GENDER EQUALITY IS A HUMAN RIGHT: AN ASSESSMENT OF CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW).

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1. Introduction

Promoting universal respect for human rights has been one of the fundamental goals of the United Nations since its creation, and the development of comprehensive international human rights normative and standard-setting system within the United Nations was one of the great achievements of the 20th century. “Women have a right to gender equality.” It’s a simple and true statement, but its implications for how development assistance should be conducted are many and far-reaching. It is rightly said by Joanne Scott, in her classic study of women in the French revolution that the “rights of man” had “only paradoxes to offer” to women.¹ The need to respond to violence against women as the primary approach to ensure gender justice was recognized in 1992 by the CEDAW Committee through its General Recommendation 1992. The Recommendation takes an all-encompassing approach to violence and also provides that any form of discrimination or violation of rights of women will be considered to be violence, and further that the state will be responsible not only for violation of the rights by public action but also private action.

The human rights obligation to eliminate gender based discrimination against women in order to achieve gender equality has been at the pivot of international human rights from the beginning. The UDHR, ICCPR, ICESCR, and other core treaties contain clear statements on how women’s right should be free from discrimination. The centrality of this concern was

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made crystal clear by the adoption of CEDAW. The core international human rights standards when taken together provide a powerful normative framework for promoting gender equality. In 1993, the Vienna World Conference on Human Rights took the centrality of women’s rights to the international human rights regime as one of its primary concerns. As stated in the “Vienna Declaration and Programme of Action,” and reaffirmed many times since, including in the “Beijing Platform:

- 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.
- The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.”

Provisions protecting women’s human rights exist in all of the core international human rights treaties. But it is in CEDAW that the specifics of women’s human right to gender equality in detail and the broad range of actions that must be taken to achieve gender equality are mapped out.² It is also in CEDAW that the international human rights system understands the nature and meaning of sex-based discrimination and gender equality is most clearly articulated.

2. Provisions under CEDAW convention relating to Gender Discrimination

CEDAW is an international treaty that was adopted by the United Nations General Assembly on 18th December 1979 and it came into force as an International Treaty on 3rd September 1981. The Convention was the outcome of more than thirty years of work by the United Nations Commissions on the Status of Women, a body that was established in 1946 to

monitor the situation of women and to promote women’s right. Described by some as an ‘international bill of rights for women,’ the Convention has been an important tool used by national and international advocates for the equality of women, while the Committee established under the Convention to monitor its implementation has played a significant role in encouraging the implementation of the treaty. It articulates an International standard for what is meant by ‘equality’ between men and women.

The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. This convention spells out the meaning of equality and how it can be achieved.

In its very preamble, the CEDAW Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". The convention has been instrumental in highlighting a universal perspective in almost all areas in which women are denied equality with men. In its spirit the convention is based on the promise of the United Nations, i.e. to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. The convention spelled out both the meaning of equality in the context of and how it can be achieved in the field of gender discrimination. The explicit goal of this Convention, which was drafted by the Commission on the Status of Women, is to achieve equality for women based on the recognition that full global development, the welfare of the world, the establishment of just new international economic order and the cause of international peace and security require the maximum participation of women on equal terms with men in all

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4 Retrieved from: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx ; Last Visited on 2nd August, 2016 at 1:55 PM.
fields. This goal explicitly links the protection and promotion of women’s rights to other fundamental objectives of the international community. The Convention is more specific than the general assertions of sexual equality in other conventions. It identifies areas where gender-based discrimination is most marked and includes provisions on such matters as suppression of prostitution and trafficking in women, the participation of women in the public life of States, equality in nationality laws, equality in access to and in all other aspects of education, equality in employment, equality in access to health services, equality in other areas of economic and social life, the specific needs of rural woman, equality before the law and equal right with in the family. These rights are amplified by the opening provisions of this Convention. Article 1 defines discrimination against women. Article 2 condemns such discrimination and imposes obligations upon parties to take positive steps to eliminate it in national laws and constitutions and to take steps to ensure the practical realization of this principle. Article 5 recognizes that legislation and policy directives are not by themselves sufficient, and accordingly require parties to take appropriate measures to change attitudes with respect to sexist stereotyping. Article 4 allows for positive discrimination during a transitional phase. These initial articles make it clear that ratification of the Women’s Convention require States to study their domestic laws and practices in order to identify those which are discriminatory, to determine appropriate means of modification and to ensure that such legal changes are implemented in practice. Ideally, States should take such steps as desired after examining and adapting their policies in all fields, for example legislation, case law and policy directives within the public and private sectors, educational.

5 Article 6
6 Articles 7 and 8
7 Articles 9
8 Article 19
9 Article 11
10 Article 12
11 Article 13
12 Article 14
13 Article 15
14 Article 16
curriculum, media representation, introducing gender awareness programs for members of the judiciary. The remaining articles provide for implementation of this Convention. The uniform pattern of United Nations Human Rights treaties is followed through the establishment of a monitoring committee the committee on the elimination of discrimination against women, (CEDAW) comprising independent experts. The initial and periodic reports made by States in compliance with their obligations are scrutinized by the committee in advance of the presentation of individual reports by a representative of the relevant State, and the same is debated upon in open session. In number of ways, this Convention represents a significant advance for the legal guarantee of women’s rights. It has been widely ratified by States from all regions of the world. It includes civil and political and economic, social and cultural rights, which was a radical departure from previous United Nations instruments, which had maintained a sharp division between the two. The Women’s Convention also attempts to break through the public and private divide which feminists have identified in particular detrimental to women. It is argued that one of reasons for women’s lack of participation in public policy and decision-making is their traditional consignment to private life. Liberal political theory distinguishes between public and private domains in the way that men are seen as properly functioning in the public areas as of governance and the workplace, while women are seen as properly located in the private world of family and the home. The Convention aims at correcting the retrogressive influence of prevailing stereotype customs and norms that give rise to the multitude of legal, political and economic constraints on the advancement of women and thereby restrict women’s enjoyment of their civil, social, political or cultural rights on the basis of equality with men.

15 Article 17
3. Working of CEDAW

CEDAW is informed by a particular understanding of what counts as real equality, often called “substantive equality” or “equality of results.” CEDAW takes a very concrete and three-dimensional view of equality. Rather than considering equality in solely formal and legalistic terms, and saying that laws and policies ensure equality amongst women and men simply by being gender-neutral, CEDAW requires that their actual impact and effect should also be considered.

Under CEDAW, the State requires to do more than just make sure there are no existing laws that directly discriminate against women. It must also ensure that all of the necessary arrangements are put in place that will allow women to actually experience equality in their lives. Thus, CEDAW makes the States responsible not just for their own actions, but also to banish discrimination that is being perpetrated by private individuals and organizations. It clearly recognizes the deep rooted discrimination in spheres of life such as culture, the family, and interpersonal relations, and apprises that if change does not take place at those levels, efforts to achieve gender equality will be ultimately defeated.

3.1 The CEDAW Committee

Like all of the core international human rights treaties, CEDAW is overseen by a treaty body. The Committee on the Elimination of Discrimination against Women is a group of 23 gender equality experts. They are elected by the States parties to CEDAW, but once elected they serve in an independent capacity, not as representatives of their countries. The Committee membership is regionally representative, and at present has members from Algeria, Bangladesh, Brazil, China, Croatia, Cuba, Egypt, France, Germany, Ghana, Israel, Italy, Jamaica, Japan, the Republic of Korea, Malaysia, Mauritius, the Netherlands, Portugal, Singapore, Slovenia, South Africa, and Thailand. The Committee members bring a broad range of relevant expertise to bear, drawing from their careers as gender equality experts in
law, academia, the private sector, government, and non-governmental organizations. The Committee is responsible for reviewing each State party’s progress, as well as the challenges they are experiencing in implementing the Convention. The Committee provides its concluding comments, which provide for the specific guidance on how the performance could be improved in the national context, after reviewing the progress and the challenges. The Committee is also responsible for developing jurisprudence, a body of legal interpretation, primarily through the issuing of General Recommendations (GRs) and decisions under CEDAW’s Optional Protocol. This jurisprudence helps clarify how the Convention applies to specific situations and emerging issues.

In the past, all of the other treaty bodies met in Geneva and received secretariat support from the Office of the High Commissioner for Human Rights (OHCHR), but the CEDAW Committee met in New York, and the Division for the Advancement of Women (DAW) served as its secretariat. Beginning in 2008, CEDAW will meet in Geneva and will be supported by the OHCHR. As of 1 January 2008, responsibility for servicing the Committee on the Elimination of Discrimination against Women has been transferred to the Office of the High Commissioner for Human Rights in Geneva.

3.2 The CEDAW Reporting Process

CEDAW establishes a human rights framework for the application of quotas to attain and maintain gender balance in all spheres of life. States that are parties to CEDAW must submit regular reports to the CEDAW Committee. These reports contain detailed information about legislative, judicial, administrative and other measures that have been undertaken to implement CEDAW, as well as about obstacles that have been encountered. The reports need to provide a fairly comprehensive mapping of progress in achieving gender equality, and

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16 Supra Note 4
17 Available at: http://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq#optionalprotocol; last visited on 22nd February, 2017 at 2:09PM.
18 Available at: http://www.un.org/womenwatch/daw/cedaw/; last visited on 23rd February, 2017 at 3:08 PM.
States will often call on DAW, the OHCHR and other UN organizations for assistance when drafting them.

The reports are reviewed during the CEDAW Committee’s sessions. The reporting State sends a government delegation, including the heads of women’s machineries and other key officials such as those responsible for foreign affairs and the administration of justice, to engage in a dialogue with the Committee members. When the Committee is considering the reports, it will also draw on information provided by UN agencies and women’s NGOs from the reporting countries. There are specific meeting times set aside during the sessions for the Committee to hold discussions with the UN agencies, and with the women’s NGOs. Women’s NGOs can also submit alternative reports on their countries’ progress—often called “shadow reports”—to the Committee.

The Committee places great value on hearing from women themselves about the situation in their countries. UNIFEM has for many years supported women’s NGOs to attend the CEDAW sessions and present shadow reports through the “Global to Local” programme. The programme is run by the International Women’s Rights Action Watch (IWRAW) Asia Pacific, an NGO based in Malaysia, and while initially supported only by UNIFEM, it is now also receiving support from UNFPA. Over the past decade, more than 80% of the women’s NGOs from around the world that have attended the CEDAW sessions were sponsored by the Global to Local programme.

When the CEDAW session is completed, the Committee issues its concluding comments on each State party’s report. They note successful steps that have been taken to achieve gender equality, then identify the most critical measures that need to be taken in the future to implement the Convention.19

19 Supra Note 4
The concluding comments are very important resources for gender equality tasks. Firstly, they provide for the authoritative guidance on what *CEDAW* requires in specific national contexts- through the concluding comments, the fairly general language of the Convention is given more concrete, real-life meaning. Secondly, the concluding comments are quite valuable advocacy tools for use by the gender equality advocates to drive for the required changes at the national level.

Gender equality advocates around the world have been working to promote and encourage their governments to sign on to the OP-CEDAW with some big success – till date there are 100 States parties to the OP. In Southeast Asia, the Philippines, Thailand, and Timor-Leste have ratified or acceded to the OP-CEDAW, while Cambodia and Indonesia have signed but not yet ratified it.  

Recently in 2016 in a Joint Statement by the Committee it was stated that “the risk of sexual and gender-based violence is high…, with women and girls also facing other challenges, particularly in transit, of psychosocial stress and trauma, health complications, physical harm, injury and all forms of exploitation, including trafficking in human beings. Migrant women and girls are commonly subject to multiple and intersecting forms of discrimination, based on their sex and on additional grounds such as race, religion or ethnicity. Gender-based discrimination limits women’s and girls’ decision-making and agency in the household and in the labour market, as well as their mobility, within and outside their countries of origin. In order to develop the right measures, we encourage States to ensure the leadership and engagement of women migrant workers in policy formulation and their full and equal participation in decision-making, and to increase research, collection and analysis of sex and age-disaggregated data on migration. We ask that States recognize the contributions of migrant women to fostering more equitable, inclusive and sustainable growth and human

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20 Available at: http://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq#optionalprotocol; last visited on 23rd February, 2017 on 6:23PM.
development for countries of origin, transit and destination. In the design, implementation, 
monitoring and evaluation of the new international framework on migration, States will 
benefit from hearing the voices of women and girls, and responding to their rights and 
specific needs to ensure that no one is left behind."^{21}

3.3 Critical Analysis of CEDAW in Pretext to Gender Equality in India

One of the most widely ratified International treaties is also one that is the least known. The 
Convention on the elimination of all forms of discrimination against women (CEDAW) was 
adopted by the United Nations General Assembly in 1979 and ratified by India in 1993. This 
treaty has been described as the International Bill of Rights for Women. It is a comprehensive 
treaty on the rights of women and establishes legally binding obligations on the State Parties 
to follow the legal standards set by it to end discrimination against women and its goal is to 
achieve equality between men and women.

The equality that this Covenant seeks to achieve is not formal equality, where women are 
treated on par with men under the law and where the rights on paper are never made a reality, 
nor does it mean the protectionist mode of equality, where women are given equal rights but 
then discriminated against by reservations on the ground of being protected for their own 
good. The equality that this Convention seeks to secure for women is not equal rights but the 
right to be equal.

When a State has ratified an international convention the courts have a right to use the 
convention or treaty as an aid in interpreting national law to conform to the provisions of the 
convention. This is what the Supreme Court of India and High Courts have done.

In 1997, the Supreme Court in *Vishaka's* Case\(^{22}\) held that international covenants can be made use of by courts in India to interpret our laws and that by ratifying CEDAW, India had committed itself to an international standard or norm of rights for women, according to which gender equality includes an obligation on the part of the State/ employer to provide women with a sexual harassment free workplace. In 1999, in *Gita Hariharan's* case,\(^{23}\) where the question was whether the mother of a Hindu minor could be the legal guardian during the lifetime of the father, the Apex Court, while holding in favor of women stated, "the message of CEDAW and the Beijing Declaration which directs all State Parties to take appropriate measures to prevent discrimination in all forms against women is quite clear. India is a signatory to CEDAW. . . the domestic courts are under an obligation to give due regard to International Covenants and norms for construing domestic law when there is no inconsistency between them."\(^{24}\) Violence against women used to be a very taboo subject to talk about or portray in the media. Cases were never publicized in the same way twenty years ago as they are now. A perfect example of this is the 2012 *Delhi Gang Rape*.\(^{25}\) This brutal rape and fatal assault of a young woman in Delhi India was widely publicized in both India and abroad. The massive media coverage allowed for national and international outrage, which was able to produce justice for the victim, and really engaged communities in talking about how to combat violence against women.\(^{26}\)

The National Crime Records statistics show that in 1994 there were 4,935 dowry deaths and 25,946 cases of dowry harassment, while in 2005, eleven years after the signing of CEDAW, that number increased to 6,787 dowry murders and 58,319 incidents of dowry harassment.\(^{27}\)

\(^{22}\) *Vishaka and others v. State of Rajasthan and others.* (AIR 1997 SC 3011)

\(^{23}\) *Ms Githa Hariharan and another v. Reserve Bank of India and another* (AIR 1999, 2 SCC 228)

\(^{24}\) Sheila Jayprakash, "The right to be equal," *The Hindu*, 23\(^{rd}\) April, 2000.

\(^{25}\) *State Vs. Ram Singh and another*, SC No. 114/2013.

\(^{26}\) Mita Ramani, "Violence Against Women (Focus on India)," Available at: http://templeofunderstanding.org/wp-content/uploads/2015/07/Mita-Ramani-Paper-Violence-Against-Women.pdf; Last visited on 26\(^{th}\) February, 2017 at 5:08 PM.

\(^{27}\) National Crime Records Bureau, 2005.
A total of 24,771 dowry deaths have been reported in the country in past three years i.e. 2013-15, with maximum of them occurring in Uttar Pradesh with 7,048 deaths. As per National Crime Records Bureau data, the country has recorded 3.48 lakh cases of cruelty by husband or his relative and West Bengal tops the chart with 61,259 such cases in past three years, followed by Rajasthan (44,311) and Andhra Pradesh (34,835). The trend for dowry harassment and dowry deaths are on the rise, therefore there is no evidence that the ratification of CEDAW has helped reduce this violent act against women.

Similarly, NCRB shows that in 2010, there were 22,172 reported rape cases and it has increased to 36,735 in 2014. Out of 36,735 total rape cases in the country, 197 cases were reported as custodial rapes during the year 2014.

The cases of Cruelty by husband or his relatives in the country have increased by 3.4% during 2014 over the previous year which was 1, 18,866 cases. Data on Protection of Women from Domestic Violence Act, 2005 has been collected for the first time in 2014. A total of 426 cases were reported under this Act during 2014.

In a country where boys are preferred and considered an asset for economic, social, and religious reasons, it is difficult to make changes on a national level when access to education is limited, poverty is widespread, and some individuals are unaware of the International Conventions. India’s ratification of CEDAW did not make the country change its religious and cultural beliefs about the value of the female population.

In fact, the ratification of CEDAW does not seem to have changed anything. The statistics completely show the contrast. India, in order to reduce gender violence, it actually needs more regulating governing policies, as CEDAW has evidently done nothing to help Indian women.

28 Report by The Indian Express Newspaper, July 31, 2015.
29 Available at: http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf; Last visited on 23rd February, 2017 at 9:00PM.
4. Conclusion

The primary concern with the elimination of all forms of discrimination against women is directed towards achievement of gender equality. The Convention grants explicit recognition to the goal of actual as well as legal equality and encourages adoption of temporary and special measures directed at accelerating de facto equality between men and women. The actual Gender Equality Strategy tends towards a gender neutral approach, as it focuses upon equal opportunities for both sexes, and extends its scope to ‘men and women and the transgender’.

Although women have a sad history of near universal, systematic suffering in virtually every area of the globe, the idea of group human rights for women is fatally undermined by problems of collective agency for a diverse group that includes half of humanity. It is also not clear that what rights women as a group might be held to possess. Unless we accept gender roles that postulate qualitative differences between men and women, the best formulated special rights for women should be in gender neutral terms. For instance family rights, reproductive rights and protection against domestic violence are not special rights of women. The principle in each case is independent of sex or gender. No one should be subject to violent assault by anyone, including a domestic partner.

5. Suggestions to achieve Gender Equality in pretext to India

5.1 Uniform Civil Code: A means of Achieving Gender Equality

The Indian Constitution, in its Part IV, Article 44 directs the state to provide a Uniform Civil Code throughout the territory of India. No Gender Justice could be rendered in its comprehensive sense, unless we have a Uniform Civil Code containing the best provisions

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from all religions, with the sole objective of doing gender justice. The fact that the enactment of UCC has been made a Directive Principle indicates that equality of sexes was accepted as an abstract principle but it was not likely to be easily translated into concrete legal rights. Moreover, the fact that no definite time period has been set for the achievement of the UCC indicates a reluctance to make a firm commitment to achieve gender equality. As long as the oppressive personal laws continue, there cannot be a legal equality. Only the adoption of a secular, Uniform Civil Code would ensure this.

The heterogeneous, religious oriented personal laws were a concept of medieval times. A society which is compartmentalized by its laws can hardly become a homogenous unit. The non-implementation of the Uniform Civil code provided in Article 44 of the Constitution amounts to a grave failure of the Indian democracy. India is a secular nation and it is a cardinal necessity that religion be distanced from law. The vision under Article 44 is not for mere uniformity but for gender justice and henceforth it’s the need of the hour.

5.2 Need for gender neutral Laws

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Everyone should have equal rights and responsibilities, irrespective of gender. The preamble of our Constitution begins with “WE THE PEOPLE OF INDIA” which includes men and women of all castes, religions; etc. It renders “EQUALITY of status and opportunity” to every man and woman. It also ensures “dignity of individuals” which includes the dignity of man also. There is a dire need to ensure that gender-neutral language is used in our laws, and both the sexes are equally protected.

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5.3 Neglected Third Gender

Often the members of the marginalized sex like ‘Transgender’ are also victim of various offences and as such they cannot claim any protection because the crimes under the Indian Penal Code are not gender neutral. With respect to sexual abuse of transgenders remains unresolved as there cannot be equal protection of men, women and transgender when it comes to sexual atrocities and sexual abuse, because without law there is no legal remedy available to them. The Supreme Court has recognized transgenders as a third gender.\(^{35}\) If we really want to establish a gender-just society, we need to recognize LGBT rights as well, because that will ensure both legal justice, and societal inclusion of all communities. The criminalization of gay relationships is a major concern these days.\(^{36}\) Thus, there is need to realize that crime has no gender, and everyone should be deterred from committing it. It inflicts innumerable sufferings upon the victim, and he deserves justice.

5.4 Need to strengthen CEDAW and its implementation

In August 2004, Mr Effah-Appenteng, chairperson of the States Parties meeting, said that “The Convention had established the guidelines critical for the advancement of women and enjoyment of their fundamental human rights. But, 25 years after its adoption, discrimination against women was still rife, as they continue to suffer avoidable challenges by virtue of their gender”.\(^{37}\) Hence States Parties, UN agencies, other international bodies, donors and NGOs need to pay greater attention to its implementation and to the work of the CEDAW Committee and to integrate all other work towards the advancement of women, including the implementation of Plans of Action of World Conferences, into the framework of CEDAW’s normative standards for equality.\(^{38}\) Recently, UN Secretary-General \textit{António Guterres }in her

\(^{35}\) \textit{National Legal Services Authority v. Union of India}, AIR 2014 SC 1863.

\(^{36}\) Section 377, \textit{the Indian Penal Code}, 1860.


message for the International Day of Women and Girls in Science, observed on 11 February, said that, “For too long, discriminatory stereotypes have prevented women and girls from having equal access to education in science, technology, engineering and mathematics. On this International Day, I urge commitment to end bias, greater investments in science, technology, engineering and maths education for all women and girls, as well as opportunities for their careers and longer-term professional advancement, so that all can benefit from their ground-breaking future contributions.”

Lastly, to conclude if we really want justice to prevail, if we really want people to have faith in the law, if we really want to proclaim equality and dignity, if we really want to rise above our shallow prejudices, if we really want humanity to supersede, we must have gender-neutrality as the solution.

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