

# The Concept of Women's Right to Health in International Law and Gender Equality

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## **Abstract**

Gender equality is an urgent necessity, without which achieving sustainability and development is impossible. The world is experiencing a series of unprecedented crises with disproportionate negative effects on women, girls, sexual and gender minorities, and marginalized groups. It has not been done and there is a long gap, relatively few international binding agreements have been recognized regarding women's right to health, which indicates the insufficient level of protection. This issue requires complete and comprehensive international and regional research. The CEDAW Convention is the fundamental charter of women's rights, a unique and multifaceted document that deals with specific areas and forms of discrimination and fully covers the field of mental health (all areas where women's human rights are violated or not available to women). Gender equality for all people is a matter of fairness and justice and is a foundation for a peaceful and prosperous world and necessary for development. Gender equality is a moral imperative, a fundamental human right, an established legal principle in many countries and essential for development outcomes.

**Keywords:** Gender gap, Gender equality, Women's health, international protection of women's rights.

## **1. Introduction**

**(Relevance of the study):** According to General Comment No. 14 The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)" Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. the right to health embraces a wide range of social economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. for millions of people throughout the world, the full enjoyment of the right to health remains a distant goal. Moreover, in many cases, especially for those living in poverty, this goal is becoming increasingly remote." [1]

In CEDAW General Recommendation No. 24: Article 12 of the Convention is mentioned "While biological differences between women and men

may lead to differences in health status, there are societal factors which are determinative of the health status of women and men, and which can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women, and women with physical or mental disabilities. full realization of women's right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women's fundamental human right to nutritional well-being throughout their life span by means of a food supply that is safe, nutritious, and adapted to local conditions. "[2]

removing gender barriers unlocks economic productivity, reduces poverty, deepens social cohesion, and enhances well-being for current and future generations [3]

Women's participation and decision making improves community resource management and resilience and makes companies more

competitive. It calls for changes spanning country laws and policies, public and private sector activities, and personal lives. Accomplishing such changes requires a sustained and broad-based commitment, and financing for evidence-based solutions. This is especially difficult in the current global environment of sluggish growth and rising poverty, as governments face hard choices under fiscal and debt constraints. [4, P 1]

September 1995 on Fourth World Conference on Women, Action for Equality, Development and Peace [5] "Women play an important role in the family, and the family is the basic unit of society, which has the right to receive all-round protection and support. Women play a great role in the welfare of the family and the development of the society, which importance has not yet been noticed. The social importance of Maternity, motherhood, and the role of parents in the family and in the upbringing of children should be acknowledged, and the role of women in reproduction should not be a basis for discrimination and limit women's full participation in society. One of the major obstacles for women to achieve the highest standards of health is inequality, both between men and women and among women in different geographic regions, social classes, and indigenous and ethnic groups. Discrimination against girls [5, Art 93], which often results from a preference for boys, in accessing nutrition and health care services, endangers their health and well-being now and in the future. Conditions that force girls into early marriage, pregnancy and childbearing and expose them to harmful practices such as female circumcision pose serious health risks. Adolescent girls have access to essential health and nutrition services during puberty, but often do not. Counseling and access to sexual and reproductive health information and services for adolescents is still inadequate or non-existent, and the young woman's right to privacy, confidentiality, respect, and informed consent is often not considered. Adolescent girls are both biologically and psychosocially [5, Art 95] more vulnerable than boys to sexual abuse, violence and prostitution and the consequences of unprotected and premature sex. The trend toward early sexual experience, coupled with a lack of information and services, increases the risk of unwanted and very

early pregnancy, HIV infection and other sexually transmitted diseases, as well as unsafe abortions. Early childbearing is still an obstacle to improving the educational, economic and social status of women in all parts of the world. Taken together, early marriage and early motherhood for young women can severely reduce educational and employment opportunities and are likely to have long-term adverse effects on their quality of life and the lives of their children. Young men are often not trained to respect women's self-determination and share responsibility with women in sexual and reproductive matters.

Reproductive health [6, Paragraph 7.2] is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people can have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. reproductive rights [7, P 24] embrace certain human rights that are already recognized in national laws, international human rights documents, and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion, and violence, as expressed in human rights documents. In most countries, the neglect of women's reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic and political empowerment. The ability of women to control their own fertility forms an important basis for the enjoyment of other rights. Shared responsibility between women and men in matters related to sexual and reproductive behavior is also essential to improving women's health. HIV/AIDS [5, Art 98] and other sexually transmitted diseases, the transmission of which is sometimes a consequence of sexual violence, are having a devastating effect

on women's health, particularly the health of adolescent girls and young women.

Sexual and gender-based violence, including physical and psychological abuse, trafficking in women and girls, and other forms of abuse and sexual exploitation place girls and women at high risk of physical and mental trauma, disease, and unwanted pregnancy. Such situations often deter women from using health and other services.[8]

Mental disorders related to marginalization, powerlessness, and poverty, along with overwork and stress and the growing incidence of domestic violence as well as substance abuse, are among other health issues of growing concern to women. Women throughout the world, especially young women, are increasing their use of tobacco with serious effects on their health and that of their children. Occupational health issues are also growing in importance, as many women work in low-paid jobs in either the formal or the informal labour market under tedious and unhealthy conditions, and the number is rising. Cancers of the breast and cervix and other cancers of the reproductive system, as well as infertility affect growing numbers of women and may be preventable, or curable, if detected early.

With the increase in life expectancy and the growing number of older women, their health concerns require particular attention. The long-term health prospects of women are influenced by changes at menopause, which, in combination with life-long conditions and other factors, such as poor nutrition and lack of physical activity, may increase the risk of cardiovascular disease and osteoporosis. Other diseases of ageing and the interrelationships of ageing and disability among women also need particular attention.

Many drug therapy protocols and other medical treatments and interventions administered to women are based on research on men without any investigation and adjustment for gender differences.” [5]

Gender-Based Violence (GBV) is one of the most prevalent human rights violations in the world. Before the COVID-19 pandemic, the World Health Organization estimated that one woman in three worldwide experiences physical or sexual violence by an intimate partner or sexual violence by a non-partner. Online abuse is even more prevalent,

affecting 85 percent of women and girls globally. Child marriage, sexual harassment, intimate partner violence, and female genital mutilation remain widespread. GBV has wide repercussions, including deteriorating physical and mental health, reduced access to education and jobs, and worse human development and economic outcomes for survivors and their children. Surveys report sexual harassment in transport, public spaces, and the workplace as a deterrent to women's economic participation. [3, P 3]

General comment No. 22 (2016) on the right to sexual and reproductive health Committee on Economic, Social and Cultural Rights UN “The right to sexual and reproductive health is an integral part of the right to health enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights.[9] It is also reflected in other international human rights instruments. The adoption of the Programme of Action of the International Conference on Population and Development in 1994 further highlighted reproductive and sexual health issues within the human rights framework. [10, ART 5,7] Since then, international, and regional human rights standards and jurisprudence related to the right to sexual and reproductive health have considerably evolved. the 2030 Agenda for Sustainable Development includes goals and targets to be achieved in the area of sexual and reproductive health. Due to numerous legal, procedural, practical, and social barriers, access to the full range of sexual and reproductive health facilities, services, goods and information is seriously restricted. In fact, the full enjoyment of the right to sexual and reproductive health remains a distant goal for millions of people, especially for women and girls, throughout the world. The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion, and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services, and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant. [11]

Sexual health and reproductive health are distinct from, but closely linked, to each other. Sexual health, as defined by the World Health Organization (WHO), is “a state of physical, emotional, mental and social well-being in relation to sexuality”. Reproductive health, as described in the Programme of Action of the International Conference on Population and Development, concerns the capability to reproduce and the freedom to make informed, free, and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities, and services to enable individuals to make informed, free, and responsible decisions about their reproductive behavior. Due to women’s reproductive capacities, the realization of the right of women to sexual and reproductive health is essential to the realization of the full range of their human rights. The right of women to sexual and reproductive health is indispensable to their autonomy and their right to make meaningful decisions about their lives and health. Gender equality requires that the health needs of women, different from those of men, be considered and appropriate services provided for women in accordance with their life cycles. The experiences of women of systemic discrimination and violence throughout their lives require comprehensive understanding of the concept of gender equality in the right to sexual and reproductive health. Non-discrimination based on sex, as guaranteed in article 2 of the Covenant, and the equality of women, as guaranteed in article 3, require the removal of not only direct discrimination but also indirect discrimination, and the ensuring of formal as well as substantive equality. [12, Art 25,26] “

Gender equality is a human right at the core of development. Gender equality and women’s empowerment are enshrined as Sustainable Development Goal 5 and in the Convention on the Elimination of All Forms of Discrimination Against Women. Global challenges can be overcome only by lifting barriers faced by women, girls, and sexual and gender minorities. Gender equality and women’s participation in decision-making contribute to more inclusive institutions and pro-poor policy choices. In households, gender equality improves choices, leading to better child

development outcomes, which in turn reduces the intergenerational transmission of poverty. [3, P 4] *Defining the right to health of the individual and the right to health of women in international laws and regulations:*

Universal Declaration of Human Rights, (1948) Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” [13]

International Covenant on Economic, Social and Cultural Rights, ICESCR (1966) Article 12:

1. “The States Parties to the present Covenant recognize the right of everyone to the highest attainable standard of physical and mental health.

2. The measures taken by the States Parties to the full realization of this right include the improvement of all aspects of environmental and industrial health, the prevention, treatment and control of pandemic, endemic, occupational, and other diseases, as well as the provision of conditions for all medical services. And guarantee medical care in case of illness.” [7]

Convention on Women's Political Rights: “The Contracting Parties, according to the principle of equality of rights for men and women contained in the Charter of the United Nations, accepted that Women shall be entitled to vote in all elections on equal terms with men, without any discrimination and Women shall be eligible for election to all publicly elected bodies, on equal terms with men, without any discrimination and also Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.”[14]

International Convention on the Elimination of All Forms of Racial Discrimination, Article 2, 5: “Member States condemn racial discrimination and pledge to pursue a policy of eliminating racial discrimination in all its forms and promoting understanding between all races by all appropriate means and without delay; for example, each Member State must take effective measures to

review Government, national and local. Policies, and amendments, repeal or repeal of any laws and regulations wherever they exist, create, or perpetuate racial discrimination. and States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to ensure the right of everyone, without distinction of race, color, national or ethnic origin, to equality before the law, especially in the enjoyment of the rights The following guarantee, like as the right to public health, medical care, social security, and social services.” [15]

Convention on the Elimination of All Forms of Discrimination against Women: “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. States Parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.” [16, Art 12]

“According to articles 2 (b), (c), (e), (f) and (g) and 5 (a), States are required to adopt legislation prohibiting all forms of gender-based violence against women and girls, harmonizing national law with the Convention. In the legislation, women who are victims/survivors of such violence should be right holders. It should contain age-sensitive and gender-sensitive provisions and effective legal protection, including sanctions on perpetrators and reparations to victims/survivors. The Convention provides that any existing norms of religious, customary, indigenous and community justice systems are to be harmonized with its standards and that all laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for such acts, are to be repealed. States parties should provide accessible, affordable, and adequate services to protect women from gender-based violence, prevent its reoccurrence and provide or ensure funding for reparations to all victims/survivors. States parties must also eliminate the institutional practices and individual conduct and behaviour of public officials that constitute gender-based

violence against women, or tolerate such violence, and that provide a context for lack of a response or for a negligent response. This includes adequate investigation of and sanctions for inefficiency, complicity, and negligence by public authorities responsible for the registration, prevention or investigation of such violence or for providing services to victims/survivors. Appropriate measures to modify or eradicate customs and practices that constitute discrimination against women, including those that justify or promote gender-based violence against women, must also be taken at the executive level. All jurisdictions are obliged to refrain from any act or practice of discrimination or sex-based violence against women, and to strictly enforce all provisions of the penal code that penalize such violence, as to what constitutes gender-based violence against women. Reflect how women should react to such violence and reflect in law the criteria needed to prove its occurrence can affect women's rights to equality before the law, a fair and effective trial. This means that the principle of shared power and responsibility should be established between women and men at home, in the workplace and in the wider national and international communities. Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development, and peace.” [17]

Convention on the Rights of the Child, Article 24” Member States recognize the right of the child to the highest attainable standard of health and to facilities for the treatment of illness and health rehabilitation. Member States should work to ensure that no child is deprived of the right of access to such health care services and will take appropriate action to ensure that this right is fully implemented, as well as all effective and appropriate measures to abolish the traditional practice of The health of children is harmful, they will adopt and cooperate internationally in order to gradually achieve the full realization of these rights.”[18]

International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 28, 43, 45:” Migrant workers and their families have the right to receive any medical care necessary to protect their lives or

to prevent irreparable damage to their health on the basis of equal treatment with nationals. Such emergency medical care should not be withheld because of any irregularities in residence or employment, including access to social and health services, provided the conditions for participation in the relevant projects are met.” [19]

The World Conference on Human Rights in Vienna: Equality, dignity and tolerance the equal status and human rights of women [22, Art 18], and “ The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. Women's full and equal enjoyment of all human rights, as an agent and beneficiary in the development process, should be a priority for governments and the United Nations, as well as the goals set in the global action for women towards sustainable and just development, which is in the Rio Declaration. It has been mentioned, it reiterates, that Brahmit also emphasizes working towards eliminating violence against women in public and private life, eliminating all forms of sexual harassment, exploitation, and trafficking of women, eliminating gender bias. Implementing justice and eradicating any conflict that may arise between women's rights and the harmful effects of some traditional or customary practices, cultural prejudices, and religious extremism. And it asks governments to fight violence against women. All violations of this type, including murder, systematic rape, sexual slavery, and forced pregnancy, require an effective response. stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices, and religious extremism. Treaty monitoring bodies should disseminate necessary

information to enable women to make more effective use of existing implementation procedures in their pursuit of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. and urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process.” [22, Art 36-44]

It is also mentioned in the health section of the Convention on the Rights of Persons with Disabilities: “States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination based on disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. States Parties shall: Provide persons with disabilities with the same range, quality, and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes.” [20, Art 25, (a) - Health]

The implementation of Beijing Platform for Action, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms, and the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by women of their human rights in order to achieve equality, development and peace[5, Art 9]. Grave violations of the human rights of women occur, particularly in times of armed conflict, and include murder, torture, systematic rape, forced pregnancy and forced abortion, under policies of ethnic cleansing. [5, Art 11]

To this end, Governments, the international community, and civil society, including non-governmental organizations and the private

sector, are called upon to take strategic action in the following critical areas of concern:

- The persistent and increasing burden of poverty on women.
- Inequalities and inadequacies in and unequal access to education and training
- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against women
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Inequality between men and women in the sharing of power and decision-making at all levels
- Insufficient mechanisms at all levels to promote the advancement of women.
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl child" [5, Art 44]

## **2. Conclusion**

According to the report of the World Bank "The international community has made a commitment to gender equality as an essential core plank in implementing human rights. Through mechanisms of platform for actions, conventions, and treaties (for example, the Beijing Platform for Action and CEDAW), governments and the whole UN and related systems, including the IMF and the World Bank, have committed to gender equality. Cooperation is a must when promoting gender equality across the world. Gender equality is included in many UN meetings. The Commission on Status of Women is dealing specifically with gender equality and empowerment of women and girls, based on the Beijing Declaration and Platform for Action. Accelerating gender equality generates large economic gains. No society can

develop sustainably without supporting opportunities, resources, and choices for men and women so that they have equal power to shape their own lives and contribute to their families, communities, and countries. Women's employment can be a central driver of inclusive growth. On average across countries, long-run GDP per capita would be almost 20% higher if gender employment gaps were closed. Gender equality and empowerment are central to addressing crises, from food insecurity and climate change, to conflict, fragility, and violence. In addition, leveraging women's economic empowerment in the productive sectors, including agriculture and goods and services produced in the formal and informal sectors by entrepreneurs are contributing to improved food security, job creation, productivity growth and private sector development. Women's leadership can enhance long-term economic, environmental, and social outcomes, as well as governance gains." [21]

Achieving gender equality is difficult, it even requires the major participation of men in accepting the importance of the mental health of women, girls and mothers in society, which means the absence of physical, verbal, and psychological violence, acceptance of gender democracy and respect and acceptance of gender equality as a requirement. Morality is one of the basic human rights and a fixed legal principle in all countries and the key to essential development. [4,P 6] Therefore, understanding these rights and institutionalizing them in societies is one of the main duties of governments.

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