

# **ORIGIN AND DEVELOPMENT OF HUMAN RIGHTS OF WOMEN**

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## **ABSTRACT**

The time United Nations was formed in mid-twentieth century, internationally, a critical mass of women had been educated, were employed outside the home, and had obtained enough legal and social freedom to participate in public life, even at international level. Authors have determined women equality as a universally accepted principle, supported by the phrase "equal rights of men and women" inserted in UN Charter. Furthermore, when Universal Declaration of Human Rights (UDHR) was drafted, the term "everyone" rather than personal pronoun "his" was used in most, but not all of its articles.

Within the framework of a democratic polity, our laws, development policies, plans and programmes aims at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles, which not only grants equality to women but also empowers state to adopt measures of positive prejudice in favor of women for neutralizing cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of

birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard. Furthermore, to uphold the Constitutional mandate, State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

## **INTRODUCTION**

During this decade there has been a significant shift in approach to women's advancement and empowerment. While previously the advancement of women was regarded as important for outcomes such as economic development or population policies, more than ever the international community has come to consider the empowerment and autonomy of women and the improvement of their political, social, and economic and health status as important ends in themselves. This shift in approach reflects a human rights approach to issues of concern to women.

Parallel to this shift in approach to women's advancement has been an increased emphasis on the importance of a rights-based approach to planning and programming generally. In his reform proposals, the Secretary-General has made clear that human rights are a cross-cutting element that should be reflected in all United Nations policies and programmes. The High Commissioner for Human Rights is also stressing that human rights are integral to all activities, including peace-making, peace-keeping, peace-building, humanitarian assistance and development. Several United Nations entities, including UNICEF, UNFPA and UNDP have identified the securing of individuals' human rights as a critical first step in addressing global problems, and are now incorporating human rights into their policy making processes and operational activities.

Several factors explain these developments. First, the framework of international human rights law provides a forum for asserting individual claims of human rights violation. Some victims of human rights violation, including women who have suffered discrimination on the basis of sex, for example, those denied citizenship on the same basis as men, have successfully sought relief in international tribunals. The approach and decisions at international level have shaped decisions of regional and domestic tribunals, which have also provided remedies for individuals, including women, who have encountered denial of their human rights.

Perhaps more importantly, the language of human rights allows legitimate claims to be articulated with a moral authority which other approaches lack. It is a language which is recognized by the powerful, and which stimulates deep chords of response in many. It is a language which has the potential to empower individuals and communities at the grass-roots level to believe that they have a right to education, to health care or any other right. Human rights speak in broad terms about the fundamental entitlement of all human beings to live in dignity, and in conditions of social justice and thereby provide a foundation from which to establish a set of demands premised on the intrinsic worth of the individual. The human rights approach justifies legitimate claims, not because the realization of rights such as that to health or life is a means to another end, such as quality child care, environment, development or population policies, but because the realization of their rights is an important goal in itself.

Human rights not only create entitlements for rights-holders, but they also create duties for States. States are required to ensure the fulfillment of human rights by acting in a way that enables rights-holders to enjoy the rights to which they are entitled. Human rights require that actions - of a legislative, administrative, policy or programme nature - are considered in light of the obligations inherent in human rights. Actions which violate or fail to support the realization of human rights contravene human rights obligations. A rights-based approach thus assumes the creation of an enabling environment in which human rights can be enjoyed. A rights-based approach also promises an environment which can prevent the many conflicts based on poverty, discrimination and exclusion.

Despite the recent focus on the rights-based approach, the meaning and practical implications of such an approach for policy making processes and operational activities, particularly in the context of development and humanitarian assistance, require greater clarity. This paper seeks to provide an understanding of the international human rights framework, and the challenges that must be addressed in integrating it into these processes in order to realize gender equality. A number of premises underlie the paper. First, human rights bring to the development discussion a unifying set of standards, or a common reference, for setting objectives and assessing the value of action. Second, that if sustainable economic development and the eradication of poverty are to be achieved, economic growth has to be combined with the concept of human development and

respect for human rights. As such, the 'rights-based' approach is an inherent dimension of the concept of 'people-centered sustainable development', with development constituting a comprehensive process directed towards the full realization of all human rights and fundamental freedoms. Third, central to the rights-based approach is the norm of gender equality, which resists, rather than accommodates, relativist approaches to the interpretation of human rights.

## **INTERNATIONAL HUMAN RIGHTS LAW AND GENDER EQUALITY: ELEMENTS OF A RIGHTS-BASED APPROACH**

### **A. The context of International Human Rights Law**

#### **The development of international human rights standards**

Historically, international law was the law that regulated relations between kings and sovereigns, and developed into the legal regime governing relations between sovereign States that emerged from feudal kingdoms. States were the actors in international law, and the treatment of the individual human person was not part of this body of law. Exceptionally, international law addressed the State's responsibility to alien (foreign) subjects of another State living within its borders. In addition, several international treaties regulated the treatment of victims of war, and sought to combat slavery.

Early major advances in the protection of the human rights are to be found in the mandates and minorities protection treaties of the League of Nations and the attempts to codify labour standards by the International Labour Organization, established in 1919. However, the conceptualization and development of human rights law originated in the middle of the twentieth century with the foundation of the United Nations. The 1945 Charter of the United Nations includes 'promoting and encouraging respect for human rights and fundamental freedoms' as one of the four purposes of the Organization. The Charter's provisions on human rights and international co-operation form the basis of the view that membership in the United Nations carries with it a Member State's responsibility to promote and protect the human rights of individual human beings, and that national sovereignty cannot prevent scrutiny of conduct within national boundaries that infringes human rights.

The principle of equality forms the core of the human rights vision of the Charter, which states that human rights and fundamental freedoms should be available to all human beings 'without discrimination on the basis of race, sex, language or religion'. The principle of the equal rights of women and men is thus one of the pillars upon which the United Nations was founded.

The Universal Declaration of Human Rights (UDHR), adopted in 1948, proclaims numerous rights to which people everywhere are entitled. A "common standard of achievement for all peoples and of all nations", the Declaration delineates civil and political rights such as the right to freedom from torture, illegal arrest, free speech and freedom of conscience. It also establishes "freedom from want" as an essential dimension of human rights and dignity. Consequently, it encompasses economic, social and cultural rights, including work-related rights, the right to social security, the right to education, and the right to an adequate standard of living.

Although technically a non-binding instrument, several commentators argue that the whole of the Declaration has acquired the status of universally recognized norms of customary international law that bind all Member States of the United Nations. There is consensus that some of the human rights in the UDHR, including the right to freedom from torture, slavery, and prohibition of racial discrimination form part of customary international law and thus bind all Member States.

The UDHR was followed by other instruments, including the Convention against Genocide (1948) and the Convention on the Elimination of Racial Discrimination (1965). In 1966, two overarching human rights treaties - the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) - were adopted, which together with the UDHR form the International Bill of Human Rights providing the source of the core standards of international human rights law. The Covenants elaborate many of the rights in the UDHR, albeit with greater detail, and also address the protection of particular categories of people, including refugees and children. In contrast to the UDHR, however, they are multilateral treaties which, upon ratification or accession, create binding international legal obligations for the State concerned.

Since the adoption of the Covenants, the United Nations has continued to elaborate international human rights standards. Other major treaties concern non-discrimination on the basis of sex,

freedom from torture, the rights of children, and the rights of migrant workers and their families. The ILO has also continued its effort to define particular human rights standards relating to the rights of workers. Important amongst these efforts have been the ILO Conventions Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (100) (1951), on Discrimination in Respect of Employment and Occupation (111) (1958), and on Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (156) (1981). In addition, human rights standards concerning education, including the 1960 Convention on Non-Discrimination in Education, have been concluded under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

### **Standards are also delineated in international humanitarian law**

The body of international law governing the conduct of armed conflict between sovereign States, and internal conflicts within a State. The purpose of this branch of international law is to protect individuals who are affected by such conflicts and as such it is founded on core values familiar to international human rights law. Norms governing armed conflict that were meant to foster humanism and protect the rights of persons affected by such conflicts were developed in the nineteenth century, and thus pre-dated human rights law. These standards were codified in 1949 in the four Geneva Conventions, and developed further in their Additional Protocols of 1977. Specific provisions on the treatment of women are contained in the Geneva Convention relative to the protection of civilian persons in time of war(2) while all four Geneva Conventions contain a 'Common Article 3' concerning internal conflicts, which endorses some of the core standards of international human rights law. It establishes, inter alia, the right of non-combatants and civilians to be treated humanely, without distinction on grounds of race, sex, religion or faith.

Relevant standards are also to be found in international refugee law, which although predominantly concerned with protection, incorporate minimum human rights principles for those meeting the definition of refugee in international law. These principles are codified in the 1951 Convention relating to the status of refugees, and its Protocol adopted in 1966.

### **Gender-specific norms and standards**

The principle of the equal rights of women and men is contained in the Charter of the United Nations, the Universal Declaration of Human Rights and all subsequent major international human rights instruments. It is most comprehensively elaborated in the Convention on the Elimination of All Forms of Discrimination against Women, which codifies women's rights to non-discrimination on the basis of sex, and equality as self-standing norms in international law. It also establishes that women and men are entitled, on a basis of equality, to the enjoyment and exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and thus moves beyond the two Covenants by incorporating both families of rights in one instrument, establishing them as mutually reinforcing.

Critical areas, such as political participation and access to equal opportunity in public life, and in the professions are covered comprehensively in CEDAW, as are standards on nationality. The Convention also addresses women's equal right to education and training, health and employment. The Convention underlines the equal responsibility of women and men in family life and stresses the social services needed for combining family responsibilities and participation in public life. The Convention calls for the introduction of temporary special measures to redress inequalities between women and men, and special attention is given to rural women and their equal involvement in development processes. Importantly, the Convention obliges States parties to take all appropriate measures to ensure that women do not experience discrimination in certain areas of private life. Thus States parties are required to ensure that all contracts and other private instruments which restrict the legal capacity of women "shall be deemed null and void", while they are also obliged to take steps to eliminate discriminatory practices in the family.

## **B. INDIA SCENARIO**

The Constitution of India defines fundamental rights in Part-III that guarantees every citizen with some rights irrespective of race, place of birth, religion, caste, creed or gender. These are the essential rights which a person born along with.

Fundamental rights revolutionize the inequalities existing in pre-independence era. They had put a taboo on untouchability, forbid discrimination on the grounds of religion, race, caste, sex, or place of birth, trading of human beings and forced labour.

They also protect cultural and educational rights of ethnic and religious minorities.

The Fundamental Rights are essential for the development of the personality of an individual and to preserve dignity of a human. Any person can move to court if anyone challenges his fundamental right. These Fundamental Rights not only protects individuals from any arbitrary state actions but also prevents violation of human rights. Some Fundamental Rights apply for both the Indian citizen as well as persons of other nationality whereas others are available only to Indian citizens.

The right to life and personal liberty and the right to freedom of religion are available to all people. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are exclusively meant for citizens. All the provisions of the Constitution, including Fundamental Rights can be amended. Basically every citizen in India enjoys six fundamental rights:

- *Right to equality*
- *Right to freedom*
- *Right against exploitation*
- *Right to freedom of religion*
- *Cultural and educational rights*
- *Right to constitutional remedies*

The Right to Equality (Articles 14 to 18) says that all men are born equal and therefore they should be treated equally. All Citizens are equal before law. No citizen can be denied to access shops, public hotels, and places of entertainment etc. on the basis of caste, religion, sex or place of birth. Equality of opportunity is given in employment. Government has implied many laws to safeguard the interests of weaker sections of the society. For example, Reservation is given to the socially and economically backward Classes, the Scheduled Castes and Scheduled Tribes in employment, School and College admissions, etc. Untouchability is abolished in Article 17 of the constitution. Untouchability is a punishable offense.

Right to Freedom is the essence of Democracy. According to Right to Freedom every citizen can freely express his thoughts and no one can stop him for doing so. They can move freely to any part of India and relocate to any part of India. They have the freedom to practice any trade or occupation. Nobody can be punished until he violates law. The constitution framed certain rules for the protection of an individual's life and personal liberty. The right of freedom of an individual should not affect the freedom of the others.

Right against Exploitation says no individual can be forced or compelled to do work without wages. The rights of women and children are also protected. Articles 23 and 24 of Indian constitution prohibit trafficking in human beings and forced labor that abolished the employment of children below the age of 14 years in factories and mines. Begar, or forced labor is a crime and is a punishable offense. Trafficking in humans for slavery or prostitution is also prohibited by law.

Right to Freedom of Religion guarantees the religious freedom to all citizens of India. Articles 25, 26, 27 and 28, provide religious freedom to all citizens of India. Being a secular country all the religions are treated alike. All the religions are respected equally. Everyone has an equal right to practice and spread his own religion. All religious bodies are free to manage their affairs. The Government does not interfere in the religious practice of the people until proper public order is maintained.

Cultural and Educational Rights say India is a land of many languages, religions and cultures. There are many minority groups. Articles 29 and 30 gives them right to conserve their culture. They have the right to establish and administer educational institutions of their choice. The cultural and educational rights of all groups of people irrespective of their origin are safeguarded by the constitution.

Anybody can set up their own educational institutions to protect and develop their culture. State cannot discriminate against any institution on the basis of its administering community. A judgment by Supreme Court held in 1980, said "the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards.

It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution.” According to another judgment on 31 October 2002, the Supreme Court ruled the procedure for admission to any professional course should remain the same for all.

**Right to Constitutional Remedies** say The Right to Constitutional Remedies empowers every citizen to move Supreme Court directly in case if someone denies or challenges his Fundamental Rights. For instance, in case of imprisonment, a citizen has the right to question his imprisonment to see if it is according to the provisions of the law of the country. A court can issue various writs like habeas corpus, mandamus, prohibition, quo warranto or certiorari to safeguard the citizens' fundamental rights.

Article 14 declares that "the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India". The phrase "equality before the law" occurs in almost all written constitutions that guarantee fundamental rights. Equality before the law is an expression of English Common Law while "equal protection of laws" owes its origin to the American Constitution.

Both the phrases aim to establish what is called the "equality to status and of opportunity" as embodied in the Preamble of the Constitution. While equality before the law is a somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law, equal protection of laws is a more positive concept employing equality of treatment under equal circumstances.

Thus, Article 14 stands for the establishment of a situation under which there is complete absence of any arbitrary discrimination by the laws themselves or in their administration.

Interpreting the scope of the Article, the Supreme Court of India held in Charanjit Lai Choudhury vs. The Union of India that: (a) Equal protection means equal protection under equal circumstances; (b) The state can make reasonable classification for purposes of legislation; (c) Presumption of reasonableness is in favour of legislation; (d) The burden of proof is on those who challenge the legislation.

Explaining the scope of reasonable classification, the Court held that "even one corporation or a group of persons can be taken to be a class by itself for the purpose of legislation provided there is sufficient basis or reason for it. The onus of proving that there were also other companies similarly situated and this company alone has been discriminated against, was on the petitioner".

In its struggle for social and political freedom mankind has always tried to move towards the ideal of equality for all. The urge for equality and liberty has been the motive force of many revolutions. The charter of the United Nations records the determination of the member nations to reaffirm their faith in the equal rights of men and women.

Indeed, real and effective democracy cannot be achieved unless equality in all spheres is realised in a full measure. However, complete equality among men and women in all spheres of life is a distant ideal to be realised only by the march of humanity along the long and difficult path of economic, social and political progress.

The Constitution and laws of a country can at best assure to its citizens only a limited measure of equality. The framers of the Indian Constitution were fully conscious of this. This is why while they gave political and legal equality the status of a fundamental right, economic and social equality was largely left within the scope of Directive Principles of State Policy.

The Right to Equality affords protection not only against discriminatory laws passed by legislatures but also prevents arbitrary discretion being vested in the executive. In the modern State, the executive is armed with vast powers, in the matter of enforcing by-laws, rules and regulations as well as in the performance of a number of other functions.

The equality clause prevents such power being exercised in a discriminatory manner. For example, the issue of licenses regulating various trades and business activities cannot be left to the unqualified discretion of the licensing authority. The law regulating such activities should lay down the principles under which the licensing authority has to act in the grant of these licenses.

Article 14 prevents discriminatory practices only by the State and not by individuals. For instance, if a private employer like the owner of a private business concern discriminates in choosing his

employees or treats his employees unequally, the person discriminated against will have no judicial remedy.

One might ask here, why the Constitution should not extend the scope of these right to private individuals also. There is good reason for not doing so. For, such extension to individual action may result in serious interference with the liberty of the individual and, in the process; fundamental rights themselves may become meaningless.

After all, real democracy can be achieved only by a proper balance between the freedom of the individual and the restrictions imposed on him in the interests of the community. Yet, even individual action in certain spheres has been restricted by the Constitution, as for example, the abolition of untouchability, and its practice in any form by any one being made an offence. Altogether, Article 14 lays down an important fundamental right which has to be closely and vigilantly guarded.

There is a related matter that deserves consideration here. The right to equality and equal protection of laws loses its reality if all the citizens do not have equal facilities of access to the courts for the protection of their fundamental rights.

The fact that these rights are guaranteed in the Constitution does not make them real unless legal assistance is available for all on reasonable terms. There cannot be any real equality in the right "to sue and be sued" unless the poorer sections of the community have equal access to courts as the richer sections.

There is evidence that this point is widely appreciated in the country as a whole and the Government of India in particular and that is why steps are now being taken to establish a system of legal aid to those who cannot afford the prohibitive legal cost that prevails in all parts of the country.

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