



# The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Transforming Women's Human Rights

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**Abstract:** “Convention on the Elimination of All Forms of Discrimination against Women” is a treaty signed by the members of the United Nations General Assembly in 1989. Currently, there is no worldwide measure that examines the position of women in a country other than the Bill of Rights for Women. The (CEDAW) aims to provide women with comprehensive rights throughout their lives. It accomplishes this through a succession of interconnected and helpful dialogues and recommendations, among other means. The CEDAW Committee is made up of specialists from a wide range of civil society organizations. Since the Convention has been endorsed by a large number of states, civil society organizations have used it to fight violence against women. This article primarily focuses on the parts of the Convention on the Elimination of All Forms of Discrimination Against Women and the Indian Constitution. It also emphasizes the importance of the judiciary in the growth of the country.

**Keywords:** Human rights, constitution, elimination and discrimination

## Introduction

The Convention on the Status of Women is the result of the work of the United Nations Commission on the Status of Women. As a result, the Women's Congress represents an important development in international human rights legislation (IHRL) since it addresses issues that contribute to the reduction of gender discrimination (UN Convention on the Elimination of Discrimination against Women, 1979). The passage of the Convention on the Elimination of All Forms of Discrimination Against Women brought the term “women's rights” into a worldwide framework. It made a commendable effort to incorporate women's human rights

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concerns into the mainstream framework of human rights protection<sup>3</sup>. According to the Preamble of the Convention on the Equality of Women and Men, “the full and complete development of a country, the welfare of the world, and the cause of peace necessitated the maximum participation of women on an equal footing with men in all fields”<sup>4</sup> (CEDAW Preamble).

Our Constitution begins with the words “We the People,” which guarantees justice on all levels of society - social, economic, and political - our Indian legal system has made efforts to incorporate various women-specific provisions and legislations into its legal framework in order to blend in with universal recognition of their rights and freedoms. Reflecting this comprehensive approach, our very own constitution, which serves as the foundation of all legislation, provides many measures for the emancipation of Indian women in the process of achieving full political and economic independence. The preamble of the Convention on the Elimination of Discrimination Against Women (CEDAW) encompasses a wide range of rights. There are numerous other considerations involved in achieving gender equality, including eradicating de facto inequality between men and women, establishing a new economic order for international growth, dismantling racism, neo colonialism, and foreign occupation, as well as strengthening international peace and stability. All of these are cited as being important for achieving equality between men and women<sup>5</sup>.

The “Convention on the Elimination of Discrimination Against Women” was the product of various international women’s rights efforts organized by the United Nations Commission on the Status of Women. The “1967 Resolution on Gender Inequality, the International Women’s Year 1975, the Women’s Decade, and the women’s conferences in Mexico City, Nairobi, and Copenhagen” are examples of such initiatives. The “Convention on the Elimination of All Forms of Racial Discrimination” (CERD) was used as a model for the development of CEDAW, which acknowledges that the “International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)” are all relevant. According to Article 2, the CEDAW’s role is succinctly stated: “Concerned about the challenges faced by women and the policy of elimination of discrimination, including sexual discrimination, it will immediately denounce all kinds of discrimination and seek a rapid solution to the gender issues”<sup>6</sup>.

The CEDAW is an ideal international legislative tool for promoting and protecting women’s rights; it is broad in reach, detailed in content, and legally binding<sup>7</sup>. While other conventions address specific aspects of women’s rights, the “Convention on the Elimination of All Forms of Discrimination Against Women” is the most comprehensive United Nations agreement dealing with gender equity<sup>8</sup>.

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<sup>3</sup> S.S. Ali, *A Comparative Study of Convention on the Elimination of All Forms of Discrimination against Women with Islamic Law and Laws of Pakistan* 6 (Shaheen Publishers, Peshawar, 1995).

<sup>4</sup> UN Women, United Nation Entity for Gender Equality and the Empowerment of Women, Convention on the Elimination of All Forms of Discrimination Against Women, Available at: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (Visited on September 27, 2021).

<sup>5</sup> National Law Report, “The 1979 convention of elimination of all forms of discrimination against women,” 21(1985).

<sup>6</sup> Evatt, E, “Finding a voice for women’s rights: The early days of CEDAW” 34 *George Washington University International Law Review* 515 (2002).

<sup>7</sup> Cook, R.J., “Reservation to the convention on the elimination of all forms of discrimination against women” 30 *Virginia Journal of International Law* 643-716 (1990).

<sup>8</sup> Meron, T., “Human rights law-making in the united nations: a critique of instruments and process” 53 *Clarendon Press* (1986).

**CEDAW recognizes the following women's rights**

**Article 1:** Discrimination clause: which extends to all articles of the Convention, provides a detailed definition of discrimination. It involves any gender inequalities that purposely or unconsciously disadvantage women, prevents society in general from respecting women's rights both in the domestic and public fields, or impedes women from exercising their rights to human rights and fundamental freedoms. The Convention does not pursue the abolition of sex-based discrimination but only eliminating discrimination against women.

**Article 2:** Interventions (Special and provisional): acknowledges that, unless States are actively engaged in the promotion and advancement of women, the fundamental human rights guaranteed in other instruments will not be entirely applicable for them.

**Article 5:** Social and cultural patterns: acknowledges that while women's legal equality and extraordinary steps to encourage de-facto equality are assured, another level of reform is required for women's proper equal rights, i.e., States should aim to eliminate the social, cultural and conventional norms that reinforce gender roles and establish a general social structure that facilitates full rights for women.

**Article 9:** Equality in national legislation: calls on state parties to give women equal rights to men, to gain, alter or maintain their citizenship.

**Article 10:** Equality in education: acknowledges that uniformity in education is the basis for empowering women in all fields, families, and society as a whole. Article 10 is adverse in rejecting discrimination and promoting potential education preparation to boost women's status.

**Article 11:** Equality in the labour laws: states that the universal Right to work for women is enjoyed. It also requires obligations concerning States Parties.

**Article 12:** Fair access to health services: allows the Member States to ensure equal access to health services for men and women. Should take steps to guarantee that all women, particularly those who may be disadvantaged by poverty, illiteracy, or physical isolation, access to health care.

**Article 12(2)** acknowledges that women need special care and attention during and after pregnancy.

**Article 13:** measures to eliminate discrimination: States Parties shall take "all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights", in particular:

- a) Right to "family benefits"
- b) Right to "bank loans, mortgages and other forms of financial credit"
- c) Right to "participate in recreational activities, sports and all aspects of cultural life"

**Article 14:** Rural women's rights: the only countries that have called on the country parties to adopt the principles of expanded urbanism and integration in economic development as they relate to women are the signatory countries to eradicating gender-based discrimination in urban and peri-urban areas, extending standards of living, and ensuring an even footing and an equal opportunity for women in rural growth.

**Article 15:** Equality before the law: specifies that women are brought before the law into conformity with men. CEDAW is “legally binding on the States Parties which ratify or accede the convention shall replace all other documents, conventions, and declarations except national and international standards that are more conducive to the achievement of gender equality”.

**Article 24:** Measures at National Level: States Parties undertake “to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention”.

“However, all human rights treaties have the same legal validity and cannot be superseded by any other equally legitimate Treaty,” according to the United Nations High Commissioner for Human Rights, “States have international legal obligations to defend women’s rights in all aspects of their lives”<sup>9</sup>.

As a result of this historic understanding, the international community has made significant contributions to the advancement and maintenance of meaningful women’s rights. The CEDAW Committee, an autonomous supervisory body made of 23 elected members, was established by the “Convention on the Elimination of All Forms of Discrimination against Women”. Each state can appoint one person to a four-year term, with half of the Committee members elected every two years. The Committee strives to ensure equity in the legal system, geography, and form of civilization by ensuring that each state has one representative. The Committee is charged with a number of different functions. It takes into account the need for improvement in execution and examines state studies. Each year, the “Economic and Social Council submits a report to the General Assembly” in which it makes proposals and recommendations based on the findings of the studies. It also encourages reports from agencies on execution issues that are consistent with their themes of specialty and expertise. Making the reports useful, on the other hand, is a huge task. State reports impart some evidence of conformity while still preserving international sovereignty and autonomy principles. Specifically, the Committee wishes to see the Treaty consistently applied in the context of women’s rights in a variety of different cultural and legal settings<sup>10</sup>.

### **The Optional Protocol-CEDAW**

The “Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)” is now in the process of developing the CEDAW Optional Protocol (OP-CEDAW). The “OP-CEDAW” empowers the Committee to accept individual correspondence alleging violations of CEDAW by a State Party. The Committee's jurisprudence was praised for, among other things, “holding the state accountable for failing to protect women from sexual harassment<sup>11</sup> and determining that customary inheritance legislation discriminates against women<sup>12</sup>”.

OP-CEDAW was drafted in 1996. The UN General Assembly adopted it by consensus in 1999 and came into effect in 2000. The OP-CEDAW consists of 105 states. The Committee agreed that 47 communications: 24

<sup>9</sup> Sardar M.A.Waqar Khan Arif, “Economic, social and cultural rights of women: International legal framework, justiciability and challenges,” 61 *International Journal of Law and Management* 191- 204 (2019)

<sup>10</sup> *Supra* note 6 at 2.

<sup>11</sup> Andrew Byrnes and Eleanor Bath, “Violence against Women, the Obligation of Due Diligence and the OP-CEDAW-Recent Developments” 8(3) *Human Rights Law Review* 517 (2008).

<sup>12</sup> Meghan Campbell, “Womens rights and the convention on the elimination of all forms of discrimination against women: Unlocking the potential of the optional protocol,” 34 *Nordic Journal of Human Rights* 247- 71 (2016).

were deemed inadmissible and judged 23 on their excellences. The OP- CEDAW is articulated carefully and gives minimal suggestion of the intent of each decision. It authorizes individuals to communicate to the Committee that CEDAW has not been upheld by the government (articles1-2). The Committee assesses the correspondence (Article5) and shall send its opinions and recommendations to the parties (Article7). The Committee will commence an investigation to investigate severe or systemic “CEDAW” violations (article8). Although the “OP-CEDAW” itself makes no sense of the intent of decisions, its function is illuminated by the drawing past. States are tremendously accepted that the “OP-CEDAW” is intended to make “CEDAW” more successful

## Constitutional Provision and CEDAW

### 1. “Article 14: Equality before law”

- *In Air India V. Nargish Mirza*<sup>13</sup>.

The Supreme Court “struck down the regulation providing for retirement of the Air Hostess on her first pregnancy, as unconstitutional, void and violative of Article 14 of the constitution”.

- *In Vishaka and Others V. State of Rajasthan*<sup>14</sup>

A writ petition under “Article 32 of the constitution was filed before the Supreme Court for the Enforcement of the Fundamental Rights of working women guaranteed under Article 14, 19, and 21 of the constitution”. The issue of “prevention of sexual harassment of working women at their place of work” was also raised. Supreme Court for “effective enforcement of the basic Human Rights of gender equality and against sexual harassment and abuse at the place of work issued guidelines until a legislation is enacted for this purpose”

### 2. “Article 15: Prohibition of discrimination on ground of religion, race, caste, sex or place of birth”

- *In Geeta Hariharan V. Reserve Bank of India*<sup>15</sup>.

In this case it was held that “mother can act as a Natural Guardian of a minor”

- *In People’s Union for Democratic Rights V. Union of India*<sup>16</sup> .

Violation of fundamental Rights which was “enforceable against private individuals was being violated it would be the constitutional obligation of the state, to take necessary steps, for the purpose of interdicting such violation and ensuring observance of the Fundamental Right by the private individual who was transgressing the same”

### 3. “Article 16: Equality of opportunity in matters of public employment”

- *In Randhir Singh V. Union of India*<sup>17</sup>.

In this case the Rule equal pay for equal work is applied

### 4. “Article 19: Protection of certain rights regarding freedom of speech, etc”

- *In Delhi Domestic Working Women’s Forum V. Union of India*<sup>18</sup> .

<sup>13</sup> A.I.R 1981 S.C. 1829

<sup>14</sup> (1997) 6 SCC 241

<sup>15</sup> AIR 1999 S.C 1149

<sup>16</sup> (1983) SCR (1) 456

<sup>17</sup> (1982) AIR 879

<sup>18</sup> (1995) 1 SCC 14

It was held that the name and identity of the Rape victim should not be revealed. Supreme Court asked the State to established Rape victim fund after this the state government established the Rape victim fund and rehabilitation homes

#### 5. “Article 23: Prohibition of traffic in human being and forced labours”

- In *Gurav Jain V. Union of India*<sup>19</sup> .

Court held that “problem of prostitution had become one of serious nature and required considerable and effective attention”. The court issued “directions for the constitution of a committee to examine the problem and for the segregation of the child of prostitutes from their mothers living in the prostitute home and to allow them to mingle with others and become part of the society”.

- In *Suraj Narayan V. state of Madhya Pradesh*<sup>20</sup>.

It was determined that failing to pay a teacher’s salary for substandard work violated the spirit of Article 23 and amounted to beggarly treatment.

#### 6. “Article 51-A: Fundamental Duties”

- In *Chandra Rajkumari V. police Commissioner Hyderabad*<sup>21</sup> .

The A.P High Court has declared that “holding of beauty contest by depicting in any manner the figure of a woman, form, body, or any part thereof in such a way so as to have the effect of being indecent or derogatory to or denigrating women, offended Article 14, 21, and Article 51A(e)”.

#### 7. “Article 243-D, 243-T: Reservation of Seats”

- In *Indra Sawhney V. Union of India*<sup>22</sup> .

That, the increase in reservation was not founded on any scientific or systematic study and there was no material to show that women needed reservation to that extent. Hence, it was irrational, arbitrary and smacked of total discrimination violating the basic facet of Article 14. That, the increase in reservation for women might continue in perpetuity as Article 334, restricting the duration for reservation, did not cover reservation for women.

#### Leading Constitutional Law Citations

<p><b>1. “Right to positive discrimination”</b>  <i>“Air India Cabin Crew Association V. Yeshawinee Merchant and Others</i><sup>23</sup> “.</p>	<p><b>2. “Status of female”</b>  <i>“State of Jammu and Kashmir and Others V. Dr. Susheela Sawhney</i><sup>24</sup> “. “Daughter of a permanent resident marrying a</p>	<p><b>3. “Equal Pay for equal work”</b>  <i>“M/s Mackinnon Mackenzie and co. Ltd V. Audrey D’ Costa and another</i><sup>25</sup>”.</p>
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<sup>19</sup> AIR 1990 S.C 292

<sup>20</sup> AIR 1960 M.P 303

<sup>21</sup> AIR 1998 AP 302

<sup>22</sup> AIR 1993 SC 477

<sup>23</sup> AIR 2003 SC 4

<sup>24</sup> AIR 2003 J&K 83

<sup>25</sup> (1987) 2SCC 469

Age of retirement of Air hostesses will be at par with flight pursers and other members of the cabin crew.	non-permanent resident will not lose the status of permanent resident of the State of Jammu and Kashmir”.	Lady Stenographer were given a lower scale than male Stenographer was held as violative of “Article 14 and the Equal Remuneration Act, 1976”.
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### India and “Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW)”

The United Nations General Assembly in “December 1979 adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”. Till date, “190 countries have consented the Convention that has been known as the International Bill of Women’s Rights”. With such broad international support, this ground breaking Convention seeks to encourage equality amongst women in several fields, including access to education, health, employment, political participation, and violence. In entering the pantheon of the primary human rights documents, “CEDAW has attached a mandate for gender equality to the rights assurances enshrined in other documents”. Shortly after its adoption, India ratified the Convention in the mid 1980s, with endorsement in 1993. “India ratified the treaty with the reservation that the Convention and family and marital laws socio-cultural practice provisions will be observed only following the formal stance of non-interference in personal matters of any society without prior permission<sup>26</sup>”.

Perhaps an essential aspect of the Convention itself is enforcing public compliance by daily reports and comments. The Conventions Committee is a forum in which Convention signatories come and report annually on their progress towards gender equality. This Committee “does important cultural work by articulating principles and showing how they apply for the countries under consideration in a formal and public context” The Convention and the Committee have influenced the concept of gender equality in political and legislative policy as well as court judgments in India both indirectly and directly<sup>27</sup>. The CEDAW Committee has assessed problems such as “child marriage, dowry abuse, and the Special Powers Act of the Armed Forces<sup>28</sup>”.

### Ratification, Declarations, and Reservations of CEDAW

The CEDAW was “adopted by the UNs General Assembly in 1989 and is a large convention aimed at achieving more gender-balanced results by eliminating obstacles to equality in governance, health, education, work, and home affairs”. The Convention associates all civil/political, economic, and de-jure rights. Concentrating on legal and development strategies to ensure women’s rights it stresses that the substantive realization of rights needs to be a broad-based strategy compared to the previous international human rights initiatives<sup>29</sup>. In its clear endorsement of government action, embracing redress policies for achieving de-facto

<sup>26</sup> Carolyn E. Holmes, “Conventions, Courts, and Communities: Gender Equity, CEDAW and Religious Personal Law in India,” 54 *Journal of Asian and African Studies* 965- 79 (2019).

<sup>27</sup> Merry SE, “Constructing a global law- violence against women and the human rights system” 28(4) *Law and Social Inquiry* 941- 977 (2003).

<sup>28</sup> Concluding Comments of the Committee on the Elimination of Discrimination against Women: India (2000), Available at: [https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING\\_COMMENTS/India/India-CO-1.pdf](https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/India/India-CO-1.pdf), Concluding Comments of the Committee on the Elimination of Discrimination against Women: India (2007), Available at: <https://digitallibrary.un.org/record/720690/>, Concluding Comments of the Committee on the Elimination of Discrimination against Women: India (2014) Available at: <https://digitallibrary.un.org/record/720690/> (Visited on September 27, 2021).

<sup>29</sup> Saksena A, “CEDAW: Mandate for substantive equality” 14(3) *Indian Journal of Gender Studies* 481- 498 (2007).

equality, the right-in-practice strategy of CEDAW is further illustrated. As with other documents on human rights, the powers of regulation in States that have “ratified CEDAW are minimal, and compliance depends on the will and commitment of the national political actors and the pressures of other countries and NGOs<sup>30</sup>.”

When India ratified “CEDAW”, it did so by announcing “two articles” and reserving a supplementary one. Such reservations and declarations, particularly in the case of CEDAW, are not uncommon. At present, 61 countries ratifying the Convention, by such steps, have “qualified their accession”. The two articles to which India has proposed statements are Article 5, “to eliminate the discriminatory cultural and social practice”, and Article 16, on “equality in marriage and families”. Both comments are outlined in terms of personal religious law and a need to ensure that the Conventions ambitions are compatible with the structures of the various laws of faith. For “succession in traditional leadership, inheritance, and education, five countries have joined declarations on Article 5”. India, by 27 other nations, made a declaration on Article 16. In addition to 11 for non-specified or other purposes, “16 made provisions on this Article for objections based on religious personal rights”. India’s reservation, “Article 29” where parties agree to arbitrary proceedings in the event of disputes between countries arising from the Convention is expressed in 38 other Nations reservations, which is the only portion with most reservations.

### **Application of International declaration in India**

The Supreme Court of India recognizing the rights of<sup>31</sup> “working women against sexual harassment in working places” in relief on the provisions of CEDAW and declare that:

“In absence of domestic law occupying the field, to formulate<sup>32</sup> measure to cheek the evil of sexual harassment of working women at all workplace<sup>33</sup>, the contents of international covenant and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in<sup>34</sup> Article 14, 15, 19(1)(g) and 21 of the constitution safeguards are implied on these”. Any “international convention not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into these provision to enlarge the meaning and contents thereof, to promote the object of the constitutional guarantee”.

Similarly, “Article 26 of the Universal Declaration of Human Rights” has been recognized under “Article 45 of the Indian Constitution to provide free and compulsory education to all children”.

- In *Jolly George Verghese V. Bank of Cochin*<sup>35</sup>

The Supreme court referred Article 10 of the “International Covenant on Civil and Political Rights”, 1966 which was not given effect to by the Indian law but the court interpreted the provision in the light of 51 of the Civil Procedure Code, 1908 and gave priority to the basic human rights of inconsistent provision like order 21 Rule 37 of the code.

<sup>30</sup> *Ibid.*

<sup>31</sup> Kritika Garg, Judicial development towards gender justice, Available at: <https://blog.ipleaders.in/judicial-development-towards-gender-justice/> (Visited on September 27, 2021).

<sup>32</sup> Epathshala, Sexual Harassment at Workplace: Legal Measures and Guidelines, Available at: [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S001610/P001749/M022769/ET/1505120459Module40Quadrant1.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001610/P001749/M022769/ET/1505120459Module40Quadrant1.pdf) (Visited on September 27, 2021).

<sup>33</sup> Taranjit Singh, vishakha and others case important notes (sexual harassment case), Available at: <https://legalserviceforfaith.blogspot.com/> (Visited on September 27, 2021).

<sup>34</sup> International Convention, Available at: <https://lawaids.blogspot.com/2010/04/chapter-4-international-conventions-4.html> (Visited on September 27, 2021).

<sup>35</sup> AIR 1980 SCC 470



It will not be out of place to mention that in the light of these international developments of basic human rights of women, the Indian Parliament has enacted the “Protection of Human Rights Act”, 1993, and has established a “National Human Rights Commission” at the centre and state level to implement these basic human rights. The Human Rights Commission have always kept in view all the international declarations of human rights particulars relating to women. ‘However, it is painfully evident that even after 70 years of the “Universal Declaration of Human Rights”, women’s right have only recently been acknowledge conceptually while its “practice and reality still remains tangled in complex issue of culture”, inadequate and “lack of enforcement, accountability systems and political will”. It all requires relentless and since efforts to eliminate all types of discrimination against women and put them at-par with men.

### Challenges to CEDAW in India

Gender equality in “marriage, divorce, domestic violence, and child custody” that come into immediate conflict with religious personal law. References to human rights records, and more specifically CEDAW, are much more common in these situations. For example, in pressing for changes to the “Prohibition of Child Marriages Act”, the “Law Commission of India referred directly to CEDAW (both the Convention and the Committee)<sup>36</sup>”. When the S.C challenged “prohibitions against child marriage”, the Court upheld the States right to “make those bans, even if such laws contradicted religious personal rights at Court On its Motion”:

- In *Lajja Devi V. State*<sup>37</sup>.

The Committee on CEDAW has commended changes to “Hindu Personal Law” explicitly in heritage “(through the 2005 amendments to the Hindu Succession Law of 1956)” & children’s protection “(through the Personal Laws Amendment Act of 2010 updating the Guardians and Wards Act of 1890 and the Hindu Adoptions and Maintenance Act of 1956)<sup>38</sup>”.

Perhaps the most critical changes in “religious personal law” to encourage gender equality have nevertheless taken place through two main legal struggles in the field of Muslim personal law:

- In *Shayara Bano V. Union Of India And Others*<sup>39</sup> .

“The triple talaq or talaq-e- biddat, where a Muslim man may divorce his wife three times by speaking or writing the word talaq three times. The case brought by a woman , divorced in this way by her husband was brought before the Indian Supreme Court in 2017. A jury of five judges ruled it was unethical, with a sub-set of three recommending the illegal practice. This appears to be a break from past tactics, where the Court is deliberately attempting to change personal religious law. In fact, during the arguments on the case, CEDAW was brought before the judges decided on the applicability of the Convention to the case”.

<sup>36</sup> Law Commission of India, 205th Report on Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws (2008), Available at: <https://indiankanoon.org/doc/116780787/> (Visited on September 27, 2021).

<sup>37</sup> (2013) CriLJ 3458

<sup>38</sup> Committee on the Elimination of Discrimination against Women CEDAW , “Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Indonesia, Combined Fourth and Fifth Periodic Reports of States Parties, CEDAW/C/IDN/4-5.” (2005).

<sup>39</sup> AIR 2017 9 SCC 1 (SC)

- In *Ahmed Khan V. Shah Bano Begum And Others*<sup>40</sup> .

Concerning the rights of divorced women in “Shah Bano”, the S.C upheld “right of the aggrieved woman to obtain subsistence payments under secular law in contravention of Muslim law” instruction by many Muslim activists. Although held Shah Bano for women’s rights, the Court did not rule on the principle of sexual equality, likely because the concepts are too Western<sup>41</sup>. On the other hand, the Court based its judgment on protecting the family’s sanctity. Thus, the courts preserved the institution of marriage rather than ensure gender equality at women’s expense<sup>42</sup>.

This foundation and the demands from Muslim activists have resulted in the Lok Sabha passing a “Muslim Women’s Protection of Rights on Divorce Act of 1986”, which basically reversed Shah Bano’s decision and permitted religious personal law prescribe conditions for alimony instead of secular legislation. However,

- In *Danial Latifi v. Union of India*<sup>43</sup> , and

In *Shamima Farooqui v. Shahid Khan*<sup>44</sup> (The Court upheld its precedent by judicially annulling the act).

### Role of judiciary in stimulation and protection of women’s right

1. <i>“Geeta Hariharan v. Reserve Bank of India</i> <sup>45</sup> ”.	The Supreme Court relied explicitly on CEDAW to make judgments about the legacy and custody as a means to put gender equality claims within an international system of human rights. The Court put the judgment both on “CEDAW and on the Universal Declaration of Human Rights”, stating that “the cries for equal rights and equal status, not only are restrictive for any country but varying in degree worldwide.” In “highlighting the international importance of human rights”, Court described CEDAWs “clear, external and authoritative” perspective in determining if personal law should be applied. “CEDAW has since been upheld in 21 rulings by the Supreme Court of India, addressing topics ranging from sexual harassment in the workplace to heritage, divorce, jobs, and crime”.
2. <i>“Vishakha and Others v. State of Rajasthan</i> <sup>46</sup> ”.	The S.C examined that the International instruments for instance “Convention on the Elimination of all Forms of Discrimination against Women and the Beijing Declaration” which aims to give direction to all States Parties to lead suitable steps to protect discrimination of all forms

<sup>40</sup> AIR 1985 SC 945.

<sup>41</sup> MacKinnon CA, “Sex equality under the constitution of India: Problems, prospects, and personal laws” 4(2) *International Journal of Constitutional Law* 181- 202 (2006).

<sup>42</sup> Herklotz T, “Law, religion and gender equality: Literature on the Indian personal law system from a women’s rights perspective” 1(3) *Indian Law Review* 250- 268 (2017).

<sup>43</sup> AIR 2001 SC 3958.

<sup>44</sup> (2015) 5 SCC 705

<sup>45</sup> (2000) 2 SCC 228

<sup>46</sup> (1997) 6 SCC 241

3. <i>“Apparel Export Promotion Council v. A.K. Chopra<sup>47</sup>”</i> .	in opposition to women moreover leading appropriate steps to prevent the dignity and reputation of women is vividly obvious. The Court of Justice decisions referred to CEDAW as “binding the country by ratifying the treaty to uphold the principle of gender equity at work”.
4. <i>“Gaurav Jain, Union of India &amp; Other<sup>48</sup>”</i> .	Referred to CEDAW in 1997 as a case involving “sex workers and their children by stating that Indian ratification of the Convention obliges them to act accordingly because all forms of discrimination based on gender infringes fundamental freedoms and human rights”.
5. <i>“Madhu Kishwar State of Bihar<sup>49</sup>”</i> .	S.C held that the “Convention on the Elimination of All Forms of Discrimination Against Women is an integral scheme of the Fundamental Rights and the Directive principles”. Article 2 (e) of CEDAW enjoins the state parties “to breathe life into the dry bones of the Constitution, International Conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights”. “Article 2(f) read with Article 3, 14 and 15 of CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act”. It is therefore required that the “enabling legislature is enacted to give legal effect to the Convention so that discrimination against women which exists due to legal, social and cultural traditions is eliminated”. Rights provided therein will remain pointless to a large number of women due to their “poverty, ignorance and illiteracy”.
6. <i>“State of Maharashtra and another V. Madhukar Narayan Mardikar<sup>50</sup>”</i> .	The question before the S.C was that, whether is it safe to rely on the testimony of Banubai Who was a woman of doubtful reputation? Reversing the decision of Bombay H.C ,the S.C held that merely because “she is a woman of easy virtue, her evidence can be thrown overboard”. Regarding rights of women of easy virtue the court opinioned: “Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to

<sup>47</sup> AIR 1999 SC 625<sup>48</sup> AIR 1990 SC 292<sup>49</sup> (1996) 5 SCC 125<sup>50</sup> A.I.R 1991 S.C 207

	protect her dignity if there is an attempt to violate it against her wish. She is equally entitled to the protection of law”.
7. <i>“Mrs. Meera Mathur V. Life Insurance Corporation of India and another<sup>51</sup>”.</i>	The S.C, protected the modesty and self-respects of women. Here, the petitioner, lady candidate, was in the service of “life Insurance Corporation of India”, and was discharged from the service on the allegation that she gave a “false declaration regarding the last menstruation period with a view to suppress her pregnancy at the stage of entering the service”. There were other particulars also to be furnished under the declaration given by her at the very initial stage of her service, like whether “her menstrual period is regular, the number of conceptions taken place and how many have gone full terms, etc”. The Supreme Court observing that such declarations required from the lady candidate are indeed “embarrassing if not humiliating, and that the modesty and self-respect may perhaps pre cluded the disclosure of such personal problems, directed the corporation to delete such columns in the declaration”. In this way, the Supreme Court upheld the right to privacy of lady employees.
8. <i>“Chairmen Railway Board and others V. Mrs Chandrima Das &amp; others<sup>52</sup>”.</i>	The Supreme Court allowed the P.I.L under “Article 226 of the Constitution”, the Calcutta High court upheld the “compensation awarded by the high court to the foreign national lady victim”. In this case Mrs. Hanufa Khatoon, “A Bangladeshi national was gang raped by many including employees of the railways in a room at yatri niwas at howrah station of eastern railway. The high court awarded a sum of Rs.10 lacks as compensation for the victim”. Appeal against this decision was filled before the Supreme Court. It was contended there that the proceeding under “Article 226 of the constitution could not have being legally commenced for demanding damages form the railways, or for that matter, the Union of India would not be vicariously liable”. It was further contended that “Smt. Hanufa Khatoon was a foreign national and, therefore, no relief under public law could be granted to her as there was no violation of the Fundamental Rights available to her under the constitution”. S.C considered elaborately the facts of the case and upheld the dignity of women. Dismissing the appeal the court opinioned that “as a national or another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of govt. employees who outrage her modesty”. The court
9. <i>Bodhisatta V. Ms. Subhra Chakraborty<sup>53</sup>”.</i>	

<sup>51</sup> A.I.R 1992 S.C 392<sup>52</sup> A.I.R 2000 S.C 988<sup>53</sup> A.I.R 1996 S.C 922

held that “committing an offence of rape upon a person of women is not a mere matter of violation of an ordinary right but is violative of the fundamental rights of a person guaranteed under Article 21 of the constitution”.
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## Supreme Court guidelines for better protection of women’s rights

### 1. Not disclose the identity of victim in rape cases

- *Dinesh alias Budha V. Rajasthan*<sup>54</sup>.

The Supreme Court declared that the “name of the victim of a sexual offence should not be indicated in judgments of Supreme Court, High Courts or lower courts”. This is to “prevent social victimization or ostracism of the victim of a sexual offence”

### 2. Right of accused women

- *Sheela Barse V. State of Maharashtra*<sup>55</sup>.

“Article 21” of the constitution provides that “no person shall be deprived of his life and personal liberty except according to procedure established by law”. Problem of women in police lock-up come before the Supreme Court in the said above mentioned case. The case arose out of a letter to the Supreme Court complaining of “custodial violence meted out to women prisoners in police lock-ups in Bombay”. Acting on the letter, The Supreme Court laid down “guidelines on how women in police lock-ups should be treated”. The guidelines incorporated a number of safeguards:

- (i) “Separate place of detention should be provided for female suspects”.
- (ii) “Female suspects should be interrogated only in the presence of female police officers”.
- (iii) “Every person who is arrested should be informed of the grounds of arrest and of the right to apply for the bail. A pamphlet these rights should be affixed in every police station”.
- (iv) “The police should intimate the nearest legal aid committee about the arrest, and the committee should give immediate legal assistance to the arrested person”.
- (v) “Session Judges should make surprise visits to police lock-ups periodically”.
- (vi) “On arrest, the police should inform a relative or friend of the arrested person”.
- (vii) “The magistrate before whom an arrested person is produced must inquire whether the arrested person ant complain of torture or mal treatment in police custody in inform him/her that under section 54 of the code of criminal procedure, 1973 he/she has the right to be medically examined. This rule applied to both men and women”.

<sup>54</sup> (2006) Cr.L.J. 1679 SC

<sup>55</sup> AIR 1983 SC 378

### 3. Compulsory Registration of Marriage

- *Smt. Seema V. Ashwani Kumar*<sup>56</sup>.

In this case it was held that all marriages shall be compulsorily registered, irrespective of the religion and personal law of the parties.

The “National Commission for Women in its affidavit has detailed the benefits of registration of marriages” which are as follow:

- (i) “Prevention of child marriages and to ensure minimum age of marriage”.
- (ii) “Check illegal bigamy/polygamy”.
- (iii) “Prevention of marriages without the consent of the parties”.
- (iv) “Enabling married women to claim their right to live in matrimonial house, maintenance”, etc.
- (v) “Enabling widow to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husband”.
- (vi) “Deterring men from deserting women after marriage”.
- (vii) “Deterring parents/guardians from selling daughters/young girl to any person including a foreigner under the garb of marriage”.

### Conclusion

Women the way to humanity, the backbone of the society and heart of the family, to define the role as played by women is as defining the depth of the ocean. She played the main role in shaping the society as a whole, without any reservation or predictions whatsoever. However this great being has till date suffered the least recognition and respect even of her fundamental human rights and basic freedom.

“The international Bill of Human Rights lays down a comprehensive set of rights to which all persons, including women, are entitled”. “Equality is the foundation of every domestic society”, which aims to “social justice and human rights”. Every person is equal in the eye of law. The women as being vulnerable are subjected to discriminations in law and practice. Discrimination against women is well-known. It is mainly due to the survival of stereotyped cultures and religious practices that heavily affect women. “There exist alarming gap between men and women on the economic and social side”. The main thrust of the Women’s Convention is “aimed at eliminating all forms of discrimination encountered by women in all areas affecting their lives, and a perusal of the relevant articles attests to this”.

<sup>56</sup> (2006) 2 SCC 578