

AN INSIGHT INTO CEDAW

GENERAL REMARKS

- **Promotion and Protection of Human Rights (HR) – one of the fundamental aims of the UN**
- **Convention on the Elimination of All Forms of Discrimination (CEDAW) was adopted in 1979 by the UN General Assembly and entered into force on 03 September 1981.**
- **Often described as an international bill of rights for women.**
- **Consists of a preamble and 30 articles.**
- **Defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.**

Definition of discrimination as per CEDAW

- As defined in Article 1, discrimination is understood 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 any other field. “

Monitoring HR implementation

- **Treaty Bodies are committees of independent experts of recognized competence in the field of HR which monitor implementation of the provisions of the core HR treaties by States parties**
- **The Treaty body for CEDAW, the Committee on the Elimination of Discrimination against Women , helps to carry out this task by monitoring implementation and recommending further action.**
- **Each State party has also an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty.**
- **By adhering to the Convention, each State party commits to take measures to end discrimination against women.**

Preamble

- CEDAW emphasizes that discrimination against women violates the principles of equality of rights and respect for human dignity.
- The agenda for equality is specified in 14 subsequent articles.
- The legal status of women receives the broadest attention.
- Devotes major attention to the reproductive rights of women. Preamble states that the role of women in procreation should not be a basis for discrimination.
- Recognizes the influence of culture and tradition on the restriction of women's enjoyment of their fundamental rights- reference is made to the stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women.
- Preamble stresses that a change in the traditional role of men and women in society and in the family is needed to achieve full equality of men and women.

Article 1- Discrimination

- **Article 1 defines discrimination “....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. “**
- **Article 3 of the Constitution, *inter alia*, provides that in Mauritius, there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sexthe right of the individual to life, liberty, security of the person and protection of the law, freedom of conscience, freedom of expression and assembly, of association etc....**
- **Section 16 of the Constitution provides that “...no law shall make any provision that is discriminatory either in itself or in its effect.”**
- **“Discriminatory” meansaffording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinion, colour, creed or sex.”**

Article 2-Obligations to eliminate discrimination

- State party , *inter alia*, undertakes to –
 - Embody the principle of equality of men and women in their domestic law;
 - Adopt appropriate legislative measures prohibiting all discrimination against women;
 - Establish legal protection of the rights of women on an equal basis with men and ensure through competent national tribunals and public institutions effective protection of women against any act of discrimination;
 - Take appropriate measures to modify or abolish existing laws, customs and practices which constitute discrimination against women;
 - Repeal all national penal provisions which constitute discrimination against women.

Article 2-(Contd)

- However, in the Mauritian context, section 16(4) of the Constitution contains an exception to protection from discrimination that renders possible the existence of personal laws- Muslim Personal Law (MPL)- special regime for those who chose to get married under MPL
- Nonetheless, there are National Human Rights Institutions such as the National Human Rights Commission, the Equal Opportunities Commission.
- Policy measures by the line Ministry, that is, the Ministry of Gender Equality, Family Welfare and Child Development (White Paper in 1995, National Gender Action Plan 2000 etc...)
- Laws- Protection from Domestic Violence Act

Article 2-Contd

- **The Protection from Domestic Violence Act** which was enacted in 1997 and amended in 2004, 2007, 2011 and 2016 affords protection to the spouse of, as well as other persons living under the same roof as, a violent person. The Act provides for the issue of protection orders, occupation orders and tenancy orders by a Magistrate and affords protection against physical, emotional, sexual violence and even threatened violence.
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- The Act was amended in 2007 with a view to providing better services to victims of domestic violence and strengthening the enforcement mechanism of the Act as follows-
- -The Court may hear an application for a Protection Order in such manner as it thinks fit subject to such rules as may be made by the Chief Justice.
- -The Court which has made the Protection, Tenancy or Occupancy Order, may make an ancillary as to alimony.
- -Magistrates have been given the power to make an order as regards payment of alimony in respect of the aggrieved spouse and any child of the parties at the same time as an order for Protection is made on such terms and conditions as the Court thinks fit.
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- The Protection from Domestic Violence Act was amended in 2011 for rules to be made by the Chief justice and for applications for Protection Orders to be heard in such manner as the Court thinks fit.
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Article 2-Contd

- In March 2014, an **Advisory Committee** was set up under the aegis of the Ministry of Gender Equality, Child Development and Family Welfare to make recommendations on measures to reinforce the framework for the protection of women against domestic violence.
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- The Protection from Domestic Violence Act was consequently further amended in June 2016 and the amendments came into force on 01 September 2016 to better protect victims of domestic violence by, inter alia-
- increasing the powers of enforcement officers;
- widening the definition of the term “domestic violence” to include any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof-
- wilfully inflicting or attempting to inflict, a wound or a blow, or threatening to inflict a wound or a blow;
- wilfully or knowingly placing or attempting to place, or threatening to place the spouse or the other person in fear of physical injury to himself or to one of his children;
- intimidating, harassing, stalking, ill-treating, insulting, brutality or cruelty;
- compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;
- confining or detaining the spouse or the other person, against his will;
- harming or threatening to harm a child of the spouse;
- causing or attempting to cause, or threatening to cause damage to the spouse’s or the other persons property; and
- depriving without any reasonable excuse the spouse of resources which the spouse is entitled to or of payment for rent in respect of shared residence;

Article 3- Guarantee of basic human rights and fundamental freedoms

- **State party shall take appropriate measures in the political, social, economic and cultural fields to ensure full development and advancement of women.**
- **Policies and projects to empower women (for eg. Development and growth of women entrepreneurs, training, capacity building, creativity and recreational activities, IT courses, weight management clubs, sensitization campaigns on HIV/AIDS, consumer rights, skills development for female prisoners, rehabilitation of sex workers, programmes to overcome poverty etc...)**

Article 4- Temporary Special Measures

- **Advocates the adoption of temporary special measures by the State party to accelerate equality between men and women.**
- **Our Constitution advocates equality of men and women and, therefore, it is not in order to adopt temporary special measures. However, there are special programmes that are adopted in the field of education, agricultural, manufacturing sectors that aim at ensuring women are given at par treatment with men.**

Article 5-Sex role stereotyping and prejudice

- State party shall take appropriate measures to modify the social and cultural patterns of conduct with a view to eliminate prejudices, customs and practices based on the inferiority or superiority of either sex or on stereotyped roles.
- State party shall ensure that family education includes a proper understanding of maternity as a social function and recognition of responsibility of men and women in the development and upbringing of their children.
- Training of educators, gender neutral appellations of jobs(for eg. use “chairperson” instead of “chairman”), human rights education

Article 6- Exploitation of women and Prostitution

- State party shall take appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women.
- Section 253 of the Criminal Code
- Section 26 of the Criminal Code (Supplementary) Act
- Sections 90 and 91A of the Criminal Code (Supplementary) Act
- Laws-The Combating of Trafficking in Persons Act, the Child Protection Act
- Inter- Ministerial Committee on Trafficking in Persons chaired by the Hon. Attorney General has been set up to look into matters relating to Trafficking in Persons. A draft National Action Plan has also been devised but which still needs to be finalized. The DPP's Office and the Police as well as the Ministry responsible for labour and tourism are very active stakeholders.

Article 7-Political and Public Life

- **State party shall take appropriate measures to eliminate discrimination against women in the political and public life.**
- **Any Mauritian citizen having attained 18, has the right to vote and to be elected as a member of the National Assembly.**
- The Local Government Act, which was passed in 2011, provides that any group presenting more than 2 candidates in an electoral ward during Municipal Council and Village Council elections shall ensure that the candidates are not of the same sex. The Constitution was also amended in that regard. As a result, there was a significant increase in the number of women standing as candidates and elected at the recent Municipal Council and Village Council elections.
- Government had set up a Ministerial Committee in January 2016 under the chairmanship of the then Deputy Prime Minister and now the Committee is being headed by none other than the former Prime Minister and under whose chairmanship the Ministerial Committee has progressed considerably especially with regard to the introduction of a dose of proportional representation in the National Assembly, guaranteeing better women representation and addressing the issue of mandatory declaration of community.
- There has been a significant increase in the number of women participating in the last national elections which was 17.5 % in 2014, as compared to 11% in 2010.

Article 8- Representation

- State party shall take appropriate measures to ensure that women have the opportunity to represent their Governments at international level and to participate in the work of international organizations.
- Our laws do not prohibit or restrict women from participating in the work of international organizations or to represent the Government.

Article 9- Nationality

- State party shall grant women equal rights with men to acquire, change or retain their nationality.
- The Constitution guarantees the same rights for men and women to acquire, change or retain their nationality.
- Marriage of a Mauritian woman to a non-citizen does not have as consequence the loss of Mauritian citizenship by the woman unless she herself changes her nationality.

Article 10- Education

- State party shall take appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.
- Same opportunities exist for both male and female to access education, be it at pre-primary, primary, secondary or tertiary levels. Education is mandatory until the age of 16.
- Policies in place by the Ministry of Education (for eg. Access to the same curricula, same examinations, teaching staff, equipment, grants, scholarships, adult literacy programmes).

Article 11- Employment

- State party shall take appropriate measures to eliminate discrimination against women in the field of employment.
- Our laws do not prohibit or restrict women from being employed.
- Equal opportunities Act, Employment Rights Act.
- In line with the provisions of the ILO Convention No. 100 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), section 20 of the Employment Rights Act 2008 was amended in June 2013 to read as follows-
 - *Every employer shall ensure that the remuneration of any worker shall not be less favourable than that of another worker performing work of equal value.*
 - *Where an employer has recourse to the services of a job contractor, the job contractor shall ensure that the remuneration of any worker shall not be less favourable than that of another worker performing work of equal value.*

Article 11-Contd

- No. of work related benefits are available such as-paid annual and sick leave, maternity leave, travelling, end of year bonus; social security measures such as retirement and old age pensions contributions .
- Occupational Safety, Health and Welfare Act and regulations made under the Act protect workers from work hazards.
- Child care facilities.

Article 12- Health

- State party shall take appropriate measures to eliminate discrimination against women in the field of health care.
- Free public health care.
- Private clinics available to those who can afford to pay.
- Provision of family planning services.
- Programmes to combat sexually transmitted diseases.

Article 12-Contd

- In May 2012 amendments were introduced in Parliament to the Criminal Code to authorise the termination of pregnancy in specified circumstances, namely, in cases where –
 - the continued pregnancy will endanger the pregnant person's life;
 - (b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;
 - (c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus, as assessed by the appropriate specialists;
 - (d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police.
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- On 12 June 2012 the Criminal Code (Amendment) Act was passed and the Act providing for the above is now in force since 15 October 2012.
- Consequential amendments were also brought to the Medical Council Act to provide for a working regime for the proposed amendments to the Criminal Code.
- Thus the Medical Council Act now provides, inter-alia, that a specialist in obstetrics and gynaecology registered as such may provide treatment to terminate a pregnancy in a prescribed institution. Consequential amendments were also brought to the Medical Council Act to provide for a working regime for the proposed amendments to the Criminal Code.

Article 13- Economic and Social Benefits

- State party shall take appropriate measures to eliminate discrimination against women in areas of economic and social life.
- Provisions for family benefits (unemployment hardship relief, family allowance)
- Right to loans and mortgages and credit.
- Right to cultural life.

Article 14- Rural women

- State party shall take into account particular problems faced by rural women and significant roles which rural women play in the economic survival of their families.
- Representation of rural women is promoted through the National Women's Council.
- Access to adequate health care facilities, counselling and family planning services.
- Capacity building and education.
- Agricultural extension services.
- Participation in community activities.
- Programmes for Rodrigues

Article 15-Equality before the law

- State party shall accord to women equality with men before the law.
- Women are treated equally before the law with men in respect of their legal capacity to conclude contracts, administer property, manage bank accounts etc...
- Women just as men have equal access to justice. Women can sue and be sued in their own names.
- Women can serve as jurors.

Article 16- Marriage and Family Life

- State party shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.
- Right to marry is provided equally to men and women-governed by the provisions of the Code Civil Mauricien.
- Rights available to both men and women with respect to property upon dissolution of marriage.
- Protection orders under the Protection from Domestic Violence Act-protection orders, occupation orders, tenancy orders.
- Women's rights with respect to the choice of their family name upon marriage.
- Right to choose a profession and occupation.

Article 17- Committee on the Elimination of Discrimination against Women

- The Committee on the Elimination of Discrimination against Women shall monitor progress made in the implementation of the Convention.
- Members of the Committee shall be elected by secret ballot from a list of persons nominated by States parties.
- Elected for a term of 4 years.
- For the filling of casual vacancies, the State party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals subject to the approval of the Committee.

Other Articles

- Article 18- National Reports- States parties undertake to submit to the Committee a report on the legislative, judicial, administrative or other measures adopted to give effect to the provisions of the Convention
- Article 19-Rules of Procedure
- Article 20-Committee Meetings
- Article 21-Committee Reports
- Article 22-Role of Specialized Agencies
- Article 23-Effect on Other Treaties
- Article 24- Commitment of States parties
- Articles 25 to 30- Administration of the Convention

THANK YOU