘menstruating years’ from entering the temple. Presently this judgement is under Review before the SC.</p> <p>2. Independent Thought v. Union of India, (2017) 10 SCC (800): SC held a man having sexual intercourse with his wife who is below the age of 18 years will be guilty of committing rape.</p> | |

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| | <p>3. <i>Gaurav Gupta v. State of Uttar Pradesh</i>, Allahabad High Court (P.I.L. CIVIL No. – 6779 of 2017): Petition was filed praying that guidelines should be prepared to ensure that police do not commit excesses so as to invade the private rights of couples or adults that are suspiciously viewed by the police to be indulging in any unauthorised or unlawful act by exhibiting knee-jerk reactions in the name of Anti-Romeo squads.</p> <p>Court ordered that available guidelines should be followed by the Anti-Romeo squad while functioning. The order was widely criticized.</p> | |

¹Article 13:

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

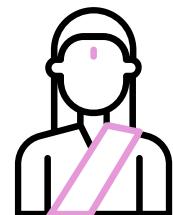
²NCW REPORT: Gender Issue in Sports <http://ncwapps.nic.in/pdfReports/Gender%20Issue%20in%20Sports.pdf>

³India closer to egalitarian play: A look at women in sports, KhelAdhikar, 2018 (<https://thebridge.in/law-in-sports/india-closer-egalitarian-play-look-women-sports/>)

⁴Global Sports Salaries Survey, 2017 (<https://globalsportssalaries.com/GSSS%202017.pdf>)

⁵Dr. Deepti Kohli, 2017. Gender Discrimination in Sports : Depleting Respect of Women Players in India





Women in Rural Areas

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| <p>Article 14:</p> <p>1. States Parties shall take into account the problems faced by rural women and recognize their contribution in their family's economic survival and their work in the non-monetized sectors.</p> <p>And ensure the application of the present Convention to women in rural areas.</p> <p>2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas.</p> <p>Further, ensure to such women the right to:</p> <ul style="list-style-type: none"> a. Participate in the elaboration and implementation of development planning at all levels; b. Adequate health care facilities including family planning services; | <p>In India, land and agriculture-related entitlements pertaining to rural women, including their work conditions and wages, are governed by laws as per the Constitutional framework including the Seventh Schedule (Distribution of powers between Union & States to make laws) and the Eleventh Schedule(Powers of Panchayats), which provides for a federal structure and decentralized governance.</p> <p>In view of India's diverse spatial habitat, the Constitution of India has incorporated the Fifth Schedule (Administration of Scheduled Areas & Scheduled Tribes) and the Sixth Schedule (Administration of Tribal Areas in specific States) to protect, restrict, and govern the rights of specific groups in identified areas.</p> <p>This section discusses issues pertaining to rural women including tribal women, women belonging to Scheduled Caste.</p> <p>CONSTITUTION:</p> <p>1. A. 31A: Saving of laws putting restrictions on the acquisition of estates, etc. (Estate includes any land held for purpose of agriculture (2)(a) 'Estate' shall include: (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans.²</p> | <p>G1 & R1: Poor health status of rural women especially maternal mortality rate (MMR). [CEDAW A. 14(2)(b)] (Supra: Chapter 5)</p> <p>G2: The wage disparity between men and women in rural parts of the country has increased. [CEDAW A. 11(1)(d) & 14(2)]</p> <p>R2: <i>The law of equal pay for equal work should be implemented in letter and spirit.</i></p> <p>G3: Child Marriage: As per NFHS-5 data, child marriage is more prevalent in rural areas than in urban areas. This results in early school drop-out, early pregnancy and other health issues, exposure to domestic violence, etc. [CEDAW A. 14(1) & 16(2)]</p> <p>R3: <i>State parties should spread awareness about the</i></p> |

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| <p>c. Benefit directly from social security programmes;</p> <p>d. Obtain all types of training and education to increase their technical proficiency;</p> <p>e. Organize self-help groups and co-operatives, in order to obtain equal access to economic opportunities through employment/ self-employment;</p> <p>f. Participate in all community activities;</p> <p>g. Have access to agricultural credit and loans, marketing facilities, appropriate technology, equal treatment in land and agrarian reforms, land resettlement schemes.</p> <p>h. Enjoy adequate living conditions in relation to housing, sanitation, electricity and water supply.¹</p> | <p>2. A. 323B: Tribunals for other matters.³ Provides for establishment of tribunals to deal with disputes of acquisition of any estate by the State.</p> <p>3. A. 40: Organisation of village panchayats: States to take steps to organise village panchayats and endow such power and authority to enable them to function as units of self-government.⁴</p> <p>4. A. 43: Living wage, etc., for workers: State shall endeavour to secure by suitable legislation, living wage, etc., for workers.—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 and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.⁵</p> <p>5. A. 43B: Promotion of co-operative societies.—The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.⁶</p> <p>6. A. 46:Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of</p> | <p><i>prohibition of child marriage and ensure strict compliance of these law, promote education, skill development, and employment opportunities for girls.</i></p> <p>G4: Gender digital divide is particularly wide for rural women. The NFHS-5 reveals that there is a significant digital divide in the country, with rural women least likely to have internet access. [CEDAW A. 14(2)(d) & 14(2)(h)]</p> <p>R4: State Parties to improve digital infrastructure in rural areas to ensure that women are not discriminated against in accessing the same. Women focussed training with awareness about the dangers of the digital world should be imparted. ASK TYAGI SIR</p> |

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| <p>Note 1: "Health" has also been specifically dealt with in Chapter- 5.</p> <p>Note 2: "Marriage" has also been specifically dealt with in Chapter - 6.</p> <p>Note 3: Issues related to education and employment of women in rural areas have also been dealt with in Chapter 4.</p> | <p>exploitation.⁷</p> <p>7. A. 48: Organisation of agriculture and animal husbandry—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.⁸</p> <p>8. A. 243D: Reservation of seats for women in Panchayats. (Supra: Chapter 3)</p> <p>LEGISLATIONS:</p> <ol style="list-style-type: none"> Hindu Succession Act, 1956 <ul style="list-style-type: none"> Section 4: has been amended in 2005 by omitting S 4(2) of Hindu Succession Act (which prevented application of HSA to the fragmentation of agriculture holdings). Succession to agricultural land (which apply to all irrespective of their religion), is governed by State laws. However, the laws of several States deny women the right to own/ inherit agricultural land. After the amendment of 2005, some states like Karnataka, Andhra Pradesh, Tamil Nadu, and Maharashtra have equalized the inheritance rights of women for agricultural (rural) lands and extends coparcenary rights at birth to daughters. Land tenure and usage rights: Each State has its own laws on land holding & tenancy, agriculture, mortgages, land usage rights and ownership of agricultural land. Women are generally not recognized as tenants as per the definition in these laws. | <p>G5: Violence against women particularly community sanctioned violence (Khap panchayat, branding and witch hunting) is still prevalent in rural areas and targets mainly women belonging to SC/ST communities. [CEDAW A. 14(1)]</p> <p>R5: State Parties to take strict penal action against the perpetrators to deter public from committing such acts. Awareness about the rights of women, accessible justice delivery system including One Stop Centres (OSCs)⁹ in rural areas. Gender and caste sensitization programmes for the police personnel especially in the rural areas should be conducted.</p> <p>G6: MGNREGA</p> <ol style="list-style-type: none"> The Act provides for |

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| | <p>3. Amongst tribals, customary laws largely recognize only usufructuary rights of unmarried daughters.</p> <p>4. Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005: Promises 100 days work to all rural households. At least one-third beneficiaries shall be women under clause 6 of Schedule II drafted under S. 5 of the Act. (<i>Supra: Chapter 4</i>)</p> <p>5. Recently, the Uttarakhand Government has brought an ordinance to give co-ownership rights to women in their husband's ancestral property. Through the ordinance, government aims to provide economic independence to women – who are left behind in the hills and are solely dependent on agriculture to meet their financial needs.</p> <ul style="list-style-type: none"> • The amendment made to the Uttarakhand Zamindari Abolition and Land Reforms Act (??) is likely to impact around 35 lakh women in the State. In the revenue records, the name of the wife would be now mentioned as a co-owner. <p>6. The Indian Shariat Act, 1937 The Indian Shariat Act, 1937 gives women the right to inherit property except the right to inherit agricultural land.</p> <p>7. National Co-operative Development Corporation Act, 1962 (NCDC Act). The objectives of the NCDC Act are to plan and promote programmes for the production, processing, marketing, storage, export and import of agricultural produce, foodstuffs, industrial goods, livestock, certain other commodities and services on co-operative principles.</p> | <p>crèches at the sites; very few crèches are functional at the work-sites.</p> <p>ii. Water & Sanitation facilities are not adequate on the sites.</p> <p>iii. 100 days of wages is not sufficient to sustain a family; delayed payment of wages is also quite prevalent. [CEDAW A. 11(1)(f) & A. 11(2)(c) & A. 14]</p> <p>R6:</p> <p>i. Functional creches should be established at the sites in compliance of the Act.</p> <p>ii. Wage rate and days of work under MGNREGA should be increased. Payment should be made in a timely manner.</p> <p>iii. Women should have access to the wages in their own or joint bank accounts.</p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
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| | <p>8. Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989: An Act to prohibit discrimination, prevent atrocities, and hate crimes against scheduled castes and scheduled tribes.</p> <p>POLICIES:</p> <ol style="list-style-type: none"> 1. Five Year Plans <ol style="list-style-type: none"> a. The 1980-1985: Sixth Five Year Plan, provided for joint titles to spouses; however, this policy was not confirmed in the 1985-1990 Seventh Five Year Plan. b. In the 1992-1997: Eighth Plan, 40 percent of forfeited land was allocated to women, and the remaining land to both spouses through joint titles. c. The 1997-2002: Ninth Plan had a women's land rights section and provided for land titles mainly distributed to women through women's groups or individually. d. The 2002-2007: Tenth Five Year Plan recommended concessions to female property buyers when they registered to ensure effective implementation of land reform legislations setting a ceiling so as to guarantee the distribution of surplus land to women. e. The 2007-2012: Eleventh Five Year Plan aims at ensuring effective and independent land rights for women and strengthening women's agricultural capacities. | <p>G7: Despite omission of Section 4 (2) of HSA which denied women succession of agriculture lands, many States are still continuing with the agriculture laws which deny women to succeed in agriculture holdings. E.g. U.P. Also, tribal & customary practices largely deprive married daughters to inherit agriculture lands. [CEDAW A. 14(2)(g) & A. 16(1)(h)]</p> <p>R7: All the States must equalize the inheritance rights of women for agricultural lands, irrespective of their marital status.</p> <p>G8: The Indian Shariat Act, 1937, excludes inheritance of agricultural land by women. [CEDAW A. 14(2)(g)]</p> <p>R8: Inheritance of agricultural land by women, should be</p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
|-------------------------|---|---|
| | <p>2. National Rural Livelihood Mission: It is a poverty alleviation project by the Government of India that began in 2011. This scheme aims to promote the self-employment of the rural poor. The idea is to organize the poor into a Self Help Group for self-employment. It comes under the Ministry of Rural Development. The World Bank finances this scheme as it is one of the largest schemes working for rural poor. Deen Dayal Antyodaya Yojana took over it in 2015.</p> <p>3. Swamitva Yojana: Swamitva Yojana is a Government scheme to encourage land ownership in rural areas with use of modern technology. The Panchayati Raj Ministry of the Union Government is responsible for this scheme management. Panchayati Raj Day, 2020 saw the launch of this scheme. The reason is many villagers don't have a paper to prove their land. This scheme is to provide them ownership rights.</p> <p>4. The National Policy on Farmers, 2007 accords priority to 'Recognition and Mainstreaming of Women's role in Agriculture' and highlights incorporation of 'Gender Issues' in the agricultural development agenda.</p> <p>5. The National Gender Resource Centre in Agriculture (NGRCA) set up in the Department of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, endeavours that the policies and programmes in agriculture are fully engendered & promote the national commitment to empowerment of women.</p> | <p><i>included in the Indian Shariat Act.</i></p> <p><i>General Recommendation: Impact assessment of Mahila Kisan Sashaktikaran Pariyojana, Kudumbashree & National Gender Resource Centre be done.</i></p> |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
|-------------------------|--|--|
| | <p>6. Schemes for rural women / women in agriculture</p> <ul style="list-style-type: none"> • Mahila Kisan Sashaktikaran Pariyojana launched in 2011 to help & extend support to women farmers who make up for one-third of the agricultural labour and almost a half of the self-employed farmers. • Kudumbashree (under the State Poverty Eradication Mission (SPEM) of Kerala): Since 2006, Kerala has introduced collective farming on fallow farmland taken on informal lease by groups of women organized with the support of Panchayats and joint liability groups of women farmers. These groups are formed under the collective farming initiative to help women cultivators access agricultural loans/ credit from the banking system. (SELF-HELP GROUPS) <p>JUDGMENTS:</p> <ol style="list-style-type: none"> 1. Madhu Kishwar v. Union of India – Tribal & Agricultural rights of Women (1996) SCC (5) 125: Madhu Kishwar v. State of Bihar (1996) 5. SCC 125: SC held that the exclusive right of male succession conceived in Sections 7 and 8 of the Chotanagpur Tenancy Act, 1908 would remain suspended animation as long as the right of livelihood of the female descendants of the last male holder remained valid and in vogue. 2. Nirmala v. State of NCT Delhi, right of daughter in agricultural land in India LQ/DelHC/2020/153 : Delhi HC, declared the part of Land Laws of Delhi as void, as the same disentitled daughters from | |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
|-------------------------|--|--|
| | <p>Succeeding agricultural lands.</p> <p>3. <i>Devika Biswas v. Union of India (Writ Petition (C) No. 95 of 2012)</i>: It was a public interest petition concerning the sterilization of women in the accredited centers, under the State Governments. The SC emphasized that sterilization related deaths were a direct consequence of poor quality of health care services and therefore, there was a need to invest more monetary and human resources in the National Rural Health Mission.</p> <p>PANCHAYAT RELATED JUDGMENTS:</p> <ul style="list-style-type: none"> ● <i>Suresh Balkrishna Pogale v. State of Maharashtra (W.P. No. 3720 of 2001)</i>: Section 30(4)(c) of the Bombay Village Panchayats Act. The Court held that appointing a male candidate in place of a women candidate in absence of unavailability of a woman candidate amounted to de-reservation of the post of Sarpanch and consequently frustrated the very intention of the legislature. ● <i>Rajbala v. State of Haryana ((2016) 1 SCC 463)</i>: The Supreme Court upheld the constitutional validity of the Haryana Panchayati Raj (Amendment) Act, which stipulated that individuals contesting panchayat elections must have at least passed Class 10 (Class 8 for Dalit candidates). | |

| Article(s) of the CEDAW | Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgements | Gaps in the implementation of CEDAW in India (G) and its corresponding recommendations (R) |
|-------------------------|---|--|
| | <p>ANGANWADI WORKERS:</p> <ul style="list-style-type: none"> • <i>Vaishnorani Mahila Bachat v. State of Maharashtra (2019 SCC Online SC 353):</i> The judges ruled that the Government should take steps to ensure that the self-help groups/Mahila Mandals and such other similar organizations were allowed to meaningfully participate in providing food to the Anganwadi Centres tenders. • <i>State of U. P. and Ors. vs. Sushila (09.04.2008 - SC Order): MANU/SCOR/00030/2008:</i> Payment of minimum wages to voluntary workers who clean centre and help Auxiliary Nurse Midwife (ANM) at the time of delivery of pregnant woman in Mother and Child Welfare Center | |

¹Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

²A. 31A: Saving of laws putting restrictions on acquisition of estates, etc.,
(1) Notwithstanding anything contained in Article 13, no law providing for –
(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [article 14 or article 19]:
[Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]
[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or

structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]
(2) In this article,—
(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—
(i) any jagir, inam or muafi or other similar grant and in the States of ¹[Tamil Nadu] and Kerala, any janmam right; (ii) any land held under ryotwari settlement; (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]
(b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, ²[raiyat, under-raiayat] or other intermediary and any rights or privileges in respect of land revenue.

³323B. Tribunals for other matters.—(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.
(2) The matters referred to in clause (1) are the following, namely:— (a) levy, assessment, collection and enforcement of any tax;
(b) foreign exchange, import and export across customs frontiers; (c) industrial and labour disputes;
(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or

in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

1[(h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;]

2[(i)] offences against laws with respect to any of the matters specified in sub-clauses (a) to 3[(h)] and fees in respect of any of those matters;

2[(j)] any matter incidental to any of the matters specified in sub-clauses (a) to 4[(i)]. (3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within

the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matters in accordance with the provisions of Part XI.]

⁴Organisation of village panchayats.—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.

⁵Article 43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all

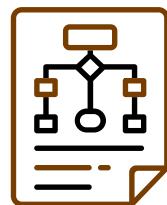
workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

⁶Article 43B: Promotion of co-operative societies.—
The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.]

⁷Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

⁸Article 48: Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

⁹One stop centres where all the facilities are available under one roof.



Procedural Aspect of Implementation of CEDAW

| Article(s) of the CEDAW | Summary of the Articles |
|--------------------------|---|
| Article 17 ¹ | Deals with establishment of a Committee for considering progress made in implementation of CEDAW. The article gives details about the procedure for election of Committee members. |
| Article 18 ² | State Parties undertake to submit reports to the Secretary-General of the United Nations for consideration by the Committee. |
| Article 19 ³ | The Committee to adopt its own rules of procedure. |
| Article 20 ⁴ | Committee to meet for a period of not more than 2 weeks annually in order to consider the reports submitted. |
| Article 21 ⁵ | The Committee through Economic and Social council reports annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on examination of reports. Secretary General of UN to transmit the reports of the Committee to the Commission on the Status of Women. |
| Article 22 ⁶ | The Committee can invite specialized agencies to submit reports on the implementation of the Convention. |
| Article 23 ⁷ | Nothing in the present Convention to affect any provisions that are more conducive to the achievement of equality between men and women. |
| Article 24 ⁸ | State Party to undertake to adopt all measures aimed at achieving the full realization of the rights recognized in this Convention. |
| Article 25 ⁹ | Deals with signature, ratification and accession of the Convention by States. |
| Article 26 ¹⁰ | Deals with the procedure to be followed by States seeking revision of the Convention. |

| Article(s) of the CEDAW | Summary of the Articles |
|--------------------------|--|
| Article 27 ¹¹ | Deals with procedure for coming into force of the Convention after ratification or accession by the States. |
| Article 28 ¹² | Secretary-General of the United Nations to receive and circulate to all States the text of Reservation made by the States at the time of ratification or accession. |
| Article 29 ¹³ | Any dispute between two or more State Parties concerning interpretation or application of Convention to be referred to arbitration or International Court of Justice as the case may be. |
| Article 30 ¹⁴ | The Arabic, Chinese, English, French, Russian, and Spanish texts of the Convention to be deposited with the Secretary-General of the United Nations. |

Note: As per the information available on the website of the Ministry of External Affairs, the Combined Fourth and Fifth Periodic Report on CEDAW in respect of India was submitted in 2012, but the Commission could not find any further information about the submission of any Periodic Report thereafter.

Being the signatory to the CEDAW, the Government of India should take all the measures to submit the Periodic Reports on time. The submission of Periodic Reports on time will help in identifying the gaps in the implementation of CEDAW and would also help the Government in taking timely corrective measures.

¹Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention.

The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties

present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

²Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the

State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

³Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

⁴Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

⁵Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

⁶Article 22

The specialized agencies shall be entitled to

be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

⁷Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

⁸Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

⁹Article 25

- 1. The present Convention shall be open for signature by all States.
- 2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
- 3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

¹⁰Article 26

- 1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
- 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

¹¹Article 27

- 1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
- 2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

¹²Article 28

- 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
- 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
- 3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

¹³Article 29

- 1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
- 2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
- 3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

¹⁴Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

¹⁵https://www.mea.gov.in/Speeches-Statements.htm?dtl/23546/Opening_Statement_by_Mr_Shankar_Aggarwal_Secretary_WCD_amp_Leader_of_Delegation_of_India_at_the_FiftyEighth_Session_of_the_UN_Committee_on_Convention



Major recommendations of the Study

1 Action: Ministry of Home Affairs

G1: Women hold only 10.33% of seats in Lok Sabha (2019-2024) and 8.8% women in Rajya Sabha (2020). During 2021, female MLAs in the State Legislative Assemblies were 8.5% and female candidates were 7.3%. The data shows that there is a continued low representation of women in the upper echelons of law making. [CEDAW A.3 and A.7(b)]

R1: To improve the representation of women in the upper echelons of law-making, affirmative actions are required including the Women's Reservation Bill or the Constitution (108th Amendment) Bill, 2008 to amend the Constitution of India to reserve 33 per cent seats for women in Lok Sabha, and in all State Legislative Assemblies need to be reintroduced.

2 Action: Ministry of Home Affairs

G2: India has separate legislations relating to marriage for different religions. The age of marriage for bride is 18 years and bridegroom is 21 years (The Special Marriage Act, 1954) as the condition prescribing the age of marriage has not been uniformly provided in all legislations. [CEDAW A. 16(2)]

R2: Endeavours should be made to have a uniform age of bride and bridegroom for marriage across various marriage related legislations for the bride as well as for the bridegroom.

3 Action: Ministry of Home Affairs

G3: Although some of the legislations related to marriage have put minimum age of the bride and bridegroom as a condition for marriage but no legislation has specified that if the condition for the age of marriage has not been met, the marriage would be illegal or *void ab initio*. [CEDAW A. 16(2)]

R3: In compliance with Article 16 (2) of CEDAW, the marriages which do not adhere to the prescribed age of marriage should be declared illegal in all legislations relating to marriage.

4 Action: Ministry of Home Affairs

G4: Although PCM Act prohibits child marriage, still legal framework dealing with marriage, rape and sexual assault on children have contradictory provisions because of which there remain challenges in effective implementation of PCM Act. [CEDAW A. 16(2)]

R4: Contradictions in legal provisions dealing with marriage, rape and sexual assault on children should be removed. Further, there should be a uniform law to deal with sexual intercourse with a wife who happens to be a child.

5 Action: Ministry of Home Affairs

G5: Several prevailing customs and practices that perpetuate discrimination against women are out of the purview of the legislative framework. [CEDAW A.2 (f)]

R5: Efforts should be made to discourage prejudices and eliminate customs and practices that discriminate against women by enacting appropriate legislation(s) and other necessary social measures.

6 Action: Ministry of Home Affairs

G6: Violence against women particularly community sanctioned violence (*Khap panchayat, branding and witch hunting*) is still prevalent in rural areas and targets mainly women belonging to SC/ST communities. [CEDAW A. 14(1)]

R6: State Parties to take strict penal action against the perpetrators to deter public from committing such acts. Awareness about the rights of women, accessible justice delivery system including One Stop Centres (OSCs) in rural areas. Gender and caste sensitization programmes for the police personnel especially in the rural areas should be conducted.

7 Action: Ministry of Home Affairs

G7: As the establishment of AHTUs is by way of a scheme, the setting-up of AHTUs at the district level is not legally enforceable. [CEDAW A.6)

R7: ITPA be amended to provide for the establishment of AHTUs at the district level as stated in the scheme.

8 Action: Ministry of Parliamentary Affairs & Ministry of Home Affairs

G8: Ineligibility and consequent disqualification of women to contest elections on the grounds of lack of educational qualification deprives women for no fault of theirs. [CEDAW A. 7(a) and A. 7(b)] (Ref: Rajbala V/s State of Haryana)

R8: As per 2020, only around 66% of women are literate in India as compared to 82% of men. Considering the grass-root realities regarding the literacy of women, especially adult women, legislatures, need to be more sensitive in imposing disqualifying criteria on women in public life for lack of educational qualification till particular level of literacy of women is achieved.

9 Action: Ministry of External Affairs & Ministry of Home Affairs

G9: Given the socio-cultural realities of India, only a few women get a chance to represent India at international levels or to work for international organisations. The number of women representing the State at international level, including in delegations, postings, assignments, committees, commissions, multilateral agencies is also very low. [CEDAW A.8]

R9: State should take affirmative actions to ensure adequate representation of women at international level including participation in the work of international organizations.

10 Action: Ministry of External Affairs & Ministry of Home Affairs

G10: As per the information available on the website of the Ministry of External Affairs, the Combined Fourth and Fifth Periodic Report on CEDAW in respect of India was submitted in 2012, but the Commission could not find any further information about the submission of any Periodic Report thereafter.

R10: Being the signatory to the CEDAW, the Government of India should take all the measures to submit the Periodic Reports on time. The submission of Periodic Reports on time will help in identifying the gaps in the implementation of CEDAW and would also help the Government in taking timely corrective measures.

11 Action: Ministry of Law & Justice

G11: Only father (not mother) is the natural guardian as per Section 6 of The Hindu Minority and Guardianship Act, 1956. [CEDAW A. 16(1)(f)]

R11: Mother should also be a natural guardian as is the father under the HAMA, 1956.

12 Action: Ministry of Law & Justice

G12: Despite omission of Section 4 (2) of HSA which denied women succession of agriculture lands, many States are still continuing with the agriculture laws which deny women to succeed in agriculture holdings. E.g. U.P. Also, tribal & customary practices largely deprive married daughters from inheriting agriculture lands. [CEDAW A. 14(2)(g) & A. 16(1)(h)]

R12: All the States must equalize the inheritance rights of women for agricultural lands, irrespective of their marital status.

13 Action: Ministry of Women and Child Development & State/UTs

G13: Despite legislations ensuring equal opportunities for women, the unavailability of adequate and quality crèches for children of working women discourages them from joining workplaces. [CEDAW A.3]

R13 : Crèches for children should be ensured at/near the workplace/home to enable and encourage women to work.

14 Action: Ministry of Women and Child Development & State/UTs

G14: The Matru Vandana Yojana (Maternity Benefit Program), 2017, to support lactating mothers and pregnant women by compensating them for loss of wages during their pregnancy has been able to reach less than a third of the eligible beneficiaries. Further, the benefit is restricted to only the first living child, thereby, excluding the majority of pregnant women in the country. [CEDAW A. 12(2)]

R14: The eligibility conditions stipulated for availing the benefits of the Matru Vandana Yojana (reproductive health services) should be made easier so as to ensure that the benefit reaches to all of its eligible beneficiaries. Women should be given benefits for the first two live births as was provided under the previous maternity benefit scheme.

15 Action: Ministry of Women and Child Development & State/UTs

G15: The scheme of One Stop Centres (OSCs) provides for a comprehensive response to gender-based violence faced by women most commonly by married women. However, the ground-level realities indicate that the victims are unable to avail these facilities due to lack of awareness and accessibility of these centres. [CEDAW A. 16]

R15: Awareness should be generated about the OSCs through mass media, Government institutions such as the Primary Health Centres, Anganwadi centres, etc. Further, integrating the OSCs with the Women Helpline Number 181, formation of a taskforce for monitoring the functioning of OSCs as recommended by the NHRC in its workshops on OSCs held on September 26, 2017 and on December 29, 2020.

16 Action: Ministry of Women and Child Development & State/UTs

G16: There is no definition of ‘Victim’ in the ITPA. Further, U/s 2(aa) of ITPA, ‘child’ means a person who has not completed the age of 16 years. Further, U/s 2(cb) of ITPA, minor means a person who has completed the age of 16 years but has not completed the age of eighteen years. [CEDAW A.6]

R16: ‘Victim’ should be defined in the ITPA and the definition of ‘Victim’ as provided U/s 2(wa) of Cr.P.C may be followed. While the definition of ‘child’ as provided u/s 2(12) JJ Act, 2015 i.e. a ‘child’ means a person who has not completed 18 years of age should be uniformly followed both for child and minor in the ITPA.

17 Action: Ministry of Labour and Employment & Ministry of Women and Child Development & States/UTs

G17: States lack monitoring and regulating systems to prevent fake and fraudulent placement agencies due to which domestic workers, mainly women, get trafficked into commercial sexual exploitation and forced labour. [CEDAW A.6]

R17: The State Governments should put in place adequate monitoring and regulating systems to closely monitor the functioning of private placement agencies to prevent trafficking.

18 Action: Ministry of Labour & Employment & States/UTs

G18: Over 90% of women are in the informal economy where regulatory frameworks are mostly absent as such POSH Act is poorly implemented, including the setting up of a Local Committee. [CEDAW A. 11(1)(f)]

R18: Local Committee should be set up and POSH Act should be included in the Labour Codes.

19 Action: Ministry of Labour & Employment & States/UTs

G19: It is a prevalent practice in private sector organisations to terminate pregnant women to avoid giving maternity benefits to them. [CEDAW A. 11(2)(a)&(b)]

R19: The Maternity Benefits Act should be uniformly and effectively implemented in both public and private sectors.

20 Action: Ministry of Labour & Employment & States/UTs

G20: The Female Labour Force Participation Rate, i.e., the share of working women (who report either being employed or being available for work) has fallen to a historic low of 23.3% in 2017-18. There is also a fall in work participation rates among rural women by 7 percentage points from 24.8% to 17.5%. (PLFS data for 2017-18) [CEDAW A. 11(2)]

R20: The State should encourage women participation in the workforce by taking affirmative actions like demystifying gender stereotypes, ensuring an enabling and inclusive environment like social support services and maternity benefits. Wherever required, female labour force participation be improved by providing reservation to women.

21 Action: Ministry of Education & States/UTs

G21: Despite parity in primary school enrolment, the drop-out rate and gender gap for girl's education is higher, especially in rural areas. [CEDAW A. 10(e) and (f)]

R21: Infrastructure in schools, especially rural schools should be improved including provision of separate toilets for boys and girls. Menstrual hygiene should also be ensured in the schools to encourage enrolment and retention of girl (adolescent) students in schools especially in rural areas.

22 Action: Ministry of Health & Family Welfare & States/UTs

G22: The health budget of the Union Government is very low. It saw only an abysmal rise from 1.2% of its GDP in 2014–2015 to 1.8% in 2020–2021. Further, the share of the budget for the National Health Mission (NHM) in the total health budget of the Union Government has also declined from 60.25% in 2018–19 to 52.12% in 2020–21, thus, adversely affecting the quality of healthcare services including reproductive healthcare services as well. [CEDAW A. 12]

R22: The National Health Policy, 2017 recommended, public health spending should be increased to 2.5% of GDP by 2025. In order to ensure that the healthcare systems in India improve, especially the maternal and reproductive health services, it is necessary to implement the recommendations of the National Health Policy, 2017.

23 Action: Ministry of Health & Family Welfare & States/UTs

G23: As many as 363 deaths had taken place due to sterilisation procedures during the period of 2010 to 2013. The SC in 2016 in *Devika Biswas v. Union of India* directed both Union & the State Governments to phase out the holding of sterilization camps in the next three years. The SC also directed the Union of India to take a decision by December 31, 2016 about finalisation of National Health Policy (NHP). In case the Government decides to have an NHP, it should keep issues of gender equity in mind as well. [CEDAW A. 12]

R23: State Parties to ensure adequate health infrastructure including reproductive health. Trained public healthcare workforce, their continuous training, decent working conditions and filling up the vacancies of professionals and workers. Regularization of contractual reproductive public healthcare workers like ASHAs, ANMs, etc who render services to pregnant and lactating women. Also to ensure universal access to quality and comprehensive healthcare especially for women with physical disabilities and mental illnesses.

24 Action: Ministry of Health & Family Welfare & States/UTs

G24: The health status of rural women especially the maternal mortality rate (MMR) which is 113 (SRS 2016–18) is quite poor. The lowest MMR for the same period is 43 in Kerala, and the highest MMR is 215 in Assam. [CEDAW A. 14(2)(b)]

R24: Primary health centres and health infrastructure should be improved to ensure equitable access to antenatal care, nutritious food and supplements like folic acid, iron, and calcium. Identification of high risk pregnancies and timely referral to higher centres as required. Timely availability of fully equipped ambulances should also be ensured. Benefits provided under ICDS be also strictly followed.

25 Action: Ministry of Sports & Youth Affairs & States/UTs

G25: Confining the role of the Union Government to merely supplementing the efforts on sports and leaving the primary efforts completely on the State government has led to the uneven development of sports across the country and the non-emergence of sports as a national priority. This in turn also adversely impacts the participation of women in sports. [CEDAW A. 13(c)]

R25: Transferring of the subject of sports from the List II - State List to the List III - Concurrent List in the Seventh Schedule may be considered. Further, item sports will be shifted from the present Constitutional place, where it is clubbed with entertainment and amusement as sports is a key instrument of youth development including that of women.

26 Action: Ministry of Sports & Youth Affairs & States/UTs

G26: Women face several constraints in sports than men including gender pay gap bias in receiving sports awards and difference in prize money, absence of family support, lack of training facilities, lack of provision for dietary allowance, issues related to sexual harassment and the absence of sexual harassment committees, etc. [CEDAW A. 13(c)]

R26: Discrimination in pay and prize money should be removed. Awareness should be created at school-level to promote women in sports; adequate training and dietary allowance should be ensured to women. Safe workplace including effective implementation of POSH Act.

27 Action: Ministry of Electronics and Information Technology

G27: Gender digital divide is particularly wide for rural women. The NFHS-5 reveals that there is a significant digital divide in the country, with rural women least likely to have internet access. [CEDAW A. 14(2)(d) & 14(2)(h)]

R27: State Parties to improve digital infrastructure in rural areas to ensure that women are not discriminated against in accessing the same. Women focussed training with awareness about the dangers of the digital world should be imparted.

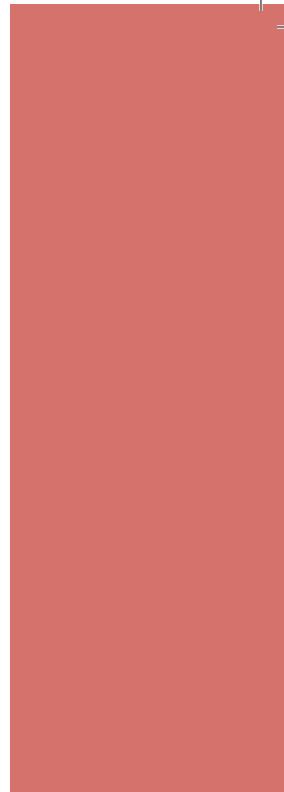
28 Action: Ministry of Rural Development

G28: MGNREGA

- i. The Act provides for crèches at the sites; very few crèches are functional at the work-sites.
- ii. Water & Sanitation facilities are not adequate on the sites.
- iii. 100 days of wages is not sufficient to sustain a family; delayed payment of wages is also quite prevalent. [CEDAW A. 11(1)(f) & A. 11(2)(c) & A. 14]

R28:

- i. Functional creches should be established at the sites in compliance of the Act.
- ii. Wage rate and days of work under MGNREGA should be increased. Payment should be made in a timely manner.
- iii. Women should have access to the wages in their own or joint bank accounts.





भवन्तु सुखिनः

National Human Rights Commission

Manav Adhikar Bhawan
C-Block, GPO Complex, INA
New Delhi- 110023, India

Website: <https://nhrc.nic.in>

This analytical study has been strategically structured to facilitate the understanding of the reader regarding CEDAW and the status of implementation of the CEDAW articles in India. It is expected to be of great value to the lawmakers, policymakers, executives, civil society, academicians and students of gender studies, human rights & related disciplines. The study highlights gaps with the objective of acting as a catalyst to promote concrete dialogue and engagement between law & policymakers, implementing agencies and NGOs to address identified gaps and measures to rectify these.

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