



## A Study of Sexual Abuse and Gender Discrimination Relating to Women. Under International and National Context

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**ABSTRACT :** Women have equal rights as men so as to enable them to take part effectively in the administration. International human rights law prohibits discrimination against women in their enjoyment of all human rights and fundamental freedoms. While non-discrimination is an essential component to the realisation of women's rights, its comparative approach measures women's equality against men's enjoyment of rights, reinforcing the masculinity of the universal subject of human rights law, whose rights are fully promoted and explicitly protected. To the extent that violations experienced exclusively or primarily by women are expressly recognised in the founding human rights instruments, they are treated as a sub-category of the universal and formulated as 'protective measures rather than as human rights. There have been many efforts to address the resulting marginalisation of women's rights, including the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women and the mainstreaming of women's human rights. While these efforts have been successful in many respects, there are continuing conceptual and practical problems including, not only the limitations of anti-discrimination law, but the danger that specific recognition of women's rights violations may simply reproduce women's secondary status. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. 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.

**Keywords :-** Gender Discrimination, Equality, Sexual Abuse, Women Rights

**Introduction:** The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the 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.<sup>1</sup>

The Charter of the United Nations recognised the principle that human rights and fundamental freedoms should be enjoyed by everyone 'without distinction as to sex'.<sup>2</sup> Since then, international human rights instruments have repeatedly affirmed that women and men must equally enjoy the human rights they enumerate, without discrimination on the ground of sex.<sup>3</sup> The new era of universal human rights promised women, for the first time in international law, the full recognition of their humanity, marking a decisive break with the long- standing legal representation of women as lacking full legal and civil capacity significantly, the promise of equality also extended to the private realm of the family.<sup>4</sup> Women were no longer to be treated as the dependents of men, or as the property of their fathers or husbands. Yet there has been widespread resistance to taking these obligations seriously, as evidenced by the many sweeping reservations to the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>5</sup> some of which clearly defeat its object and purpose.<sup>6</sup> As former UN High Commissioner for Human Rights, Louise Arbour, said in a statement to the Human Rights Council in 2008, women and girls continue to be regarded as lesser beings in many corners of the world', despite the adoption of the Universal Declaration of Human Rights (UDHR) six decades years earlier.<sup>7</sup> Restrictions on women's freedom of movement, discriminatory property and inheritance laws, and practises such as male guardianship continue to put women at the risk of being subjected to abuse, violence and oppression, both inside and outside their homes.<sup>8</sup> In some countries, past hard-won advances towards the recognition of women's rights are now under threat, or have been wound back, in the face of cultural or religious 'fundamentalisms'<sup>7</sup> or in the name of thwarting international terrorism.<sup>9</sup>

The World Health organisation estimates that, every day, 1,500 women and girls die of preventable complications related to pregnancy and child-birth.<sup>10</sup> As an international group of eminent global leaders, recently observed, religious teachings and customary practises "have been misused throughout the centuries to justify and entrench inequality and discrimination against women and girls', denying them 'fair access to education, health, employment, property and influence within their own communities'.<sup>11</sup> Women's inequality is still widely regarded as 'natural' and as prescribed by religious teachings and cultural traditions. This article examines the many efforts to promote women's equality and rights through international human rights law, and discusses some of the ongoing dilemmas about how best to achieve the full inclusion of women. Section 2 describes the treatment of women in international law prior to the adoption of the UN Charter, in order to emphasise the significance of the shift to the promotion of women's equality.

While the UN Charter was the first international treaty to promote women's equality with men, it was not the first time that women were constituted as a category in international law. Before 1945, international law had taken a paternalistic or 'protective' approach to women, treating them as the property,

extension or dependents of men, as primarily mothers and wives, and as incapable of full autonomy and agency.<sup>12</sup> Women were valued for their pre-marriage chastity, their prioritisation of motherhood and domesticity, and their acceptance of the heterosexual family hierarchy and the paternal protection of the state and its laws. The laws of war, for example, required an occupying power to respect family honour and rights, treating women as part of family property and reputation to be protected by the law.<sup>13</sup> Early international labour conventions prohibited women from certain types of work, like night work and mining, on the basis that this interfered with their domestic and reproductive responsibilities.<sup>14</sup> Anti-trafficking conventions made women's consent to working in the sex industry irrelevant, thereby treating all sex workers as victims, needing rescue and rehabilitation.<sup>15</sup> None of these conventions constructed women as rights bearers.<sup>16</sup> Instead, women were granted protections, sometimes in the form of privileged treatment, because of their socially ascribed secondary status.

Following World War II, the shift from protectionism to universal human rights promised to recognise women as fully human, for the first time, by granting them the same human rights as men. The primary means for achieving women's equality, adopted by the drafters of the Universal Declaration of Human Rights (UDHR), was to prohibit discrimination based on sex in the enjoyment of universal rights and freedoms.<sup>17</sup> This approach was chosen instead of recognising rights that were specific to women's experience, fearing the latter would compromise the idea of 'universality and wrongly emphasise women's difference from men rather than their common humanity'.<sup>18</sup>

The obligation to ensure that women enjoy the same rights as men was a very significant step for women. States parties were required to treat women and men alike when they are in a comparable situation. Think, for example, of the importance to women of the universal franchise, the freedom to move and to express their opinions to the same extent as men, of equal pay and education on the same basis as men. In addition, the unprecedented acknowledgment that women and men are entitled to equal rights as to marriage, during marriage and at its dissolution',<sup>19</sup> broke through the tradition in liberal legal thinking that exempted the private sphere from legal scrutiny,<sup>20</sup> although this development was in tension with state's responsibilities to protect the institution of the family and enshrine the right to privacy within families.<sup>21</sup>

These developments left little doubt that the differences between women and men that had previously been treated as immutable and used to justify women's inequality, were to be understood as socially constructed and therefore changeable. International human rights law had the potential to challenge the 'naturalness' of many discriminatory beliefs and practises, and assist in the task of changing oppressive stereotypes about 'women' and, simultaneously, challenging dominating stereotypes about 'men'. While clearly ground-breaking, the preferred method of realising women's full humanity by promoting their equal and non-discriminatory enjoyment of human rights soon proved to have a number of problems, both conceptually and in practise.

However, a comparison with the rights that men enjoy does not help in situations where women's experience is substantially different from men's, as in the case of the right to work. Rights recognised by ICESCR that protect the right to work assume a male model of employment, which makes women's unremunerated work in the family and their poorly remunerated work in the informal sector invisible.<sup>22</sup> This approach also fails to take account of women's often interrupted patterns of paid work, the problem of gender

segregation in the workforce and the need for maternity leave and childcare provision. A further problem with the comparative approach of equality and non-discrimination is that when the Covenants depart from it by explicitly referring to women's different experience, international law's discursive heritage of treating women protectively tends to re-emerge, as in the requirement that state parties ensure special protection" (rather than rights) for mothers for a period before and after childbirth.<sup>23</sup>

The Constitution of India provides equality before law article 14 embodies the general principles of equality before law and equal protection of laws. Prohibition from discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(1) and (2) prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them. Article 15(3) makes it possible for the state to create special provisions for protecting the interests of women and children. Article 15(4) empowers the State to create special arrangements for promoting interests and welfare of socially and educationally backward classes of society. Equality of Opportunity article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 39 requires the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood [Article 39(a)]; and equal pay for equal work for both men and women [Article 39(d)]. Article 39A directs the State to promote justice, on the basis of equal opportunity and to promote free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Article 42 directs the State to make provision for securing justice and humane conditions of work and for maternity relief. Fundamental Duty article 51A (e) enjoins upon every citizen to renounce practices derogatory to the dignity of women. Reservation of seats for Women in Panchayats and Municipalities article 243 D (3) and Article 243 T(3) provide for reservation of not less than one third of total number of seats in Panchayats and Municipalities for women to be allotted by rotation to different Constituencies. Article 243 D(4) T(4) provides that not less than one third of the total number of officers of chairperson in the Panchayat and Municipalities at each level to be reserved for women. Voting rights/Electoral law. Not less than one-third seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat. The office of the chairperson in the Panchayat at the village or any other level shall be reserved for SCs, STs and women in such manner as the legislature of state may, by law provide. Reservation of seats for women in Municipalities is provided to uphold the Constitutional mandate, the 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<sup>24</sup>. Although women may be victims of the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. New Criminal Law's Bhartiya Nayay Sanhita 2023, Bhartiya Nagarik Suraksha Sanhita 2023 and Bhartiya Sakshya Adhiniyam 2023 provides complete security to women against crime<sup>25</sup>.

The Supreme Court unanimously struck down Section 497 IPC, which penalises adultery. The Court said that any provision of law affecting individual dignity and equality of women invites wrath of constitution. "It's time to say that husband is not the master of wife. Legal sovereignty of one sex over other sex is wrong," the Court said.<sup>26</sup> The Supreme Court held that sexual harassment of women at workplace violated the fundamental rights of working women under Articles 14, 15, and 21 of the Constitution. The

Court invoked international conventions and norms, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to emphasize the need for legal safeguards against workplace harassment. These guidelines led to the formulation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH Act), 2013.<sup>27</sup> In this case, the Supreme Court directed that Permanent Commission should be granted to women in Army regardless of their service, in all ten streams where the Central government have already taken a decision to grant Short Service Commission to women.<sup>28</sup>

**Conclusion:** - In society, women play an important role from birth to death. Women share their love and affection with men and bear the burdens of men in their family, but she has no proper recognition and protection in family and society. Women all around the world have faced similar nature of problems during different periods like low status in society, no right to education and property, child marriage, physical, psychological and emotional abuse, poor conditions of widows, and no proper representation in the social, economic and political sphere in the society, also the women in her different stages of life control by men. The last two centuries witnessed mass movements and protection by women all over the world for their rights. The movements for adult suffrage and the fight for the right to education, property, and employment by women in western brought major changes in the world, it led to an increase in women's participation in every aspect of society. In our country, the movement for the betterment of women's condition in society was started by men social reformers in the 19th century. After that, women themselves began forming organizations at local and national levels also. Later women fight against gender discrimination and demanded equality. While there is still a long way to go before the present-day realities of human rights abuses suffered by women become fully legally cognisable, we also need new thinking about legal representations that will challenge the gender stereotypes that underpin gendered human rights abuses.

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