

Report of the State – Level Consultation on

CEDAW THE RESERVATIONS AND OPTIONAL PROTOCOL

(CEDAW - Convention on the Elimination of all forms of Discrimination Against Women)

Held on

20th - 21st January, 2006

at

Academy of Fine Arts, Kolkata.

Organized by

NAWO, West Bengal

C/O, ISW

29 B, Chetla Central Road, Kolkata -700 027

Funding Organisation :

National Commission For Women,
New Delhi.

Introduction:

Background : Convention on the Elimination of all forms of Discrimination against Women (CEDAW), is the most comprehensive treaty of Women's Human Rights. It is the principle international document to address the rights of women to be free from discrimination. The Preamble to this Convention recognises that discrimination against women violets the principle of equality of rights and respect for human dignity. Such discrimination affects equal participation of women in the political, social and economic lives in their respective countries.

The CEDAW convention not only prohibits overtly discriminatory actions by States but also requires them to take affirmative steps to eradicate discriminatory treatment of women by both state and private sectors in all social, cultural and political areas of life.

India ratified the CEDAW convention on 9th July 1993, with two declaratory statements and a reservation. The text of the declaration and reservation are as follows:

Declaration -1.

With regards to Article 5(a) and 16(1) of the convention, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

Declaration – 2

With regard to Article 16(2) of the Convention, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriage, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.

Reservation:

With regard to Article 29 of the Convention, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this Article.

The **Optional Protocol**, a separate treaty open to ratifications by States who are already party to the CEDAW Convention, was adopted by the UN General Assembly on 15th October 1999 and entered into force in December 2000. OP-CEDAW creates access to justice for women at the international level, if justice is denied at the national level. **India has not ratified OP-CEDAW till date.**

B) Objectives :

Objectives of the state level consultation are:-

- To create awareness and clear understanding of the principles of CEDAW and OP-CEDAW amongst the key actors working in the field of women's rights,

empowerment and development, both in the government and non-governmental sector.

- To create awareness of human rights standards prohibiting discrimination against women
- To analyse the declaration and reservation made by the Govt. of India in terms of Constitutional provisions, the International Human Rights Treaty and
- Build up public opinion to lobby the Government of India to withdraw the declaration and ratify OP-CEDAW.

Out put Expected :

- The participants will be well versed with the principles of CEDAW and OP-CEDAW
- The participants will have a clear understanding of human rights standards prohibiting discrimination against women.
- The participants will hold similar consultation at their work place/community/area with similar objectives as stated above.
- Strengthen NAWO network to lobby the Government of India to withdraw the declaration and ratify OP-CEDAW.

Methodology :

- Discourse and presentation by the resource persons using OHP & LCD.
- Interactive session with the participants.

Proceedings :

Day 1, (20th January 2006)

Introductory session : Koely Roy, focal point, NAWO, West Bengal and member executive committee NAWO(India) introduced Ruth Monorama, President, NAWO, and other guests, resource persons and facilitated the starting of the consultation. In her welcome address, Ms. Roy outlined the activities of NAWO with particular reference to preparation of the alternate CEDAW report; NAWO's role in lobbying the Government and campaign on various issues, particularly those related to CEDAW and OP-CEDAW. She then stated the purpose and objective of the Consultation and schedule of the programme.

The participants introduced themselves with information on their work and outlining their expectation from the consultation.

1st Session :

Speaker : Ruth Monorama, President, NAWO.

Introducing NAWO, she explained vividly on the followings,

- What & why CEDAW.
- Key features and framework of CEDAW.

Her sharing enriched the participants to understand more deeply about CEDAW, which is to be recognised as a core human rights treaty. She discussed the definition of discrimination which is well defined in the Convention taking into account any and all form of discrimination in the private or public sphere be it in the political, social, cultural, economic civil or any other field in the women's lives. Main stress was laid on the concept of 'De-jure' and 'De-facto'. CEDAW aims to remove the imbalance of gender in society. She also highlighted the domestic violence bill as the direct outcome of CEDAW intervention. To her opinion, the main sources of discrimination of women relate to the customary practices and referred to the issue of 'reservation' in this context. She highlighted the necessity of the

Union Govt. and the State Govt. to undertake proper and justified initiatives in this regards so as to remove ill practices within the families, communities and in the society and hoped for stronger intervention by the National Commission for Women and play a bigger role to translate all the principle of CEDAW.

2nd Session :

Speaker : Koely Roy, Focal point, NAWO, W.B. & Asmita Basu Advocate - Lawyers Collective

She interacted with the participants raising some points to view and review the entire women issues from different dimensions to give proper insight into the issue of discrimination. She invited reaction and responses on instances of discrimination and elaborated the complete process of substantive equality. She overviewed the principle of CEDAW to enhance substantive equality, where determining factors are not only formal, legal equality but also equality of results in the real terms, which includes equality of opportunity, equality of access and results. She reminded that CEDAW acknowledges that discrimination is socially construed influencing laws, policies and practices and therefore effect discriminatory results which may be unintentional. Women have been discriminated against historically and do not necessarily come into a situation on equal basis with men. She pointed out to the historical advantage of substantive equality and the scope and opportunity through the govt.'s initiatives to create such equality. She also differentiated 'De-jure' and 'De-facto' and its role in the CEDAW process. The articles 1 to 16 were presented and discussed by her for equipping the participants with the principles of CEDAW – the reservations and declaration.

Ashmita Basu of Lawyers Collective supplemented the process of substantive equality with vivid examples from the life situations and the participants also contributed their experiences.

3rd Session :

Speaker : Indrani Sinha, Director, Sanlap, Member Core committee, NAWO, W. B.

Indrani Sinha with her intensive experiences referred to Article (6) and stated that 'trafficking' which is becoming so complex and deep rooted and so wider that Article (6) may not cover the whole aspect and its perspectives. She explained Article(6), where it reveals that state parties shall take appropriate measures including legislation to combat all forms trafficking in women and children and exploitation in terms of prostitution of women. Detailed analysis was made by her on Article (6) and Sanlaap's initiatives in countering trafficking for the most vulnerable – namely women and children. She elaborated certain

experiences and problems while working in the field. To her the reality becomes so crude that becomes difficult to keep track of the whole situation.. She applauded some NGO's intervention on 'trafficking', who are trying very hard to face the situation with many risks. It is evident that NGO's are trying to reduce the intensity of the problem but parallelly on the other hand the pimps are carrying out this profession in such an organised manner in front of the administrative levels that it is very difficult to combat the situation.

She also pointed out the fact that some of the survivors are willing to return home but because of the social stigma attached to it, they remain unchanged. She considers that last but not the least, the community participation and community awareness on trafficking and the whole process will have to be taken care with more concerted efforts with community participation.. She referred to the Swadhar Scheme initiated by the Govt. sector in order to give shelter to the rescued survivor from the red light areas and other attempts to address this problem.

A co-ordinate effort is needed to keep control to this rising trended of trafficking among the NGO's, the law Enforcement Agencies and the Govt. she concluded with an expectation of this co-ordinated effort to take place and to address the issue with more intensive care and protection.

Day 2 (21st January, 2006)

Speaker : Indira Jaisingh – Advocate – Lawyers Collective

The discussion started with focusing upon the following points :

- What is CEDAW
- The differentiation between a Declaration and a Reservation
- Detailed discussion between reservation and declaration

She stressed upon the following issues:

The basis of Right to Equality and Right to Discrimination

Principles of substantive equality

Respect Protect and fulfill women's rights both in the public & private sphere.

Domestic violence in the private sphere

CEDAW to use the Domestic Violence Bill.

She underlined and gave stress upon all the articles:

Article 2(f)

Our rights are violated, and we are told that ,we are culturally different and this difference is located in the institution of the family .

Secondly the State should take responsibility to protect all types of cultural practices.

Core Commitment Art(2)

No one can make reservations to a core commitment of a treaty.

Art (5a)

India's declaration non interference in the personal affair of any committee.

Declaration (2)

Compulsory Registration

In a country as illiterate as India, in order to protect the rights of women the women marriage is incomplete.

Reservation Art 29: Is not linked with Core Committee. All cases to arbitration and the International Court of Justice, India has put reservation .

: 5 :

India has good legal system, India has known to give justice, but she stressed upon the fact that she wants a genuine community to emerge.

Apart from the content discussed above in brief the major part of the discussion session concentrated on the reservation of optional protocol. Ms.Jaising helped the participants to find out the basis of reservation and its execution. It was reflected from the speakers presentation that when a country adopts reservation then the said/specific country has to consider its implementation depending on some evident and emerging conditions as also very much on the customs, community practices, the rituals and overall traditional trend of a nation.

It may be granted when a country has to sign a treaty then the country is well aware about the discriminative scenario projected out of this traditional and cultural value system prevalent in the country.

Illustrations were made on definition, feature and special rules and regulations concerning optional protocol. The speaker along with Ashmita Basu added that though elimination of discrimination of women is state obligation but CEDAW can intervene directly to deal with the matter if the situation so demands.

Indira Jaising also concluded that inadequate allocation of resources is a blockage to Women's Development

The session concluded with the participants sharing and discussing of the two day discourse and recommended that -

- Effort be made for wider participation in preparation of the Alternative report.
- Highlight situation of discrimination where intervention from state authority is essential.
- Create wider awareness for lobbying the Government for ratifying OP-CEDAW and withdrawal of the Declarations

Concluding session :

Guest of Honour: Dr. Jashodhara Bagchi, Chair person, State Commission for Women, W.B. responding to optional protocol of CEDAW regarded this as a strategy to march on for the long struggling and untiring efforts for the women movements. She extended her thanks to NAWO members and representatives and their efforts for lobbying with the govt. at the end

Special Guest Smt. Malini Bhattacharya, member representative of National Commission for Women, concluded with her remarks that optional protocol is a critical measure for

strengthening such alliance to gear up the momentum as also may be the source of inspiration for the women's movement. It is important that we lobby the Government for ratifying the optional protocol which will enhance women's power leading to people's power.

Other **Special invitees** for the concluding session included Smt. Shyamali Gupta, Smt Chandreyee Alam, Chairman District Legal Services Authority, Sri M.Chatterjee and Secretary DLSAid, Sri P.K.Sarkar. Sri M.Chatterjee and Sri P.K.Sarkar also shared their views in the concluding session..

Koely Roy, focal point of NAWO, W.B. extended vote of thanks on behalf of NAWO, W.B. to all guests and participants, for the very successful and meaningful consultation which now increases the responsibility of nAWO to take the whole process ahead. Special thanks was mentioned for the support received from National Commission for Women with the hope that similar support will be received in future for organizing such consultations.

Maya Karmakar, Core committee member of NAWO, W.B. and co-ordinator for the consultation, acknowledged the opportunities provided for co-ordination of this consultation and which enabled her to establish wide contact with the NGO representatives, Govt. Officials, Judicial personalities/departments, Police Authorities, University representatives, Women commission which will strengthe NAWO network for its work in future.
