

## **UNITED NATIONS AND INDIAN CONSTITUTION – WOMEN’S RIGHTS – A CAMPARATIVE ANALYSIS OF ISSUES AND ACHIEVEMENTS**

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### **INTRODUCTION**

A life of dignity is every person’s human right and every woman, man, youth and child has basic needs that must be met if he or she is to live in dignity. A life of poverty means that basic needs that must be met if he or she is to live in dignity. A life of poverty means that basic needs go to unfulfilled and fundamental human rights are violated. More than one billion people live in poverty around the world and great majority of them are women. The World Health Organization has noted that women continue to lag behind men in control over essential resources including cash, credit, property, land, wealth and access to material goods.

This paper attempts to focus on how women’s issues were perceived and what were the steps taken during the initial period of the United Nations to accord rights to women. It aims to highlight on the new perceptions since the 1970s and the initiatives on the significance of the international women’s conferences in raising consciousness regarding problems relating to global problem. The first section of the papers deals with establishments of norms and standards by the United Nations to promote and protect women’s rights. The second section high lights the significance of the series of international women’s rights. The second section high lights the significance of the series of international women’s conferences held under the United Nations auspices. The Third section of the paper deals with institutional compliance of standards, conventions and strategies relating to improvement of women’s status and empowerment of women- A comparative analysis. The fourth section reviews initiatives taken by Indian Government, Non-Governmental Organizations (NGOs) and Self Help Groups (SHGs) for up liftment of women in all spheres.

The data used in this study is from publicly available sources, including the World Development Indicators of the World Bank, and the human Development Report of UNDP, as well as the annual Executive Opinion Survey of the World Economic Forum.

The World Health Organisation has noted that women continue to lag behind men in control over essential resources including cash, credit, property, land, wealth and access to material goods. They are also disadvantaged by other forms of improvishments in areas such as literacy, education, skills, employment opportunities, mobility, political representation and pressures on their available time and energy liked to gender role responsibilities.

Women’s disproportionate poverty and economic inequality also effectively compromises their full enjoyment of other human rights, including their rights to food, water, housing and to the highest attainable standard of health, among others.

One of the main goals of the United Nations is to promote and encourage “respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”.

The Preamble of the UN Charter begins “We the peoples of the United Nations” and reaffirms not only “faith in fundamental human rights” and the “dignity and worth of the human person”, but also “the equal rights of the men and women”. The equality of rights is also explicitly asserted in three articles of the Charter. Although international and intergovernmental bodies had begun working to advance the status of women long before 1945, no previous legal document had so forcefully affirmed the equality of all human beings, or specifically outlawed sex as basis for discrimination. The Charter provisions on women’s equality offered clear and compelling basis for asserting advancement of the political and legal status of women. In the course of time the United Nations has made steady progress in promoting and protecting women’s rights.

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.

### **WHAT ARE HUMAN RIGHTS?**

Human rights are universal legal entitlements protecting individuals and groups against actions (or the lack of actions) that effect their freedoms and human dignity.

Human Rights Principle,

- a. Indivisible and inter-dependent: We cannot have only part of a right, and to fulfil one right, we need to be able to fulfil others.
- b. Universal: Human rights belong to all human beings, without discrimination regardless of gender, HIV status, race, religion, sexuality, age, ability and class.
- c. Inalienable: No one can take our rights away from us. We may not be able to fulfil all our rights, but they are ours nonetheless.
- d. Accountability: States and people are responsible for rights. We have responsibilities in terms of each other in terms of rights, and states have responsibilities to make sure that rights are fulfilled.
- e. Participation: States and people are responsible for rights. We have responsibilities to make sure that rights are fulfilled.
- f. Participation: To fulfil our rights we all need to recognize our responsibilities, and the roles we must play to fulfil them.
- g. Internationally agreed and legally protected: There are international and national bodies whose job it is to monitor whether rights are being violated in any particular country or context.
- h. Beyond state sovereignty: No state can disregard the need to work towards enabling its citizens to fulfil their rights. Any State, which does, so runs the risk of international sanction.

### **Articles of United Nations on Women's Rights**

#### **Article 2**

Violence against women shall be understood to encompass, but not be limited to, the following:

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation;
- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c. Physical, sexual and psychological violence perpetuated or condoned by the State, wherever it occurs.

#### **Article 3**

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. These rights include, inter alia:

- a. The right to life
- b. The right to equality
- c. The right to liberty and security of person
- d. The right to equal protection under the law
- e. The right to be free from all forms of discrimination
- f. The right to the highest standard attainable of physical and mental health
- g. The right to just and favourable conditions of work
- h. The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

**Article 4**

States should condemn violence against women and should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- a. Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination Against Women or withdrawing reservations to that Convention;
- b. Refrain from engaging in violence against women;
- c. Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- d. Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence: women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies to the harm they have suffered; States should also inform women of their rights in seeking redress through mechanisms;
- e. Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- f. Develop, in a comprehensive way, preventative approaches and all those measures of legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- g. Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- h. Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- i. Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- j. Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women to eliminate prejudices, customary practices and all other practices based on the idea of inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
- k. Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- l. Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- m. Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- n. Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

- o. Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;
- p. Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- q. Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

## DISCRIMINATION

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines 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 nay other field”.

The initial world survey of the status of women conducted by the United Nations showed that discrimination against women was prevalent in nearly every region of the world. In 1945, only 30 of the original 51 UN Member States allowed equal rights with men or permitted them to hold public office. In a report of the Secretary General in 1950 to the Commission on the Status of Women showed that in 22 countries women did not have legislation to provide equal rights to vote or hold political office and in some countries women were not legally debarred from these rights. These conditions prompted the United Nations to adopt the Convention on the Political Rights of women in 1952 which came into force in June 1954. Under this convention, Member States committed themselves to allowing terms with men and without discrimination. By 1996, 105 countries where such rights do not exist legally.

The question of Women's rights of nationality in marriage was a major focus of the Commission on the Status of Women from its first session onward in 1947. In most countries, nationality laws were based on the time-honoured assumption that women who marry would automatically take their husband's nationality. This view was based on the notion that the wife must defer to the primacy of the husband as family head. There was strong feeling in the Commission that, because nationality was so basic right, it should be enjoyed by women as well as men on a non-discriminatory basis. It was found in many countries, women who married a man of a different nationality without her consent. In some cases, she could even find herself stateless, especially in the event of a divorce. So the convention was also intended to eliminate conflicts of law involving the nationality of women who were married or divorced, or whose husbands had changed their nationality.

The need was also felt to have an international instrument that covers the minimum age, free consent and registration of marriage. Women in all most all societies had no say in the choice of their marriage partners or the age at which their marriage took place. Their parents and family members had full power to decide about their future. In November 1962, the General Assembly adopted the Convention leaves up to governments to decide for them on an appropriate minimum age for marriage. The obligatory registration necessary means to ensure that the rights of the wife are officially recognised.

In November 1967, the General Assembly unanimously approved the Declaration on the Elimination of Discrimination against Women. All human rights conventions speak about universal human rights, meaning equal rights of men and women, but they are still not applied equally, thus requiring this particular Declaration. The Declaration considered that “discrimination against women in incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and humanity”.

In December 1979 the General Assembly, adopted the Convention on the Elimination of all forms of Discrimination against women without any dissenting vote and it entered into force in 1981, needs of women. So it is regarded as women's bill of rights.

In December 1974, the General Assembly adopted the Declaration on the Protection of women and Children in Emergency and Armed Conflict. The Declaration expressed deep concern over the sufferings of women and children who are too often the victims of inhuman acts and consequently suffer serious harm. It affirmed that all forms of repression and cruel and inhuman treatment of women and children are criminal acts and that Government should do everything to spare women and children from the ravages of war.

United Nations efforts towards the advancement of women increasing focused on the role of women in development and paid more attention to women in the developing countries while giving technical aids and other assistance by the UN agencies. The United Nations drew the attention of the government on the need of mobilising and integrating women in the development process of their countries. Recognition of women as an important component in the development process has been a significant point of departure from their role being defined as a housekeepers without giving due recognition to their multi-faceted roles.

Till 1980s the violence against women was generally as private matter, not a public human rights issue requiring government or international action. However due to women's movement and NGOs, views regarding this matter began to change and gradually it has been accepted that all forms of violence against women exists in various forms in everyday life in all societies" and the urged Government to adopt legal measure "to prevent violence and assist women victims".

The most important action on this issue is the Declaration on the Elimination of violence against women adopted by the General Assembly in 1993. The Declaration states, "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination". It presents a comprehensive list of measures for combating violence against women, protecting women, and redressing the wrongs caused to them, creating preventive measures of all kinds, improving legislation, training personnel in the appropriate organs and institutions to sensitize them to the needs of women and so on.

The UN Millennium Declaration also states, "We resolve to promote gender equality and empowerment of women as effective ways to combat poverty, hunger, disease and to stimulate development that is truly sustainable". One of the millennium goals is to "promote gender equality and empowerment" and to eliminate gender disparity in primary and secondary education preferably and at all level by 2015.

Thus, in terms of setting standards and norms, the United Nations has been prolific in creating a historic legacy of internationally agreed standards. Declaration and conventions to promote and protect women's rights. During 1950s and 1960s women's issues were seen primarily within the context of human rights and from 1970;s the perspective changed decisively with linkage of women's issues to the bid issues of development and peace.

### **CONCIOUS-RAISING THROUGH INTERNATIONAL CONFERENCES**

Other major steps taken by the United Nations has been in the field of convening a series of world conferences on women to sensitize the issue and to highlight the necessity of collective efforts at various levels to deal with this global problem. It coincides with International Women Year as international Women's Conference was convened at Mexico City in June 1975.

This conference underscored the fact that women everywhere in the world face similar problems which must be solved through international co-operation. The Plan of action adopted at the end of the conference proved to be most enduring legacy. It offered set comprehensive set of guidelines for the advancement of women until mid-



point of the Decade. These included equal access for women to every level of education and training: the enactment of legislation employment opportunities, and improvements in health services sanitation, housing, nutrition and family planning. The Plan declared, "Since there are wide divergences in the situation of women in various societies, cultures and religions, reflected in differing needs and problems, each country status of women was sustained, the Conference urged that the United Nations proclaim recommended that another world conference on women held in 1980. Thus was set in motion the process of attempting to change the plight of women.

In accordance with decision in Mexico conference, a second world conference was organised in Copenhagen in 1980 to review and appraise the extent to which the targets set in the World Plan of Action had been attained during the first half of the UN Decade for Women and to prepare a more Precise Plan of Action for the remaining period of the Decade. The Conference Programme of Action included calls for stronger national measure to ensure women's rights to inheritance, child custody and nationality. It also forms of commissions, offices or post at different levels, including at local administrative level. It further pointed out those special governmental instructions should be issued for achieving equitable representation of women in the different branches of Government and in departments at the national, state and local levels.

### **NAIROBI CONFERENCE AND OTHER WORLD CONFERENCES ON GLOBAL ISSUES**

The third world Conference on women was opened at Nairobi on 15 July 1985 with a mandate to draw conclusions about the experiences and obstacles encountered in the attainment of goals of the UN Decade for Women and to prepare Forward-Looking Strategies (FLS) for the Advancement of women for the period up to the year 2000. It was clear from the survey and review conducted by the United Nations that the goals and objectives of the UN Decade for Women had been achieved only partly during the Decade and a lot remained to be achieved in future yards. So while there was not much only much need to redefine the goals and objectives, it was necessary to develop further the strategies for cover coming the obstacles to the achievement of those goals.

The final document of the Nairobi Conference, FLS for the advancement of women, was adopted unanimously after long and strenuous negotiations among the delegates. This unanimity was a great achievement, and makes implementation of the document a much stronger obligation upon all the government present at the conference, It is also an indication of the success of the Nairobi conference as the earlier world conferences in Mexico City and Copenhagen were not able to reach inanity in their deliberations. This unanimity can be taken as sign of the growing in their deliberations. This unanimity can be taken as sign of the growing common understanding among governments on issues.

The FLS pointed out that the three objectives of the Women's Decade, Equality, Development and Peace, were internally interrelated and mutually reinforcing, so that the advancement of one contributes to the advancement of the others.

### **BEIJING CONFERENCE**

The fourth World Conference on Women at Beijing in 1995 was an epochal event involving the participation of large number of delegates. The Beijing Declaration and Platform for Action, adopted unanimously by 189 countries, consolidated five decades of advancement aimed at securing the equality of women and men in law and in fact. It set new benchmark for the advancement of women and achievement of gender equality. It outlined action for the rights of women in twelve interrelated critical areas. It emphasized the rights of women and need to mainstream a gender perspective in all sectors and at all levels of policy making and planning to achieve gender equality.

Consensus was also reached on the need to recognize women's unremunerated household work and contribution to food production, both of which are undervalued and unrecorded. In areas of education, the platform set time

specific targets. The Platform also drew attention to the plight of girl-child and recommended number of measures to be adopted to improve her situation.

On power-sharing, the Platform recommended actions by governments to ensure Women's equal access to and full participation in power administration entities. Highlighting the fact that the overwhelming majority of the world's millions of refugees are women and children, the Platform urged Governments, intergovernmental bodies and NGOs to provide protection, assistance and training to refugee women.

### **MEASURING ADVANCEMENT OF WOMEN: A COMPARATIVE ANALYSIS**

The study of world economic Forum is an attempt to consolidate these data in a manner that allows us to take a closer and more structured look at relative country strengths and weaknesses.

The year 2005 marks the tenth anniversary of the Beijing World conference on Women, bringing renewed focus and energy to the efforts to empower women. Thus, it is timely for the forum to undertake the study, in order to facilitate the work of aid agencies, governments and policymakers by providing a benchmarking tool to assess the size of the gender gap in 58 countries, ranking these nations according to the level of advancement of their female population and identifying success and failure, based on economic, political, education and health-based criteria.

### **CRITERIA FOR MEASUREMENT**

Five important dimensions of female empowerment and opportunity have been chosen for examination, based mainly on the findings of UNIFEM, concerning global patterns of inequality between men and women. Following is a brief description of each of the five categories and the rationale behind them.

Economic Participation  
Economic Opportunity  
Political empowerment  
Educational attainment  
Health and well-being

### **Overall Rankings of Countries on Women Empowerment**

Country	Overall Score	Overall Rank
Sweden	5.53	1
Norway	5.39	2
Iceland	5.32	3
Denmark	5.27	4
Finland	5.19	5
New Zealand	4.89	6
Cannada	4.87	7
United Kingdom	4.75	8
Germany	4.61	9
Australia	4.61	10
United States	4.40	17
China	4.01	33
Bangladesh	3.74	39
India	3.27	53

Source: World Economic Forum

The preceding table illustrates the overall rankings; the top five places are occupied by Nordic countries, characterized by strongly liberal societies, protection of minority rights and comprehensive welfare systems.

While women in these countries clearly have access to wider spectrum of educational, political and work opportunities and enjoy a higher standard of living than women in other parts of the world.

These are followed by a number of “women-friendly” nations such as New Zealand, Canada, the UK, Germany and Australia.

The United States (17) performs particularly well on educational attainment and only less on economic participation and political empowerment. However, it ranks poorly on the specific dimensions of economic opportunity and health and well-being. United Nations Economic and social council(ECOSOC) indicate that the vast majority of the world’s countries offer paid maternity leave, often a guaranteed wage of 100%NSALARY. Interestingly, the United States offers women 12 weeks, but with no pay. India, stands 53<sup>rd</sup> and performance level in almost all indicators is lowest. While Bangladesh performs relatively well on all fronts than India.

The economic participation of women-their presence in the workforce in quantitative terms is important not only for lowering the disproportionate levels of poverty among women, but also as an important step toward raising household income and encouraging economic development in countries as a whole.

Worldwide, outside of the agricultural sector, in both developed and developing countries, women are still averaging slightly less than 78% of the wages given to men for the same work, a gap which refuses to close in even the most developed countries.

Economic opportunity concerns the quality of women’s economic involvement, beyond their mere presence as workers. This is a particularly serious problem in developed countries, where women may gain employment with relative ease, but where their employment is either concentrated in poorly paid or unskilled job “ghettos”, characterised by the absence of upward mobility and opportunity. This is most commonly the result of negative or obstructive attitudes, and of legal and social systems which use maternity laws and benefits to penalize women economically for childbirth and childcare responsibilities, and discourage or actively prevent-men from sharing family responsibilities.

### **ROLE OF NGO’S**

Compared to other international conferences, the women’s conferences attracted substantial number of women participants, both in the official Government delegations and in Non-Governmental communities. During these conferences, women’s movements and organizations got activated.

### **THE CONSTITUTION OF INDIA**

The constitution of India is one of the most rights based constitutions in the world. Drafted around the same time as Universal Declaration of Human Rights 1948, The Indian Constitution captures the essence of human rights in its Preamble, and the sections on Fundamental Rights and the Directive Principles of the State Policy.

In spite of the fact that most of the human rights found clear expression in the Constitution of India, the independent Indian State carried forward many colonial tendencies and power structures, including those embedded in the elite Indian Civil Service. Though the Indian State under Jawaharlal Nehru took many proactive steps and followed a welfare state model, the police and bureaucracy remained largely colonial in their approach and sought to exert control and power over citizens.

Over a period of 60 years, the articulation and assertion of human rights within civil society has grown into much richer, more diverse and relatively more powerful discourse at multiple levels. A brief historical sketch of the different trajectories of human rights discourse will help us locate human rights in the historical context. The emergence of the women’s movement in the 1970’s gave a new dimension to the rights discourse in India. In 1974, the committee on the Status of Women in India submitted a report that highlighted the marginalization of



women in every sphere of life. The Emergence of a number of women's groups such as Self Employed Women's status, domestic violence, dowry, rape custodial violence, trafficking and the invisible of women in the household.

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