

## **CEDAW –Application, Relevance of its Cardinal Provisions**

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‘Parliaments and their members have a vital role to play in ensuring respect of the principles of the Convention. They have an impressive range of tools at their disposal to do so. They can encourage their State to become party to the Convention and the Protocol. They can also debate and adopt national legislation that conforms to the international standards set out by the Convention and monitor its implementation. - Anders B. Johnson Secretary General Inter-Parliamentary Union.

### **Origin**

At the founding conference of the United Nations in San Francisco in 1945 few of the participating women insisted that the principle of equal rights for men and women to be enshrined in the Charter of the United Nations. Since that time, women worldwide have drawn attention to ensure “the fundamental rights of individuals, the dignity and value of human beings, especially equal rights to women whether it is big and small” state should initiate code of equality in their respective law.

In response to a motion submitted by Bertha Lutz, the Brazilian delegate, the Economic and Social Council of the United Nations (ECOSOC) set up a Commission which was entrusted with the task of analysing the political status of women. Initially, this Commission was established as a sub-unit of the Human Rights Commission. The delegate of the United States, Eleanor Roosevelt, together with 16 female delegates and advisers from eleven states, prepared an open letter to the World’s Women which she read out in their names on the occasion of the First General Assembly of the United Nations in London in February 1946 that Women in various parts of the world are at different stages of participation in the life of their community, that some of them are prevented by law from assuming full rights of citizenship, and that they therefore, may see their immediate problems somewhat differently. Finding ourselves in agreement on these points, they expected and wished those group to advise the women of all our countries of women strong belief that an important opportunity and responsibility confront the women of the United Nations: first, to recognize the progress women have made during the war and to participate actively in the effort to improve the standards of life in their own countries and in the pressing work of reconstruction, so that there will be qualified women ready to accept responsibility when new opportunities arise; second, to train their children, boys and girls alike, to understand world problems and the need for international cooperation, as well as the problems of their own countries; third, not to permit themselves to be misled by antidemocratic movements now or in the future; fourth, to recognise that the goal of full participation in the life and responsibilities of their countries and of the world community is a common objective toward which the women of the world should assist one another.

The seven members of the “sub-Committee“(from Denmark, the Dominican Republic, Lebanon, Poland, France, India and China) met in May 1946, protested against their subordination to the Human Rights Commission, started to work out their terms of reference and to continue their work at any rate “until women will have reached the point where they are on a par with men. In practice, priority should be given to political rights because without these little progresses is possible.” At that time, women in 30 of 51 states did not have the right to vote. On March 29, 1947, these women succeeded: The Commission on the Status of Women (CSW) was established and enjoyed equal status with the Human Rights Commission within the system of the United Nations. The scope of responsibilities of the Commission on the Status of Women was defined as follows: “Preparing recommendations and reports for the Economic and Social Council with a view to advancing women’s rights in the fields of politics, business, social life and education, and to treat problems in the sphere of women’s rights urgently which call for immediate attention in order to assert the principle that men and women have equal rights, to prepare proposals to this end and to issue relevant recommendations.“ (ECOSOC Resolution 48(IV) of March 29, 1947)

### **CSW Developments within the UN.**

Since the founding conference in 1945, the number of member states of the United Nations has risen from 51 originally to 192. At the beginning, the Commission on the Status of Women consisted of representatives from 15-member states which were elected by the UN Economic and Social Council. Since 1990 the Commission on the Status of Women has consisted of 45 members. Its regional composition is as follows: 13 African states, 11 Asian, 4 Eastern European, 9 Latin American and Caribbean states as well as 8 Western European and other states. The members, who are elected for a term of four years, determine the admission of government delegates; observer states are also admitted. India shown keen interest in during the 90s and kept her representation in various stages to emphasis the importance of women rights and equality. Country like Austria joined the United Nations after the allies had left the country and the State Treaty had been signed in 1955. Austria was a member of the Commission on the Status of Women in the years 1965 to 1967, 1970 to 1972, and 1989 to 1996.

The Commission on the Status of Women proposed additions to the human rights conventions as drafted in order to draw world public attention to problems and existing inequalities between women and men—even during the Cold War as well post-cold war times. The central task of the Commission on the Status of Women is the elaboration of universal, i.e. generally valid standards concerning the equal status of the sexes in all spheres, especially in politics and public life, in education, in the labour market, in the health sector, in economic and social life, in across cities and rural areas, and in marriage and the family lives. Comprehensive information and the evaluation of data on the legal status of women allowed the Commission on the Status of Women to define progressively in greater detail on Women’s Human Rights and enshrined these in various treaties and legal instruments later they are developed as ‘Convention on the Political Rights of Women-1952, Convention on the Nationality of Married Women- 1957, Convention and Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962 and 1965 Declaration on the Elimination of Discrimination of Women- 1967, Convention on the Elimination of all Forms of Discrimination of Women-1979, Declaration on the Elimination of Violence against Women- 1993, Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women- 1999.

### **What is CEDAW?**

CEDAW is often referred to as the ‘Women’s Bill of Rights’. It is one of the core international human rights instruments of the United Nations treaty system, which requires Member States to undertake legal obligations to respect, protect and fulfill women rights as human rights. CEDAW was adopted by the UN General Assembly on December 19, 1979, came into force on December 3, 1981. Today, it is one of the most broadly endorsed human rights treaties—it has been ratified or acceded to by 189 countries to date, or about 90 per cent of the UN membership States parties to this.

Provisions protecting women’s human rights exist in all the core international human rights treaties. What is significant about CEDAW is that it is exclusively devoted to gender equality, one of the key elements of the MDGs and Sustainable Development Goals (SDGs). It is in CEDAW that the specifics of women’s human right to equality and non-discrimination are spelled out in detail, and the broad range of actions that must be taken to achieve this equality are mapped out. It is also in CEDAW that the nature and meaning of sex-based discrimination and gender equality is most clearly articulated.

CEDAW is made up of VI Parts containing 30 Articles. After giving in Article I a meaning to the term "discrimination against women", it "condemns discrimination against women in all its forms" under Article 2. Salient features of the Convention regarding which States are required to take all appropriate measures in the direction of eliminating discrimination revolve around: modification of social and cultural patterns of conduct; ensuring family education; suppression of all forms of traffic in women and exploitation; ensuring full development and advancement of women in all fields; eliminating discrimination in the political and public life of the country; ensuring women the opportunity to represent their Government at the international level; granting women equal right with men to acquire, change or retain their nationality; eliminating discrimination in the field of education; eliminating discrimination in other areas of economic and social life; according equality before law; eliminating discrimination in the field of employment; preventing discrimination on grounds of marriage and maternity; eliminating discrimination in the field of health care; eliminating discrimination in all matters relating to marriage and family relations: ensuring application of CEDAW to women in rural areas; and establishing a Committee on Elimination of Discrimination against Women for the purposes of implementation of its provisions.

CEDAW provides a complete definition of sex-based discrimination – described as any distinction, exclusion, or restriction based on sex, which intentionally or unintentionally nullifies or impairs the recognition, enjoyment and exercise of women’s social, cultural, political and economic rights.

CEDAW takes a concrete and multi-dimensional view of equality – it is based on the principle of “substantive equality”, or “equality of results” between men and women. This goes beyond equality of

opportunity, and the wording used in laws, to looking at the actual condition of women's lives as the true measure of whether equality has been achieved.

CEDAW legally binds all States Parties to fulfill, protect and respect women's human rights – this means that States are responsible not just for their own actions, but also for eliminating discrimination that is being perpetrated by private individuals and organizations. Gender inequalities must be addressed at all levels and in all spheres, including the family, community and across state.

CEDAW recognizes that discrimination is often most deeply 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 efforts to achieve gender equality will be frustrated.

The most important elements of the Convention are the following: Definition of discrimination: The Convention defines and prohibits both direct and indirect discrimination against women on the grounds of sex and the gender-specific role assigned to them, including their marital status (Article 1). In this context, it is worth noting that the Convention also refers indirectly to multiple discrimination to which women can be exposed. Definition of equality: The Convention defines equality, equal treatment and the equal status of women and men not only formally, i.e. in law and before the law but also in the substantive sense, i.e. in the exercise and enjoyment of human rights, women must de facto be equal, be treated equally and have equal opportunities to those of men, so that they can attain equal outcomes. (Articles 2, 44, para one, 24)

Endorsement of special measures: The Convention questions and prevents both the biological and social differences between women and men; i.e. it allows the “States Parties “and other bodies directly represent state power as well as other actors to treat women and men differently according to their needs, so as to make sure that women can enjoy de facto equality, equal treatment and equal status. Therefore, special measures for the protection of women, i.e. maternity protection provisions taking into account women's capacity to bear and breast-feed children are permissible but should be checked from time to time for their necessity and content. Time-limited special measures which serve the advancement of women or even the preferential treatment of women in order to accelerate the process of attaining de facto equality of women and men are also permitted, and in the eyes of the Committee are necessary in order to reach this objective.

Reference to all forms of discrimination in all spheres of life: The Convention covers all forms of discrimination in all spheres of life, including discrimination that occurs in the family. This is particularly important as the rules of equality, equal treatment and equal status, including protection against violence within marriage and the family were not applied for decades because of patriarchal concepts – and in a series of countries are still today disregarded.

The influence of culture: The Convention calls for the modification or abolition of practices, customs and patterns of conduct imposed by a culture or faith which seek to promote prejudices concerning inferiority of women to men as well as sex-stereotyped roles and to justify discrimination against women (Article 2, letter f; Article 5, letter a)

Obligations of the “States Parties “: The Convention illustrates the obligations that the “States Parties“must meet. These include, amongst other things, immediate action in the form of legal or other measures in order to ensure the full development and advancement of women for the purpose of guaranteeing them the enjoyment of human rights without discrimination on the grounds of their sex and marital status. Furthermore, the States Parties assume responsibility for the implementation of the Convention not only by civil servants, but also by private individuals, companies and organisations. Although a State Party may freely choose the way in which it implements the Convention, it must at all costs attain the outcomes by granting the rights de facto and meeting the obligations defined in the Convention. (Articles 2, 3, 24)

Articles 25 to 27 include provisions on participation in the treaty, and procedures for revision and designate the Secretary-General as depository. Article 28 entitles States parties to accept the Convention subject to reservations but provides that reservations which are incompatible with its object and purpose are not permitted. Reservations may be withdrawn at any time by notification to the Secretary-General. Article 29 provides that disputes between two or more States parties about the interpretation of the Convention which cannot be settled by negotiation, may be submitted to arbitration, and where the parties are unable to agree referred to the International Court of Justice for determination. Reservations to article 29 are permissible, and the other States Parties are not bound by that provision with respect to any State party which has to make such a reservation. Article 30 provides for the authenticity of the Arabic, Chinese, English, French, Russian and Spanish texts of the Convention and that these shall be deposited with the Secretary-General now and then if any changes raised.

### **Member Countries Obligation**

By becoming a party to CEDAW, a State is legally obliged to take all appropriate measures to eliminate discrimination against women and advance gender equality. The content of these obligations, set out in Articles 2 to 5 of the Convention, is not open to alteration by individual governments or organizations.

Importantly, Article 2 makes clear that the State not only has the obligation not to discriminate through its own actions, but also to prevent and eliminate discrimination that is perpetrated by private individuals and organizations. The State's obligations extend to private life as well as public life. Article 16 provides that States must eliminate discrimination against women in marriage and family life, areas considered by many countries to fall within the private sphere. Historically, one of the biggest obstacles to realizing women's rights in many countries has been the perception that the State should not interfere in the private realm of family relations. CEDAW recognizes that unequal power relations within the private sphere contribute very significantly to gender inequality in all aspects of women's lives, and it directs States to take measures to correct this power imbalance.

### **Monitoring Process**

CEDAW is overseen by a treaty body called the Committee on the Elimination of Discrimination Against Women. This is a group of 23 gender equality experts, elected by States parties to CEDAW, although once elected they serve in an independent capacity and not as representatives of their countries. The Committee membership is regionally representative. Their terms last four years, with only half of the Committee members replaced each time elections take place.

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 is also responsible for developing jurisprudence, a body of legal interpretation, through the issuing of General Recommendations and decisions under CEDAW's Optional Protocol. This jurisprudence helps clarify how the Convention applies to specific situations and emerging issues. Prior to 2008, the CEDAW Committee met in New York, with the UN Division for the Advancement of Women (DAW) serving as its secretariat. From 2008 onwards, the Committee meets in Geneva and is supported by the Office of the High Commissioner for Human Rights.

### **Reporting Process**

States that are parties to CEDAW must submit regular reports to the CEDAW Committee, typically at four-yearly intervals. These reports contain detailed information about legislative, judicial, administrative and other measures that have been undertaken to implement CEDAW, as well as about obstacles encountered. The reports require a fair comprehensive mapping of progress in achieving gender equality.

State reports are reviewed during the CEDAW Committee sessions which have been held in Geneva since 2008. The reporting State sends a government delegation, most often including the heads of national women's machineries and other key officials such as those responsible for foreign affairs, the administration of justice, education, and health, to engage in a dialogue with the Committee members.

Since 1990, initial and subsequent state reports have been reviewed by a pre-session working group of five Committee members. The working group draws up questions to guide the full Committee's examination of the report – called the 'List of issues and questions with regard to the consideration of periodic reports. These questions are submitted to the country's representative in advance so that a response can be prepared. When the CEDAW session is over, the Committee issues its Concluding Observations on each State party's report to reflect on specific remarks.

### **Optional Protocol**

A number of core international human rights treaties have protocols that States parties can sign on to. These Optional Protocols are treaties, and are open to signature, accession or ratification by countries who are party to the main treaty. Optional Protocols create avenues for individuals to make complaints about the violation of their rights to a treaty body or empower a treaty body to conduct inquiries on areas of concern.

The preamble to the Protocol notes that the United Nations Charter reaffirms faith in fundamental human rights, the dignity and worth of the human person and the equal rights of men and women, and that the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex. It recalls the Convention on the Elimination of All Forms of Discrimination against Women, in which States parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. It reaffirms the determination of States parties which adopt the Protocol to ensure "full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms.

By virtue of article 1, States which become party to the Optional Protocol recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications submitted in accordance with article 2 of the Protocol. Article 2 entitles individuals or groups of individuals, under the jurisdiction of a State party to the Protocol, who claim to be victims of any violations of rights in the Convention to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless the author can justify acting on their behalf without their consent.

Articles 3 and 4 outline the admissibility criteria for communications. Article 3 provides that communications must be submitted in writing and may not be anonymous. No communication may be received by the Committee if it concerns a State party to the Convention that is not a party to the Protocol. Article 4 states that the Committee shall not consider a communication unless it has ascertained that all domestic remedies have been exhausted, or that the application of such remedies would be unnecessarily prolonged or unlikely to bring effective relief to the complainant. The Committee is also called on to declare a communication inadmissible if the same matter has already been examined by the Committee or has been or is being considered by another international investigation or settlement procedure. It must also declare a communication inadmissible if it is incompatible with the Convention; manifestly ill-founded or not sufficiently substantiated; an abuse of the right to petition; or if the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless those facts continued after that date.

Article 5 provides the Committee with an express power to recommend interim measures to the State party at any time between the receipt of a communication and its final decision on the communication's merits in order to avoid possible irreparable harm to the alleged victim or victims of the alleged violation. Articles 6 and 7 outline the Committee's procedures for dealing with complaints, with article 6 providing that unless the Committee considers a communication to be inadmissible without reference to the State party concerned and provided the complainant or complainants consent to the disclosure of their identity to that State party, the Committee shall confidentially bring the communication to the State party's attention. The State party is given six months to submit to the Committee written explanations or statements clarifying the matter and outlining any remedy it may have provided. Article 7 requires the Committee to consider communications in the light of information made available to it by the complainant(s) and the State party, which must be transmitted to the parties concerned. Communications are considered in closed meetings. After examination, the Committee's views and any recommendations are transmitted to the parties concerned. The State party is obliged to give due consideration to the views and any recommendations of the Committee and is required, within six months to submit to it a written response, including information on any action taken in light of the Committee's views and recommendations. The Committee may invite the State party to submit further information on measures taken in response to its views and recommendations, including in its subsequent reports under article 18 of the Convention.

Articles 8, 9 and 10 govern the "inquiry procedure" established by the Optional Protocol. Article 8 provides that if the Committee receives reliable information indicating grave or systematic violations by a State party of rights in the Convention, the Committee shall invite that State party to cooperate in the examination of that information through the submission of observations. Taking into account the State party's observations, and any other reliable information, the Committee may designate one or more of its members to conduct an inquiry and report to it on an urgent basis. Where warranted and with the consent of the State party, this inquiry may include a visit to its territory. After examining the findings of the inquiry, the Committee must transmit these, as well as its comments, to the State party which has six months to submit its observations to the Committee. All stages of the inquiry are to be conducted confidentially and with the full cooperation of the State party.

After the six-month period in which it may submit its observations, the State party may be invited to include details of any measures taken in response to an inquiry in its report under article 18 of the Convention. The Committee is also entitled to submit a further request for information on this matter to the State party. States that ratify or accede to the Protocol are entitled to "opt-out" of the inquiry procedure, with article 10 providing that each State party may at the time of signature, ratification or accession of the Protocol declare that it does not recognize the competence of the Committee to initiate and conduct an inquiry. Such a declaration may be withdrawn at a later time by notification to the Secretary-General.

The remaining articles of the Protocol relate to both the communication and inquiry procedures, with article 11 providing that a State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation if they use the Protocol's procedures, and article 12 obliging the Committee to include a summary of its activities relating to the Protocol in its annual report to the General Assembly. Article 13 requires each State party to make the Convention and the Protocol widely known, and to give them publicity and to facilitate access to information about the views and recommendations of the Committee, particularly on matters involving that State party.

Article 14 requires the Committee to develop its own rules of procedure with regard to the functions devolved on it by the Protocol, and articles 15, 16, 18, 19, 20 and 21 address signature, ratification and accession criteria and procedures, entry into force, procedures for amendment, denunciation and the depositary functions of the Secretary-General of the United Nations. Article 17 provides that no reservations to the Protocol shall be permitted, thereby requiring all States parties to the instrument to accept the communications procedure unreservedly.

The OP-CEDAW offers a number of benefits towards the implementation of the Convention. It reinforces the Convention – it offers the first gender specific international complaints procedure, putting it on par with other human rights treaties with such procedures. The OP-CEDAW promotes a better understanding by both States and individuals of all dimensions of the rights set forth in CEDAW. The Committee is able to focus on individual cases when considering CEDAW, and able to say what is required from States in individual circumstances. This contributes to enhancing jurisprudence that then allows for greater clarification and guidance on States' obligations under CEDAW.

The OP-CEDAW also strengthens the enforcement mechanism for CEDAW, stimulating States to take steps to implement the Convention, and change discriminatory laws and practices to avoid complaints being made against them. In addition, the OP-CEDAW goes further than CEDAW's Article 29, where two or more State parties can refer disputes about the interpretation and implementation of CEDAW to arbitration, and if the dispute is not settled, it can be referred to the International Court of Justice. Article 29 is subject to a large number of reservations and has never been used. The OP-CEDAW incorporates a settlement procedure which allows the Committee to facilitate settlements of disputes in some circumstances.

Gender equality advocates around the world have been working to encourage their governments to sign on to the OP-CEDAW with some success – to 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.

In Nutshell, it provides an opportunity for specific redress in individual cases when a State violates women's rights; Provides the possibility of international recourse for women who have been denied access to justice at the national level; Allows the Committee to highlight the need for more effective remedies at the national level; Allows the Committee to develop a new body of jurisprudence on how to guarantee women's rights; Assists States parties in determining the content of their obligations under the

Convention and thus assists them in implementing those obligations. The inquiry procedure: Enables the Committee to address systematic and widespread violations; allows the Committee to recommend measures to combat the structural causes of discrimination against women; provides the Committee with an opportunity to set out a broad range of recommendations to achieve equality between men and women.

### **Indian Scenario**

The debate around sexual violence has grown in India with rising cases of unprecedented forms of sexual assaults against minor girls. The horrifying accounts of gang rape in Kathua and Unnao in early 2018 (16-year-old, who was allegedly raped by a BJP lawmaker in Unnao, tried to commit suicide outside UP Chief Minister Yogi Adityanath's house. The tipping point was the rape and murder of an 8-year-old in Kathua, where the charge sheet spoke of unspeakable brutality. A third -- the death of a 9-year-old girl in Surat, whose body was covered in over 80 wounds) and instances of sexual assaults from other parts of the country, like Banda, Surat and Nadia point to the weak laws and mechanisms to secure women's dignity and rights. Alarming, these rapes are framed as isolated incidence of crime, rather than as outcomes of deep-rooted misogyny and patriarchy, casteism and communalism that is widely pervasive. Perhaps, it is this skewed understanding that results in fundamental gaps being unaddressed while planning, formulating and implementing laws and policies crafted for women.

The year 2018 is of relative significance, as the Government of India (GOI) must submit its sixth periodic report to the CEDAW Committee. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in its pursuit to achieve 'Substantive Equality' and 'Redistributive Justice' for women provides universal minimum standards for women's human rights. It is the first UN Treaty that is legally binding on State parties (signatory member-countries). India ratified the Convention in 1994. The Convention not only establishes norms which all countries must abide by, but also provides a mechanism to monitor the compliance by State parties. By ratifying the CEDAW, State parties are required to submit a periodic report on the progress made every four years to the CEDAW Committee. Under CEDAW, the State has responsibilities towards women, from which it cannot withdraw, and to which it will be held accountable.

During its 58th session in July 2014, the CEDAW Committee reviewed India's compliance with CEDAW and issued 'Concluding Observations' urging stronger action to address the increasing incidence of violence against women in the country. The Committee called upon GOI to provide, within two years, (i.e. by 2016) written information on the steps undertaken to implement the Committee's observations on Violence

Against Women and Armed Forces Special Powers Act (AFSPA). Although the Committee highlighted various issues in the area of violence, only recommendations relating to sexual offenses are discussed here. They pertain to implementing the recommendations of the Justice Verma Committee regarding violence against women; amending the Criminal Law (Amendment) Act, 2013 – ensuring ‘Marital Rape’ is defined as criminal offence; establishing one stop crisis centers; and effective systems to monitor and evaluate the implementation to combat sexual violence. Even after four years GOI’s Interim Report is yet to be submitted. Moreover, there is no information available in public domain on GOI’s sixth Periodic Report to be submitted to the CEDAW Committee in July 2018.

Several concerns remain in the discourse on the rise in sexual offenses against women in the last few years. The Criminal Law (Amendment Act), 2013 broadened the definition of rape and made amendments to laws on sexual offenses, but the recommendation pertaining to recognising marital rape as a criminal offense was ignored by the Government. According to the latest National Health and Family Survey (NFHS-4) for 2015-16, 5.4 percent women have experienced marital rape. However, the Parliamentary Standing Committee on Home Affairs in its report on the discussions of the Justice Verma Committee’s recommendations stated that criminalising marital rape had the potential to destroy the sanctity of the institution of marriage.

The ‘Nirbhaya’ case (2012), (Delhi gang rape case involved a rape and fatal assault and the victim has become widely known as Nirbhaya, meaning "fearless", and her life and death have come to symbolise women's struggle to end the rap) occasioned the Government to take several initiatives, however, India’s rape crisis shows very grim signs of abating. According to the latest National Crime Records Bureau (NCRB 2016), rape accounts for about 12 percent of all crimes against women while the average rate of reported rape cases is as low as 6.3 per 100,000 of the population. On 18 July 2018, the Union Minister of State for Home Affairs, stated that 1,10,333 rape cases were registered from 2014 to 2016, indicating a rise in such occurrences. When an analyses measures taken by the Government, there are serious gaps in the domain of implementation of such schemes and programme. For instance, the scheme meant for survivors of violence, such as the ‘One Stop Crisis Centre’ (OSC are intended to support women affected by violence, in private and public spaces, within the family, community and at the workplace) are originally designed to be in every district of every state, but only 170 OSCs are operational in the country since 2015.

India's crime records show that reported rapes of minor children had more than doubled between 2012 and 2016. More than 40 percent of the country's female victims are minors. Several cases have been reported where little girls get raped on their way to school. When schools themselves become sites of sexual violence against girls - how is the safety component going to be factored-in under schemes like ‘Beti Bachao, Beti Padhao’? States such as Rajasthan, Uttar Pradesh, Haryana and Arunachal Pradesh have recently awarded death penalty to those convicted of raping girls below 12 years of age. GOI followed suit when nation-wide backlash and scrutiny by the international community led them to hurriedly approve the Criminal Law (Amendment) Ordinance, 2018. The debate around increasing incidences of rape was almost entirely confined to death penalty – with no discussion on prevention, lack of sex education, misogyny or normalised forms of sexual harassment as part of the continuum leading to rape. The discourse on State accountability for prevention, protection, provision of safer public places across social groups, across regions - in rural as well as urban contexts needs to be brought to the forefront.

Another concern is the rising incidence of sexual offenses on women from marginalised communities, particularly Dalit women. Rape is used as a tool against the Dalit community to maintain hierarchy and caste-based power equations – Dalit women are ‘Untouchable’ but violable! The NCRB data shows recorded rape against Dalit women between 2007 to 2017 has doubled. It states that six Dalit women are raped every day in the country. This figure is likely to be a significant underestimation. The figures for total number of reported cases of sexual assaults is not disaggregated by caste or religion, so exact figures of women from marginalised communities reporting violence is not known.

The new Ordinance on Rape (2018) under criminal laws including the Indian Penal Code (IPC), Criminal Procedure Code (CrPc), Evidence Act and POCSO have now been made more stringent and a number of measures for investigation and fast-tracking of rape cases are undertaken. The Government has stated that the NCRB will now start maintaining a national database and profile of sexual offenders. This data will be regularly shared with States and UTs for tracking, monitoring and investigation, including verification of antecedents by police. While stricter laws are a welcome step, they are certainly not enough. Gender-Just laws are undermined due to impunity and lack of comprehensive support provided to victims or survivors. As observed, stricter laws post the 2012 ‘Nirbhaya’ case may have led to higher levels of reporting but not necessarily to higher conviction rates - as the NCRB data shows that only 25.5 percent of rape cases end in conviction.

The way to a rights-based legal system for women lies in the respect for and codification of the principles of CEDAW in the country. What is required is a complete overhaul of the existing system, along with other measures of mass gender-sensitive awareness programme, sex education in schools, among others, with an in-built narrative of zero tolerance against violence against women and girls. However, the challenge is how to

decipher this commitment of CEDAW given on the international stage into real accomplishments at home. It is to be seen how the Government in its forthcoming Report to the CEDAW Committee due in July 2018, presents the current status of women and prioritizes and integrates its commitment of ensuring protection of women's human rights into its larger policy framework.

### **Relevance, Application and its Assessment**

CEDAW's application, relevance and impact assessment has become a significant subfield in the social sciences especially in Human Rights law as the number of treaties and the number of States parties has increased dramatically in the last two decades. This concern reflects the somewhat unusual nature of human rights treaties, which provide obligations that run from the government to individuals within the jurisdiction, as opposed to other types of treaties, which provide for reciprocal rights and obligations as between the States parties.

### **Transnational Case Laws**

In the *State v Godfrey Baloyi*, decided in 1999, the Constitutional Court of South Africa considered the constitutionality of the section 3(5) of the 1993 Prevention of Family Violence Act which provided that a person charged with breaching a family violence interdict was required to prove his innocence. Drawing on the Universal Declaration of Human Rights, the Declaration on the Elimination of Violence against Women and the Convention on the Elimination of All Forms of Discrimination against Women, which it noted imposed positive obligations on States to pursue policies of eliminating discrimination against women by, amongst other things, adopting legislative and other means which prohibit discrimination, the Court held that the provision was constitutional as it was necessary to ensure the right to equality and non-discrimination in the context of the gross denial of human rights resulting from pervasive domestic violence.

In *Dow v Attorney-General of Botswana*, decided by the Botswana Court of Appeal in 1992, judges relied on international treaties, including the Convention, which had not been ratified by Botswana at the time, to uphold a challenge to the provisions of Botswana's nationality law which did not permit a Botswanan woman married to a non-Botswanan national to pass on her nationality to the children of the marriage, although a Botswanan man married to a non-Botswanan woman was able to do so.

In 1995, in *Dhungana and another v the Government of Nepal*, the Supreme Court of Nepal relied on the Convention in deciding to order the Government to introduce a bill to Parliament to address discriminatory laws providing that while a son was entitled to a share of his father's property at birth, a daughter was able to obtain a share only when she reached the age of 35 and was still unmarried.

In 1996, the Constitutional Court of Guatemala upheld a challenge to provisions in the Penal Code which treated men and women differently on the basis that these contradicted the equality provisions in the Constitution, and amounted to a failure by Guatemala to fulfil its obligations under the Convention and other international instruments (Case No. 936-95) (Source: Andrew Byrnes, "The Convention on the Elimination of All Forms of Discrimination against Women" in *The Human Rights of Women: International Instruments and African Experiences*).

In 1999, the Supreme Court of Canada drew on the Convention and the Committee's general recommendation 19 on violence against women in *R v Ewanchuk*, a case of alleged sexual assault, to conclude that violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights, and that stereotypical attitudes about the nature of sexual assault have created the myth that women are sexually accessible until they resist.

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 appear to have changed anything. It prepares a plan of action by member countries to ensure the same fundamental rights and freedom as men. Focuses on the human rights of women.

States which become parties to the Convention accept wide-ranging obligations to eliminate direct and indirect discrimination against women and to promote formal and de facto equality of women and men in all fields of life in the public and private spheres. The substantive articles of the Convention obligate States parties to undertake the necessary legal, policy and programmatic measures to ensure women's equal enjoyment of all human rights and fundamental freedoms. The treaty sets out specific obligations in relation to fields such as education, employment, exploitation of prostitution, nationality, political life, health, participation in economic and cultural life, the situation of rural women, equality before the law, marriage and family life, and the elimination of customary and traditional practices or stereotypes that discriminate against women.

**REFERENCE**

- [1]. Afra Afsharipour, “Empowering Ourselves: The Role of Women’s NGOs in the Enforcement of the Women’s Convention”, *Colombia Law Review*, vol. 99 (1), 1999, pp. 129-172.
- [2]. Amnesty International, “Claiming Women’s Rights: The Optional Protocol to the UN Women’s Convention”, AI Index, IOR 51/001/2001, March 2001.
- [3]. Noreen Burrows, “The 1979 Convention on the Elimination of All Forms of Discrimination against Women”, *Netherlands International Review*, vol. 32 (1980), pp. 419-60.
- [4]. Mara Bustelo, “The Committee on the Elimination of Discrimination against Women at the crossroads”, *The Future of UN Human Rights Monitoring*, (Cambridge, Cambridge University Press, 2000), pp. 79-111.
- [5]. Andrew Byrnes, “Human Rights Instruments Relating Specifically to Women, With Particular Emphasis on the Convention on the Elimination of All Forms of Discrimination against Women”, *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*, Andrew Byrnes, Jane Connors and Lum Bik, eds. (Hong Kong and New York, Commonwealth Secretariat, 1997), pp. 39-57.
- [6]. Andrew Byrnes, *The Convention on the Elimination of All Forms of Discrimination against Women in The Human Rights of Women: International Instruments and African Experiences*, edited by Wolfgang Benedek, E. M. Kisaakye and G. Oberleitner, Zed Books, in association with the World University Service, Austria, 2002, pp. 119-172).
- [7]. Andrew Byrnes, “The “Other” Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination against Women”, *Yale Journal of International Law*, vol. 14, 1989, pp. 1-67
- [8]. Andrew Byrnes and Jane Connors, “Enforcing the Human Rights of Women: A Complaints Procedure for the Women’s Convention”, *Brooklyn Journal of International Law*, vol. 21 (3), 1996, pp. 679-797.
- [9]. Silvia Cartwright, “Rights and Remedies: The Drafting of an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”, *Otago Law Review*, vol. 9 (2), 1998, pp. 239-54.
- [10]. Jane Connors, “The Women’s Convention in the Muslim World”, *Human Rights as General Norms and a State’s Right to Opt Out: Reservations and Objections to Human Rights Conventions*, J. P Gardner, ed., (London, British Institute of International and Comparative Law, 1997), pp. 85-103.
- [11]. Rebecca Cook, *State Accountability under the Convention on the Elimination of All Forms of Discrimination against Women in Human Rights of Women: National and International Perspectives*, (Philadelphia, University of Pennsylvania Press, 1994), pp. 228-56.
- [12]. Fayeeza Kathree, “Convention on the Elimination of All Forms of Discrimination against Women”, *South African Journal of Human Rights*, vol. 11, 1996, pp. 421-37.
- [13]. Office of the United Nations High Commissioner for Human Rights, *Human Rights, Fact Sheet No. 7 (Rev.1), Complaint Procedures* (Geneva, United Nations, 2002).
- [14]. Office of the United Nations High Commissioner for Human Rights, *Human Rights, Fact Sheet No.22, Discrimination Against Women: The Convention and the Committee*, (Geneva, United Nations, 1995).
- [15]. United Nations, Division for the Advancement of Women, *Bringing International Human Rights Law Home: Judicial Colloquium of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child*, (New York, United Nations, 2000).
- [16]. United Nations, *The Convention on the Elimination of All Forms of Discrimination against Women*.
- [17]. *The Optional Protocol: Text and Materials*, (New York, United Nations, 2000).
- [18]. United Nations, *Multilateral Treaty Framework: An Invitation to Universal Participation*, Focus 2001: Rights of Women and Children, (New York, United Nations, 2001).
- [19]. United Nations, *The United Nations and the Advancement of Women: 1945-1996*, Department of Public Information, rev. ed., (New York, United Nations, 1996), *The United Nations Blue Book Series*, Vol. VI.
- [20]. Aloisia Woergetter, “The Draft Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”, *Austrian Review of International and European Law*, vol. 2, 1997, pp. 261-268.

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