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THE IMPACT OF THE CEDAW CONVENTION: PATHWAYS TO EGALITARIANISM

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Abstract

In this paper, it aims on topic how CEDAW i.e., the convention on the Elimination of All Forms of Discrimination against Women has affect the world and India in context to bring equality of women in the society where they have been dominated by the patriarchal system and other reasons. In this there have been many judicial precedent where court have played a key role to bring equal and fair justice to the women who have faced discrimination such as inequality in education, political, and economic sector as well as dowry, workplace harassment etc.

The Committee established under the Convention has played a important role in encouraging the implementation of the treaty. The paper specializes in the overview of the convention's impact which ends result as to use by the government and civil society. It additionally describes the status of Convention and Optional Protocol ratification, patterns of reservations to the Convention and of their withdrawal, and of States parties' discharge of their reporting obligations under the treaty. It argues that there is considerable evidence that the Convention has contributed to increasing women's enjoyment of the right to equality in many countries, however this impact is variable, and a big amount remains to be done before women enjoy full equality with men in all States.

Introduction

The full form of CEDAW, is the Convention on the Elimination of All Forms of Discrimination Against Women. It is an international treaty which was adopted in 1979 by the United Nations General Assembly. It is also known as the "International Bill of Rights for Women." The convention is divided into six sections and 30 Articles. It came into effect on 3 September 1981 after approved by 189 states. It consist of a preamble and 30 articles. It establishes a national action plan to fight against discrimination against women and determines what makes such discrimination. The Convention establishes the base for achieving gender equality by ensuring equal participation by women in political and public spheres, encompassing the right to vote, stand for election, and access to opportunities in education, health, and employment. States

parties commit to implementing necessary measures, including legislation and temporary special actions, to facilitate women in enjoying all their human rights and fundamental freedoms.

Brief history of CEDAW

The United Nations Commission has previously inscribed women’s political rights and the legal minimum age for marriage on the Status of Women (CSW). Notwithstanding the notion that the United Nations Charter of 1945 helps universal human rights, few claim that previous U.N. agreements on sex and gender equality were a holistic approach that fell quick of putting off all types of discrimination against women.

- The committee became constituted according to Article 17 of the CEDAW² to supervise compliance with the CEDAW’s provisions with the aid of the nations that had signed and agreed to be sure by means of it.
- In terms of the scope of its major obligation and its global tracking processes, the settlement and its international monitoring procedures, the agreement is structured similarly to the
- Convention on the Elimination of All Forms of Racial Discrimination³

The convention is divided into six parts, with total of 30 articles.

Part	Article	Subject matter
Part I	Article 1-6	It Focuses on non- discrimination, sex stereotypes, and sex trafficking
Part II	Article 7-9	It Outlines the women’s rights in the public space with an significance on political life, representation, and rights to nationality.
Part III	Article 10-14	It Describes the economic and social rights of women, mainly it focuses on education, employment, and health. Part III also consist of special protections for

¹ “Charter of the United Nations, adopted June 26, 1945, entered into force October 24, 1945”.

² UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

³ Karma Dorjee C Ors vs U.O.I C Ors on 14 December, 2016

		rural women and the problems they face in society.
Part IV	Article 15 and 16	It Outlines women’s right to equality in marriage and family life also with the right to equality before the law. ⁴
Part V	Article 17-22	It Establishes the Committee on the Elimination of Discrimination against Women as well as the state parties’ reporting procedure.
Part VI	Article 23-30	It Describes the effects of the convention on other treaties the commitment of the state’s parties, and the administration of the convention

Why is CEDAW Important?

CEDAW is essential because it makes it the responsibility of the member states to have non-discriminatory legal guidance and policies. It also talks approximately about major equality and no longer simply formal equality as stated above. Even in the 21st century, many women face recurring discrimination in all matters of their lives such as healthcare, education, decent work, free marriage, equal pay for equal work⁵, and so on.. They also face violence, even from family members and partners. They frequently have no voice in matters associated with sexual and reproductive choices. It is important that governments in power make important laws that promote gender equality in the true sense of the world, and additionally empower women as a way that they can lead complete lives to the equality in their talents and ability. This is not simply a fundamental human right⁶ but also a necessity to understand the proper financial and social development of society.

Importance and need of the CEDAW

General Importance -

CEDAW⁷ is frequently referred to as the “bill of rights for women.” Countries that have ratified the convention are predicted to incorporate it into their national legislation and take the precise steps to guarantee that women and girls in the entire country have the chance to enjoy equality

⁴ Mohd. Ahmed Khan vs Shah Bano Begum and Ors on 23 April, 1985

⁵ State of Madhya Pradesh and Another v. Pramod Bhartiya and Others (1993)

⁶ Lata Singh v. State of Uttar Pradesh (1987)

⁷ Mohammad Yunis vs Malooki Widow Of Nabi Khan And Ors. On 15 September, 2003

in their lives. Even though different international treaties particularly focus on minimizing discrimination primarily based on sex, as the International Covenant on Civil and Political Rights, the CEDAW is particular in that it gives unique attention to women and has shaped a set of guidelines on various components of women's human rights that may contribute to discrimination in any form.

CEDAW mandates all countries to eliminate/get rid off discrimination against women in all spheres⁸. Gender stereotypes and established gender norms are some examples. Similarly, this agreement emphasizes organizing "substantive equality" through making it sure by "equal opportunities, results, and access" for women and girls. The Convention lays the groundwork for attaining gender equality with the aid of assuring women's equal access to and participation in political and public life, including the potential to vote and stand for election and education, health, and employment. State parties conform to take all vital steps, including legislation and temporary special measures, to ensure that women have access to their full range of human rights and fundamental freedoms.

The Convention is the only human rights treaty that recognizes women's reproductive rights⁹ and recognizes culture and tradition as powerful influences on gender roles and family relationships. It affirms women's rights to accumulate, modify, or preserve their nationality, as well as their children's nationality. States parties further commit to take adequate action to combat all kinds of female trafficking and exploitation. The Convention's terms ought to be implemented with the aid of countries which have ratified or acceded to it. They have also got undertaken to offer national reports on their efforts to meet their treaty responsibilities at least every four years.

CEDAW's importance to the youth -

CEDAW addresses women of all ages, along with the elderly women, young women, and young girls. In nowadays, both young men and women play important roles in the implementation of CEDAW. They are in charge of tracking the rights and making sure that they are respected by both men and women. Furthermore, they are liable for determining whether or not rights have been infringed.

⁸ Smt. Reena Jain And Anr. Vs Shri Rajiv Kumar Saxena on 3 August, 2016

⁹ Suchita Srivastava v. Chandigarh Administration

Actions and measures of CEDAW

1. It's also important to point out that this convention is the most effective one to uphold women's rights to abortion¹⁰, to choose, change, and maintain their nationality¹¹, and to endure children.
2. The states pledge to take the vital steps and measures to end discrimination against women in any forms through ratifying the CEDAW agreement. The states ought to:
 - Comprise the idea of gender equality into their legislative framework. The discriminatory laws have to be repealed and replaced with ones which might be extra appropriate and will help prevent prejudice against women.
 - They must set up a courtroom and government agencies to make ensure that women are protected from all forms of discrimination.
 - To emphasize the fact that no one, no organization, and no enterprise discriminates against women in any way.
3. All crucial steps ought to be taken by the nations that have ratified the agreement in an effort to guarantee complete equality for women and girls in all spheres of life.
4. They are required to enforce its requirements and submit national reports every four years outlining their compliance.

Goals and General Agendas of CEDAW

The convention aims to acknowledge all verities of discrimination against women in their respective countries' civil, political, social, economic, legal, and cultural lives. Furthermore, it attempts to deliver equitable treatment for men and women by raising awareness of the necessary changes. The Convention covers all factors of a woman's life.

CEDAW has sustainable development goals, which were accepted by UN leaders in 2015. With the 2030 Agenda for Sustainable Development and 17 Sustainable Development Goals (SDGs), they strive for the next 15 years (SDGs). This agenda targets to achieve gender equality by empowering women and putting of all of discrimination against them. Gender equality has received a lot of attention in the pursuit of sustainable development, and it is related to all of the SDGs.

¹⁰ Meera Santosh Pal v. Union of India (2017)

¹¹ CEDAW (Article9)

With the SDGs and CEDAW, world leaders have established a human rights foundation to decide to and implement duty measures to make certain gender equality, empowering all girls and women, and preventing all forms of discrimination.

Optional protocol

Human rights treaties are often followed by “Optional Protocols” that either provide for treaty procedures or address a substantive issue connected to the treaty. Such protocols are also appeared as essential. Optionally available Protocols to human rights treaties are treaties in their own right that may be signed, acceded to, or ratified by nations who are parties to the treaty. The optional protocol to the “Convention on the Elimination of All Forms of Discrimination against Women “consists:

Communications procedure-

Individuals and groups of women have the right to protest about the violations of the Convention to the Committee at the removal of Discrimination against Women. This is known as the "communications procedure." The United Nations communications processes furnish the capacity to petition or a complaint about infringement of human rights¹². The complaint ought to be writing under all procedures.

Inquiry procedure-

It lets the committee to conduct investigations of grave or systemic Optional Protocol parties. This capability, referred as an inquiry mechanism, is provided in Article 8 of the Optional Protocol. An inquiry method and a complaints mechanism are also included in the optional protocol. An inquiry procedure enables the committee to conduct investigations into significant and systematic violations of women’s human rights in countries that become the Optional Protocol States. It is primarily based on Article 20 of the International Convention Against Torture and Other Cruel¹³, Inhuman or Degrading Treatment or Punishment. The inquiry technique:

1. Allows an international committee of experts to investigate critical violations of women’s human rights; Is beneficial when individual communications fail to carry the systemic character of widespread violations of women’s rights;

¹² Vishaka v. State of Rajasthan (1997)

¹³ Section 498-A of the Indian Penal Code:

2. Allows for the investigation of widespread infractions in situations when individuals or groups may be unable to communicate (for practical reasons or because of fear of reprisals)
3. Allows the committee to make recommendations on the structural reasons of violations;
4. And enables the committee to address a wide range of concerns in a specific country.

Need for an optional protocol-

1. To enhance and extend the modern day method for enforcing women's human rights.
2. Strengthening states' and individuals' understanding of CEDAW.
3. To encourage states to do so to adopt CEDAW.
4. To inspire to upgrade in discriminatory laws and practices.
5. To improve present channels for human rights implementation inside the UN system.
6. To raise public knowledge of human rights principles regarding to gender discrimination.

India & Convention on the Elimination of All Forms of Discrimination against Women-

The steps taken by India on the Elimination of All Forms of Discrimination against Women is listed on the table below:

S. No.	Steps taken/Measures	Subject Matter
1.	Article 14 of the Indian Constitution ¹⁴	Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
2.	Article 15 of the Indian Constitution ¹⁵	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
3.	Prenatal Diagnostic Techniques Act (PNDT) 1994	In this Act, it says to protect female Foeticide in India.

¹⁴ Shayara Bano v UOI, 2016

¹⁵ Revathi v. Union of India, AIR 1998

4.	Immoral Trafficking Prevention Act (ITPA)	In this Act, it says To prevent immoral trafficking, the punishment is seven years to life imprisonment.
5.	National Commission for Women,1992	it says To protect and safeguard the rights of women
6.	Sexual harassment at workplace	It says To prevent Sexual harassment at the workplace and establishment of Vishaka guidelines ¹⁶ .
7.	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	India ratified the CEDAW convention on 9 th July 1993.

Expanding CEDAW to include discrimination based on SOGIESC

The language of equality that is embedded in the Convention is based on a contrasts between women and men. “Yet, the Committee has time and again insisted that the obligations contained in the Convention express broader dimensions of inequality, including inequalities amongst women.”

There is no provision in CEDAW that refers back to the interaction of sex and gender and other markers of identity inclusive of sexual orientation. CEDAW has come in for criticism for ‘failing to seize the diversity of women and the range of their experiences’ and no longer recognising the ‘complexity of discriminatory practices directed at intersecting identities’.[2] However, others argue that this is a misreading of CEDAW and it is constantly evolving and alive to the different lived experiences of all women. As early as 1994 the Committee had noted the concern of the Netherlands[3] about problem bearing on sexual preference in its state report and welcomed the government of New Zealand move to pass a Human Rights Act that made sexual orientation a prohibited ground of discrimination.[4] Further by issuing Standard tips the CEDAW Committee adapts and clarifies the provisions and meaning of the Convention as international human rights law develops over time.

Scholars have noted that the Convention will be applied to provide safety for women who are discriminated against due to their sexuality wherein this ‘has been used to subordinate women’

¹⁶ Vishaka and Ors. V. State of Rajasthan (1997)

for instance, in which ‘a lesbian’s right to life is violated when she is subjected to death threats for no longer conforming to dictated heterosexual norms’[5]. It may, therefore, be argued that the phrase ‘all forms of discrimination against women’ in the Convention’s title also includes oppression that is related to women’s sex, sexuality, gender roles, and/or gender identity.¹⁷

Since CEDAW does not engage within the distinction among sex and gender, many have argued that Article 1 of CEDAW can be expanded to include trans and intersex people as it expands the term discrimination to mean: ‘the term “discrimination against women” shall mean any distinction...made on the basis of sex which has the effect or purpose of impairing...”

This expanded version of going past primarily sex-based to gender-based discrimination is made explicit in the Committee’s General Recommendation No. 28. This is an essential improvement to allow for SOGIESC to go into the ambit of the Convention. Similarly, the textual content of CEDAW does not directly discuss the meaning of marital status. The CEDAW Committee has held that ‘state parties are obligated to address the sex and gender-based discriminatory aspects of all diverse forms of family and family relationship’ and, more specifically, ‘wherein they are known, whether or not as a de facto union, registered partnership or marriage the state party should ensure safety of financial rights of the women in those relationships’ (CEDAW Committee, General Recommendation No. 29).

Again this could be used to acknowledge same –sex unions or marriages.¹⁸ In addition, the availability in CEDAW to counter gender stereotypes is likewise understood to champion the reason of all persons who renounce traditional heterosexual and patriarchal feminine and masculine gender identities and gender roles. This would encompass lesbian and bisexual women and trans people.

Except analysing into the textual content and expanding the Convention, rights of lesbian, bisexual women and trans people find a specific reference in the General Recommendations. Starting in December 2010, CEDAW started to often include sexual orientation and gender identity as vulnerable grounds in its General Recommendations, particularly in comments on intersectionality and more than one kind of discrimination. To date, there are a total of 37 General Recommendations. Of these, No. 27 (concerning the rights of older women), No. 28 (on the core obligations of state parties under article 2), No. 32 (on the gender-based

¹⁷ Shakti Vahini vs Union Of India on 27 March, 2018

dimensions of refugee status, asylum, nationality and statelessness of women), No. 33 (on women's access to justice), No. 35 (on gender-based violence against women, updating general recommendation No. 19) No. 36 (on the right of girls and women to education) and General Recommendation 37 (on the gender-related dimensions of disaster risk reduction in the context of climate change) explicitly refer to SOGIESEC.

This step of inclusion of SOGIESEC is not without difficulty as often there have been fierce debates and shortage of assist for this agenda from a swath of nations.

CEDAW and the Supreme Court

The Indian Supreme Court has relied on CEDAW directly in making decisions about inheritance and custody in a 1999 decision in *Hariharan v. Reserve Bank of India*¹⁸ as a way to specify gendered claims to fairness inside a framework of international human rights. The court situated the decision in terms of both CEDAW and the Universal Declaration of Human Rights, announcing that “the cry for equality and equal status...is not restrictive to any specific country but world over with variation in degree only”. In emphasizing the international weight of human rights, the court drew on the “clear, external and authoritative” stance of CEDAW in making a decision concerning the application of personal law. On the account that its ratification CEDAW has been referenced to date in 21 decisions of the Supreme Court of India, with problem ranging from workplace sexual harassment¹⁹ to inheritance, divorce, employment and violence.

When India ratified CEDAW, it did so with declarations to two articles and a reservation to an additional article. Such reservations and declarations are not uncommon, especially in the case of CEDAW presently, 61 countries which have ratified the convention have qualified their accession through such measures.

The two articles to which India has entered declarations are Article 5, which goals to take away discriminatory cultural and social practices, and Article 16, regarding equality in marriage and family life. Both declarations are framed in terms of religious personal law, and the desire for the ambitions of the convention to be in accordance with the strictures of different faiths' laws.

¹⁸ (*Githa Hariharan v. Reserve Bank of India* (2000) 2 S.C.C. 228)

¹⁹ *Shital Prasad Sharma vs State Of Raj And Ors* on 6 April, 2018

Five countries have entered declarations on Article 5 for motives of succession in traditional leadership, inheritance and education. India put a declaration on Article 16 together with 27 other countries: 16 put provisos on this article for objections based in religious personal law, in addition to 11 for unspecified or other reasons. The reservation entered through India to Article 29—wherein signatories agree to an arbitration process if conflict arises among states as a result of convention—is echoed by 38 other states' reservations, and it is the single most reserved section of the convention.

Conclusion

This international Convention, which was enacted in 1979, is structured similarly to the Convention on the Elimination of All Forms of Racial Discrimination. By way of signing the Convention, governments conform to adopt a series of steps to disposes all forms of discrimination against women. The Commission on the Status of Women (CSW) of the United Nations had previously worked on women's political rights and the minimum marriage age.

CEDAW is frequently known as the “bill of rights for women.” Countries which have ratified the convention are expected to incorporate it into their national legislation and take the appropriate steps to guarantee that women and girls throughout the country have the chance to enjoy equality in their lives. It commands all countries to eliminate discrimination against women in the public and private spheres.

The Convention Is the only human rights treaty that recognizes women's reproductive rights and recognizes culture and tradition as powerful affects on gender roles and family relationships. It addresses women of all ages, inclusive of elderly women, young women, and young girls. They are in charge of monitoring the rights and making sure that they are respected by both men and women. The convention main object is to acknowledge all forms of discrimination against women in their respective countries' civil, political, social, economic, legal, and cultural lives. And such agendas primarily focuses to achieve gender equality by empowering women and eliminating all types of discrimination against them. Gender equality has received a great amount of attention in the pursuit of sustainable development, and it is linked to all of the SDGs. India ratified CEDAW in 1993.

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