

INTERNATIONAL RESEARCH FELLOWS ASSOCIATION'S  
**RESEARCH JOURNEY**

Multidisciplinary International E-research Journal

PEER REFREED & INDEXED JOURNAL  
 December-2018 Special Issue - LXXVIII

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This Journal is indexed in :

- University Grants Commission (UGC)
- Scientific Journal Impact Factor (SJIF)
- Cosmoc Impact Factor (CIF)
- Global Impact Factor (GIF)
- International Impact Factor Services (IIFS)



## **Execution of CEDAW: Indian Scenario**

**Dr. G. Laxman**

### **Introduction**

In India almost half of the Indian population are women, they have always been discriminated against and have suffered and are suffering discrimination in silence in the civilized as well as the primitive society. Even though self sacrifice and self – denial are their nobility and virtue, yet they have been made the victims of all inequalities, indignities, inequity and discrimination from time immemorial. These are some of the factors that prompted the legislature to make various laws to give the women their due share.

This research examines, whether the women in India are having same status and rights as they claiming in the light of Equality, Education, Health, Labour, Employment, Marriage and Family life, Race and Gender related, Religion and Culture etc.

### **Perspective of the Indian Constitution**

The Constitution of India prohibits any discrimination solely based on the ground of sex in general and in the matter of public employment. This prohibition of gender – based discrimination has been given the status of a fundamental right. Various other laws have been enacted to deal with the personal matters like marriage, divorce and succession etc., of the women. Unfortunately only a few of such laws could be codified and made uniform.

### **Conventions of United Nation Organisation**

India is a signatory of the various UNO Conventions. United Nations adopted Universal Declaration of Human Rights on 10 December 1948. Further, UNO also adopted a series of international Conventions. Fundamental view of these Conventions is to think universally those Human Rights are supreme and needs to be preserved also implemented by the States and its agencies.

The following are a few series of International Conventions:

- ❖ Convention on the Political Rights of Women, 1954; Convention on the Elimination of All Forms of Racial Discrimination, 1965;
- ❖ International Covenant on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966;
- ❖ International Convention on the Suppression and Punishment of Crime of *Apartheid*, 1973; Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- ❖ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
- ❖ International Convention against *Apartheid* in Sports, 1985;
- ❖ Convention on the Rights of Child, 1989.

Taking up of such Conventions indicates much hard work made at International height either to create general provisions for the fortification of women against discrimination or devote specifically to the cause of women for the purpose of eliminating discrimination against them.

### **Outlines of CEDAW**

CEDAW is the first International Law Instrument focusing entirely on elimination of all forms of discrimination against women. Adopted by the United Nations on 18 December 1979,



the Convention on Elimination of all Forms of Discrimination against Women entered into force on 3 September 1981.

It has been ratified by India in 1993. CEDAW is made up of VI Parts containing 30 Articles. After giving in Article I a meaning to the term "discrimination against women", it "condemns discrimination against women in all its forms" under Article 2.

Salient features of the Convention regarding which States are required to take all appropriate measures in the direction of eliminating discrimination revolve around: modification of social and cultural patterns of conduct; ensuring family education; suppression of all forms of traffic in women and exploitation; ensuring full development and advancement of women in all fields; eliminating discrimination in the political and public life of the country; ensuring women the opportunity to represent their Government at the international level; granting women equal right with men to acquire, change or retain their nationality; eliminating discrimination in the field of education; eliminating discrimination in other areas of economic and social life; according equality before law; eliminating discrimination in the field of employment; preventing discrimination on grounds of marriage and maternity; eliminating discrimination in the field of health care; eliminating discrimination in all matters relating to marriage and family relations; ensuring application of CEDAW to women in rural areas; and establishing a Committee on Elimination of Discrimination against Women for the purposes of implementation of its provisions.

#### **Execution of CEDAW by India**

The parliament of India has realized the importance of a monitoring institution to examine and investigate all the matters relating to the safeguards in the light of the Constitution and UNO Conventions as a result Indian Parliament made out with strong legislation in order to protect women in India. The following are a few series of LEGISLAIONS -

#### **Women's Right under the Civil Laws of India -**

- ❖ The Hindu Marriage Act, 1955,
- ❖ Special Marriage Act, 1954
- ❖ The Family Court Act, 1954,
- ❖ Hindu Adoptions & Maintenance Act, 1956
- ❖ The Dissolution of Muslim Marriage Act, 1939,
- ❖ Muslim Women's (Protection of Rights upon Divorce) Act,
- ❖ The Christian Marriage Act, 1882
- ❖ The Christian Marriage and Matrimonial Causes Bill, 1994
- ❖ The Muslim Women Protection of Right on Divorce) Act 1986

#### **Women's Right under Various Laws in India -**

- ❖ The Equal Remuneration Act, 1976
- ❖ Land and Property Rights (2005)
- ❖ Factories Act, 1948
- ❖ The Employees State Insurance Act, 1948
- ❖ The Dowry Prohibition Act, 1961
- ❖ The Maternity Benefit Act, 1961
- ❖ The Medical Termination of Pregnancy Act, 1971



- ❖ The Child Marriage Restraint Act, 1976
- ❖ The Family Court Act, 1984
- ❖ The Immoral Trafficking (Prevention) Act, 1986
- ❖ The Indecent Representation of Women (Prohibition) Act, 1986
- ❖ The Commission of Sati (Prevention) Act, 1992
- ❖ The National Commission for Women Act, 1990
- ❖ The Prenatal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994
- ❖ The Tamil Nadu Prohibition of Eve-Teasing Act, 1998
- ❖ The Tamil Nadu Prohibition of Harassment of Women Act, 1998
- ❖ The Protection of Women from Domestic Violence Act, 2005
- ❖ The Tamil Nadu State Commission for Women Act, 2000
- ❖ The Protection of Children from Sexual Offences Act, 2008
- ❖ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- ❖ The Protection of Human Rights Act, 1993

#### **Judicial Response -**

##### **Elimination of all Forms of Discrimination against Women**

Judiciary is an authorised mechanism to protect the Human Rights. In India, Judiciary is an independent and vital organ of the State, which is an inborn power to implement the International Convention(s) once it is ratified by the State.

In **Chairman, Railway V. Chandrima Doss**<sup>18</sup> Compensation of 10 lakhs awarded by the Supreme Court to an alien women, who has been a victim of rape under Article 21 of the Indian Constitution.

<sup>1</sup> AIR 2000 SC1274

In **Municipal Corporation of Delhi V. Female Workers (Muster Roll)**,<sup>19</sup> Maternity benefits were extended under Maternity Benefit Act, 1961 and directly incorporated the provisions of Article 11 of the CEDAW, 1979 into the Indian Law by Supreme Court to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation.

In **Government of Andhra Pradesh V. P.B. Vijay Kumar**<sup>20</sup> the Supreme Court held that issue of reservation for women in state services were upheld under Article 15(3) of the Indian Constitution.

In **Municipal Corporation of Delhi V. Female Workers**,<sup>21</sup> the Supreme Court held that a just social order could be achieved only when inequalities are obliterated and women, who constitute almost half of the segment of our society, are honoured and treated with dignity.

In **Uttarakhand Mahila Kalyan Parishad V. State of Uttar Pradesh**,<sup>22</sup> Supreme Court struck down the discriminatory rules of Education Department of Government of Uttar Pradesh.

In **Nargis Mirza**,<sup>23</sup> the Supreme Court struck down the discriminatory Rules of Indian Air Lines against Air hostess service rules.

<sup>19</sup> AIR 2000 SC9888

<sup>20</sup> AIR 1995 SC 1648

<sup>21</sup> AIR 2000 SC 1274, 1281

<sup>22</sup> AIR 1992 sc 1695



In **Vishakha V. State of Rajasthan**,<sup>24</sup> a Division Bench of Supreme Court speaking through chief Justice J.S. Verma (as he then was) laid down number of guidelines to remedy the legislative vacuum. The Court has defined, having regard to the definition of "Women Rights" in section 2(d) of the protection of Human Rights Act, 1993, "Sexual harassment" as including any unwelcome sexually determined behaviour (whether directly or by implication) like physical contact and advances, a demand or request for sexual favours, sexual – coloured remarked, showing pornography and any other unwelcome physical, verbal or non – verbal conduct of sexual nature.

In **Muthamma V. Union of India**,<sup>25</sup> a service rule whereby marriage was a disability for appointment to Foreign Service was declared unconstitutional by Supreme Court.

In **Shobha Rani V. Madhukar**,<sup>26</sup> the Supreme Court held that dowry demand was held enough to amount to cruelty.

In **Prathibha Rani V. Suraj Kumar**,<sup>27</sup> Supreme Court upheld women's right to the "Sridhana.

In **State of Punjab V. Gurmit Singh**,<sup>28</sup> the Supreme Court that rape is held to be violative of the right of privacy.

In **Bodhisattwa V. Ms, Subhas Chakraborty**,<sup>29</sup> the Supreme Court held that rape is a crime against basic human right. In this case the Supreme Court observed that

an offence under the criminal law, but it was a violation of the fundamental right to life and liberty guaranteed by Article 21 of Indian Constitution.

In **Domestic working Women's Forum V. Union of India**,<sup>30</sup> Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person founding guilty of rape. The court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

In **Gourav Jain V. Union of India**<sup>31</sup> Supreme Court laid down guidelines including the necessity of counselling, cajoling and coercing the women to retrieve from prostitution and rehabilitate to them

In **Saveetha Samvedhi's case**,<sup>32</sup> Supreme Court held that a married daughter was allowed accommodation in prenatal house.

In **Randhir Sing V. Union of India**,<sup>33</sup> disserve a special mention in the context of concept of 'equal pay for equal work' in service jurisprudence: "it true that the principles of 'equal pay for equal work' is not expressly declared by our Constitution to be fundamental right.

<sup>23</sup> AIR 1981 SC 1829

<sup>24</sup> AIR 1997 SC 301

<sup>25</sup> AIR 1979 SC 1968; 1979 Lab IC 1307

<sup>26</sup> AIR 1979 SC 1868; 1979 Lab IC 1307

<sup>27</sup> AIR 1985 SC 628

<sup>28</sup> AIR 1996 SC 1393

<sup>29</sup> AIR 1996 SC 922

<sup>30</sup> (1995) 1 SCC14

<sup>31</sup> AIR 1997 SC 3012

<sup>32</sup> (1996) 1 SCR 1046

<sup>33</sup> (1982) 1 SCC 618



Article 39(J) of the Constitution proclaims 'equal pay for equal work for both men women' as a Directive Principles of State Policy... Directive Principles, as has been pointed out in some of the judgement of this court, have to be read into the fundamental right as a matter of interpretation.

In **Apparel Export Promotion Council V. A.K. Chopra**,<sup>34</sup> Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental right granted by the Constitution. The Supreme Court in this case held that punishment of removal of male employee from service after he has been found guilty of sexual harassment of a female colleague is proper and reasonable on the ground that sexual harassment of a female at the place of work is a form of 'gender discrimination against women' and is incompatible with the dignity and honour of a female and needs to be eliminated.

In **T.K. Gopal V. State of Karnataka**,<sup>35</sup> the Supreme Court held on the violation of human dignity of the victim of Sex Crime, observed that "rapist not only violates that victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female".

#### Conclusion :

Indian Parliament had realised about the UNO Conventions. This realisation has led to the enactment of number of the legislations, which take care of rights and privileges of women, are numerous in number. But due to ignorance and illiteracy those legislations cannot be properly enforced. The plethora of Indian Legislations aims at women empowerment. The judicial decision rendered by the Indian Courts depicts the active role played by the judiciary to protect women from exploitation at a stage where legislations are unformed due to lack of adequacy of enforcement machinery. The legislative and judicial initiatives have placed the women in a better place in the society. Yet the women in India have to go for miles to achieve cent percent empowerment.

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<sup>34</sup> AIR 1999 SC 625

<sup>35</sup> AIR 2000 SC 1669