

EFFECTIVENESS OF THE CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN IN ELIMINATING VIOLENCE AGAINST WOMEN: A CRITICAL EXAMINATION

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ABSTRACT

Violence against women is seen as one of the most widespread human rights violations and a major barrier to women's personal growth. In the late 1960s and early 1970s, the Second Wave feminist movement introduced the issue to the public, offered a theoretical framework for analyzing it, and launched a full-scale campaign to address it. One of the most common violations of human rights worldwide is violence against women; never sand the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) makes no explicit reference to this issue. This paper starts by further analyzing the CEDAW's evolution. analyzes CEDAW's Article 2 against violence against women critically, looking at its implementation procedures and alternatives Optional protocols, the State parties' Concept of Reservation, the 1993 Declaration on the Elimination of Violence Against Women, and the hesitant actions of state parties to the general proposals are also covered. The fact that, despite CEDAW's existence since 1979, the word "violence" is never specifically mentioned, makes this fact all the more startling. It has, however, construed in its rules in a way that implicitly incorporates them, although this hasn't been very helpful. It also sheds some light on India's position with CEDAW.

Keywords: -Violence against women, Treaty, Discrimination, Reservation, Declaration.

PROBLEM OF RESEARCH

Despite the adoption of the Declaration on the Elimination of Violence Against Women (DEVAW) as a complementary mechanism to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), its non-binding nature limits its effectiveness in preventing and addressing violence against women.

RESEARCH QUESTIONS

1. Should the issue of violence against women be addressed by a separate treaty?
2. What are the existing limitations in CEWDAW'S current framework regarding violence against women?

LITERATURE REVIEW

For this paper, the researcher used data from primary and secondary sources. The information found in online databases, publications, legal journals, reports, and decided cases has been extensively utilized by the author. To have a better knowledge of the problems to be addressed, thorough research of the literature was conducted on the subject.

RESEARCH METHODOLOGY

The study's technique is both analytical and doctrinal. A discussion and critical evaluation of various provisions under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have also been attempted, with a focus on violence against women and the issues and shortcomings that have been highlighted. This study has placed more of an emphasis on secondary data. The origins of CEDAW and its implementation methods were traced through the collection, assembly, and analysis of numerous books, articles, research papers, magazines, etc. The citation style for sources in the footnotes is **Bluebook 20th edition**.

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EVOLUTION OF CEDAW

Short History

In many regions of the world, a new awareness of the patterns of discrimination against women emerged in the 1960s, and the number of groups dedicated to halting the effects of this discrimination increased. The Commission on the Status of Women, or CSW, examined the possibility of drafting a legally binding treaty that would give the Declaration's provisions normative force in 1972, five years after declaration was adopted and four years after the Economic and Social Commission introduced a voluntary reporting system on its implementation. The CSW decided to ask the Secretary-General to ask UN Member States to submit their opinions on the proposal. The next year, a working committee was established to examine how to develop such a convention. The Commission made the decision to draft a single, comprehensive, and legally binding document to end discrimination against women in 1974 during its 25th session, based in part on the report of this working group. This instrument was created without affecting any suggestions the UN or its specialized agencies might make in the future about the creation of legal documents to end discrimination in particular domains. The World Plan of Action for the Implementation of the Objectives of the International Women's Year, which was adopted by the World Conference of the International Women's Year held in Mexico City in 1975, it encouraged the Commission to draft a convention on the elimination of discrimination against women along with efficient procedures for putting it into effect. Despite recommendations to postpone the text's completion for an additional year, the General Assembly passed the Convention on the Elimination of All Forms of Discrimination Against Women in 1979 with 130 votes and 10 abstentions. The General Assembly adopted the Convention in resolution 34/180, expressing the hope that it would be implemented soon. The Assembly also asked the Secretary-General to bring the Convention's text to the United Nations Decade for Women World Conference in the middle of the decade.¹

The convention is enlisted with 30 Articles which can be sorted in 3 groups. The first group is 1 to 5 includes the definition clauses, nature, scope and measures to be achieved by the state's parties, i.e. the obligation on the state, The second group deals with the Articles 6 to 16 that are related to the

¹ UN WOMEN, <https://www.un.org/womenwatch/daw/cedaw/history.htm> (last visited sept.15, 2024).

subject matter which addresses various spheres of women's lives. It highlights the specific forms of discrimination and outlines measures that the state must undertake to eliminate discrimination in each of these areas for e.g. Article 6 deals with Trafficking and exploitation of prostitution, Article 7 deals with Public and Political life, Article 8 deals with international affairs, Article 9 with Nationality, Article 10 with Education and so on. Last set of the group includes Article 17-22 and Article 23-30 which deals with CEDAW committee and reporting process and Ratification, Reservation and procedural matters dealt under CEDAW in state parties. These include procedural and administrative matters such as composition of committee and way of reporting process and operation of the Convention. The CEDAW convention incorporates features of the Universal Declaration of Human Rights (1948), the International Covenants of Civil and Political Rights and on Economic, Social, and Cultural Rights, and International Labor Organization conventions. It emphasizes a vision of gender relations in terms of equal rights for men and women and explicitly prohibits discrimination on the basis of sex².



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² SHODHGANGA, <http://hdl.handle.net/10603/370427> (last visited sept.12, 2024).

CEDAW has been described as an international bill of rights for women.

THE OMISSION OF VIOLENCE AGAINST WOMEN FROM CEDAW

Article 2, the core of the convention, requires states parties: To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”

The Convention essentially defines what constitutes discrimination against women and sets out what national action should be taken to end such discrimination. Discrimination against women is defined as, any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field³.

The states parties must take all necessary steps, including legislation to amend or repeal current laws, rules, customs, and practices that discriminate against women, according to Article 2, the convention’s central provision. In essence, the convention lays out what national action should be taken to eradicate discrimination against women and defines what constitutes such discrimination. Any sex-based distinction, exclusion or restriction that has the effect of preventing or negating women’s recognition, enjoyment or exercise of their rights regardless of their marital status on the basis of equality of men and women, human rights and fundamental freedoms in the political, economic, social civil or any other field is considered discrimination against women.

The focus of CEDAW was not primarily on any of these rights, but on the anti-discrimination discourse. Given this approach, it is perhaps less remarkable that this instrument does not expressly encompass the issue of violence against women.

Another reason for the omission of violence against women from CEDAW lies in the simple fact that this instrument was adopted almost four decades ago. It seems that during the drafting process there was relatively little discussion of the possible inclusion of the of violence against women.

³ Convention on elimination of Discrimination against women, art.1.

The anti-discrimination debate was the main topic of CEDAW. It may be less noteworthy that this tool does not specifically address the problem of violence against women in its provisions. The fact that CEDAW was approved nearly forty years ago is another reason why violence against women is not included in this document. It appears that the inclusion of violence against women was not discussed much during the drafting process.

As Edwards states, ‘Prior to the 1990s...violence against women was not seen as a major issue, and if it was recognised as an issue at all, it was considered an issue for national governments (and criminal law) rather than international law. ‘It is therefore unsurprising that no express reference to violence against women is to be found in CEDAW⁴.

IMPLEMENTAION

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international laws are important tools used by the international human rights system to prevent violence against women. This is the main UN agreement that controls women's status. It has received widespread ratification and, in principle, has been integrated into the national legal frameworks of the signatory nations. However, a lot of legal experts, activists, and non-governmental organizations are worried about this legal process's lack of enforcement mechanisms. Similar to committees tasked with overseeing adherence to the other five major UN treaties, the CEDAW committee has limited authority to force states to fulfil the duties they took on when they ratified the agreement⁵.

1. Because treaty bodies work within the global structure of sovereignty, they are not empowered to impose sanctions on noncompliant states. The primary mechanism for inducing compliance with CEDAW is the preparation of periodic reports that are presented by national governments to an oversight committee, called a treaty body, at UN headquarters in New York. Pressure is exerted through exposure, shaming, and appeal to the international standards articulated in the convention. Committee members see the process as a “constructive dialogue” in which they pose questions to governments. The committee's options for dealing with governments that fabricate reports or conceal discriminatory policies are limited. They cannot prevent a government from providing evasive or scanty answers although they can write critical “concluding comments” that are sent to governments and posted on the Internet.

⁴ Dr Ronagh McQuigg, *The Need for a UN Treaty on Violence against Women*, QUEEN’S POLICY ENGAGEMENT (sept.15,2024, 8.34 PM), <https://qpol.qub.ac.uk/need-un-treaty-violence-women/>.

⁵ COMMON WEALTH LIBRARY, <https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/1059/1055/9405?inline=1> (last visited oct.2,2024).

2. There is a new individual complaint procedure for CEDAW, but relatively few states have ratified it yet. Overall, compliance depends on the will and commitment of national political actors and pressures from other countries and nongovernmental organizations (NGOs). Thus, CEDAW is law without sanctions.
3. Many of these treaty bodies have developed an optional protocol that allows individuals to file complaints directly with the committee. CEDAW has its own optional protocol that entered into force by late 2000. It allows individual women or groups to submit claims of violations of rights protected under the convention to the CEDAW committee, but only after all domestic remedies have been exhausted and only in countries that have ratified it. The protocol also creates a procedure by which the committee can inquire into situations of grave or systemic violations of women's rights. As the optional protocol comes into force more widely, there will be a new system of sanctioning in place, but it applies only to those countries that have ratified it. By mid-2002, 41 states had ratified it but no complaints had yet been received⁶.

RESERVATIONS

As defined by the Vienna Convention, a reservation is any statement made by a state representative when ratifying a treaty that “purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.

States may ratify CEDAW with reservations to particular items of the convention by declaring that certain parts of the treaty are not binding on them. The committee discourages this and endeavours to persuade ratifying states to remove their reservations. In the past, this convention had more reservations to it than any other. Some of the reservations are to core portions of the convention, such that they undermine the purpose of the convention itself. Egypt, for example entered a general reservation on article 2, explaining that it is “willing to comply with the content of this article provided that such compliance does not run counter to the Islamic Shari’a”. 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. Again, CEDAW does not provide for any mechanism if any reservation violates this provision. There are no procedural limitations on making the reservations. The most state reservations are found in Article 16, which addresses women's rights inside the family. “To decide freely and responsibly on the number and spacing of their children and

⁶ DR. S.K KAPOOR, HUMAN RIGHTS UNDER INTERNATIONAL LAW INDIAN LAW155-156(Central Law Agency, 2011).

to have access to the information, education, and means to enable them to exercise these rights" is what Article 16(e) guarantees women⁷.

The most frequent justification given by state parties for reserving rights under Article 16 is that Sharia law governs matters pertaining to marriage, divorce, and child custody.

India reserved on Articles 5(a) and 16, citing a policy of "noninterference in the personal affairs of any Community" and Country's variety of customs and religions, "while Iraq reserved on Article 2 without offering any explanation at all⁸.

THE APPROACH OF THE CEDAW COMMITTEE TO VIOLENCE AGAINST WOMEN

The CEDAW Committee has construed the Convention to include violence against women even though it does not contain any explicit provisions on the subject. The CEDAW Committee published General Recommendation No. 12 in 1989. Despite being extremely brief, this recommendation stated that states parties to CEDAW should provide information about the laws protecting women from all forms of violence in their daily lives, other measures to end such violence, the availability of support services for women who are the victims of abuse or aggression, and statistics on the prevalence of violence against women. However, it should be noted that General Recommendation No. 12 did not specifically outline how CEDAW included violence against women. It only said that states parties were bound "to act to protect women against violence of any kind occurring within the family, at the workplace, or in any other area of social life" under articles 2, 5, 11, 12, and 16 of the Convention. However, this remark was, to put it mildly, ambiguous because there is not a single explicit reference to violence against women in any of these articles⁹.

The much more specific General Recommendation No. 19 was issued by the CEDAW Committee three years after it issued General Recommendation No. 12. According to General Recommendation No. 19, "The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women." It also stated that gender-based violence is a form of discrimination that significantly limits women's ability to enjoy rights and freedoms on an equal

⁷ Ellinore Ahlgren, *Ratification, Reservations, and Review: Exploring the Role of the CEDAW Compliance Mechanisms in Women's Rights*, PRINCETON UNIVERSITY (Oct.9, 2024, 5:45 PM), <https://jpia.princeton.edu/news/ratification-reservations-and-review-exploring-role-cedaw-compliance-mechanisms-womens-rights>.

⁸ Supra note 7.

⁹ ASIAN DEVELOPMENT BANK, <https://lpr.adb.org/libraries/pdf.js/web/viewer.html?file=https%3A%2F%2Flpr.adb.org%2Fsites%2Fdefault%2Ffiles%2Fresource%2F1063%2Fcedaw-general-recommendation-no-12.pdf> (last visited Nov. 15, 2024).

basis with men. As stated in the General Recommendation, gender-based violence that is, violence committed against a woman because she is a woman or that disproportionately affects women is included in the concept of discrimination. It covers actions that causes pain or suffering that is physical, mental, or sexual, threats of such actions, coercion, and other forms of deprivation of freedom. Whether or not the Convention's articles specifically address violence, gender-based violence may nonetheless violate them.

This was followed by General Recommendation No. 19, which outlined how different CEDAW rules should be understood to include violence against women even when they do not specifically mention it¹⁰.

WHETHER THERE IS A NEED OF A NEW TREATY

Adoption of a CEDAW Optional Protocol on Violence Against Women is the first. Second, is it appropriate to adopt a stand-alone treaty on violence against women? Regarding the first option, there may be some appeal to adopting an Optional Protocol to CEDAW on this matter, which would be overseen by the CEDAW Committee. This is because it is probably going to be significantly less expensive than adopting a stand-alone treaty and setting up a different monitoring body. Because states parties to such a Protocol might include information on compliance in their reports to the CEDAW Committee on compliance with CEDAW more broadly, this method would also relieve states of some of their reporting obligations. This might therefore have the benefit of enticing additional states to ratify such a document. Notably, the CEDAW Committee has voiced concerns that a new instrument with its own oversight body would put more strain on nations and have financial ramifications. Such worries would be lessened if CEDAW were to adopt an Optional Protocol rather than a stand-alone agreement.

However, adopting an Optional Protocol to CEDAW, rather than a distinct treaty, may have substantial disadvantages. All of the UN treaty bodies, including the CEDAW Committee, are already under considerable strain. It does not appear practical to expect the CEDAW Committee to take on the additional monitoring responsibilities that would result from the adoption of a Protocol on violence against women. Indeed, owing to the CEDAW Committee's inability to perform, such a course of action might lead to nations' replies to their duties under such a Protocol being less closely

¹⁰ REF WORLD, <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542> (last visited Nov. 19, 2024).

examined. A separate convention on violence against women, on the other hand, with its own oversight body would enable a far more thorough examination of official responses.¹¹.

If a United Nations treaty on violence against women were to be adopted, would a sizable portion of governments genuinely decide to ratify it? It is noteworthy that the vast majority of Member States of the Council of Europe have either ratified the Istanbul Convention or signed this document indicating their intention to do so. Furthermore, within the Inter-American system, the most generally approved treaty is the 1994-adopted Inter-American treaty on the Prevention, Punishment, and Eradication of Violence Against Women. Many states may actually be inclined to sign a worldwide treaty on violence against women, as evidenced by their largely positive reactions to the two regional conventions on the subject¹².

SPECIAL RAPPORTEURS

The creation of the Special Rapporteur on violence against women and girls, its causes, and its consequences as the first independent human rights mechanism on the elimination of violence against women represented a significant milestone in the global women's rights movement, given the ongoing impact that violence against women has on the lives of women and girls worldwide. In addition to acknowledging violence against women as a violation of human rights, it assigned the Special Rapporteur the responsibility of making sure that violence against women was incorporated into the UN human rights framework and its procedures.

The United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, including its causes and consequences, on 4 March 1994 (resolution 1994/45).

Special rapporteurs and members of working groups are independent experts with mandates to report and advise on human rights. Their mandates may be thematic in scope, such as violence against women, or country-specific¹³.

¹¹ McQuigg et al., *Is it time for a UN Treaty on Violence against Women?* IJHR 10-11(2018).

¹² Dr Ronagh McQuigg, *The Need for a UN Treaty on Violence against Women*, QUEEN'S POLICY ENGAGEMENT (Oct. 18, 2024, 8:34 PM), <https://qppl.qub.ac.uk/need-un-treaty-violence-women/>.

¹³ UNITED NATIONS, <https://www.ohchr.org/en/special-procedures/sr-violence-against-women> (last visited Nov.20,2024).

ADOPTION OF THE DECLARATION OF VIOLENCE AGAINST WOMEN

1993 saw the adoption of the Declaration on the Elimination of Violence Against Women by the UN. This was done in an effort to totally eradicate violence against women. the declaration discusses ways to prevent sexual, physical, and even psychological violence against women. This declaration focuses on violence against women that occurs everywhere, especially within their homes.

The declaration addresses violence against women in six different articles. The declaration also defines "violence against women", which as "Any act of gender-based violence that results in, or suffering to women, whether it takes place in their private or public lives, including threats of such actions, coercion, or arbitrary denial of liberty." This concept, which the United Nations approved in the declaration, is widely accepted.¹⁴

OBJECTIVE BEHIND ADOPTION

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women, Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, the declaration on the Elimination of Violence Against Women adopted by the UN¹⁵.

IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN UNDER THE INDIAN LAW

India demonstrated its commitment to women's human rights before the global community through the ratification of the CEDAW.

¹⁴ UNITED NATIONS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women> (last visited Dec.12,2024).

¹⁵ Supra note 13.

Ratifying the CEDAW was one way India showed the world that it was committed to women's human rights. The Protection of Human Rights Act 1993, which India also passed, described human rights as "the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the constitution or as stated in the International Covenants and upheld by Indian courts."

Regarding gender-specific issues, *Vishaka v. State of Rajasthan*¹⁶ is by far the most significant ruling implementing CEDAW. In this ruling, the Court traces the Constitution's sex discrimination prohibitions as well as the clauses addressing the need to implement international treaties. In paragraph 13 of the ruling, the Court specifically mentions CEDAW by quoting the broad recommendations of CEDAW on sexual harassment, some of which are highly pertinent to the article "Violence and equality in employment."¹⁷

The Supreme Court affirmed the removal from service following disciplinary actions for sexual harassment in the case of *Export Promotion Council v. A.K. Chopra*¹⁸. An employee was charge-sheeted and ultimately fired in this case due to allegations of sexual harassment. According to the statement, "the courts were under an obligation to give due regard to international conventions and norms for considering domestic laws, more so, when there is a void in the domestic laws and there is no inconsistency between them." By laying forth rules for legislation, the judiciary has taken the lead in domesticating the CEDAW, which may be far more feasible than a politically heated legislature.¹⁹

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CONCLUSION

As referred to previously, all of the UN human rights treaties suffer from substantial problems as regards implementation. This raises the question therefore of how difficulties of this nature could be avoided in respect of a UN declaration on violence against women. It seems unjustifiable from the

¹⁶ *Vishaka v. State of Rajasthan*, (AIR 1997 SC 3011).

¹⁷ DR.H. O AGGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 852(Central Law Agency, 2013).

¹⁸ *Export Promotion Council v. A.K. Chopra*, (AIR 1999 SC 625).

¹⁹ NETWORK VN-VROUWENVERDRAG, https://www.vn-vrouwenverdrag.nl/wp-content/uploads/NOTE_MAKING-CEDAW-UNIVERSAL_-A-CRITIQUE-OF-CEDAW_S-RESE.pdf (last visited Jan. 14, 2024).

perspective of principle that there are still no legally binding provisions at the global level on violence against women, and it is submitted that a treaty on violence against women would be a desirable development it could be. however, it is important that existing work at the UN level on violence against women be developed and strengthened, such as by the continuation by the UN Special Rapporteur on violence against women with the approach of conducting detailed investigations of the laws, policies and practices of each state as regards this crucial issue. Violence against women is considered a clear violation of women's rights, and therefore it is a violation of human rights thus it is to be dealt by utmost sincerity.



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