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ROLE OF CONVENTION: BALANCING WOMEN'S RIGHTS WITH SOCIAL JUSTICE AUTHOR DETAILS

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ABSTRACT:

International Conventions are very crucial as they help in integrating women's rights with broader canvas of justice. The legal framework for ensuring women's rights while maintaining social justice is multifaceted and constantly changing by incorporating treaties, conventions, and international regulations. The United Nations (UN) has significantly impacted the legal framework regarding women's rights, particularly through the Co nvention on Elimination of All Forms of Discrimination Against Women (CEDAW). This declaration requires State Parties to ensure fair education, employment, and healthcare access , eliminate gender-based violence, and combat gender stereotypes. The UN has also implemented other treaties and declarations to protect women's rights, including the Declaration on the Elimination of Violence Against Women, the Beijing Declaration and Action Platform, and the Sustainable Development Goals (SDGs). Although the legal framework for protecting women's rights has improved globally in recent decades, women still face discrimination and violence in many parts of the world. Regional human rights frameworks, such as the Istanbul Convention of the Council of Europe, also safeguard women's rights. To protect women's human rights, raising awareness and providing legal aid is essential. However, the Protection of Human Rights Act, 1993 must be more effective in preventing human rights violations as it lacks authority and power. Despite being in the 21st century, sexual harassment remains prevalent. The government's inaction in addressing these issues has resulted in human rights violations. The researcher by virtue of this study examines the role of the various International Agreements in balancing women's rights with the issue of social justice. The researcher tries to contribute to the ongoing discussion of maintaining a balance between the empowerment of women and social justice. The research emphasizes raising awareness and acting against wrongful acts, protecting women's rights, preventing rape, and ensuring food rights. It is essential to understand these issues to gain a better understanding of women's lives. Keywords: United Nations, Social Justice, Sustainable Goals, Protection, Violence.

INTRODUCTION

This is an era where there is a quest for equality and justice. The laws and agreements that balance women's rights with social justice are intricate and constantly changing. International agreements such as treaties and conventions provide a framework for recognizing and protecting women's rights and are vital for pre serving them. The most comprehensive international treaty on women's rights is CEDAW. It defines discrimination against women and outlines the measures states must take to eradicate it. The CEDAW requires participating nations to act towards promoting fair access to education, employment, and healthcare and to put an end to gender -based violence. Additionally, it encourages these nations to eliminate gender stereotypes and improve women's involvement in public and political affairs.1 The United Nations has implemented numerous treaties and declarations to safeguard women's rights, including the Elimination of Violence Against Women Declaratio n, the Beijing Declaration2 and Action Platform, and the Sustainable Development Goals (SDGs), in addition to CEDAW. Regional human rights frameworks have greatly supported the protection of women's rights. The Istanbul Convention of the Council of Europe aims to prevent and address violence against women within their respective countries. However, despite the existing legal measures, women still face discrimination and violence in various region s. It is crucial to continue working towards proper legislation implementation and preserving women's rights. 1 CEDAW. 18 December 1249 U.N.T.S. 13. 2 United Nations. Beijing Declaration and Platform for Action. Fourth World Conference on Women, Beijing, China, 4-15 September. Retrieved from http://www.un.org/womenwatch/daw/beijing/platform/ (last seen on 12-03-2023)

STATEMENT OF RESEARCH PROBLEM

The legal system that protects women's rights under international and national laws is intricate and involves various aspects that need addressing. Despite efforts to improve the situation, women still face discrimination, violence, and inequality, which renders the legal instruments ineffective. Identifying and overcoming the barriers that hinder progress to address emerging issues and protect women's rights more efficiently is crucial . It requires a comprehensive analysis of existing legal instruments and examining political, social, and cultural factors contributing to discrimination and violence against women.

SIGNIFICANCE OF THE STUDY

The study aims to recognize the barriers and difficulties involved in implementing a legal structure that balances women's rights with social justice. It also intends to provide suggestions for improving the framework, promoting gender equality, informing policy and legal changes, encouraging collaboration among governments, international organizations, and civil society groups, and creating awareness among policymakers, scholars, and the public about the significance.

Historical Perspective on Women's Rights Protection

An individual's spiritual, physical, and moral well -being growth depends on human rights. These rights are universal and have been in existence since society began. 3 The Magna Carta was the first document to address human rights, and it protected various individual rights such as property ownership, ownership without burdens, and legal property takeaway. 4 The Bill of Rights, which Parliament passed, declared that all men are free and independent, and the state cannot deny certain inherent rights. The Declaration of Human Rights aimed to advance man's natural and unalienable rights, ensuring freedom of religion, expression, and the presumption 3 R J. Vincent, Human Rights and International Relations, Cambridge University Press. 4 Moses Moskowitz, Human Rights and World Order, Oceana publications, New York (I9511), p.88. of innocence.5 In the 19th and 20th centuries, it became the exclusive responsibility of each state to respect its inhabitants' rights. The abolition of slavery and establishment of the Geneva Conventions of 1899 and 1907 were pivotal in protecting human rights and preserving social stability.6 The League of Nations7 was formed to maintain peace and security, while the International Labour Organization 8 was founded to advance social justice and uphold human rights. In 1948, the United Nations became the first international agreement to promote and safeguard human rights and basic freedoms, impartial to one's race, religion, or language. The Charter acknowledges the importance of human rights in promoting global peace and security and shows respect towards them. The International Bill of Rights consists of two agreements: the International Covenant on Civil and Political Rights (ICESCR) an d the Optional Protocol to the International Covenant on Civil and Political Rights (OPCHR). The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the European Convention on Human Rights (ECHR) are the initial international human rights agreements with an effective implementation framework. The awareness of human rights came to light during the 18th, 19th, and 20th centuries, with the recognition of necessities and the idea of natural law. The United Nations plays a crucial role in identifying human rights, particularly women's protection.

NATURE AND HUMAN RIGHTS AND INDIAN WOMEN

Women must participate for the betterment of the nation, community, and clan. International conferences have p ressured member states to act and implement measures to ensure their involvement. In India, the 73rd and 74th constitutional amendments enable women to participate in governance and decision-making. The 73rd Amendment Act added Part IX to the 5 Alfredsson, G. S., & Eide, A. (Eds.). (1999). The Universal Declaration of Human Rights: a common standard of achievement. Martinus Neuhoff Publishers. 6 Roosevelt, T. Hague Conventions of 1899 and 1907. 7 Goodrich, L. M. (1947). From league of nations to United Nations. International Organization, 1(1), 3-21. 8 Standing, G. (2010). The international labour organization. New Political Economy, 15(2), 307-318. Constitution and Part IX A to reserve one-third of seats for women from Scheduled Castes and Tribes in the Panchayat. To ensure female representation in local governance, the 74th Amendment mandates that women hold at least one -third of panchayat chairperson positions. The Amendment also reserves seats for scheduled castes and tribes, with at least one -third reserved for scheduled caste women. The municipality chairperson position must be reserved for scheduled castes, tribes, and women. The reservation and special representa tion will continue for 60 years post the Constitution’s enactment. Seats reserved for women are not affected by Article 334. According to the Consumer Protection Act, all three redressal agencies must have at least one female member.9 Additionally, when appointing family court judges, preference should be given to women, with 20 being the recommended number. So, there are various laws which

undoubtedly tries to drive positive change but there are some shortcomings which require changes like policy reforms, societal shifts etc.

THE INDIAN CONSTITUTION AND PROTECTION OF WOMEN'S RIGHTS

The UN Charter and other human rights treaties were created in response to humanity's wish for world peace, disarmament, and safeguarding them. British government when refused the request, it sparked the Indian people's movement for their rights. As a result, equal opportunities in public services were guaranteed regardless of race or religion.10 The Indian National Congress adopted resolutions reiterating their demand for civil rights and equality in status with the English. 11 It impacted the integration of fundamental rights 12 that led to the Commonwealth of India Bill,13 which includes a declaration of rights identical to the corresponding parts of the Irish Constitution.14 9 Nayak, R. K. (1987).

Consumer Protection Act, 1986: Law and Policy in India. Journal of Consumer Policy, 10(4), 417-423. 10 The Government of India Act, 1935. 11 Granville Austin, The Indian Constitution; Cornerstone of a Nation, Clarendon Press, Oxford. London (), p.S3. 12 The Irish Free State Constitution, 1921. 13 The Commonwealth of India Bill of 1925. 14 Dr. B.R. Sharma, Socio Economic Justice Under Indian Constitution, Deep and Deep Publications, New Delhi, p,36. In 1927, the British government tasked the Simon Commission with creating a constitution that included a declaration of rights for "swaraj." Sri Motilal Nehru led a committee to assist in incorporating fundamental rights into the Constitution .15 The Committee demanded to restore all the rights denied to Indians and emphasized the significance of equality between genders regarding rights and religious freedom.

The report by the Nehru Committee gave importance to personal liberty, freedom of religion, expression, assembly, education, and equality of rights for both men and women. However, the Simon Commission did not accept the proposal made by the Nehru Committee to prevent the government from revoking constitutional rights. According to the Government Parliamentary Committee, adding a declaration of rights to the Constitution would be the best approach to promote human rights. The Government of India Act prohibits discrimination based on factors such as sex, religion, place of birth, and skin colour, while also safeguarding individual rights and privileges.

The Sapru Committee Report highlighted the importance of equality in civic and political spheres, religious freedom, and the right to worship.16 The idea was to form a Constitutional Assembly to create the Indian Constitution and recognize the importance of safeguarding fundamental rights. The Advisory Committee presented its findings on fundamental rights and minority protection to the Constitutio nal Assembly. Additional subcommittees were formed to explore fundamental rights and propose effective ways of resolving grievances. The Draft Committee included the Directive Principles of State Policy in Part IV and the fundamental rights in Part III of the Indian Constitution.

This incorporation of human rights is extensive and is likely due to discussions and deliberations surrounding the Universal Declaration of Human Rights. It was a significant milestone in recognizing, protecting, and promoting human rights for all individuals. According to the UDHR and the Indian Constitution, every person has the fundamental right to life, personal liberty, and security. Article 3 explicitly affirms this right to life and further 15 B.K. Gokhale, Constitution of India and its Working, A.R. Sheth & Co. Bombay, p.13. 16 Sapru, T. B. (1945). Constitutional proposals of the Sapru Committee. declares that no one should be deprived of their life or liberty except through a legally established procedure.17 It was construed to encompass all the implications of Article 25 of the UDHR.18 In the famous case Supreme Court ruled that the right to life encompasses the right to a means of subsistence. The Court ruled that the defendant was not guilty of a crime. 19 Individuals are deprived of the means to live a decent life. The Supreme Court has acknowledged this as a fundamental right because it is critical to the survival of life. Denying this right would make life impossible and could not be justified even if legal procedures were followed. The Supreme Court has acknowledged the importance of this privilege as a fundamental right.

The ability to sustain oneself is essential for living a respectable life .20 The right to privilege has been deemed a fundamental right by the Supreme Court. To uphold these rights, the Court may issue directives, orders, and writs, which cannot be suspended unless specified by the Constitution. Victims who have been wrongfully arrested or detained are entitled to compensation. Although Section 357 of the Criminal Code allows the Court to imprison offenders, the state is not required to provide compensation. In one case, the Hon'ble Supreme Court was tasked with determining whether it had the authority to compensate for violating fundamental rights. The victim was granted monetary compensation by the Court for the violation of the fundamental rights, even though civil law also provided some rights.

A Legislative Assembly member was denied entry, which violated the right to attend. The Court determined that the defendant was not guilty of any crime. Police personnel must uphold citizens' rights and not violate them by abducting them. 17 Article 21 of the Indian Constitution of India. 18 Article 21 of the Indian Constitution of India. 19 Olga Tellis et al. v. Bombay Municipal Corporation, A.I.R. S.C. 180. 20 Article 12 of the Universal Declaration of Human Rights.

The Court has determined that an individual's privacy rights were infringed upon. In cases where nefarious or malicious detention or imprisonment has occurred and cannot be reversed, we may offer financial compensation to victims. In a case of police brutality resulting in death, the Court compensated the deceased's mother. The Court analyzed deaths in custody and its ability to award compensation under public law.

The Court and High Courts have the authority to provide relief to victims or their heirs whose fundamental rights have been violated . The Apex Court has awarded compensation for violating the fundamental rights of an under -trial prisoner, and the High Court of Jammu and Kashmir has ordered the State Government to compensate petitioners from the Sikh community for losses suffered during communal riots. It is the responsibility of the state to maintain law and order. The Supreme Court upheld the Calcutta High Court's decision to award Rs 10 lakh in compensation for gang rape. The Supreme Court has also ruled that even non - citizens can seek remedies for fundamental rights violations based on domestic and international human rights laws. Vishakha v. State of Rajasthan case emphasized the importance of international human rights documents in interpreting constitutional provisions, stating that any international convention that does not conflict with fundamental rights should be incorporated into these provisions.21 The Supreme Court has set out guidelines for safeguarding gender equality and preventing sexual harassment in the workplace. These criteria are designed to protect fundamental human rights and will be legally binding until appropriate laws are enacted.

As a directive from the highest Court in the land, these guidelines have the force of legislation and must be followed by all.22 The UDHR states everyone has the right to social security. According to Article 2 of the Covenant, state parties should use their available resources to implement its provisions, which may not happen quickly. International cooperation is also needed to ensure that these rights are fully implemented. As outlined in the Covenant and Article IV of the Constitution, these rights are crucial for the country's governance and should be considered when drafting legislation. 21 Article 73 of the Constitution of India. 22 Article 32 of the Constitution of India. The Constitution ensures that everyone has access to sufficient means of subsistence. The state is responsible for distributing ownership and resources for the benefit of society. Additionally, the state must ensure that individuals are not forced to work in unsuitable occupations due to economic necessity.

It is also important to protect children from both moral and material neglect so they can grow up with healthy personalities. Basic rights safeguard individual liberty , while the state must provide socio -economic conditions that ensure human liberty and dignity through the Directive Principles. The Supreme Court is now enforcing directive principles through fundamental rights. Article 26 of the UDHR recognizes the right to education and places a responsibility on State Parties to ensure its implementation. It mandates that the State must provide free and compulsory education to children.23 In the case of Unnikrishnan J.P. and others v. State of Andhra Pradesh,24 According to a ruling by the Hon’ble Supreme Court, children up to the age of fourteen must receive free elementary education. This case highlights the connection between the rights outlined in Sections III and IV of the Constitution. The Parliament holds exclusive power to create and enforce laws, even if they relate to topics reserved for stat e legislatures. The President can exercise this power until the legislature passes such a law. The Supreme Court has determined that for a treaty to be implemented, it must be enacted by Parliament only if it limits the rights of citizens or impacts state laws. If the agreement or treaty does not harm the rights of citizens or other parties who can seek justice, no legislative action is necessary for its implementation. The Supreme Court disregarded the Covenant on Civil and Political Rights in the case of Jolly George Varghese et al. Bank Cochin. 25 It is unjust to imprison someone for not fulfilling a contractual obligation. The Covenant explicitly forbids imprisonment for non -payment of court-ordered debt, now that we are signatory to this agreement. The Covenant must be adhered to until the domestic laws are amended to reflect it. The Court also relied on it.26 It concluded 23 Article 45 of the Indian Constitution of India. 24 A.I.R S.C.C. 645 25 A.I.R. S.C. 470. 26 Article 21 of the Constitution of India. that it enshrines27 the value of human dignity and the worth of the human person and obligates the State not to incarcerate without procedural fair laws.28 The Constitution will be modified to include extensive legislation for treaty -making and implementation. A team comprising members with in-depth knowledge of international law will be constituted by the Ministry of External Affairs, the Indian Society of International Law, and universities specializing in international law. This team will provide valuable insights into the government's stance on signing, ratifying, and reserving each treaty, agreement, covenant, or convention. The National Commission for Women (Commission) is responsible for upholding and promoting women's human rights and examining the circumstances of female prisoners in correctional facilities.29 According to the Vienna Declaration and Programme of Action, each state must establish a reliable system for addressing human rights violations and complaints. In compliance with this legislation, the Commission can gather information and suggest measures to improve India's human rights record. They were drafted to protect and develop human rights.30 The Indian Judiciary has incorporated international human rights documents into domestic law,

creating several laws related to human rights jurisprudence .31 The idea of humans safeguarding and advancing human rights law introduced a fresh era of judicial outlook.

THE UDHR AND UN CHARTER'S RELEVANCE IN THE INDIAN CONSTITUTION

The UDHR has played a significant role in developing legal frameworks to safeguard women's rights under international law. The UDHR outlines basic rights and freedoms innate to all individuals, irrespective of gender, race, or social standing. The Indian Constitution has incorporated many fundamental rights and freedoms provided in UDHR. It is significant because the Constitution of India ensures the right to equality, freedom from discrimination, and the right to life, liberty, and security, among other essential rights. The Indian Constitution also has provisions specifically focused on sa feguarding women's 27 Ibid. 28 id. at p.475 29 The National Commission for Women Act, 1990. 30 The Universal Declaration of Human Rights, 1961. 31 The Protection of Human Rights Act, 1993. rights, such as Article 14 , which ensures the right to equality before the law and equal protection of the laws. Additionally, Article 15 prohibits discrimination based on gender. The Indian government has ratified several international instruments to safeguard women's rights. These include the CEDAW and the Beijing Declaration and Platform for Action. These instruments prioritize the promotion of gender equality and women's empowerment. They also provide a framework to tackle pressing issues such as violence against women. UDHR and the Indian Constitution share a common goal of safeguarding fundamental rights and freedoms for everyone, regardless of gender, race, or social status. The UDHR has played a critical role in shaping the legal framework for protecting women's right s in international law, and its principles are reflected in the Indian Constitution. The United Nations Charter, adopted in the past, serves as a fundamental document of the United Nations. Its purpose is to establish basic principles and objectives for the organization and provide a framework for the international legal system. Both the UN Charter and the Indian Constitution value the safeguarding of fundamental human rights and freedoms, regardless of gender, race, or social status. The Indian Constitution has multiple pro visions to protect women's rights, which align with the principles of the UN Charter. Indian government has taken steps to uphold women's rights by ratifying multiple international agreements, such as the CEDAW. This agreement, grounded in the principles of the UN Charter, requires state parties to eliminate discrimination against women and promote gender equality. The UN Charter being the constitutive instrument and the Indian Constitution share the common goal of safeguarding fundamental human rights and freedoms, including women's rights. Though the UN Charter does not directly focus on protecting women's rights, its ideals have influenced the development of international laws that do, and its emphasis on promoting human rights and basic freedoms can be seen in the Indian Constitution.

RESPONSIBILITY OF THE JUDICIARY FOR WOMEN'S RIGHTS

The judiciary under Article 21 of the Constitution guarantees the right to life, equality, human dignity, and progress for all. Women also have the right to eliminate gender -based obstacles and discrimination.32 The Court ruled that dismissal for a first pregnancy violated Article 14 of the Air India Employees Service Regulations. The judge stated: "The dismissal of an air hostess insults Indian femininity and is anathema to civilized society. It is illogical, arbitrary, and authoritarian and violates Article 14 of the Constitution. It is anathema to Indian femininity and selfishness at the expense of all human values. "33 The Madhya Pradesh High Court rejected a request for reimbursement of transportation expenses for a Dangi girl who was brought to serve as a mistress, as it violated Article 23 of the Constitution, which prohibits human trafficking. The Court dismissed the petition since the sale of women is considered a form of human trafficking.34 Saheli filed a writ petition against the government. 35 The Supreme Court made a ruling regarding the paternity test of a 9-year-old child. The Court set down guidelines for conducting paternity tests using blood samples. The husband, who was seeking to avoid paying support to his wife and child, had requested a blood test to confirm paternity. However, the Court stated that courts in India could not routinely order such tests.36

JUDICIAL ACTIVISM AND HUMAN RIGHTS

The legal framework for safeguarding women's rights in international law is intricate and diverse. It is crucial to comprehend the basic rights that women are entitled to under different human rights agreements. CEDAW, the most extensive treaty on women's rights, has been approved by almost all nations and mandates states to eradicate discrimination against women in all aspects of life. Other global agreements focus on women's rights in specific circumstances. However, putting these laws into action can be tough, given varying cultural norms, limited resources, and weak legal systems. India's Constitution is a social instrument that incorporates articles from UDHR in its design of people's rights. 32 Madhu Kishwar v. State of Bihar, A.I.R. S.C. 1864. 33 AirIndia v, Nergesh Meerza, AIR., S.C.1829 at p. 1850. 34 Nihal Singh v, Ramhai, A.I.R M.P . 126. 35 SAHELL, a woman resource centre v, Commissioner of Police, Delhi., A.I.R. 199., S.C. 513. 36 Goutam Kundu v. State of West Bengal, A.I.R. S.C. 2295.

The provisions of the Constitution strive to enhance the lives of its citizens and maintain their dignity. In addressing the administration of justice, it is crucial to understand the judiciary's role. The Supreme Court of India has issued several innovative, intentional, liberal, and dynamic interpretations of the Constitution, expanding various provisions. The term "judicial activism" refers to the judiciary's ability to examine the actions of the Executive Branch in matters that pertain to the public interest. In the past, the Hon'ble Supreme Court of India has been the only court to exercise judicial review authority over Constitutional changes.

JUDICIAL ACTIVISM AND GROWTH OF DEMOCRACY

International law is influenced by crucial factors such as judicial activism and the growth of democracy. Judicial activism is vital in promoting social justice and human rights by expanding women's rights and challenging discriminatory laws through court decisions. Meanwhile, the growth of democracy enhances participation, representation, and protection of human rights, including women's rights. However, both factors encounter opposition from individuals who oppose expanded interpretations or seek to limit democratic institutions. Taking an intersectional approach to women's rights means acknowledging that various factors , such as race, ethnicity, religion, and socio - economic status , can affect how women experience discrimination and marginalization. By acknowledging the intersectional nature of discrimination, and the need for more extensive legal frameworks and democratic institutions, we can work towards creating more equitable and fair societies for all women. The Court's responsibilities include assessing the constitutionality of laws, safeguarding fundamental rights, and acting as the protector of the social revolution.

CONCLUSION

Throughout history, human rights have been acknowledged, but only after World War II did the significance of preserving them became evident. The global community has acted in several conflicts with human rights implications. It includes the formation of organizations, as well as declarations and treaties, to safeguard human rights. International instruments prohibit discrimination based on gender and mandate Member States to implement measures to protect women and eliminate discrimination against them. Domestic violence against women remains a problem due to the reluctance of police to intervene in family disputes. Societies can proactively play an important role in addressing the obstacles faced by women and create an environment which is conducive for equitable participation. It is important to add penalties to the Indian Penal Code for men who abandon, neglect, or do not give proper medical care to pregnant women. The government should lead an effort to stop violence against women, hold officials responsible, and make sexual abuse in detention centres a crime. It must be strengthened to prevent human rights violations more effectively, as it lacks adequate authority and power. According to a researcher, harassment continues to be a prevalent issue in the 21st century. The government's delay in addressing these matters has resulted in human rights violations. This text emphasizes the importance of raising awareness, acting against wrongful acts, and giving women the right to consent or refuse paternity tests. The researcher believes that a change in attitude towards women is necessary, as men tend to have preconceived notions about what women deserve. The legal framework for protecting women's rights internationally and nationally is complex and needs to be constantly evolving, and understanding these issues is crucial for gaining a better understanding of women's lives.

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