

IMPACT OF CEDAW ON INDIA : AN ANALYTICAL STUDY

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“Violence against women is perhaps the most shameful human rights violation. And it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.” The theme for this year’s 16 Days campaign is “For the Health of Women, For the Health of the World: No More Violence.”

— By UN Secretary General Kofi Annan at a world conference on ending violence against women in 1999.

The most beautiful creation of God is considered to be Human Beings. Man and woman from the beginning of the creation have together made this world a beautiful place to live. Who evolved first; man or woman is not an important question for an intellectual being to argue upon but to think where the oppression of women started and why?

The reason for the oppression of women may be because she was physically weak, tolerant and soft natured always thinking about the men’s welfare. Men started exploiting this biologically weaker section of the society but slowly the things began to change as women equipped with excellent mind frame to tackle various issues began to attain knowledge in various fields which enabled them to stand against this oppression and claim for their human rights.

India and Discrimination against women

Some scholars believe that in ancient India, the women enjoyed equal status with men in all fields of life. Works by ancient Indian grammarians such as Patanjali and Katyayana suggest that women were educated in the

early Vedic period notably Gargi and Maitreyi. However, later (approximately 500 B.C.), the status of women began to decline with the Smritis (esp. Manusmriti) and with the Islamic invasion of Babar and the Mughal empire and later Christianity curtailing women’s freedom and rights. The practice of child marriages is believed to have started from around sixth century. During the medieval period, the position of women in India further deteriorated as different social evils came into existence such as Sati, purdah system, child marriages, sexual exploitation of temple women famously known as the Devdasis. In spite of these conditions, some women excelled in the fields of politics, literature, education and religion. *Razia Sultana* became the only woman monarch to have ever ruled Delhi. The Gond queen Durgavati ruled for fifteen years, before she lost her life in a battle with Mughal emperor Akbar’s general *Asaf Khan* in 1564. *Chand Bibi* defended Ahmednagar against the mighty Mughal forces of *Akbar* in 1590s. The Indian women struggled with all these problem till independence. Though there were many social reformers who constructively contributed towards women’s upliftment such as *Raja Ram Mohan Roy*, *Mahatma Gandhi* etc., women’s condition in India still was quite pathetic. It was only recently *i.e.*, in the 20th century when we find an revolutionary change of attitude in women which is making them self sufficient, independent and strong. In a developing country like India where there is a great gap between the rich and the poor and the rich are getting richer and the poor are thrown more into poverty, women in India are also meeting the same fate. Women who belong to affluent sections of the society and middle class sections of

the society are finding some opportunities to develop their position but the women belonging to the poorer sections of the society are not in a position even to manage two square meals for their family and thus remain ignorant about their rights and privileges. Another major important problem in India is the attitude of men towards women. Men in India still consider women to be a weaker section of the society and treats her in an inferior manner. But in reality woman is possessing immense mental strength and thus stands as a pillar of support to her family. So woman is the base and foundation of any family. Women in India has been discriminated upon from a very long time. There are many parts of India especially villages and tribal areas where construction work is carried out and the women are paid less wages than men though they work in the same manner as men. In most of the companies women are provided less opportunities toward promotions as they are still considered to be less efficient than men. To come to the aid of women several laws have been framed as India believes that women are a reckoning force and without their contribution India can never develop. Some of the important legislations relating to discrimination against women are given below:

- The Dowry Prohibition Act, 1961
- The Medical Termination of Pregnancy Act, 1971
- The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- The Indecent Representation of Women (Prohibition) Act, 1986
- The Commission of Sati (Prevention) Act, 1987
- The Protection of Human Rights Act, 1993
- The Hindu Women's Rights to Property Act, 1937

- The Protection from Domestic Violence Act, 2005
- Sexual Harassment of Women at workplace-As per the verdict of The Supreme Court, Sexual harassment includes unwelcome sexually determined behaviour (whether directly or by implication) such as:
 - (a) Physical contact and advances
 - (b) A demand or request for sexual favours
 - (c) Sexually coloured remarks
 - (d) Showing pornography
 - (e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

*Vishaka v. State of Rajasthan*¹ has initiated debate on the issue of women's rights at their place of employment, amongst women's groups, lawyers and activists. In its guidelines, the Supreme Court has described physical contact or advances; demand or request for sexual favours; sexually coloured remarks and showing pornography as offensive conduct. The Sexual Harassment of Women at The Workplace (Prevention and Redressal) Bill, 2004. This Bill provides "for the prevention and redressal of sexual harassment of women at workplaces, or arising during or out of the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India and in pursuance of the Convention signed...for the elimination of all forms of discrimination against women". *Incidents of Violence against Women in India*

There are many problems in India to which a woman is exposed and struggles. Even after so many centuries of independence, the women are still insecure in India. Even

1. AIR (1997) 6 SCC pg.341

after so many laws and regulations made to remove the disparities between men and women in India there are many lacunae found which needs to be filled. One of the threats in India to women is Rape which is an evil that has gulped the lives of many women and at the same time it is the most heinous crime on women which leaves a permanent scar on the woman who has been raped.

“The law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to have understood and applied it.” - *Kiran Bedi*, Joint Commissioner, Special Branch.

One of the most important cases referred in this regard is the *Mathura* rape case, wherein *Mathura*- a sixteen year old tribal girl was raped by two policemen in the compound of Desai Ganj Police Station in Chandrapur District of Maharashtra. Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police chowky, the two guilty policemen, *Ganpat* and *Tukaram*, reluctantly agreed to file a panchnama. The judgment however turned out to be in favour of the accused. *Mathura* was accused of being a liar. It was stated that since she was ‘habituated to sexual intercourse’ her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape. On appeal the Nagpur Bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely *Tukaram* and *Ganpat* to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse. The Supreme Court again acquitted the accused policemen.

The Supreme Court held that *Mathura* had raised no alarm; and also that there were no visible marks of injury on her person.

A great commotion was raised by the Women’s organizations against this decision and criticized the attitude of the Courts for such an insensitive attitude from their side.

However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section 114(A) of the Evidence Act, which states that if the victim girl says that she did not give consent to the sexual intercourse, the Court shall presume that she did not consent.

In another instance of conscience stirring cases, *Sakina*- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her a good job, where she was sold and forced into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- acting on a complaint filed by her neighbour. With the help of her parents and an Advocate, *Sakina* filed a suit in the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala. The suit was squashed by the High Court, while observing that ‘it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.’

Whereas, in *State of Punjab v. Gurmit Singh*, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of *State of Maharashtra v. Madhukar N. Mardikar*, held that “the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there

is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard.”

Phoolan Devi- the famous Bandit Queen on whom a film was made was exploited at a very young age as she was beaten and raped by her husband who was quite older to her. She was later thrown out of the village- accused of unchastely behaviour. She was arrested by the police and subjected to humiliation. She was later kidnapped and raped by the leader of dacoits and later by the leader of a gang of Thakurs - who striped her naked and paraded her in front of the entire village. This incident raised a question on the status of women in India and how much insecure was the position of a woman belonging to the poorer and underprivileged sections.

Criminal Law Amendment Act, 1983:

The Criminal Law Amendment Act has substantially changed Sections 375 and 376 of the IPC. Several new sections have been introduced therein- viz. Sections 376(A), 376(B), 376(C), 376(D) of the IPC.

Section 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.

Section 376(B) punishes for sexual intercourse by a public servant with a woman in custody.

Section 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,

Section 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

Adding to this is Section 155(4) of the Evidence Act, which allows the victim to

be questioned of her past sexual history- which the defense uses to humiliate the victim in the Courtroom.

The Sati System

Sati was a funeral practice among some Hindu communities in which a recently-widowed woman would immolate herself on her husband's funeral pyre. This system was observed from very ancient times and was a customary part of Rajput Princesses. Maharani Raj Rajeshwari Devi of Nepal became regent in 1799 in the name of her son, after the abdication of her husband, who became a sanyasi. Her husband returned and took power again in 1804. In 1806 he was assassinated by his brother, and ten days later on 5 May 1806, his widow was forced to commit sati. Sati victims are still found in some parts of Rajasthan and Uttar Pradesh.

Another important incident of Sati was that of *Roop Kanwar* who committed Sati on 4 September 1987. She was an 18-year old Rajput woman. At the time of her death, she had been married for eight months to *Maal Singh*, her recently deceased husband, and had no children. She went to her death in wedding robes. This case caused furor in the entire country as Sati was one of the ancient social evils that were banned. Another interesting factor of this entire episode was that, many news reports say that she was forced to her death. But her relatives claimed that she told her brother-in-law to light the pyre when she was ready to become Sati. Several thousand people attended the sati event. After her death, *Roop Kanwar* was hailed as a sati mata — a “sati” mother, or pure mother. The incident led first to state level laws to prevent such incidents, then the central Government's The Commission of Sati (Prevention) Act.

The Commission of Sati (Prevention) Act of 1987 Part I, Section 2(c) defines *Sati* as:

The burning or burying alive of – (i) any widow along with the body of her deceased husband

or any other relative or with any article, object or thing associated with the husband or such relative; or (ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise.

Even after the legislation this system still has its impact on the society which is well evident by the incident that took place on 18 May 2006. *Vidyawati*, a 35-year-old woman allegedly committed sati by jumping into the blazing funeral pyre of her husband in Rari-Bujurg Village, Fatehpur District in the State of Uttar Pradesh. On 21 August 2006, *Janakerani*, a 40-year-old woman, burnt to death on the funeral pyre of her husband *Prem Narayan* in Sagar District.

Dowry System

Dowry, in the ancient times was considered to be a system where the father of a bride voluntarily gave some gifts to her at the time of marriage. This was customary tradition of the Kings and Emperors of India. But slowly this system took the shape of a social evil and spread its tentacles to almost every part of India resulting in death of numerous innocent married women. In 1995, the National Crime Bureau of the Government of India reported about 6,000 dowry deaths every year. A more recent police report stated that dowry deaths had risen by 170 percent in the decade to 1997.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) : Brief Study

On December 18, 1979 the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Often called the international "Bill of Rights" for women, the creation of CEDAW was the first critical step in developing appropriate human rights language for women. This language addresses abuses (for example, physical, sexual,

economic, and political) of women and promotes women's full enjoyment of their rights and well being. As of March 2004, 175 countries have ratified CEDAW. Once a country ratifies CEDAW, they are obligated to overcome barriers to discrimination against women in the areas of legal rights, education, employment, health care, politics and finance. Because it is a treaty, the CEDAW Convention demands the practical realization of rights and hence compels States Parties to eliminate all forms of discrimination, intended or unintended through law, policy, practice or custom and by state or non state institutions or private persons, even if they are family members and to approach the problem

Success of CEDAW

The CEDAW Committee requires accurate information on the *de jure* and *de facto* situation of women on the ground in order to make recommendations that are useful to the State. Towards this end, women's groups can provide alternative information to the Committee and thereby, influence the standard-setting process

In Nepal, in 2002 the eleventh amendment to the country code brought to an end more than 20 discriminatory provisions in the law. Significant among these were the discriminatory provisions in inheritance laws, adoption, divorce, criminal laws *etc.*

In the absence of a law on sexual harassment, the principles of equality and non-discrimination of the Convention were used by the Supreme Court in India to develop Guidelines for employers to prevent and address sexual harassment in the work place. In India various laws were made to tackle the problem of women oppression and discrimination against women. The recently framed Law on Domestic Violence against women in the year 2005 can trace its origin from the CEDAW Convention. In India there is continuous efforts made by certain political groups, feminist organizations and NGOs towards women empowerment and

this could be only achieved by erasing out any amount of discrimination against women. Many States such as Andhra Pradesh, Kerala *etc* have framed successful policies towards providing equal property Rights to women.

In Mongolia, the UNDP plans to assist the Government to implement legal reform to eliminate discrimination against women- a direct recommendation of the CEDAW Committee to the Government of Mongolia; a domestic violence law has been adopted².

In Japan, the Osaka Appeals Court instructed that the appellants (all women) and the respondent in a labour case, reach an amicable settlement based on the principles of Equality and non- discrimination and gave specific Recommendations with regard to the same. The Court in its statement pointed out that national action must concur with international efforts towards the elimination of sex discrimination. The appellants had made specific reference to CEDAW's Concluding Comments to Japan which pointed out the flaw in the guidelines in Japan's Equal Employment Opportunity Law as lacking an understanding of indirect discrimination.

In Malaysia, the Constitution was amended to include gender as prohibited grounds for discrimination and amendments were made to abolish discrimination in the Distribution Act and Guardianship Act.

Individual challenges to discriminatory provisions by women's movement have succeeded in positive interpretation of the legislations providing relief to women.

After ratification of CEDAW in 1993, India has recognized domestic violence as a widespread problem in the nation. As a result

the law relating to domestic violence came into force in the year 2005 as Protection of Women from Domestic Violence Act, 2005 & Rules.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and requires states not only to prohibit discrimination but also to take affirmative³ steps in order to achieve gender equality. The Convention is legally binding upon States that have ratified the Convention and any laws in violation of CEDAW must be struck down. CEDAW has been used to support affirmative action policies and programs as well as to strike down laws that are in violation of the Convention. These cases carry significant import: the application of CEDAW in domestic Courts gives CEDAW legitimacy globally and reinforces the principal that domestic Courts are bound by international treaties such as CEDAW.

India, Supreme Court of India - Municipal Corporation of Delhi v. Female Workers⁴

The Court held that the provisions of Article 11 of CEDAW *must* "be read into the contract of service between [the Corporation] and the women employees." Under CEDAW a corporation must provide its female employees with maternity benefits.

Article 11: Requires States to eliminate discrimination against women in employment and to ensure, "*The right to work as an inalienable right of all human beings; The right to the same employment opportunities...; The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service...; The right to equal remuneration, including benefits...; The right to social security...; The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*"

2. The International Women's Rights Action Watch (IWRAP Asia Pacific) Convention on the Elimination of All Forms of Discrimination against Women Twenty-Fifth anniversary of its adoption by the General Assembly of the United Nations CEDAW 13 October 2004 United Nations Headquarters.

3. <http://www.globaljusticecenter.net/publications/Domestic-Uses-CEDAW.pdf>

4. (2000) 3 SCC 224

Conclusion

The band who rock the cradle... may rock the world".

The above said famous quotation speaks about the powerful instinct prevalent in a woman. A woman is tender, vulnerable, soft person who nurtures her companion, son, parents, in laws all her life without any selfish motives. From centuries woman has been sacrificing her life for her family. Her giving nature and affectionate self made her appear fragile and she was subjected to cruelty by men. After years and years of suffering, certain great people such as *Mahatma Gandhi, Raja Ram Mohan Roy etc* spoke against the violence and ill treatment meted out to women. Since then woman empowerment was seriously considered and many woman related laws were made internationally and nationally to improve the condition of women. The most effective Convention that paved the way for woman empowerment worldwide was CEDAW (Convention on Elimination of Discrimination against Women). CEDAW as constituted by the United Nations had been successful in providing some kind of improved conditions in various countries like India. Constitutions and domestic laws have been reformed on the basis of the principles of the Convention.

Sexual Offences against women need to be dealt with much more seriousness and strong laws should be framed against the perpetrators. It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts- so as to deter the rest, then no doubt that the graph

of rape cases will come down considerably- It may also happen that those who commit such offences- simply to leave no witnesses or evidence, may even kill their victims and dispose off their bodies (whereas it is observed that in most cases - it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature. Studying the laws, the process, the application of those laws, one thing is certain- the entire structure of justice needs an over haul, otherwise the victim shall no longer be the woman, but humanity. The National Commission for Women and many Non Governmental Organizations has taken initiative in protecting women rights nationwide and the momentum has reached to a great success. The only impediment that comes in the way of full-fledged development of women is their illiteracy and non-awareness. If these problems are dealt with then woman can be one of the most efficient companion of man and only together they can develop the world and make it a better place to live.

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COLLECTIVE BARGAINING IS THE HUMAN RIGHT – NATIONAL & INTERNATIONAL PERSPECTIVES - A STUDY

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Abstract

Collective bargaining is a process of negotiations between employers and the

representatives of a unit of employees aimed at reaching agreements that regulate their working conditions. Collective agreements usually set out wage scales, working hours,