



GENDER JUSTICE & CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST DISABLED WOMEN

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INTRODUCTION:

After the adoption of declaration of Human Rights by UNO all the major continents have conducted several conventions to adopt human rights. African Convention Latin American Convention and European Convention have recognized the Human Rights at the instigation of UNO. Now the turn of women came up. The problems of women and their rights have been discussed at the different platforms. Series of Conventions are held to recognize the rights and eliminate the discrimination which can pave the way for providing equal rights are to maintain Gender Justice. CEDAW was one of such Conventions held at International level which has responded the call given by UNO to concentrate on gender justice and to provide equal rights by eliminating all forms of discrimination.

RESPONSIBILITY OF THE STATES TO PROVIDE EQUAL RIGHTS TO DISABLED WOMEN:

Article 2 of CEDAW sets out the following general obligations. The States condemn discrimination against women in all its forms agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end undertaken:

- a) To embody the principle of men and women in their national constitution or the other appropriate legislations if not yet incorporated there in and ensure through law and other appropriate means, the practical realization of this principle.
- b) To adopt appropriate legislative and other measures including sanctions where appropriate, prohibiting all discrimination against women.
- c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public



institutions the effective protection of women against any act of discrimination.

- d) Refrain from engaging in any act or practice of discrimination against women to ensure that public authorities and institutions shall act in conformity with this obligation.
- e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.
- f) To take all appropriate measures including legislations to modify or abolish adjusting laws, regulations, customs and practices which constitute discrimination against the women.
- g) To repeal all national penal provisions which constitute discrimination against women. Two important features are noticeable about state obligations under CEDAW. The first declared goal of CEDAW is complete equality in practice between men and women. The second goal is that the state is responsible not only for their own acts of discrimination but also for discriminatory acts committed by private actors. Article 2 A to G sets out some of the measures that States are required to take in the pursuit of their policy of eliminating discrimination against women including women with disabilities.

Under Article 2 the State parties are require to incorporate the principle of equality between men and women with disabilities in their national constitution and other legislations and to ensure the practical realization of this principle. A mention of disabled has not been done anywhere in the Indian Constitution except Article 41. But for the upliftment of disabled and to recognize their rights Persons with Disabilities (Equal Opportunity Protection of Rights and full participation) Act, 1995 has been enacted. This Act was followed by some amendments. There are few proposals pending before the Parliament for the recognition of the rights of the disabled and to amend the Act of 1995.

The state should prohibit all discrimination against women including those with disabilities, by adopting legislative and other measures, including sanctions. They should ensure that women including those with disabilities enjoy legal protection of their rights equal to that enjoyed by men and that protection against discrimination is to ensure through competent national tribunals and other public institutions. The States should refrain from any act that discriminates against women including those disabilities and ensure that all public authorities do likewise. They are required to modify or



abolish existing laws, regulations, customs and practices that discriminate against women with disabilities by taking all appropriate measures including legislations. Lastly, they are required to repeal all national penal provisions that constitute discrimination against women including those with disabilities.

The recommendations on effective national machinery and publicity recommends that the States: (1) establish and strengthen effective national machinery, institutions and procedure, at high level of government and adequate resources commitment and authority. (2) To advice on the impact on the women of all government policies. (3) Monitor the situation of women comprehensively (4) help formulate new policies and effectively carryout the strategies and measures to eliminate discrimination. The States are to require establishing effective national machinery to advice on the impact of all government policies on women including those with disabilities. Article 4 of CEDAW allows temporary special measures in favour of women with disabilities. Adoption of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined by the present Convention but shall in no way entail 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.

Measures contained in the present Convention aimed at protecting maternity shall not be considered discriminatory. According to Article 4 sub clause 1 advantages in the form of quota or different forms of priority access in areas such as education or employment that are used to accelerate the achievement of equality between women with disabilities and men do not constitute discrimination. Such measure should be continued however, till equality of opportunity and treatment is achieved in reality. Clause 4 of sub clause is based on the belief that one day equality of opportunity and treatment between men and women will be achieved so that special measures will no longer be necessary. Article 4 (2) which deals with special standards protecting maternity, has no time limit because however much society changes women will still get pregnant and give birth.

In fact women with disabilities face greater difficulties than able bodied women in respect of maternity. The denial of equality of the opportunity and treatment with respect to disability is based on societal prejudice and can be challenged and changed by the temporary special measures. For example women with disabilities who obtain the support they need to break down existing barriers created by prejudices and misunderstandings enter mainstream employment secure a place and play their roles,



future generations of women with disabilities will no longer face the same social barriers and hence no longer need quota nor different forms of priority access to employment. But in the case of maternity there may be forms of disability that will necessitate perpetual special measures in order to achieve equal opportunity and treatment.

It will be recalled that the Committee recommends in general that States should provide information regarding the problems being faced by the women with disability. It thus views the applications of special measures as central to the enjoyment of CEDAW rights by women with disabilities.

The States submit their reports regarding the implementation of women rights to General Secretary of United Nations for his consideration. In their reports the States mention the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of present Convention and on the progress made in this respect. Within one year after the enforcement of the women rights the States have to be informed that for every four years an enquiry has to be conducted and a report about the implementation has to be submitted whenever the Committee of CEDAW Convention requests. These reports may indicate factors and difficulties effecting the degree of fulfillment of obligations under present Convention.

According to Article 18 the state reports should describe the legislative, judicial, administrative and other judicial measures to be taken by them for the protection of rights of women with disabled. The report should also provide an account of progress made and indicate factors and difficulties experienced. The Committee requests the state parties to submit the copies of legal and administrative texts referred to in their reports. If the original text is not submitted the report should be comprehensive enough to be understood without any difficulty. In addition to information on the legal status of women with disability the state report should contain the information on the de facto status of women and their level of enjoyment of each of CEDAW rights.

The state should endeavour to provide data based on sex in all areas covered by the Convention and general recommendations. The state should inform about the progress made in the realization of each right since the enforcement of resolution of CEDAW. The state report should include information of obstacles to the equal participation of women in political, social, economic and cultural life. The report should also indicate any restrictions or limitations imposed by law practice or tradition or in any other manner on the enjoyment of each right under the Convention. It should contain information about NGOs and other women's associations including their participation in the elaboration and implementation of plans and programmes by public



authorities.

The States should further report on any reservations made to the Convention. In a case of substantive reservation they should indicate why they are considered necessary whether the state party has made comparable reservations to rights and obligations in other treaties that are consistent with the reservations to CEDAW what the precise effects of reservations are in terms of national law and policy and whether there are any plans to limit the effects of reservations or to withdraw them including a timetable. If a state party has made general reservations that do not refer to specific Articles of the Convention or if it has made reservations to Articles two and three it should make a particular effort to provide information on the protection of women rights.

The guidelines for second and subsequent reports submitted by the state parties are to contain similar to those in the initial reports and should also cover matters that were not included in the initial reports. The States should submit in its last report preceding to the session regarding the steps to be taken for eliminating discrimination against women. In the context of disability general recommendations number 18 observes that the state party reports contain scanty information on disabled women. Referring to Article 3 (basic human rights and fundamental freedoms) it expresses concern about women with disabilities who suffer from a double discrimination linked to their special living conditions.

All these general recommendations identify priority areas for reporting in respect of women with disabilities (human rights and fundamental freedoms and special measures in education employment, health services and social security). It clearly does not imply that the state parties are thereby relieved from reporting on women with disabilities under the other provisions of the CEDAW Convention.

CONCLUSION:

Thus the convention relied upon the reports submitted by the states regarding the rights of women particularly the disabled. The states are under obligation to send periodical reports about the rights of women and the progress of women to UN. If any state fail to send the report it has to mention the reasons for its failure to send the report. For every four years the conditions of the women across the globe can be reviewed human rights commission and provide certain guidelines to be adopted. This process is going on till now.



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