
INTERNATIONAL INSTRUMENTS RELATED TO WOMEN RIGHTS AND THEIR IMPLEMENTATION IN INDIA

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Abstract: Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights. Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women's human rights has not always been a priority. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination. The United Nations has a long history of addressing women's human rights and much progress has been made in securing women's rights across the world in recent decades. However, important gaps remain and women's realities are constantly changing, with new manifestations of discrimination against them regularly emerging. Some groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socioeconomic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women.

This present paper provides an introduction to women's human rights, beginning with the main provisions in international human rights law and going on to explain how far these human rights are being incorporated on national level. The aim of the publication is to offer a basic understanding of the human rights of women as a whole, but because of the wide variety of issues relevant to women's human rights, it should not be considered exhaustive.

Keywords: Women's Rights, Problems, United Nation, Equality, Laws

Introduction: Since the founding of the United Nations, equality between men and women has been among the most fundamental guarantees of human rights. The Charter of the United Nations sets out as one of its goals "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women". Furthermore, Article 1 of the Charter stipulates that one of the purposes of the United Nations is to promote respect for human rights and fundamental freedoms "without distinction as to race, sex, language or religion". This prohibition of discrimination based on sex is repeated in its Articles 13 and Article 55

In 1948, the Universal Declaration of Human Rights was adopted. It too proclaimed the equal entitlements of women and men to the rights contained in it, "without distinction of any kind, such as ... sex," In drafting the Declaration, there was considerable discussion about the use of the term "all men" rather than a gender-neutral term. The Declaration was eventually adopted using the terms "all human beings" and "everyone" in order to leave no doubt that the Universal Declaration was intended for everyone, men and women alike.

1. International Human Rights Instruments: After the adoption of the Universal Declaration, the Commission on Human Rights began drafting two human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Together with the Universal Declaration, these make up the International Bill of Human Rights. The provisions of the two Covenants, as well as other human rights treaties, are legally binding on the States that ratify or accede to them. States that ratify these treaties periodically report to bodies of experts, which issue recommendations on the steps required to meet the obligations laid out in the treaties. These treaty-monitoring bodies also provide authoritative interpretations of the treaties and, if States have agreed, they also consider individual complaints of alleged violations.

Both Covenants use the same wording to prohibit discrimination based on, inter alia, sex as well as to ensure the equal right of men and women to the enjoyment of all rights contained in them. The International Covenant on Civil and Political Rights guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups' rights to their culture, religion and language. The International Covenant on Economic, Social and Cultural Rights guarantees, for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an

adequate standard of living, the right to health, the right to education, and rights relating to culture and science.

In 1967, United Nations Member States adopted the Declaration on the Elimination of Discrimination against Women, which states that discrimination against women is an offence against human dignity and calls on States to “abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women”. Less than a year later a proposal for a legally binding treaty on women’s rights was made. The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights with men.

The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality. As with all human rights treaties, only States incur obligations through ratification. However, the Convention articulates State obligations to address not only discriminatory laws, but also practices and customs, and discrimination against women by private actors.

With these general principles as an overarching framework, the specific obligations of States to eliminate discrimination against women in political, social, economic and cultural fields are laid out in 16 substantive articles. The Convention covers both civil and political rights and economic, social and cultural rights. The Convention also pays specific attention to particular phenomena such as trafficking, to certain groups of women, for instance rural women, and to specific matters where there are special risks to women’s full enjoyment of their human rights, for example marriage and the family.

The Convention defines discrimination in its Article 1 as “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Such discrimination encompasses any difference in treatment on the grounds of sex which:

- Intentionally or unintentionally disadvantages women;
- Prevents society as a whole from recognizing women’s rights in both the private and the public spheres;

- Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.

The Convention also specifies the different ways in which State parties are to eliminate discrimination, such as through appropriate legislation prohibiting discrimination, ensuring the legal protection of women’s rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions. The Convention foresees that achieving equality may require positive action on the part of the State to improve the status of women. To accelerate women’s actual equality in all spheres of life, States are permitted to use temporary special measures for as long as inequalities continue to exist. The Convention thus reaches beyond the narrow concept of formal equality and aims for equality of opportunity and equality of outcome. Temporary special measures are both lawful and necessary to achieve these goals. In principle, these measures should be removed once equal status has been achieved.

Importantly, the Convention adds new, substantive provisions to the other instruments which also deal with equality and non-discrimination. Article 5 establishes that in addition to recognizing women’s legal equality and promoting their de facto equality, States should also strive to eliminate the social, cultural and traditional patterns that perpetuate harmful gender stereotypes and to create an overall framework in society that promotes the realization of women’s full rights.

The Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also prohibit discrimination based on sex. The Convention on the Rights of Persons with Disabilities recognizes the multiple discrimination that women with disabilities are subjected to, and requires State parties to address this by taking “all appropriate measures to ensure the full development, advancement and empowerment of women” in the enjoyment of their human rights. In its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee on the Elimination of Racial Discrimination, which oversees compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, also recognized the gender dimensions of racial discrimination and said it would “endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination.” The Committee against Torture, which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

also regularly addresses issues of violence against women and girls

2. Regional Instruments: In addition to international human rights standards, regional human rights treaties, too, include crucial provisions aimed at promoting and protecting women's human rights.

The African (Banjul) Charter on Human and Peoples' Rights was adopted in 1981 by the Organization of African Unity. Its Article 2 prohibits discrimination on any grounds, including sex, in the enjoyment of the rights guaranteed by the Charter. Article 18 specifically mentions the obligation of African States to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions". The Charter's Protocol on the Rights of Women in Africa (Maputo Protocol) was adopted in 2003.

The Charter of the Organization of American States includes a non-discrimination provision in its chapter II, Article 3 (I), and the American Convention on Human Rights in its Article 1. Moreover, in 1994 the Organization adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention).

The European Convention on Human Rights and Fundamental Freedoms prohibits discrimination on any grounds, including sex, in the enjoyment of rights contained in the Convention. Since 1998 individuals can bring complaints to the European Court of Human Rights based on allegations of violations of the Convention. In 2011 the Council of Europe adopted a new Convention on preventing and combating violence against women and domestic violence

Regional political organizations, including the Association of Southeast Asian Nations, the South Asian Association for Regional Cooperation, the Economic Community of West African States and the Southern African Development Community, have also adopted protocols and resolutions and issued declarations pertaining to women's human rights.

Status of International Law in the Indian Legal System: The right to enforce Human Rights as provided under the Constitution of India is Constitutionally protected. Article 226 empowers the High Courts to issue writs for enforcement of such rights. Similarly Article 32 of the Constitution gives the same powers to the Supreme Court. A new approach has emerged in the form of Public Interest Litigation (PIL) with the objective to bring justice with in the reach of the poor and the disadvantaged section of the society. In the recent past the judges of the High Courts and the Supreme Court have from time to time given far reaching and innovative

judgements to protect the Human Rights. Public Interest Litigation has heralded a new era of Human Rights promotion and protection in India. The greatest contribution of Public Interest Litigation has been to enhance the accountability of the Governments towards the Human Rights of the poor. Public Interest Litigation has undoubtedly produced astonishing results which were unthinkable two decades ago. Public Interest Litigation has rendered a signal service in the areas of Working womens rights, Prisoner's Rights, development of compensatory jurisprudence for Human Rights violation, Environmental protection, Bonded labour eradication and prohibition of Child Labour and many others. The Supreme Court of India has interpreted various provisions of international instruments correlated with Constitutional law of India. India is a signatory to various International Conventions and Treaties. The Universal Declaration of Human Rights , has greatly helped to create a universal thinking that Human Rights are supreme shall preserve. In *Madhu Kishwar v. State* Supreme Court has considered the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 and held that it is a mirror image of Part III and Part IV of the Constitution of India. It has come forward to take corrective measures and provide necessary directions to the executive and legislature,. In the landmark *Vishaka* ruling case, the Court went one step further in incorporating international law into its constitutional jurisprudence by drawing upon CEDAW to frame binding guidelines against sexual harassment in the workplace. "Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof," Several major U.N. treaty-monitoring bodies have applauded the positive role that the Indian judiciary has played in implementing international human rights provisions at the domestic level, especially through its PIL mechanism. The Court's ability to use international conventions as a doctrinal basis for intervention is facilitated by the conformity between the provisions of these treaties and the Indian Constitution, upon which PIL claims must be premised. However, when there is a clear inconsistency between India's treaty obligations and its domestic law, the latter prevails. The Court has relied upon this latter provision to establish that it "must interpret language of the Constitution . . . in the light of the United Nations Charter and solemn declaration[s] subscribed to by India," and "construe our legislation so as to be in conformity with International Law and not in conflict with it." Moreover, the Court has recognized that whenever there is any ambiguity surrounding a domestic law, "the national rule is to be interpreted in accordance

with the State's international obligations." In considering the extent to which international conventions can be "read into" national laws, the Indian judiciary has consulted case law from other countries and concluded that treaty provisions that "elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, [are] enforceable as such."

However while taking note of the contributions of judiciary one must not forget that the judicial pronouncements can not be a protective umbrella for inefficiency and laxity of executive and legislature. It is the foremost duty of the society and all its organs to provide justice and correct institutional and human errors affecting basic needs, dignity and liberty of human beings. Fortunately India has proactive judiciary. It can thus be aspired that in the times ahead, people's right to live, as a true human beings will further be strengthened.

Conclusion: Many actions have been taken at the international, regional and national levels to promote, protect and fulfill the human rights of women. The number of States parties to the Convention on the Elimination of All Forms of Discrimination against Women and other human rights treaties has increased considerably. Many States have strengthened their national legal and

policy frameworks. Efforts have been made to establish mechanisms responsible for promoting women's human rights, to raise awareness and build capacity in regard to women's rights, and to strengthen collaboration with non governmental organizations and other stakeholders. Despite these developments, much more needs to be done to ensure the full and equal enjoyment by all women. Coherent and concerted efforts must be taken at all levels of government and among civil society. States should intensify their efforts to fully incorporate the Convention on the Elimination of All Forms of Discrimination against Women into domestic law, and to implement the Convention and other international human rights treaties, as well as the concluding observations of the respective Committees.

Legal frameworks should also adequately respond to global policy directives and take advantage of good practice developed in particular areas. Efforts should be taken to ensure that national law enshrines equality between women and men and prohibits discrimination. Although the Indian judiciary has adopted a creative and purposive approach in the interpretation of fundamental Rights and Directive principles of state policy embodied in the constitution with a view to advancing Human Rights jurisprudence.

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