

## HUMAN RIGHTS OF WOMEN IN INDIA AND THE CEDAW: AN ANALYTICAL PERSPECTIVE

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### **Abstract**

From time immemorial, women are always used as an instrument to protect the embodiment of various cultures, be the tradition of 'purdah' or 'burkhah'. She is used as an instrument of upholding the family values and traditions. Further, under the pretext of carrying forward, the family lineage, she is being used as child bearing machinery, since ages. The urban society has been cautious of their needs in fighting against such odds by the bliss of education and readiness for recognition in the society but the rural and uneducated suffers the worst as they are deprived of all the human rights. The international commitments of the state parties have paved the way for a better future but the obligations imposed on the state parties are simply documented and holds utmost importance only in records. On the other hand, the Indian legislative framework is sufficiently trying to scrutinize the pros and cons of the causes pertaining to sufferings of women so that their basic rights could be realized and protected but the dawn is yet to follow. The CEDAW has emerged to protect the basic rights of women and it is the international Bill of rights for women which take into account every aspects of women's life including the reproductive rights of women. This paper brings home the fact that despite the various legislative mechanisms for women, nationally as well as internationally, Indian women are yet to be their own, in terms of protecting their rights and liberties. The paper discusses how CEDAW has emerged as a strong savior as it covers every ambit of a women's life. The important relevant provisions of CEDAW is analysed in this paper and it is studied in light of the Indian scenario in a holistic manner. The main objective of this paper is two-fold. Firstly, to address the various aspects that are covered by CEDAW so as to secure justice for women and secondly, to drive the attention of the stakeholders so that every women in India could be educated in terms of their basic human rights by eliminating all forms of discrimination against them.

**Key Words:** Women, Human Rights, CEDAW, Discrimination, Holistic

### **Introduction**

History reveals that the status of women in Indian society has been overly complicated one. From a remarkable high status in the Vedic period, women of India suddenly nosedived to such a low position that more than two thousand years they suffered an inferior and oppressed life. Even in this contemporary era, women are the most vulnerable and categorized as marginalized. Compared to the developed nations of the world like USA, Europe, Canada, the Middle East including Pakistan and Afghanistan, the plight of the ladies are abominable as the respect for ladies in those

countries are not only meager but mostly they were treated at par with things and commodities. The term 'self respect' was confined only for men.<sup>1</sup>

The Bhagavad Gita regards women to always have a special status on mother earth, in the cosmic system. Unless mother earth obliged, unless women obliged, there would be no progeny on mother earth and life would be meaningless. It is for this primary reason that a Goddess is respected more than God.<sup>2</sup> The paper aims to study the relevant provisions of CEDAW in protecting women's human rights and illustrate how far India has been implementing the provisions of substantive equality to maintain the principles of natural justice. Justice should not only be done but seen to be done. The obligations lies in each and every member of a welfare state to implement the provisions well suited in the greater interest of the society. CEDAW is based on three vital principles- non-discrimination, state obligation and substantive equality.

### **Objectives of the paper**

- To trace the history of CEDAW and identify the causes for deprivation of human rights of women.
- To dwell upon the various aspects of women guaranteed by the CEDAW.
- To study the position of India in context of CEDAW.
- To trace out the impediments faced by state parties in fulfillment of these principles.
- To suggest remedial measures to promote substantive equality.
- To develop a sense of belongingness, to raise the marginalized class and develop a holistic approach.

### **Genesis of CEDAW**

The slogan of equality is the fundamental tenet of the United Nations. The Preamble to the Charter sets that one of the basic goals of UN is the reaffirmation of faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women'. Article 1 of the organization proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to inter alia, sex.<sup>3</sup> The Universal Declaration of Human Rights proclaims that all human beings by virtue of being born in the society itself, is entitled to equality before the eyes of law. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, 1966 which translate the principles into legal document and makes it binding and clearly state that the rights set forth are meant for all persons without any distinction on the ground of artificial barriers.<sup>4</sup>

Despite the obligations imposed on the state parties through the conventions, the Conventions failed to provide security to women and the guarantee to safeguard their rights proved futile. The Commission on status of women has sought to define and elaborate the principles of non-discrimination in these instruments. The project undertaken by CSW has given rise to number of

<sup>1</sup> Vijay Kumar, Bhagavad Gita Summary, retrieved from <http://bhagavadgitasummary.com>

<sup>2</sup> id

<sup>3</sup> Short history of CEDAW Convention, retrieved from <https://www.un.org/daw/history>

<sup>4</sup> id

declaration and convention for the promotion of human rights of women. It was established in 1946 as a sub commission of the commission on human rights. The main objective was to bring about equality in all spheres.

The Convention on the Elimination of all forms of discrimination against women is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promote women's and girl's equal rights. It was adopted by the UN General Assembly in 1979, and it came into force as treaty in 1981. It specifies a complete sex based discrimination, explained as any exclusion, restriction or distinction on the grounds of sex, which intentionally or unintentionally impairs or nullifies the recognition, enjoyment and exercise of women's social, cultural, political and economic rights. Gender equality is both for the interest of men and women and hence equity would be more widely accepted to wipe out discriminatory laws and to bring about protective discrimination.

The Beijing Platform for Action states that the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.<sup>5</sup> The term 'non discrimination' in the convention indicates that there shall be no discrimination on the ground of any artificial barriers in regard to women. The convention details every aspect of a women's life-eradication of poverty, unemployment, violence, same rights to work, free choice of employment, to promotion, benefits, vocational training, equal remuneration, equal treatment in respect of work of equal value, the right to social security and protection of health. The world community felt the need of the convention so that the state parties could take appropriate steps to safeguard the women folk from all ends and against all odds.<sup>6</sup>

The CEDAW has taken into account each and every aspect of a women's life and so it is considered as the most comprehensive code of women's rights at the international level with its overwhelming focus at all levels. Be it, family education or reproductive rights of women or political participation and economic empowerment, every area is centered in this convention. The N.G.O's also engages in supporting the women folk in this respect and these are instrumental in formulating policies and programs for women. Vocational training to empower women is also the focus of this convention. The stereotypical gender specific roles assigned are also discouraged to promote equality and to raise women from marginalized sector.

### **Causes of constraints on fundamental freedom of women**

At the world Conference of Human Rights in Vienna in 1993, immense progress was made in recognition of women's human rights with the adoption of Declaration and programmes of action. Human beings by virtue of their humanity ought to be protected against unjust and degrading treatment. Women are human beings who have their right to live life with dignity. Unfortunately, women are victimized and exploited at home and at workplace. In India, women spend their life either in parents' house or husband's house. The images of women were no less than a community

<sup>5</sup> Countdown to Human Rights, Sexual and Reproductive Rights, retrieved from <https://www.ohchr.org>> women

<sup>6</sup> <https://www.coe.int>> gender-matters

in ancient times and even presently in some interior places. The idea of justice, liberty, equality for her depends on the conditions and acceptance of these families. Due to industrialization and globalization, development in various fields, role of women is changing rapidly in India and showing progress almost in all the fields such as education, politics, economics, media, art, space and culture.

Constraints on freedom of women are daily realities for many, more particularly in the Asia Pacific region. The disparities between the sexes in regard to educational and economic aspects, inadequate female representation in politics and public life, lack of understanding of women's human rights by law enforcement and judiciary, and the continuation of harmful practices against women in the name of culture and religion legitimize violations of women's human rights, leading to gender inequality. Women face pressure from their families to vote in a specific way, when it comes to their political participation. They are forced to engage in 'proxy voting' whereby male family members vote on their behalf, thus excluding them from the process.

Even in workplace, women face a variety of challenges associated with childcare, advancement, remuneration and harassment. Since women are classified as marginalized class, they are vulnerable, owing to which, they often have unstable claims to land upon the deaths of their husbands. They have to contend with laws which restrict their access to leased land and land of adequate quality and size. A fresh perspective would include protection from sexual harassment in the work place, trade unions and labour organizations.

Women's claims to land bring into question their capacity to enjoy equal rights in every sphere-civil, political, economic, social and cultural. Women's rights in general are denied all over the world, in a wide range of cultures and communities. For many years the women's movement has organized women at local, national, regional and international levels. In recent decades, however, the movement has sought to use the human rights framework to mainstream women's issues, rather than have the movement remain on sidelines, benefitting from special programs or continuing as movement separate and apart from the rest of the human rights movement.<sup>7</sup>

The phenomenon of violence against women cannot be ignored if human rights are to be examined from a gender perspective. Violence against women has been framed as a violation of the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to equal protection under the law, the right to liberty and security of person, and the right to the highest standards of physical and mental health. Freedom of association, have been additional critical areas under which diverse issues, ranging from access to information regarding contraceptives to the forced veiling of women and so forth are considered.

### **Special Measures of CEDAW – at a glance**

The Convention protects women against all forms of discrimination throughout their life cycle and includes girls. The relevant provisions of CEDAW protect the political, legal, civil and economic rights of women. Article 1 of the Convention states that discrimination means: '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

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<sup>7</sup> <https://hrlibrary.umn.edu>>

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.’<sup>8</sup> ‘Women’ in this definition would include all women-young, aged, married, single, able, disabled, indigenous, migrants, refugees etc<sup>9</sup>. By tolerating the convention, states invest in embracing a progression of measures to end victimization of ladies in all structures, including:<sup>10</sup>

- To integrate the guideline of balance of people into their general set of laws, to abrogate every single biased regulation and take on suitable ones forbidding victimization of ladies.
- To lay out courts and other public foundations to guarantee viable separation assurance for ladies and
- To guarantee the end of all demonstrations of oppression ladies by people, associations or undertakings.
- The Convention gives the premise to accomplishing uniformity among ladies and men through guaranteeing ladies’ equivalent admittance to and equivalent open doors in political and public life, including the option to cast a ballot and to represent political race as well as instruction, wellbeing and work. State parties consent to go every suitable length, including regulation and brief extraordinary measures, so ladies can partake in the entirety of their basic liberties and key opportunities.
- The Convention takes into account the regenerative privileges of ladies and targets culture and customs as compelling powers molding orientation jobs and family relations. It certifies ladies’ privilege to secure, change or hold their identity and the ethnicity of their kids. State parties likewise consent to go to suitable lengths against all types of dealing with ladies and abuse of ladies.
- Nations that have approved or agreed to the Convention legitimately will undoubtedly try its arrangements. They are likewise dedicated to submitting public reports, essentially at regular intervals, or measures they have taken to confirm to their arrangements commitments.

Despite the above measures, CEDAW have taken temporary special measures to narrow gender disparities and promote equality and women’s empowerment. This sort of measures are also known as protective discrimination as embodied in Article 15 (3) and (4) of the Constitution. Article 4 of the CEDAW talks about affirmative action as it says that special measures can be adopted for the promotion of women and once the equilibrium is established, those measures could be lifted over.

Further, CEDAW emphasizes on certain developmental aspects of women which is directly aimed at the overall growth and prosperity of women. They are as follows<sup>11</sup>-

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<sup>8</sup> CEDAW and Human Rights: Achievements and Obstacles, retrieved from <https://www.monash.edu>>

<sup>9</sup> id

<sup>10</sup> Critical Analysis of the Convention on Elimination of all forms of discrimination against Women (CEDAW), accessed at <https://www.researchgate.net>

<sup>11</sup> Addressing Discrimination Against Women, background paper by International Human Rights Institute, retrieved from <https://www.ibanet.org>

- **Equal enjoyment of human rights and freedoms-** The fifth para of the preamble to the UDHR states:

“Whereas the peoples of the United States have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom”

It is however, an ideal starting point in elucidating the current milieu of human rights norms applicable to discriminate against women. Even the ICCPR and ICESCR require the state parties to ensure the equal enjoyment by men and women of fundamental rights and freedoms which states as:

‘The State parties to the present Convention undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant’.

- **Political Participation-** Article 7 of the Convention requires the states to take appropriate measures to eliminate discrimination in the political and public life of the country. This includes ensuring an equal right to vote, to participate in the formulation and implementation of the government policy, to hold public office and perform public functions at all levels of government and participate in non-governmental organizations and associations concerned with public and political life.
- **Employment-** Indian women have fought against the patriarchal Indian society and triumphed at many levels, cases of rape, dowry and sexual harassment at workplace, female illiteracy, female infanticide and similar problems are still rampant in Indian society. It was in this backdrop that the Committee on the status of women in India established the National Commission for women to fulfill surveillance function and to facilitate and redress grievances thereby accelerating the socio-economic development of women.

Article 11(1) of the CEDAW requires the state parties to take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality with men and the same rights, including the right to work, the right to the same employment opportunities, the right to free choice of profession, the right to equal remuneration, the right to social security and the right to protection of health and safety. Article 11 (2) of the CEDAW also requires the state parties to prohibit dismissal on the basis of pregnancy or maternity leave and discrimination in dismissals on the basis of marital status, to introduce maternity leave, to provide necessary supporting social services for parents in order for them to balance work, family obligations and participation in public life, and to protect pregnant women from work that is harmful to them.

- **Inheritance and Land Rights-** Of the UN International instruments, neither the UDHR, ICCPR, ICESCR, CRC nor CEDAW specifically mentions inheritance rights. But, the committee on CEDAW has read inheritance rights into the non discrimination provisions

of CEDAW on the basis that inequality in families which are characterized by UDHR as the basic units of society, ‘underlies all other aspects of discrimination against women’.

- **Sexual and gender based Violence-** Within the treaty body system, the Committee on the Elimination of Discrimination against Women has issued multiple General Recommendations on violence against women, beginning with General Recommendations No.12 in 1989. These General recommendations have incorporated violence against women into the provisions of CEDAW in the following ways-
  - a) **In General Recommendation No.12**, in order to call on state parties to include in their periodic reports legislative or other measures they have adopted to combat violence against women and provide support for victims. The Committee established that Article 2,5,11,12,16 of the Convention require state parties to act to protect violence of any kind occurring within the family at the workplace or in other area of social life.
  - b) **In General Recommendation No. 19**, the Committee included violence against women in the definition of ‘discrimination’ in Article 1 of the CEDAW. It is to be noted that gender based violence violates CEDAW provisions.
  - c) **In General Recommendation No. 35**. The Committee stated that General Recommendation no.19 played a dominant role in the prohibition of gender based violence against women becoming customary international law.

### Optional Protocol of CEDAW<sup>12</sup>

The states may ratify the optional protocol on CEDAW and by ratifying this protocol. The state recognizes the competence of the Committee on the elimination of Discrimination against Women- the body that monitors state parties’ compliance with the Convention- to receive and consider complaints from individuals or groups within its jurisdiction. The protocol contains two procedures- a) A communications procedure allows individual women, to submit claims of violations of rights protected under the Convention to the committee. The protocol further establishes that in order for individual communications to be admitted for consideration by the Committee, a number of criteria must be met, including those domestic remedies must be exhausted b) The Protocol also creates an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of human rights. In either case, the state must be a party to the Convention and Protocol. The Protocol came into force in December 22, 2000, following the ratification of the tenth state party to the Convention.<sup>13</sup>

### CEDAW and India

<sup>12</sup> <https://www.ochr.org>>

<sup>13</sup> United Nations Entity for Gender Equality and Women Empowerment, retrieved from <https://www.ohchr.org>

A nation cannot achieve its goal if its womenfolk stay in the dark. Without women's literacy and dignity, a nation cannot make progress. There is a strong correlation between a country's gender gap and its national development. In this regard, India has been struggling over so many decades. A recent study by the World Economic Forum showed that India's position in terms of gender ratio is 135<sup>th</sup> among 149 nations. Indian women are much behind men in every sphere of life. Women's participation in politics is only 9 per cent and in bureaucracy also they are poorly represented. Female labourers are paid less compared to men. Many women face physical abuse while pregnant and millions of girls worldwide are child brides. This projects the status of women in the world.<sup>14</sup>

Former UN Secretary General Bandi Moon strongly condemned violence against women. He said. ; There is one universal truth applicable to all countries, cultures, communities- violence against women is never acceptable, never excusable and never tolerable'. The countries like Iceland, Finland, Norway, Sweden, Phillipines, Denmark, Switzerland and Nicaragua should serve as a role model for many countries. In these countries, women equally enjoy all kinds of facilities with men. They have high rate women labour, low pay gaps and no barrier for women to rise in the ranks. These countries have mandatory paternity and maternity leave.<sup>15</sup>

Although the Constitution of India is framed on the basic principles of equality, yet when the question of status of women comes up, the defacto status of women can be seen in contradistinctions to what has been actually given by the Constitution. The defacto status can only be transformed into dejure when all the women in India would be free from the shackles of ignorance and superstition. In India, the government of Assam was in limelight for its drive against child marriage. Population and child marriage are inter-related. A study by National Family Health mission revealed that girls who complete at least class 12 get married at the age of twenty one years or above and that rich people's daughters get married late. But, the lower class girls are married off early but these facts are not applicable to men. Poor men marry early and education of men has no impact on marriage. But, the crux of the issue is that the dropout rate of girls at the primary level is extremely high.<sup>16</sup>

India has signed CEDAW in 1980 and ratified in July, 1993 but with the reservations they will not submit to arbitration if there is a dispute of CEDAW. However, it is doubtful as to how far the convention serves as an effective tool for promoting women's basic human rights. It is quite evident from the dailies that the ratification of this convention did not reduce any kind of violence in India. The progress of superstitious beliefs existing amidst women and the violence prevalent in the society towards them, clearly portrays the very fact that protection of women still remains a myth. India has not ratified the optional protocol to CEDAW and hence it doesn't comply with the regular reporting. This also vindicates that India have ratified this Convention half heartedly as no

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<sup>14</sup> Bijaylakshmi Baruah, Gender Equality and Women Empowerment, Assam Tribune

<sup>15</sup> id

<sup>16</sup> id

changes in terms of religious and cultural beliefs of women has taken place even after the ratification.<sup>17</sup>

In *Vishakha v. State of Rajasthan*<sup>18</sup>, the Court adopted the international law on the subject matter of CEDAW. This judgement in India is one of the most incredible pieces of law, the court has ever enacted in the whole history. In 1997, the Supreme Court for the first time gave guidelines related to sexual harassment at workplace for women which are known as Vishakha guidelines. The Bill was enacted in 2007 and it came into force in December 2013 and the Act 'The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted. The facts of the case are that a woman named Bhandwari Devi, was working as a village-level social worker under the women's development project started by the government of Rajasthan. She was engaged in prevention of child marriages and along with that, she also used to report incidents pertaining to these to the police. A family belonging to Gujjar community arranged the wedding of one one-year-old infant to which she fought against and also went far ahead with this by giving information to the police. Thereafter, five men gang raped her and she was brutally injured. She did not give up and was determined to fight for justice but the police personals did not support her. A women activist, however, filed a public interest litigation for the need to safeguard women from sexual harassment at workplace.

The following provisions were referred by the Apex Court of the country in this matter. Article 14, which deals with right to equality, irrespective of any artificial barriers was invoked. Article 15 prevents discrimination on the ground of gender, race, religion, caste, place of birth. Article 19 (1) (g) gives the right to practice any profession or carry on any trade, occupation or business. Article 21 provides the right to life and liberty and the right to life have been expanded from time to time to include various provisions of dignity. Article 11 (1) (a,f) of the CEDAW provides the right to work and right to protection of health and also gives the right to safety in working conditions. Article 24 states that the state parties are obliged to adopt necessary mechanisms at the national level to achieve the aim and the full realization of the rights which are recognized by the present convention. The General recommendation No.19 is also recommended for the elimination of violence against women.

The judiciary referred the convention on elimination of all forms of discrimination against women which prevent discrimination at workplace. Article 11 and Article 24 of the Convention also states about eradication of various forms of discrimination against women. The Court however held that whenever there is sexual harassment at work places, gender equality and the principle of equilibrium is infringed.<sup>19</sup> Further, the Court held that 'Gender equality includes protection from sexual harassment and right to work with dignity which is universally recognized human rights.'<sup>20</sup>

### **CEDAW's Limitations**

<sup>17</sup> Beijing Statement of Principles of the independence of the judiciary in the LAWASIA region

<sup>18</sup> AIR 1997 SC 3011

<sup>19</sup> <https://indianportal.co.in>>

<sup>20</sup> Mohandas Poothiyil, 'Study of 'Vishakha Case' and its impact on Society', International Journal of Advances in Engineering and Management, at p. 538

Many policies do not confirm to CEDAW standards for gender equality and many, while seemingly focused on the advancement of women, fall short of their objectives because of poor enforcement, limited capacity and weak accountability. India refrains from reporting and hence India has not yet signed the optional protocol to CEDAW. The controversy lingering CEDAW is that Article 6 concerning equality in marriage and the family, and Article 10 relating to employment, proved to be particularly controversial as did the question of whether the Declaration should call for abolition of the customs and laws perpetuating discrimination or for their modification or change. CEDAW legally binds all state parties to fulfill, protect and respect women's human rights. That indicates that the state is not only responsible for their own actions but also for eliminating discrimination that is being perpetrated by private individuals. CEDAW recognizes that discrimination is often rooted in spheres of life such as culture, family and interpersonal relations- it addresses the negative impact of gender stereotyping, working on the fundamental premise that unless change takes place at those levels, gender equality is yet to be achieved.

The main problem with CEDAW is that the states have the power to choose its level of accountability by ratifying with reservations or not ratifying at all. Hence, it reduces the liabilities on the part of the states.<sup>21</sup> The CEDAW committee is advisory in nature. It shall only acts as a supervisory body that monitors the implementation of the provisions of CEDAW. The committee consists of twenty three independent experts on women's rights around the world.

### **Concluding remarks and Suggestions**

The new Sustainable Development Goals (SDGs) hold real promise to embed advances in women's rights, and include a specific goal for gender equality. Goal 5 is encompassing and includes the targets on eliminating gender-based violence, ending child marriage and female genital mutilation, thereby ensuring access to sexual and reproductive health. It further includes equal access to education, expanding women's economic opportunities, and reducing the burdens of unpaid care work on women and girls. Growing awareness on the part of women only could help them enjoy their rights. The women must be educated so that they become conscious of their rights. Most importantly, the mindset of the people must change for better. The awareness camps, workshops and so forth is the order of the day to curb the practices of sexual harassment of women at workplaces.

The Union Ministry of Women and Child Development and the Internal Complaints Committee of the Institute of Advanced Study in science and technology have taken impactful and progressive initiatives in this respect. The ongoing initiatives and future strategies should be strengthened in order to implement the special measures designed to curb harassment. The stakeholders should aim to create a safer and healthy environment so that there is overall development of women in India and in the world at large. The activists against the 'gender based violence' are also cautious to eradicate all forms of discrimination, so that a feeling of harmony could prevail by adhering to the principles of equity, justice and good conscience. Sensitization programs play a key role in this regard. The status of women in the society could be improvised by ensuring self-dignity and

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<sup>21</sup> <https://www.berkeleyjournalofinternationallaw.com>

financial independence with the help of skill enhancement and education. A new zero violence society is the need of an hour.

**In the words of Jawaharlal Nehru,<sup>22</sup>**

*‘Legislation cannot by itself solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential and hence that it may give that push and have educative factors, as well as the legal sanctions behind it, which help public opinion to be given a certain shape’.*

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