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15. United Nations Convention and Protocol for Elimination Discrimination against Women: A Study with Reference to India

Dr. Gopal G. Panchal

Asst. Professor, Dayanand College of Law, Latur (M.H).

Introduction

The sociologists had described the women by propounding different perceptions. It is worth mentioning that woman is not only the creator of the world but also gives birth to a child and cares for the health, education etc. She maintains the child properly and makes the future of a nation. In India, the history speaks that the women are considered as a divine force but the multi-cultured Indian society placed the women at different positions. Thus, there is no uniform status of women in the Indian society. However, civilization showed the overall upliftment of women's position. According to historian Romilla Thaper-

"Within the Indian sub-continent there have been infinite variations on the status of women diverging according to cultural malices, family structure, class, caste property rights and morals."

The importance of this subject can be assessed from the celebration of the year 2001 as the Woman's Empowerment Year through out the world. 24th January, 2010 has been celebrated as National Girl Child Day. First Women's Day was celebrated in the year 1911 and 100 years have passed from the declaration and observation of the first International Women's day. The United Nations designated the year 1975 as International Women's years. In the year 1975, the United Nations, declared March 8 as Women's Day. Now every year 8th March is celebrated worldwide as International Women's Day in various ways. In several countries it is an official holiday. It is celebrated by honoring mothers, wives, girl-friends and colleagues by giving flowers and chocolates. In few countries women-only dinners are organised to observe the day. In countries which impose cultural and religious restrictions on women, it is observed as a day to draw attention to women's rights. It is also marked by large-scale feminist protests in the cities.

In India also, it is celebrated every year with much fanfare. But, the question arises whether the required goal has been achieved in real sense when we hear that girl is purified for staying away from home for six hours. It is a case of a place 60 Km. from Mumbai, which claims to be India's most modern and liberated city. There was a fight between girl's parents due to which mother left home in anger. So a worried daughter, too, went out to trace and bring her mother back and was absent from home for six hours. The girl, was declared 'impure' and expelled from the community. Her crime she was 18 years old, unmarried and had left home alone. A five-foot-deep pit was dug by community members which was filled with tanker water mixed with water from the ganga and the girl was forced to take dips in that water; she was then forced to perform a prayer in the pit and was then accepted back in the community.

Not only this, even today in a family mostly the money matters are decided by males. The crimes against women including rape, dowry deaths, and infanticide etc. are on the rise. Actually, we have to treat every day as Women's Day. Things cannot change much unless women are empowered for which a lot has to be done which is a continuous process. However, we see a ray of hope when our country is headed and represented by females through out the world.

Convention on the Elimination of All Forms of Discrimination against Women, 1979

To achieve the provisions incorporated in Articles 1, 2 and 55 of the Charter of the United Nations the Declaration on the Elimination of Discrimination Against Women, 1967 was adopted by the General Assembly of the United Nations which consequently paved the way to the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

By means of the said convention it was reiterated that the State Parties to the International Covenants on Human Rights are under obligation to provide equal rights to men and women in civil, political, social, economic and also cultural field. The specialised agencies have to be established in order to achieve the fundamental objectives of the Conventions and the efforts should be made to root out all the forms of discrimination between men and women, as discrimination of any kind is a sure obstacle to the participation of women with men. The State Parties to the Convention were fully convinced that discrimination is an important factor causing obstruction in the development and advancement of women with men at national and international level. It was realised that to achieve equality of women with men it is indispensable

most in the present scenario.

Definition of Discrimination against Women

Although the International Bill of Human Rights laid down a comprehensive set of rights to which all persons, including women are entitled, additional means for protecting the human rights of women were considered as necessary because the mere fact of their 'humanity' has not been sufficient to guarantee women the protection of their rights. The Preamble to the Convention on the Elimination of All Forms of Discrimination Against Women explains that, despite the existence of other instruments, women still do not have equal rights with men. Discrimination against women continues to exist in every society. The Convention under Article 1 defines the term "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

State parties to the Convention condemned discrimination against women in all its forms and agreed to pursue by all appropriate means to eliminate discrimination against women and, to this end they undertook:

1. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein;
2. To adopt appropriate legislative and other measures prohibiting all discrimination against women;
3. To establish legal protection of the rights of women on an equal basis with men;
4. To refrain from engaging in any act or practice of discrimination against women;
5. To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
6. To repeal all national penal provisions which contribute to discrimination against women.

Implementation Procedure

Article 17 of the Convention made a provision for the establishment of a Committee on the Elimination of Discrimination Against Women for the purpose of considering the progress made in the implementation of the provisions of the Convention. The Committee shall consist of

eighteen members (at the time of entry into force of the Convention) and twenty-three members (after ratification or accession to the Convention by thirty-five States). The members shall be experts of high moral standing and shall possess competence in the field covered by the Convention. The experts shall be elected by the State Parties from among their nationals and shall serve in their personal capacity.

The State Parties shall report periodically to the Committee a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention. The Committee examines reports submitted by the State Parties and makes its suggestions and recommendations based on their considerations. It may also invite United Nations specialized agencies to submit reports for consideration and may receive information from non-governmental organizations. Thus, the Committee acts as a monitoring system to oversee the implementation of the Convention. The Committee shall report annually to the General Assembly through the Economic and Social Council on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the State Parties.

Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999

By means of this protocol it was realised by the State Parties to the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 that there is an urgent need to gear up by all adequate means to ensure full and equal enjoyment of freedom by women of all human rights.

Under the said protocol the State Parties agreed that:

1. To recognise and constitute Committee to receive and consider communication pertaining to the issue of discrimination in respect of women. Such communication could be received and considered with the consent of victims of violation unless the author of communication, can justify acting on their behalf without such consent;
2. It is necessary that communication must be in writing and it must not be anonymous;
3. The Committee constituted under the said protocol shall not consider the communication unless it is shown that all available domestic remedies are exhausted;
4. The Committee shall be competent to declare a particular Communication non-considerable if: - (a) the same matter is already considered; (b) the communication is

- beyond the scope of the Committee; (c) the communication is ill founded and it is not substantial; (d) the communication amounts to abuse of process;
5. The Committee shall be empowered to communicate further to the State Party concerned in case of urgent consideration needed in the matter.
 6. Under extra-ordinary circumstances the Committee may consider the communication submitted as confidential with the intimation to the State Party concerned, within six months from the date of Communication submitted, State party shall be liable to submit explanation clarifying the matter and available remedy;
 7. The Committee shall consider Communication submitted to it in the light of all information's furnished to it. After examination of the matter the Committee shall communicate its view and its recommendations to the State Parties concerned and within six months' period the State Party concerned shall submit its written response to the Committee and details of measures undertaken. The Committee may further invite information from the State Party concerned on any particular issue.
 8. The Committee shall ensure that individuals who gave communication and dealt with the Committee are not subjected to ill-treatment or intimidation.

India, who is one of the signatories to this Protocol, has shown the Parliamentary endeavor in the relevant field, as a result in the year 2005 the Parliament has passed the enactment to be called the Protection of Women from the Domestic Violence Act. However, we are yet to experience its effect in crime graph of domestic violence against/women. Unfortunately, as the crime statics to be relied, India is one of the leading country in such type of crime.

Her importance has been realised by national leaders and more attention has been paid towards her amelioration in recent years. The problems of housewives have also been realised and a Congress M.P., SarojKhaparde had decided to introduce even the Housewives (Compulsory Weekly Holiday From Domestic Chores) Bill, 1996. The bill provides that notwithstanding any custom, convention, ritual or tradition, it shall be the duty of the family members, particularly that of the head of the family, to ask every housewife to select a particular day of the week as a holiday from all domestic chores so as to enable her to take rest and enjoy the day according to her wishes. The day will free her of all domestic responsibilities, leaving it upon the other family members to take on her job for the day. Not only this, Bill provides for a

compensation in the shape of a fine (Which may extend to Rs. 1,000 on any family member contravening its provisions. However, the Bill was criticised by general public, and could not be introduced and passed, because it was felt that it is not possible to implement practically in Indian homes, because the duties in homes are discharged as per demarcation. Considering its significance, the Protection from Domestic Violence Bill, 2001 was introduced in the Parliament in the budget session of 2002 though it could not be passed due to some defects.

Gender justice is a universal concern and considering its importance, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been passed by United Nations and signed by India.

Commission on the Status of Women

The Commission on the Status of Women, a functional Commission of the Economic and Social Council, was established in the year 1946. Originally the membership of the Commission was fifteen and expanded to 21 in the year 1961. Since the year 1991, the Commission has 45 members. The Commission meets once in two years in Vienna to examine women's progress towards equality throughout the world. Its function is primarily to prepare recommendation and to make reports to the Economic and Social Council on the promotion of women's rights to political, economic, social and educational fields. It makes recommendations to the Council on problems requiring attention in the field of women's rights. It also prepares drafts and develops proposals to give effect to these recommendations aimed at improving the status of women in law and practice.

The Commission recognised that women would not make progress in any field unless they shared decision making power with men. In year 1949, the Commission initiated work on the convention on the political rights of women. The Convention, the first legal instrument dealing exclusively with women's rights was adopted by the General Assembly in the year 1952. The Commission was also helpful in adopting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by the General Assembly in 1957. The Commission also made efforts to prepare a convention on nationality of married women which was adopted by the General Assembly in the year 1957. In addition to above, the Commission has focused on many topics relating to women such as role of women in development, family planning, education and economic rights of women.

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13. Article 2.
14. See the article of Shirin S. Khan on "Is a legislation really necessary to reduce a housewife's burden?" published in the 'Pioneer (Lko.)' dated 1-10-1996, P. 16. See also the article of Suhel Seth on "Say it with pride, I am a housewife," published in 'The Pioneer (Lko.)' dated 18-3-1998, p.18.
15. See the article of Sumangal on "A Defence Against the Offence", published in "From the Lawyers Collective", Vol.17, No.4, p.4