

CEDAW AND THE ENFORCEMENT GAP: WOMEN'S RIGHTS IN AUTHORITARIAN REGIMES AND INDIA

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Abstract

This paper analyzes the efficacy of international legal frameworks aimed at safeguarding women's rights, with a specific focus on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW creates a complete set of rules against gender discrimination, but its enforcement still depends on cooperation from states and implementation within those states. This study compares Afghanistan and Iran to show how authoritarian or religiously structured governments use sovereignty, cultural autonomy, and religious legitimacy to make it harder to enforce international women's rights norms. These cases show that there is still a big gap between what international law says about protecting women's rights and what protections are actually available to women in their own countries. In contrast, the paper examines India's constitutional jurisprudence to demonstrate how domestic courts can convert international norms into binding legal standards. The Supreme Court of India has used CEDAW principles in its constitutional interpretation in cases like *Vishaka v. State of Rajasthan*, *Apparel Export Promotion Council v. A.K. Chopra*, *Githa Hariharan v. Reserve Bank of India*, *Anuj Garg v. Hotel Association of India*, and *Joseph Shine v. Union of India*. The paper contends that by juxtaposing these divergent methodologies, international women's rights law primarily serves as a normative framework, with its efficacy contingent upon the readiness of domestic legal institutions to assimilate and implement gender equality standards.

Keywords:

CEDAW; International Women's Rights; Gender Equality; Authoritarian Regimes; Treaty Enforcement; Constitutional Interpretation; India.

I. Introduction

The acknowledgment of women's rights as essential human rights constitutes one of the most pivotal normative advancements in contemporary international law. In the last few decades, international legal institutions have built a large framework to end gender discrimination and promote real equality between men and women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the United Nations General Assembly adopted in 1979, is a

key part of this framework. It is widely seen as the most complete international treaty on discrimination against women. CEDAW requires states to end discrimination in politics, education, work, health care, and family life, and it also requires governments to make changes to laws and institutions to make sure that men and women are treated equally.

Even though these promises are strong, women's rights around the world are still not being enforced evenly in all places. International human rights law functions within

a state-centric framework, where adherence is predominantly contingent upon the readiness of sovereign states to integrate treaty obligations into their domestic legal systems. Monitoring mechanisms, including treaty reporting procedures and recommendations from international committees, frequently lack compulsory enforcement authority. Consequently, international women's rights law often serves as a framework for global standards rather than a mechanism that can directly ensure the protection of women in practice. This conflict between moral obligation and actual enforcement is most clear in political systems that are authoritarian or based on religion. In places like Afghanistan and Iran, limiting women's freedom, education, political participation, and personal freedoms is often defended by appeals to sovereignty, cultural traditions, or religious rule. These examples show how international law can't be enforced because domestic political systems don't follow foreign legal norms.

In light of this, India is a useful example of how international legal norms can affect how a country's constitution is interpreted. The Supreme Court of India has used important court cases to use international human rights standards, such as CEDAW, to broaden constitutional protections for gender equality. This paper looks at the enforcement problems in authoritarian regimes and how India's courts incorporate international norms. It does this to see how well international women's rights law works in general and what needs to happen for it to make real legal changes.

II. Gender Discrimination in authoritative regimes like Afghanistan and Iran

Women in Afghanistan were not only limited in their ability to get an education and a job, but they were also subject to more general patterns of violence and persecution that came with Taliban rule. Reports from the time showed a lot of different kinds of abuse, such as forced displacement, extrajudicial killings, torture, and

systematic persecution of minority groups.¹⁹⁷ Even though many of these abuses weren't just against women, women were especially at risk because the way the law was set up made it hard for them to get legal protection or fight unfair policies.¹⁹⁸ The invisibility of these crimes in international discourse was exacerbated by the tendency of global attention to focus primarily on the Taliban's links to international terrorism, particularly following the attacks of September 11, 2001.¹⁹⁹

Iran has a different, but still very controversial, legal system when it comes to women's rights. Iran has a working constitution and legal system, and women can go to school, work, and use public services. This is not the case in Afghanistan when the Taliban were in power. But this participation happens within a framework that is shaped by how people understand Islamic law and the moral rules that the government sets. Legal regulations pertaining to family law, dress codes, and political engagement have frequently been condemned for perpetuating gender hierarchies and constraining women's autonomy in both private and public domains.²⁰⁰

When scholars look at women's rights in Iran, they often talk about how state law and social norms affect women's daily lives. Even though Iranian women have done well in school and have been active in civil society and the professional world, there are still structural barriers in the laws about guardianship, inheritance, and political eligibility.²⁰¹ These limitations show how complicated the connection is between formal legal rights and real gender equality in practice.

The problems women face in Afghanistan and Iran show that there are bigger problems with the international human rights system as a

¹⁹⁷ Drumbl, *supra* note 1, at 1122.

¹⁹⁸ *Id.* at 1123.

¹⁹⁹ *Id.* at 1121.

²⁰⁰ Sanam Vakil, *Women and Politics in the Islamic Republic of Iran: Action and Reaction*, 30 *Contemp. Politics* 289, 290–92 (2014).

²⁰¹ Nayereh Tohidi, *Women's Rights and Feminist Movements in Iran*, in *Women's Movements in the Global Era* 37, 40–42 (Amrita Basu ed., 2010).

whole. Even though there are comprehensive international legal tools, like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁰², enforcement is still weak when countries use sovereignty, cultural autonomy, or religious governance to justify policies that limit rights. The fact that these gaps still exist shows that the international legal system that protects women's rights often works more as a set of rules than as a set of laws that can be enforced.

Even when legal systems officially recognize some rights, those rights may not be fully realized in practice because of larger political and institutional factors. For example, in Iran, a lot more women are going to college and working in professional fields than they were a few decades ago. Today, a large number of Iranian women graduate from college and have made their presence felt in fields like medicine, academia, journalism, and civil society groups.²⁰³ Scholars frequently observe that institutional frameworks persist in constraining women's political authority and decision-making capabilities, notwithstanding these advancements. Some parts of the Constitution and laws make it harder for women to run for high political office. Other laws that govern family law make it easier for men to be guardians and give them more rights to inherit property. These legal restrictions show how complicated the relationship is between modernization and gender equality in hybrid legal systems. Many Iranian women have been able to take part more actively in public discourse and social movements thanks to better access to education. However, formal legal reforms have often not kept up with these changes in society.²⁰⁴ This creates a paradox in which women can make big strides in their education and careers but still face legal barriers in areas like family law and political

representation. This gap between social progress and legal reform shows how limited it is to rely only on domestic legal systems to ensure real gender equality. Afghanistan is a more extreme example of this structural problem, especially when state institutions have actively enforced gender exclusion instead of just ignoring discrimination. Under Taliban rule, laws that controlled how women behaved went far beyond just limiting their jobs and education. Women had to follow strict dress codes, couldn't go out in public without a male relative, and were punished harshly for what were thought to be violations of moral rules.²⁰⁵ Religious police institutions enforced these rules and had a lot of power over how people acted in everyday life.²⁰⁶

Such policies had an effect on more than just individual freedoms; they also changed Afghan society in a big way by keeping women out of many parts of public life. When women couldn't work in fields like healthcare, education, and administration, the resulting lack of institutions made already weak social infrastructures even weaker.²⁰⁷ Because of gender segregation policies, many times female doctors couldn't treat female patients, and male doctors couldn't treat women. These contradictions had terrible effects on people's lives, especially in rural areas where healthcare was already hard to get.

So, the Afghan case shows that gender discrimination can not only be a violation of individual rights, but it can also be a bigger problem that affects governance, development, and social stability. When half of a population is systematically kept out of school, work, and public life, the long-term effects go beyond gender inequality to include a weak economy and weak institutions. Because of this, many scholars say that limits on women's rights shouldn't just be seen as cultural practices in the home country, but as problems with big

²⁰² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

²⁰³ Nayereh Tohidi, Women's Rights and Feminist Movements in Iran, in WOMEN'S MOVEMENTS IN THE GLOBAL ERA 37, 40–42 (Amrita Basu ed., 2010).

²⁰⁴ Ziba Mir-Hosseini, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, 32 CRITICAL INQUIRY 629, 632–35 (2006).

²⁰⁵ Mehrangiz Kar, Legal Reform and Women's Rights in Iran, 20 HARV. HUM. RTS. J. 185, 188–90 (2007).

²⁰⁶ Mark A. Drumbl, The Taliban's "Other" Crimes, 23 THIRD WORLD Q. 1121, 1122–23 (2002).

²⁰⁷ Drumbl, *supra* note 13, at 1122–23.

legal and humanitarian effects around the world. These changes bring the conversation back to a key issue in international law: how to find a balance between respecting state sovereignty and enforcing universal human rights standards. CEDAW and other international legal tools were made to set common standards for ending discrimination against women. However, their success depends on the willingness of governments to follow through on these obligations.²⁰⁸ When states use sovereignty, cultural autonomy, or religious legitimacy to defend strict policies, international organizations often can't do much to enforce them.²⁰⁹ Because of this, the fact that gender inequality is still a problem in places like Afghanistan and Iran raises important questions about whether international law can turn moral commitments into real protections for women on the ground.²¹⁰

The lives of women in Afghanistan and Iran show how gender discrimination can happen in different political and legal systems but still have the same effects, such as limiting women's freedom and participation in public life. The Taliban's systematic exclusion of women in Afghanistan shows how government institutions can enforce gender segregation and limit basic freedoms. In Iran, on the other hand, gender inequality works through more complicated legal systems. Women can go to school and work, but they are still limited by formal laws in areas like family law and political representation. Even though these two situations are different, they both show a bigger problem with the way the international human rights system is set up. International legal norms are starting to see gender equality as a key part of protecting human rights. However, when states use sovereignty, cultural autonomy, or religious legitimacy to justify restrictive policies, there aren't many ways to enforce

these norms. Because of this, the fact that gender discrimination still happens in these situations raises important questions about how well current international legal systems work. To understand these limits, we need to look at how international legal standards for protecting women's rights have changed over time and how those standards are supposed to work.

III. The International Legal Framework for Women's Rights

III.A Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the most complete international treaty that deals with discrimination against women. The United Nations General Assembly passed it in 1979. The Convention is often called the "international bill of rights for women." It sets up a broad legal framework that states must follow to end discrimination against women in all areas of life, including politics, the economy, society, culture, and civil life.²¹¹ The Convention has a preamble and thirty articles that together define discrimination against women, spell out what states must do, and set up ways to check that they are doing what they are supposed to do.

The first article of CEDAW gives the basic definition of discrimination against women. The law says that discrimination is any "distinction, exclusion, or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise" of women's human rights and basic freedoms in any area of life.²¹² This definition is meant to be broad and includes both direct and indirect discrimination that happens in the law or in practice. The Convention's broad definition shows that gender inequality can happen not only because of clear legal restrictions, but also because of structural and

²⁰⁸ Guglielmo Verdirame, Testing the Effectiveness of International Norms: UN Humanitarian Assistance and Sexual Apartheid in Afghanistan, 23 HUM. RTS. Q. 733, 736–39 (2001).

²⁰⁹ Id. at 738.

²¹⁰ Martha C. Nussbaum, Women's Education and Human Development, 3 STUD. COMP. INTL.DEV. 325, 327–29 (2002).

²¹¹ Convention on the Elimination of All Forms of Discrimination Against Women pmbll., Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

²¹² Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

institutional practices that put women at a disadvantage in social, economic, and political situations.

Article 2 makes it clear that the main duty of states parties is to end discrimination against women through laws, courts, government actions, and policies. Constitutions and national laws must include the principle of gender equality. Discriminatory laws must be repealed, and competent national tribunals and public institutions must make sure that people are effectively protected against discrimination.²¹³ This section gives governments a duty to actively work toward policies that will end discrimination, not just avoid acting in a discriminatory way.

Some important parts of CEDAW deal with specific areas where gender discrimination has been common in the past. Article 7 is about political and public participation. It says that states must make sure that women have the same rights as men to vote, hold public office, and help make and carry out government policy.²¹⁴ The provision acknowledges that women have historically had less power to shape public policy and governance because they have been excluded from politics.

Article 10 talks about equal access to education for women and girls, which means that states must make sure that women and girls have the same chances to learn.²¹⁵ This means getting rid of stereotypes in school materials, making sure everyone has the same chance to get scholarships and training, and encouraging everyone to take part in school. Education is seen as a key way to promote gender equality because it gives women more access to job opportunities and allows them to be more involved in public life.

Article 11 goes even further by requiring states to make sure that everyone has the same job opportunities, pay for work of the same value, and protection against discrimination in hiring,

promotion, and working conditions.²¹⁶ This part recognizes that being able to participate in the economy is an important part of real gender equality.

Finally, Article 16 talks about equality in marriage and family life. It says that states must make sure that women and men have the same rights when it comes to marriage, divorce, guardianship, and parenting.²¹⁷ This article is very important because many types of gender inequality come up in family law systems that deal with marriage, inheritance, and parental rights.

Even though these rules are very detailed, CEDAW's enforcement mechanisms are still not very strong. The Committee on the Elimination of Discrimination Against Women runs the Convention's main reporting system.²¹⁸ Under Article 18, states parties must send in regular reports that explain the steps they have taken to carry out the Convention's rules. The Committee looks over these reports and makes suggestions to help states meet their treaty obligations.

This monitoring system helps create international standards for gender equality, but it doesn't have strong enforcement powers. The Committee's suggestions are not legally binding, and they mostly rely on diplomatic pressure and the threat of damage to reputation to get people to follow them. Because of this, the Convention's effectiveness depends a lot on whether or not states are willing to put its rules into their own legal systems. This structural dependence on state consent is a common feature of international law, where treaty obligations are often more like moral obligations than legally binding rules.

Also, a lot of states have ratified CEDAW with reservations that limit the scope of their obligations, especially when it comes to family law and religious practices. These reservations

²¹³ Id. art. 2.

²¹⁴ Id. art. 7.

²¹⁵ Id. art. 10.

²¹⁶ Id. art. 11.

²¹⁷ Id. art. 16.

²¹⁸ Id. art. 18; Comm. on the Elimination of Discrimination Against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, U.N. Doc. CEDAW/C/VCT/4-8 (2013)

show how the idea of state sovereignty still affects how international human rights law is used. CEDAW sets up a broad framework for dealing with gender discrimination, but it is still not being used evenly in all legal and political situations.

III.B. Other International Tools That Protect Women's Rights

CEDAW is just one of many international laws that help protect women's rights. The Beijing Declaration and Platform for Action, which was passed at the Fourth World Conference on Women in 1995, is one of the most important.²¹⁹ The Beijing Platform is one of the most complete global policy agendas for achieving gender equality and giving women more power. It has the support of 189 governments. The Platform lists twelve important issues, such as women and poverty, education and training, health, violence against women, and having a say in political and economic decisions.

The Beijing Platform stresses the need to get more women involved in politics, give women and girls more chances to learn, give women more economic power, and put an end to violence against women.²²⁰ The Platform gives governments and international organizations a way to deal with structural barriers to gender equality by pointing out these important areas.

The Beijing Declaration, on the other hand, is not legally binding like international treaties. Instead, it works as a policy framework that pushes countries to make their own plans to promote gender equality. The Platform has been an important part of global conversations about women's rights, but its success depends on whether or not each government is willing to follow its suggestions.

Other international human rights documents also help protect women's rights. The Universal Declaration of Human Rights (UDHR), which was passed in 1948, sets out basic rules for equality and not discriminating against people. It says

that all people are born free and equal in dignity and rights.²²¹ The UDHR doesn't specifically talk about gender discrimination, but its ideas of equality before the law and freedom from discrimination are important legal foundations for later gender-specific documents.

The International Covenant on Civil and Political Rights (ICCPR) also protects basic civil and political rights, such as the right to be treated equally by the law and not to be discriminated against.²²² The International Covenant on Economic, Social, and Cultural Rights (ICESCR) adds to these protections by recognizing rights related to work, education, health, and social welfare.²²³ These tools are the most important parts of the international human rights framework. They also support the idea that gender equality is an important part of all human rights.

Even though these legal tools are in place, there are still a lot of problems with turning international promises into real protections for women. International human rights law depends a lot on states agreeing to it, working together, and putting it into action at home. Monitoring bodies can make suggestions or observations, but they usually don't have the power to make states follow through on their duties.

This structural limit shows a basic conflict in international law. On the one hand, international agreements like CEDAW, the Beijing Platform for Action, and the major human rights covenants make strong promises to promote gender equality. On the other hand, sovereign states still have the power to choose how to enforce these promises. Because of this, the international legal system often works more like a way to set global standards than like a way to directly protect women's rights in different countries.

²¹⁹ Fourth World Conference on Women, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF.177/20 (Sept. 15, 1995).

²²⁰ Id. ¶¶ 13–20.

²²¹ Universal Declaration of Human Rights arts. 1–2, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

²²² International Covenant on Civil and Political Rights arts. 2, 3, Dec. 16, 1966, 999 U.N.T.S. 171.

²²³ International Covenant on Economic, Social and Cultural Rights arts. 2–3, Dec. 16, 1966, 993 U.N.T.S. 3.

IV. Breaches of CEDAW and the Structural Constraints of Treaty Enforcement

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) set up a complete framework for protecting women's rights, but the structural limits of treaty enforcement still make it hard for women to fully enjoy their rights under international law. Many international court decisions have said that once a country agrees to a treaty, it can't get out of its obligations. These cases also show how weak international human rights enforcement mechanisms are because they still rely heavily on the cooperation and political will of sovereign states.

The doctrine of *pacta sunt servanda* is what makes treaty obligations in international law binding. Article 26 of the Vienna Convention on the Law of Treaties (VCLT) makes this rule official: every treaty that is in effect is binding on the parties and must be carried out in good faith.²²⁴ Article 27 of the same Convention also says that a state can't use its own laws as an excuse for not following through on a treaty obligation.²²⁵ These rules make up the basic rules of international treaty law. They make it clear that states can't use their own legal systems or political reasons to get out of their international obligations.

This principle has been supported many times by international courts. The Inter-American Court of Human Rights made one of the most important statements about state responsibility in international human rights law in the case of *Velásquez Rodríguez v. Honduras*.²²⁶ The case dealt with the forced disappearance of a university student during a time in Honduras when human rights were being violated on a large scale. The Court found Honduras guilty of breaking the American Convention on Human Rights, even though it couldn't be proven beyond a reasonable doubt that state agents

were directly responsible for all parts of the disappearance.²²⁷ The Court said that states have a duty not only to not directly violate human rights, but also to do everything they can to stop, look into, and punish violations by both state agents and private individuals.²²⁸ This principle of "due diligence" has evolved into a fundamental tenet of international human rights law, especially in instances of gender-based violence.

In later cases about violence against women, the due diligence standard has been used. The European Court of Human Rights' 2009 decision in *Opuz v. Turkey* is one of the most important examples.²²⁹ The case came about because the Turkish government didn't protect the applicant and her mother from her husband's repeated domestic violence. Even though many people complained to the police and there was clear evidence of rising violence, state officials did not do enough to stop more abuse from happening. In the end, the applicant's mother was killed.

The European Court said that Turkey had broken the applicant's rights under Articles 2 and 3 of the European Convention on Human Rights, which protect the right to life and forbid cruel or degrading treatment.²³⁰ The Court also found a violation of Article 14, saying that the state's failure to deal with domestic violence properly was discrimination based on gender.²³¹ The Court made it clear that violence against women in the home is not just a private issue; it is a systemic form of gender discrimination that needs the state's active involvement.²³² The *Opuz* decision was a major step forward in international human rights law because it made it clear that domestic violence is a form of gender discrimination and that states have a duty to protect women from this kind of violence. The Court's strong findings were important, but the judgment's overall effectiveness depended on Turkey's willingness

²²⁴ Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.

²²⁵ *Id.* art. 27.

²²⁶ *Velásquez Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 166–174 (July 29, 1988).

²²⁷ *Id.* ¶¶ 166–172.

²²⁸ *Id.* ¶ 174.

²²⁹ *Opuz v. Turkey*, App. No. 33401/02, Eur. Ct. H.R. (June 9, 2009).

²³⁰ *Id.* ¶¶ 129–138.

²³¹ *Id.* ¶¶ 185–201.

²³² *Id.* ¶ 200.

to make changes to its own legal system. This shows that enforcing international human rights still depends on cooperation between states rather than a single legal authority.

The jurisprudence of the CEDAW Committee itself exemplifies these constraints. The Committee looked into a complaint in *Alyne da Silva Pimentel Teixeira v. Brazil* about a woman who died because she didn't get enough maternal healthcare. The Committee decided that Brazil had broken its duties under Articles 2 and 12 of CEDAW by not making sure that women could get healthcare that was easy to get and didn't discriminate against them.²³³ The Committee said that Brazil should pay the victim's family and make systemic changes to make maternal healthcare more accountable. In the same way, the Committee looked at the case of *A.T. v. Hungary*, in which a woman who was being severely abused at home could not get good protection from the Hungarian government. The Committee found that Hungary had broken Articles 2 and 5 of CEDAW by not taking the right steps to protect victims of domestic violence. They suggested changes to the law and protections for survivors in institutions.²³⁴

These decisions show how women's rights are being interpreted more and more in international human rights law. They also show how the CEDAW enforcement system has problems that need to be fixed. The CEDAW Committee does not have the power to make decisions that are legally binding, unlike regional human rights courts like the European Court of Human Rights or the Inter-American Court of Human Rights. Instead, it mainly acts as a monitoring body that looks at complaints and makes suggestions for how states should act.

The lack of binding enforcement mechanisms shows that international law is not centralized.

²³³ *Alyne da Silva Pimentel Teixeira v. Brazil*, Comm. on the Elimination of Discrimination Against Women, Comm'n No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).

²³⁴ *A.T. v. Hungary*, Comm. on the Elimination of Discrimination Against Women, Comm'n No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (2005).

International human rights treaties are established by the consent of sovereign states, and enforcement mechanisms are frequently deliberately constrained to uphold state sovereignty. So, even when international organizations find clear violations of treaty obligations, they still can't impose sanctions or force compliance. The Optional Protocol to CEDAW also creates a structural limit by setting up the individual complaint process that brings cases like *Alyne* and *A.T.* to the Committee. This process is optional and only applies to states that have ratified the Optional Protocol. The Committee's complaint mechanism does not apply to states that have not ratified the Protocol.

These institutional limitations expose a fundamental paradox in the global safeguarding of women's rights. International law clearly sees gender discrimination as a violation of basic human rights and sets out a lot of legal duties through treaties like CEDAW. Courts and treaty bodies have repeatedly said that states can't get out of these duties once they have agreed to them. On the other hand, states must be willing to put international standards into their own legal systems in order for these obligations to be enforced. So, even though the decisions made by international courts and treaty bodies have had a big impact on global standards for gender equality, enforcing women's rights in practice often depends more on changes to the laws and politics of individual countries than on international enforcement. The cases we talked about above show that international law is a strong set of rules for dealing with gender discrimination, but it can't always protect people effectively because of the way states are set up and how enforcement is spread out.

V. India's adherence to CEDAW

V.A. Vishaka v. State of Rajasthan (1997)

India is a good example of how international human rights standards can affect how a country's constitution is read. International treaties like the Convention on the Elimination of

All Forms of Discrimination Against Women (CEDAW) depend mostly on the agreement of states and don't have any direct ways to enforce them. However, domestic courts can use judicial interpretation to add these rules to their own legal systems. The Supreme Court of India's decision in *Vishaka v. State of Rajasthan* is one of the most important examples of this process. It shows how international treaties can change the laws in a country to better protect women.²³⁵ The case came about because of the well-known incident in which Bhanwari Devi, a social worker in Rajasthan's Women's Development Program, was gang-raped after trying to stop a child marriage in her village.²³⁶ At the time of the incident, Indian law didn't have a full set of rules about sexual harassment at work. Women's rights groups then took the case to the Supreme Court, saying that the lack of legal protections for working women violated their basic rights under the Constitution of India. The Supreme Court said in its decision that sexual harassment at work is a violation of basic constitutional rights, especially Article 14's guarantees of equality, Article 15's prohibition of discrimination, and Article 21's protection of life and personal freedom. The Court also said that the right to work with dignity is an important part of the constitutional guarantee of life and liberty.

It is important to note that the Court used international human rights instruments, especially CEDAW, to understand these constitutional protections. The Court said that international treaties and norms can help us understand our own constitutional provisions, especially when there is no conflict between international obligations and domestic law.²³⁷ By using CEDAW, the Court effectively added international standards for gender equality to the way it interpreted constitutional rights. Since there wasn't any specific law about sexual harassment at work, the Supreme Court made a set of rules that everyone had to follow. These

rules are called the Vishaka Guidelines. These rules said that businesses and organizations had to set up ways to stop and deal with sexual harassment at work. The Court said that sexual harassment includes unwanted physical contact, requests for sexual favors, comments with sexual overtones, and other sexual behavior, both verbal and non-verbal.²³⁸ The rules also said that employers had to set up complaint committees, take steps to stop problems before they happen, and make sure that offenders were punished quickly.

Due to this, the Vishaka decision was an important turning point in the relationship between international law and domestic constitutional law. The Court showed that international human rights standards could be used to help fill in gaps in domestic law by using CEDAW to do so. The case also shows how limited international enforcement mechanisms are. For example, it was not the treaty body in charge of monitoring CEDAW that made sure India followed the rules. Instead, it was the Indian courts that turned international commitments into binding national law. The Vishaka decision had an impact that went beyond the case at hand. It eventually led to the passing of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. The law made many of the principles that the Court had first stated into law, turning judicial guidelines into a complete set of rules.

V.B. Other Indian Court Decisions Using CEDAW as a reference

After the Vishaka decision, the Supreme Court of India continued to use CEDAW and international human rights principles in a number of important cases that dealt with gender equality. These cases show how important domestic courts can be for enforcing international human rights standards.

Apparel Export Promotion Council v. A.K. Chopra was one of the first cases to support the ideas

²³⁵ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India)

²³⁶ *Id.* at 243–45

²³⁷ *Id.* at 249–50

²³⁸ *Id.* at 253–54

put forth in Vishaka. A senior employee of the Apparel Export Promotion Council was accused of sexually harassing a female subordinate in this case. The Supreme Court upheld the firing of the accused employee and made it clear that sexual harassment at work is a violation of women's basic rights under Articles 14, 19, and 21 of the Constitution.²³⁹ The Court said again how important the Vishaka Guidelines are and stressed that sexual harassment doesn't have to involve touching. Harassment can also include behavior that hurts a woman's dignity or makes the workplace hostile. The ruling made the law set out in Vishaka stronger by making it clearer what employers need to do to stop harassment at work.

Githa Hariharan v. Reserve Bank of India is another important case in Indian law that deals with gender equality.²⁴⁰ The disagreement was about how to read Section 6(a) of the Hindu Minority and Guardianship Act, which said that the father was the "natural guardian" of a minor child "after him" the mother. The person who filed the petition said that this part was unfair to women and went against the constitutional principle of equality. The Supreme Court read the provision in a way that was in line with the Constitution's guarantees of gender equality. It said that the word "after" should not be taken literally as meaning "after." Instead, the Court said that mothers can also be natural guardians for their children while their father is alive if the situation calls for it. The ruling shows that the Court is willing to look at domestic laws in light of international law's broader principles of gender equality.

In Anuj Garg v. Hotel Association of India, the Supreme Court made women's constitutional rights even stronger.²⁴¹ In this case, the Court looked at whether Section 30 of the Punjab Excise Act, which made it illegal to hire women to work in places that serve alcohol, was constitutional. The Court threw out the provision, saying that laws that protect women based on

gender stereotypes can't be used to limit their job opportunities. The ruling made it clear that laws that are based on old ideas about gender roles are not in line with the constitutional guarantee of equality. The Court used international human rights principles to make its decision and stressed the need to get rid of structural discrimination against women.

In Joseph Shine v. Union of India, the Supreme Court reaffirmed the constitutional commitment to gender equality. This case was about whether the adultery provision in Section 497 of the Indian Penal Code was constitutional.²⁴² The Court said that the provision treated women like their husbands' property, which goes against the constitutional principles of equality, dignity, and personal freedom. The ruling made it clear that gender equality is a fundamental constitutional value and rejected legal ideas based on patriarchal ideas.

These cases show how the Indian courts have helped bring international human rights standards into Indian constitutional law. The Supreme Court has increased legal protections for women in many areas, including family law, criminal justice, and workplace rights, by using tools like CEDAW and applying constitutional principles of equality and dignity. These cases also show that the effectiveness of international human rights treaties often depends on how well domestic institutions work. CEDAW sets up an important international framework for dealing with gender discrimination, but it is up to each country's courts and legislatures to decide how to apply these rules in their own legal systems. India's involvement with CEDAW shows both the strengths and weaknesses of international human rights law. International treaties set norms, but meaningful enforcement often depends on how domestic constitutions are interpreted and how institutions are reformed.

²³⁹ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 S.C.C. 759 (India).

²⁴⁰ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 S.C.C. 228 (India).

²⁴¹ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 S.C.C. 1 (India).

²⁴² *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

VI. Feminist Views on International Law and What Needs to Happen Next

VI.A. Feminist Critiques of the State-Centric Framework of International Law

Feminist scholars have been saying for a long time that the way international law is set up makes it harder for women's rights to be protected. Sovereign states are the main actors in the international system, and traditional international law is mostly based on them. Because of this, governments are often the ones who enforce laws and rules instead of directly protecting people.²⁴³ This framework has worked well in the past to keep the peace between states, but it hasn't been as good at dealing with systemic gender discrimination that happens in the legal and social systems at home.

Feminist critiques stress that international law was mostly made in political systems that were mostly controlled by men in the past. Because of this, the issues and priorities that are important to international law are often more about state power, diplomacy, and armed conflict than they are about issues that affect women in their daily lives.²⁴⁴ In this way, the international legal system has historically focused more on issues of territorial sovereignty and political authority and less on forms of inequality that are built into domestic legal systems.²⁴⁵

This focus on states also makes it harder for international organizations to respond effectively when governments are the ones who are doing things that are unfair. When cultural traditions, religious beliefs, or domestic political authority are used to justify limiting women's rights, international organizations often run into major legal and political problems when they try to step in. International legal norms may not be very useful in places where governments don't want to make changes to promote gender

equality because enforcement mechanisms depend on the cooperation of states.

VI.B The Gap Between Public and Private Life and the Lack of Women's Rights

Feminist scholars have also criticized the way international law separates the public and private spheres. In the past, international law mostly dealt with public issues that had to do with relations between states, like diplomacy, war, and trade. Things that happen in the private sphere of family relationships, cultural practices, and social norms were often seen as private matters that international law couldn't touch.

But a lot of the worst kinds of gender discrimination happen in these private or social areas. Family law systems or social norms that are deeply rooted in culture often enforce legal limits on marriage, inheritance, guardianship, mobility, and access to education. Feminist scholars say that the traditional divide between public and private has hidden the systemic inequalities that women have faced in the past.²⁴⁶

This dynamic is especially clear in places like Afghanistan and Iran. Both countries are part of international legal systems that protect human rights, but discriminatory policies against women are often built into their own legal systems or explained away by cultural and religious stories. International legal systems have a hard time dealing with these kinds of issues because they are often seen as matters of national sovereignty.

Because of this, feminist views on international law stress the need to rethink how international legal rules work with domestic legal systems. To make sure that international promises to gender equality really protect women, it may be necessary to look more closely at practices that have been seen as private or cultural.

²⁴³ Karen Knop, *Re/Statements: Feminism and State Sovereignty in International Law*, 3 *Transnat'l L. & Contemp. Probs.* 293, 296–302 (1994).

²⁴⁴ Susan H. Fellmeth, *Feminism and International Law: Theory, Methodology, and Substantive Reform*, 22 *Hum. Rts. Q.* 658, 661–668 (2000).

²⁴⁵ Patricia Viseur Sellers, *Jus Cogens Redux*, 116 *AJIL Unbound* 281 (2022).

²⁴⁶ Hilary Charlesworth & Christine Chinkin, *Feminist Approaches to International Law*, 85 *Am. J. Int'l L.* 613, 621–629 (1991).

VI.C The Next Step: Making Women's Rights More Secure Around the World

International law still plays a big role in shaping what people around the world expect from gender equality, even though feminist critiques have pointed out its flaws. In the future, a number of things could happen that would make international laws that protect women's rights work better.

First, reporting procedures can be made stronger and civil society organizations can get more involved to make international monitoring systems work better. Non-governmental organizations often provide independent evidence of gender discrimination and human rights violations, which helps international organizations get a better picture of what's going on in states. These contributions are especially important when governments might try to limit or control the information that is included in official reports.

Second, including more gender perspectives in international organizations and humanitarian work may make it easier to put international norms into practice. Research on humanitarian aid programs has shown that even international organizations have trouble consistently putting gender equality principles into practice.²⁴⁷ So, making policies that are more sensitive to gender within international organizations could make international human rights efforts more credible and effective.

Third, transnational advocacy networks and global civil society movements have done more and more to help women's rights move forward across borders. These networks help bring attention to violations that might otherwise stay hidden in domestic political systems through international campaigns, legal advocacy, and public engagement. These kinds of movements can help close the gap between international legal norms and their actual use by getting people all over the world to speak out and work

together with activists, scholars, and policymakers.²⁴⁸

In the end, to better protect women's rights in international law, states need to make stronger institutional changes and keep their political promises. Feminist critiques point out important structural problems with the international legal system, but they also show how changing legal norms and cross-border advocacy can help make slow but real progress toward gender equality.

VII. Conclusion

The development of international women's rights law signifies a substantial transformation in the global legal framework towards acknowledging gender equality as an essential element of human rights protection. CEDAW and other instruments have created a complete set of rules that define discrimination, set obligations for states, and encourage institutional changes that will help gender equality in many areas of social, economic, and political life. International law has been very important in shaping what people around the world expect when it comes to protecting women's rights. This paper's analysis shows, however, that the structural features of international law itself still limit how well these legal frameworks work. International human rights treaties work in a decentralized system based on state sovereignty. This means that enforcement mechanisms depend a lot on how willing governments are to follow the rules of the treaty. Monitoring bodies, reporting procedures, and treaty committees play a big role in creating global legal norms, but they don't often have the power to force compliance when there is political resistance. The situations in Afghanistan and Iran show how hard it is when a country's laws and politics are very different from international standards for gender equality. In these situations, calls for cultural autonomy, religious interpretation, or sovereign authority often make international

²⁴⁷ Guglielmo Verdirame, *Testing the Effectiveness of International Norms: UN Humanitarian Assistance and Sexual Apartheid in Afghanistan*, 23 Hum. Rts. Q. 733, 734–740 (2001).

²⁴⁸ Hilary Charlesworth & Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* 3–22 (Manchester Univ. Press 2000)

human rights norms less effective. These examples show that international legal obligations alone cannot guarantee the safeguarding of women's rights without substantial domestic enforcement.

Conversely, the Indian experience illustrates how domestic judicial institutions can significantly contribute to the conversion of international norms into enforceable legal standards. The Supreme Court of India has used international treaties to help women by making decisions like *Vishaka v. State of Rajasthan* and other cases that follow the same line of reasoning. These changes show how important domestic legal systems are for putting international human rights commitments into action. In the end, international women's rights law works best when strong domestic institutions that can understand and enforce principles of equality and dignity support global legal norms. Without such domestic involvement, international treaties could end up being just goals instead of real legal protections.

