

# Obligations under CEDAW and Its Optional Protocol

## Abstract

The Convention on Elimination of all forms of Discrimination against Women (CEDAW) deals with discrimination and gender equality elaborately and in detail, covering both the private and the public domain. It lays down a road map to achieving gender equality. The Convention is the only human rights treaty, which affirms number of rights of women. States Parties agreed to take appropriate measures against all forms of discrimination against women and exploitation of women.

The Optional Protocol to CEDAW strengthens the enforcement mechanism for CEDAW, stimulating states to take steps to implement the Convention, and change discriminatory laws and practices to avoid complaints being made against them. An attempt has been made in this paper to evaluate the implementation of the convention and how the obligations are being carried on by India.

**Keywords:** CEDAW, Obligations, Reporting, Complaint Procedure.

## Introduction

Women's human rights were strewn across several international treaties, conventions and covenants, each adopting fragmentary approach towards these rights. Such an approach failed to address issues of women in a comprehensive way. Especially, it was realised that the fundamental challenge confronting implementation of women's rights was an entrenched discrimination and inequality against them which none of the conventions had addressed in detail. Recognising the need, the Convention on Elimination of all forms of discrimination against Women (CEDAW) was adopted by the General Assembly in 1979 as a comprehensive human rights document<sup>1</sup>. It is one of the most broadly endorsed human rights treaties – it has been ratified or acceded to by 187 countries to date. CEDAW is popularly known as 'women's bill of rights'. It deals with discrimination and gender equality elaborately and in detail, covering both the private and the public domain. It lays down a road map to achieving gender equality. The Convention is the only human rights treaty, which affirms the reproductive rights of women and officially recognizes the role that culture and religion play in limiting women's rights. Its greatest strength is that it requires states to report on women's rights. It affirms women's rights to acquire change or retain their nationality and the nationality of their children. States Parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

The articles of CEDAW fall into three main groups: the first set of articles explains the nature and scope of the State's obligations; the second set of articles targets specific forms of discrimination and outlines measures that the State must undertake to eliminate discrimination in each of these areas; and the last set of articles governs procedural and administrative matters, such as the way the CEDAW reporting process works. CEDAW provides a complete definition of sex-based discrimination – described as any distinction, exclusion, or restriction on the basis of sex, which intentionally or unintentionally nullifies or impairs the recognition, enjoyment and exercise of women's social, cultural, political and economic rights. CEDAW takes a concrete and three-dimensional view of equality – it is based on the principle of "substantive equality", or "equality of results" between men and women. This goes beyond equality of opportunity, and the wording used in laws, to looking at the actual condition of women's lives as the true measure of whether equality has been achieved. CEDAW legally binds all States Parties to fulfill, protect and respect women's human rights – this means that States are responsible not just for their own actions, but also for eliminating discrimination that is being perpetrated by private individuals and organizations. Gender inequalities must be addressed at all levels and in all spheres, including the family, community,



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market and state. CEDAW recognizes that discrimination is often most deeply rooted in spheres of life such as culture, family and interpersonal relations – it addresses the negative impact of gender stereotyping, working on the fundamental premise that unless change takes place at those levels efforts to achieve gender equality will be frustrated.

#### **Discrimination**

"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.<sup>2n</sup>

#### **Equality**

The concept of equality is not defined in CEDAW. However, the model adopted by the conventions unearths three theories of equality entrenched therein- formal equality, substantive equality and transformative equality. This concept of equality imposes on state parties a formal legal obligation of equal treatment of women and men<sup>3</sup>. For instance, State parties require to adopt measures to guarantee women equal rights with men to vote. However, recognizing the limitation of formal equality in targeting the underlying causes of discrimination and inequality, CEDAW has also adopted the principle of substantive equality<sup>4</sup>. In this category of equality, identical treatment of woman to man is not enough, the state must take into account the biological, social and cultural differences which may require non identical treatment to address the differences. Yet another kind of equality recognized under CEDAW is transformative equality which requires state parties to address contemporary gender relations and gender based stereotypes and entails transformation of institutions, systems and structures perpetuating such discrimination and inequality.

#### **Rights Guaranteed Under The Convention**

1. Right to good quality education
2. Right to comprehensive health services, including on family planning
3. Right to access loans and other forms of financial credits
4. Right to join sports and cultural activities
5. Right to decide on the number of children and on the number of years between pregnancies
6. Right to shared parenting responsibilities
7. Right to have equal access to jobs, benefits and social security
8. Right to be paid equally based on the work they do
9. Right to be free from all forms of violence whether physical, sexual, emotional, mental or economic
10. Right to be free from all forms of slavery and prostitution
11. Right to vote, run for election and hold public office

12. Right to represent the country internationally
13. Right to acquire, change or retain nationality and citizenship

#### **State Parties' Obligations**

A state is legally obliged to refrain from discrimination through discriminatory laws or acts of state officials (Article 2(d)). It is also required to take all appropriate measures to eliminate discrimination (including gender based violence) and advance gender equality by private persons/organizations including family and in marriages<sup>5</sup>. The content of these obligations, set out in of the Convention, is not open to alteration by individual governments or organizations. Women who have experienced discrimination are to be provided with effective remedy and States are also obliged to transform gender stereotypes The Committee on Elimination of Discrimination against Women with the mandate to watch the progress for women made in member countries and it reviews national reports on action taken to improve situation of women submitted by member states. It makes observations and comments. The Committee also recommends on any issue affecting women which requires more attention. It is responsible for developing women's human rights jurisprudence through issuing of General Recommendations and decisions under CEDAW's Optional Protocol.

#### **Reporting**

State parties must submit regular reports to the CEDAW Committee (at four-yearly interval). These reports contain detailed information about legislative, judicial, administrative and other measure that have been adopted to implement provisions of CEDAW, as well as about obstacles encountered. The reports require a fairly comprehensive mapping of progress in achieving gender equality. In their concluding observations, CEDAW committee observes the successful steps taken by state party for gender equality, provide specific guidance on improving the performance, and delineate critical measures to be taken in future.

#### **Special Measures and Temporary Special Measures**

Adoption by state 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. Adoption by state parties of special measures including those measures contained in the present convention, aimed at protecting maternity shall not be considered discriminatory<sup>6</sup>.

Temporary special measures are measures undertaken to accelerate the achievement of substantive equality for women in situations where long term effects of discrimination has seriously disadvantaged women. These measures seek to speed up the achievement of women's de facto or substantive equality with men, and to effect the

structural, social and cultural changes necessary to correct past and current forms of discrimination against women. These measures are temporary in the nature in the sense that they are not deemed necessary in perpetuity but are relevant till the purpose for which they have been adopted are fulfilled. Temporary special measures can include outreach or support programmes; allocation and/or reallocation of resources, preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with timeframes; and quota systems. Special Measures are those measures refer to non-identical treatment of women and men due to their biological differences – these measures are of a permanent nature, and refer to the provision of general conditions or the adoption of general social policies to improve the situation of women and girls, including for instance measures to protect maternity, or women's reproductive rights etc.

#### **Recommendations**

The General Recommendations (GRs) are statements by the CEDAW Committee on different aspects of the Convention and its interpretation. They are aimed at providing additional guidance to assist governments in their implementation the Convention. They have been used to date either to elaborate on the implications of specific articles of CEDAW (such as Article 7 on political participation), or to explain the application of the Convention to areas which are not covered by their own article (such as HIV/AIDS).

#### **Optional Protocol**

The Optional Protocol to the CEDAW is a procedural protocol which sets up two new procedures to implement the Convention, firstly, an individual complaints procedure and secondly an inquiry procedure. An inquiry procedure enables the CEDAW Committee to conduct inquiries into serious and systematic abuses of women's human rights in countries that become States parties to the Optional Protocol. The complaints procedure, also known as the communications procedure, gives individuals and groups of women the right to petition or the right to complain to the CEDAW Committee about violations of rights<sup>7</sup>.

#### **Complaints Procedure**

The existing International human rights machinery for women had not given specific redressal mechanism for violation of women's rights. Optional protocol to ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of All Migrant Workers and Members of their Families (not yet in force) all had complaint procedures. These conventions were however not targeting women. Further, unlike the Committee on the Elimination of Discrimination against Women, these complaint redressal systems did not comprise gender specialists. Thus, while women could file complaints under these other procedures, the Optional Protocol to the Convention provided a targeted procedure to address discrimination against women on the basis of sex.

The option protocol also allows a better understanding by both States and individuals of all dimensions of the rights set forth in CEDAW. The Committee is able to focus on individual cases when considering CEDAW, and able to say what is required from States in individual circumstances. This contributes to enhancing jurisprudence that then allows for greater clarification and guidance on States' obligations under CEDAW. The protocol also strengthens the enforcement mechanism for CEDAW, stimulating states to take steps to implement the Convention, and change discriminatory laws and practices to avoid complaints being made against them. the requires Each State party to make the Convention and the Protocol widely known, and to give them publicity and to facilitate access to information about the views and recommendations of the Committee, particularly on matters involving that State party<sup>8</sup>. Individuals or groups of individuals, under the jurisdiction of a State party to the Protocol, who claim to be victims of any violations of rights in the Convention to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless the author can justify acting on their behalf without their consent<sup>9</sup>. Communications must be submitted in writing and may not be anonymous. No communication may be received by the Committee if it concerns a State party to the Convention that is not a party to the Protocol. The Committee shall not consider a communication unless it has ascertained that all domestic remedies have been exhausted, or that the application of such remedies would be unnecessarily prolonged or unlikely to bring effective relief to the complainant. The Committee is also called on to declare a communication inadmissible if the same matter has already been examined by the Committee or has been or is being considered by another international investigation or settlement procedure. It must also declare a communication inadmissible if it is incompatible with the Convention; manifestly ill-founded or not sufficiently substantiated; an abuse of the right to petition; or if the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless those facts continued after that date<sup>10</sup>. The Committee with an express power to recommend interim measures to the State party at any time between the receipt of a communication and its final decision on the communication's merits in order to avoid possible irreparable harm to the alleged victim or victims of the alleged violation<sup>11</sup>.

The Committee to consider communications in the light of information made available to it by the complainant(s) and the State party, which must be transmitted to the parties concerned. Communications are considered in closed meetings. After examination, the Committee's views and recommendations are transmitted to the parties concerned. The State party is obliged to give due consideration to the views and any recommendation of the Committee and is required, within six months to submit to it written response, including information on any action taken in

light of the Committee's views and recommendations<sup>12</sup>. The Committee may invite the State party to submit further information on measures taken in response to its views and recommendations, including in its subsequent reports.

#### **Inquiry procedure**

If the Committee receives reliable information indicating grave or systematic violations by a State party of rights in the Convention, the Committee shall invite that State party to cooperate in the examination of that information through the submission of observations. Taking into account the State party's observations, and reliable information, the Committee may designate one or more of its members to conduct an inquiry and report to it on an urgent basis. Where warranted and with the consent of the State party, this inquiry may include a visit to its territory. After examining the findings of the inquiry, the Committee must transmit these, as well as its comments, to the State party which has six months to submit its observations to the Committee. All stages of the inquiry are to be conducted confidentially and with the full cooperation of the State party. After the six-month period in which it may submit its observations, the State party may be invited to include details of any measures taken in response to an inquiry in its report<sup>13</sup>. The Committee is also entitled to submit a further request for information on this matter to the State party. States that ratify or accede to the Protocol are entitled to "opt-out" of the inquiry procedure, with Article 10 providing that each State party may at the time of signature, ratification or accession of the Protocol declare that it does not recognize the competence of the Committee to initiate and conduct an inquiry. Such a declaration may be withdrawn at a later time by notification to the Secretary-General.

#### **Role of Civil Society**

The CEDAW Committee places great value on hearing from women themselves about the situation in their countries. When the Committee is considering State reports, it will also draw on information provided by UN agencies and women's NGOs from the reporting countries. Specific meeting times are set aside during the formal sessions for the Committee to hold discussions with NGOs. In addition, NGOs can also submit alternative reports on their countries' progress – often called 'shadow reports' – to the Committee. After the CEDAW session, many NGOs undertake efforts to monitor their country's obligations to CEDAW implementation. They translate key documents into local languages and disseminate these as widely as possible to raise awareness about the Convention. They also use the CEDAW Committee's Concluding Observations as an important advocacy tool – to urge their governments to concentrate on the critical measures highlighted by the Committee that need to be taken to move forward on implementation. Many NGOs also field gender experts to conduct training on CEDAW for community groups and national institutions to deepen knowledge and build awareness on gender equality and women's human rights.

In 1997, the Supreme Court of India in Vishaka's Case held that international covenants can be made use of by courts in India to interpret our laws and that by ratifying CEDAW, India had committed itself to an international standard or norm of rights for women, according to which gender equality includes an obligation on the part of the State/ employer to provide women with a sexual harassment free workplace. In 1999, in Gita Hariharan's case, where the question was whether the mother of a Hindu minor could be the legal guardian during the lifetime of the father, the Apex Court, while holding in favour of women stated, "the message of CEDAW and the Beijing Declaration which directs all State Parties to take appropriate measures to prevent discrimination in all forms against women is quite clear. India is a signatory to CEDAW. . . the domestic courts are under an obligation to give due regard to International Covenants and norms for construing domestic law when there is no inconsistency between them"<sup>14</sup>. In 1992, India established the National Commission for Women, which is the national mediator for women. In 1997 India established a parliamentary committee on the empowerment of women, and in January 2001, India announced its commitment to the empowerment of women through the launching of a new National Policy on Women's Empowerment (United Nations, 2012). According to Amnesty International, however, "these policies should be more than just further rhetoric and should firmly address ongoing problems of non-implementation and/or discriminatory implementation of safeguards and impunity for perpetrators of violence against women"<sup>15</sup>.

The provisions of CEDAW and their interpretation by the CEDAW Committee clearly belie the claims that CEDAW is assimilationist, homogenous or essentialist. CEDAW provides the basis for transformative equality and indeed mandates it. It takes into account a wide range of intersectional needs. As regards its essentialism, CEDAW responds to discrimination in law and practice based on the identity of women and hence it is somewhat ingenuous to categorise its formulation as essentialist. CEDAW corrects the historic silencing of women's voices documented and analysed in feminist literature for many decades, since Simone de Beauvoir's observation of women as the other in the *Second Sex*. The Convention provides for intersectionality while not losing the core of feminist theory applicable to all women - it can be regarded as nourishing the tree of feminism with its branches of feminisms. Without the concentration of CEDAW on discrimination against women, there is a strong likelihood that women's voices would be marginalised even in the human rights setting. The concentration on the need to eliminate discrimination against women and to empower them is essential both as a focal point and as a way of stimulating and indeed insisting on mainstreaming of women's issues in all other human rights frameworks. CEDAW has produced the understanding that "women's rights are human rights" but it should also be regarded as guaranteeing a fundamental concept of human rights as men's and women's rights, on a shared and mutual basis.

The Human Rights Council Working Group on Discrimination against Women in Law and Practice has the task of contributing to the realisation of the potential of CEDAW. It has at its disposal the tools of women's human rights discourse, which provides a conceptual basis most empathetic to women's perspectives. This discourse mandates women's equal entitlement both to experience and to form the human social realities in which we live, and to participate with men in engineering a transformative mutuality and framework in which both can flourish. Alternative discourses which have growing influence in democratic societies are the traditionalist religious and the neo-liberal discourse, neither of which has an agenda for women's transformative equality and both of which indeed challenge the rights mandated in CEDAW. The traditionalist religious agenda challenges women's civil and political rights in the public sphere and their right to equality in the family; the neo-liberal agenda challenges state interventionist policy to advance women's economic and social rights. The HRC Working Group has identified the thematic scope of discrimination against women in law and practice and the areas of life in which women must be empowered to take their full and equal place in the fabric of societal existence under five thematic themes: public and political, economic and social, family and cultural, health and safety, with violence as a cross-cutting issue for all these aspects of women's lives.

The substantive equality provisions of CEDAW provide theoretical and normative tools to contend with the growing challenges of traditionalist cultural and religious patriarchy and neoliberal exploitation of women. This holds out promise but a large gap exists between normative policy and social practice. The promise of *de jure* and *de facto* equality for women cannot be fulfilled by law and philosophy alone. The necessary formulations and commitments to the goal of substantive equality have been made under the auspices of CEDAW. It remains to translate the formulation and commitment into political, economic, and social action, which will secure women's capacity to participate as equal actors in the public sphere, to have equal opportunity in the economy, and to live in a state of equal autonomy to that of men in the family. This is the meaning of democratic citizenship for women and it is a condition precedent for a viable democracy for men and women alike<sup>16</sup>.

While introducing the 4th and 5th reports to the CEDAW Committee the representatives clarified that according to the latest census, the population of India stood at 1.2 billion, with women representing 48.5 per cent. India was the world's largest and most vibrant democracy, and enjoyed socio-economic, cultural and geographic diversity, which was its strength but also posed challenges to policy-makers. National and international attention had recently been drawn to incidents of violence against women, which were not widespread, and people, civil society and the media had stood up very strongly against such crimes and called for urgent action to punish the perpetrators. Over the last few years, significant

steps had been taken to improve transparency and efficiency, leading to a rights-based approach; new legislation had been enacted, including the Right to Information Act, Right to Public Services Act, Citizen Charter, E-Governance and others. Key development goals for women were gender equality and empowerment using strategies such as economic empowerment, social and physical infrastructure, enabling legislation, women's participation in governance, inclusion of all vulnerable and marginalized women, and gender sensitive policies and programmes.

The landmark legislation, the National Food Security Act 2013, aimed to ensure food and nutritional security to identified eligible households, with specific provisions for women and children; it gave the right to receive an adequate quantity of food grains at subsidized prices to about two thirds of the population, and provided age appropriate free meals to pregnant and lactating women, among others. The Criminal Law Amendment Act 2013 included comprehensive amendments in the laws to cover the varied nature of sexual offences committed against women, and included offences such as acid attacks and sexual harassment, while the definition of rape had been widened to include non-penetrative sex. Provisions for aggravated rape had been widened to include rape committed by a person in a position of dominance, a member of the armed forces, rape committed during communal or sectarian violence, or on a woman incapable of giving consent. Increased penalty, including capital punishment, had been provided for gang rape and for causing serious injury to the victim. Other legislation addressed manual scavenging, the protection of children from sexual offences, and sexual harassment of women in the workplace.

The Gender Budget Statement, a part of the Union Budget, had emerged as an important tool for reporting allocations for women; the number of Ministries reflecting their schemes and programmes had increased to 30 and the gender budget now stood at 5.83 per cent. The Government had set up in 2012 a High Level Committee on the Status of Women, composed of representatives of civil society and other stakeholders, to undertake a comprehensive study into the status of women and develop appropriate policy intervention, while the National Commission for Women had been mandated to review constitutional and legal safeguards for women and recommend remedial measures. India was cognizant of the enormous challenges on the policy front and the implementation of existing policies; new path breaking legislation protecting women from violence had been adopted as well as amendments in the existing legislation to address the gaps. The challenge now was to ensure adequate training and capacity building of all persons at all levels. In response to the various queries, the delegation said that India would continue to work to eliminate all forms of discrimination against women through the empowerment of women and protecting them from violence so that they could contribute to national development as equal partners. India reiterated its commitment to the promotion and

protection of the human rights of its people and would seek to advance the legal framework and its effective implementation. All citizens, including civil society and the private sector, were equal participants in this process and India looked forward to receiving the Committee's recommendations so that it could implement them appropriately with targeted programmes and policies<sup>17</sup>.

#### **Conclusion**

After became member of CEDAW India has established women commission and brought certain legislations for women to eliminate all forms of discrimination for example Sexual Harassment of Women at Workplace Act, Protection Of Women From Domestic Violence Act, The Prohibition of Child Marriage Act, and providing rights like Zero FIR, Anonymity for sexual assault victims, Free legal Aid, Women Empowerment and so on. And the courts in India are also contributing more for the cause of women. Despite all this efforts, it can be concluded that a lot has to be done for full realisation of women's rights and in carrying out the obligations of the convention with letter and spirit and each and every one has to involve in this mission.

#### **References**

1. *The Convention entered into force in the year1981.*

2. *Article 1 of the Convention*
3. *Article 7(a).*
4. *Articles 3and 24.*
5. *Articles 2 to 5.*
6. *Article 4.*
7. *Optional Protocol entered into force in the year 2000.*
8. *Article 13of the Protocol.*
9. *Article 2of the Protocol.*
10. *Article 4of the Protocol.*
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12. *Article 7of the Protocol.*
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