

**Universal Human Rights of Women in Local Context: Challenges of  
Implementing the United Nation Convention on the Elimination of all Forms  
of Discrimination against Women (CEDAW) in Pakistan**

by

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## **Abstract**

This thesis will engage with the feminist debate on implementing universal human rights (UHR) of women at a national through the lens of the United Nation Convention on the Elimination of all forms of Discriminations against women (CEDAW). This study will take the Islamic Republic of Pakistan as a case study to examine the challenges of implementing UHR of women in its particular socio-historic and political context. The government of Pakistan has ratified CEDAW with a declaration that Islamic precepts enjoy supremacy over UHR provisions. Therefore, Pakistan will not implement any law that contradicts with its Islamic Constitution. This study will critically analyze the government of Pakistan's effort to reconcile its Islamic Constitution with CEDAW. More specifically, this study will examine what kinds of challenges and dilemmas arises when the government of Pakistan fails to reconcile CEDAW with its Islamic precepts. This study will argue that the government of Pakistan is not committed to fulfill its international commitment to establish gender equality. Pakistan has maintained inconsistent position on women's rights and its plan to implement CEDAW. The study will conclude with a few recommendations to improve CEDAW's implementation in general and in the Islamic Republic of Pakistan in particular.

## **Résumé**

Ce mémoire s'intéressera au débat féministe portant sur la mise en oeuvre des Droits des femmes à l'échelle nationale, et ce, dans la perspective de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW) des Nations Unies. La présente étude s'appuiera sur l'exemple de la République Islamique du Pakistan afin d'examiner les défis relatifs à l'application des Droits des femmes dans ce contexte social, historique et politique particulier. Le gouvernement du Pakistan a ratifié la CEDAW tout en déclarant que les préceptes de l'Islam jouissent d'une primauté sur les clauses relatives aux Droits des femmes. Dès lors, le Pakistan ne peut adopter de loi qui contredirait sa constitution islamique. Cette étude analysera de manière critique les efforts du gouvernement du Pakistan visant à réconcilier sa constitution islamique avec la CEDAW. Plus précisément, elle examinera les défis et dilemmes résultant de l'échec rencontré par le gouvernement du Pakistan dans sa tentative de réconcilier la CEDAW et les préceptes de l'Islam. Ainsi sera défendue l'idée que le gouvernement du Pakistan n'est pas tenu de remplir ses engagements internationaux relatifs à l'établissement de l'égalité des genres. Le Pakistan se tiendrait donc dans une position inconséquente quant aux Droits des femmes et à son intention d'appliquer la CEDAW. L'étude se conclura par quelques recommandations visant à améliorer la mise en oeuvre de la CEDAW de manière générale et, plus spécifiquement, dans la République Islamique du Pakistan.

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## **Abbreviations**

CEDAW	The Convention on the Elimination of all Forms of Discrimination against women
GBV	Gender Based Violence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHR	International Human Rights
NGO	Non-governmental Organization
UHR	Universal Human Rights
UHRL	Universal Human Rights Law
UN	United Nations
UNDHR	United Nations Universal Declaration of Human Rights
VAW	Violence against Women

## **Introduction**

*“For years, Pakistan had taken ‘two steps forward and one step backward’ when it comes to working on the issues related to women. The challenges that we face pertain to a very simple question; do we have the capacity to implement our national and international commitments? And more importantly, which one of them comes first?”*

A women’s rights advocate posed this question during a workshop on the *Global View on Challenges for Women’s Rights*.<sup>1</sup> The Islamic Republic of Pakistan struggles to find a balance between its Islamic legal system and its obligations under international human rights law, such as those obligations arising under the United Nation Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>2</sup> CEDAW is also known as the “international bill of rights for women.”<sup>3</sup> It aims to establish equality between men and women by reforming gender discriminatory laws and cultural practices at a national level. In March 1996, Pakistan ratified the Convention with a general reservation<sup>4</sup> that “the accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.”<sup>5</sup>

Pakistan’s Constitution declares Islam as the state religion and requires all laws should be in accordance with the Islamic laws. Therefore, any law or policy that conflicts with Pakistan’s Islamic Constitution cannot be implemented.<sup>6</sup> Pakistan’s reservation is problematic because it doesn’t identify articles of CEDAW that are in tension with its Islamic Constitution. As a result, there is an ambiguity about the level of compatibility between CEDAW and the Islamic

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<sup>1</sup> “Workshop Discusses Challenges to Women’s Rights,” *Dawn News* (November 1, 2013): <http://www.dawn.com/news/1053226>

<sup>2</sup> From now onward used as CEDAW, the Convention or the Women’s Convention.

<sup>3</sup> For detail on the Convention on the Elimination Against Women: <http://www.un.org/womenwatch/daw/cedaw/>

<sup>4</sup> Reservation is a legal statement made by a country when it ratifies a treaty. Reservation allows a state to temporarily limit its obligations to certain provisions or articles of a treaty.

<sup>5</sup> *Combined initial second, and third periodic report of Pakistan* submitted on 3 August 2005, UN Doc. CEDAW/C/PAK/1-3, 7.

<sup>6</sup> See in particular article 2(z), chapter 3(a) and part IX of Islamic Provisions of the Constitution of the Islamic Republic of Pakistan.

Constitution of Pakistan. Furthermore, a general reservation makes it hard to determine the role of CEDAW in improving socio-legal status of women in Pakistan.

The statement made by women's rights advocate above seems to suggest that the issue is simply about Pakistan's capacity to fulfill its international commitment to women's rights. However, the goal of implementing CEDAW in Pakistan is much more complicated and challenging. It raises the question: how should civil rights informed by cultural and historical specificities, be reconciled with the global notion of Universal Human Rights (UHR). The issue of compatibility of UHR and national laws has posed a serious challenge for legal reformers and academics. The root of the universality and relativity debate in part flows from the critique of Western domination. Critics argue that adopting UHR provisions is "tantamount to acceptance of imperialistic, colonizers' Western values and the consequent destruction of social and political independence of non-Western communities."<sup>7</sup>

The proclamation of universality has been resisted by various cultures, religions and ideologies based on different rationales. It mainly consists of a demand that cultural practices, especially when based on religious values, enjoy supremacy over UHR provisions. It is argued that International human rights (IHR) institutions should take cultural particularity into account otherwise its laws can be alien to a society in which they are applied. In other words, failure to consider cultural relativism as a principle leads to poor implementation of IHR laws. This concern raises the question whether articulated IHR laws and policies are also universally applicable. If so, "how can universal human rights be legitimized in radically different societies

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<sup>7</sup> Kelly Dawn Askin and Doreen M Koenig, *Women and International Human Rights Law* (Ardsley, N.Y.: Transnational, 1999), 37.



without succumbing to either homogenizing universalism or the paralysis of cultural relativism.”<sup>8</sup>

The universality versus relativity problem also requires taking multiplicities of women’s identities and experiences into account. It poses a serious challenge for feminists in their struggle against patriarchy. Western feminists have been criticized for presenting “women” as a universal group that fails to include experiences of women of color and third-world women, for example, women’s experiences in the context of slavery and colonialism.<sup>9</sup> As a result, long-lasting efforts have been made by feminist theorists to integrate factors such as class, race, ethnicity and national differences to develop a women’s rights framework in a more transnational perspective.<sup>10</sup>

The inclusion of religious differences is a relatively a new area of academic research in women’s and gender studies, particularly as related to women’s rights. Saba Mahmood notes that “the vexed relationship between feminism and religious tradition is perhaps most manifest in discussions of Islam.”<sup>11</sup> Islamic legal scholars and intellectuals have actively contributed to this debate by providing critical insights to the complexity of Islamic law itself especially on debates related to compatibility of the Islamic legal system (Shari’a) and national perspectives of modernity.<sup>12</sup>

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<sup>8</sup> Rebecca J Cook, *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), 7.

<sup>9</sup> Siobhán Mullally, *Gender, Culture and Human Rights: Reclaiming Universalism* (Oxford; Portland, Or.: Hart Pub., 2006), 1–25 ; M. Jacqui Alexander and Chandra Talpade Mohanty, *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York: Routledge, 1997).

<sup>10</sup>Trans-nationalization is described as a “dynamic of internalizations that stands for different forms of rearrangements of geographical-social spaces beyond, alongside, above the formerly dominant national society paradigm” in Susanne Zwingel, “How Do Norms Travel? Theorizing International Women’s Rights in Transnational Perspective1,” *International Studies Quarterly* 56, no. 1 (March 1, 2012): 115–29, doi:10.1111/j.1468-2478.2011.00701.x. At 121

<sup>11</sup> Saba Mahmood, “Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival,” *Cultural Anthropology* 16, no. 2 (May 1, 2001): 202, doi:10.1525/can.2001.16.2.202.

<sup>12</sup> Yvonne Yazbeck Haddad and Barbara Freyer Stowasser, *Islamic Law and the Challenges of Modernity* (Walnut Creek, CA: AltaMira Press, 2004); Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity’s Moral*

Some academics such as Amina Wadud,<sup>13</sup> Asma Barlas,<sup>14</sup> Leila Ahmed,<sup>15</sup> Fatima Mernissi,<sup>16</sup> and Khaled Abu El-Fadl<sup>17</sup> try to reconcile UHR and Islam by offering reinterpretations of the Quran and Islamic history. Scholars committed to universalism argue that fundamental human rights must be established in all societies despite local differences.<sup>18</sup> The challenge of establishing UHR becomes a convoluted task especially when it comes to the question of women's rights. This is because women often bear the burden of preserving religious and cultural identity of a society. Religious, cultural and traditional practices are often used as a justification to deny basic rights to women. In some cases, overlap of these highly intertwined notions perpetuates violence and inhumane treatment of women.<sup>19</sup> Thus, the issue of establishing UHR of women at a national level is highly complicated. This research will take the Islamic Republic of Pakistan as a case study to analyze some of these challenges from one particular situation.

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*Predicament* (New York [N.Y.]: Columbia University Press, 2013); Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, Calif.: Stanford University Press, 2003); Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993); 'Abd Allāh Aḥmad Na'im, *Islam and the Secular State Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2008), -, <http://site.ebrary.com/id/10313861>; 'Abd Allāh Aḥmad Na'im, *Human Rights and Religious Values: An Uneasy Relationship?* (Amsterdam; Grand Rapids, Mich: Editions Rodopi ; W.B. Eerdmans, 1995), -.

<sup>13</sup> Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999); Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld, 2006).

<sup>14</sup> Asma Barlas, "Believing Women" in *Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002).

<sup>15</sup> Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, 1992.

<sup>16</sup> Fatima Mernissi, *The veil and the male elite: a feminist interpretation of women's rights in Islam* (Reading, Mass.: Addison-Wesley Pub. Co., 1991); Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* (Bloomington: Indiana University Press, 1987).

<sup>17</sup> Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age*, 2014, <http://public.eblib.com/choice/publicfullrecord.aspx?p=1832660>; Khaled Abou El Fadl, Joshua Cohen, and Ian Lague, *The Place of Tolerance in Islam* (Boston: Beacon Press, 2002).

<sup>18</sup> 'Abd Allāh Aḥmad Na'im and Francis Mading Deng, *Human Rights in Africa: Cross-Cultural Perspectives* (Washington, D.C.: The Brookings Institution, 1990); Margaret Schuler, *Freedom from Violence: Women's Strategies from around the World* (New York, NY (Widbooks, P.O. Box 20109, Dag Hammarskjold Convenience Center, New York 10017): OEF International : Distributed by UNIFEM, 1992); Michael Ignatieff and Amy Gutmann, *Human Rights as Politics and Idolatry* (Princeton, N.J.: Princeton University Press, 2001).

<sup>19</sup> Askin and Koenig, *Women and International Human Rights Law*, 37.

## **Research Questions**

The aim of this research project is twofold. First, it aims to examine the process of implementing CEDAW in the Islamic Republic of Pakistan. The study will examine the theoretical and methodological framework used by Pakistan to implement CEDAW in its socio-historical context. In other words, how the government is trying to bring its national laws and practices into harmony with the provisions of CEDAW. The second aim of this research is to analyze whether these techniques will be successful in eliminating discrimination against women in Pakistan.

This research project poses four main questions: (a) What boundaries or reservations are drawn by the government of Pakistan before implementing CEDAW? (b) What criteria does the government of Pakistan use to determine the rights of women and how are these criteria legitimized? (c) What happens if there is a conflict between the Islamic Constitution of Pakistan and CEDAW? (d) How does demands of religion and cultural particularism affect CEDAW's objective to establish gender equality?

This project would engage with these questions to identify reasons for poor implementation of CEDAW in Pakistan. Pakistan is facing a unique challenge to maintain a balance between two discourses. On the one hand, it is trying to fulfill its international commitment to establish UHR of women. On the other hand, the government is trying to define women's rights in a way that are not perceived as religiously or culturally 'inappropriate' by the local populace. This study concludes that despite all the challenges, the government of Pakistan is not truly committed to fulfilling its CEDAW obligations, for reasons I state below.

The government of Pakistan holds its Islamic Constitution superior to UHR notions in general, and CEDAW in particular. However, Pakistan does not make this statement clearly to avoid international criticism. Pakistan made a very broad reservation to CEDAW by stating that

the Convention is subject to the Islamic Constitution of Pakistan. This means that Pakistan will not implement any article of CEDAW that is in conflict with the Islamic Constitution. In this way the government tries to restrict implementation of CEDAW in Pakistan. Pakistan's reservation is extremely problematic because it does not identify articles of CEDAW that are in conflict with its Constitution. As a result, there is an ambiguity about the way Pakistan determines women's rights and implement CEDAW.

This study will show that Pakistan has failed to take a consistent position with respect to the implementation of CEDAW. The government has given contradictory statements on reasons for holding the reservation. Reports submitted to the CEDAW Committee provide very limited and general information. Pakistan delegates have also refused to provide a timeline in which discriminatory laws reformed under CEDAW would be practically implemented by the state. Pakistan's contradictory statements and non-cooperative attitude with the CEDAW Committee raises doubts about its commitment to women's rights. It also raises the question whether the government has ratified CEDAW only to improve its political image globally.

The study is divided into three chapters. The first chapter would provide a brief historical account of the emergence of a global women's movement that led to the development of CEDAW. The chapter does not aim to provide a revisionist reconstruction to this historical period; however, it will discuss theoretical underpinnings of women's rights debates. The first chapter serves as a foundation to understand the Convention; its objectives, key features, implementation mechanisms, and obligations of state parties. It is necessary to understand working methods of CEDAW before analyzing Pakistan's effort to implement it. This chapter will also discuss unique aspects of CEDAW that set it apart from other UN human rights treaties. This includes (a) allowing state parties to hold reservations, (b) differentiating between the

concept of equity and equality, (c) eliminating gender stereotypes, and (d) eliminating harmful cultural practices. A close examination of these features would allow us to critically examine the way CEDAW has dealt with the question of religion and cultural particularism in practice.

The second chapter takes the Islamic Republic of Pakistan as a case study to examine its methodological framework to eliminate all forms of discrimination against women. First, it will discuss Pakistan's process of becoming a member of CEDAW. The pre-ratification period provides a clear insight to Pakistan's concerns regarding UHR provisions that continue to persist until today. Then, the chapter will discuss Pakistan's reservation to CEDAW and its problems. It will be argued that Pakistan clearly contradicts and undermines objectives of CEDAW. This chapter would show that Pakistan has given ambiguous and misleading statements on its position on women's rights. These contradictions are also reflected in practical measures taken by the government. Various documents produced in the process of implementing CEDAW would be used to exhibit Pakistan's lack of commitment to women's rights. This includes government documents, periodic reports submitted to CEDAW, and statements given to the Committee at review meetings. The second chapter will also identify key areas of contention on women's rights and dilemmas faced by the government to bring its Constitutional system in harmony with CEDAW.

The failure of Pakistan to fulfill its obligations of CEDAW also draws our attention to weaknesses within the framework of IHR treaties. The third chapter will closely analyze the critique of CEDAW and its implementation mechanisms. The final chapter will argue that CEDAW provides strong theoretical framework and tools to implement UHR of women at a national level. However, a large gap continues to exist in implementing these rights in practice. It will be argued that despite its limitations, CEDAW has the potential to effectively address the

issue of discrimination and violence against women. CEDAW's success lies in its continuous improvement of implementation mechanisms and gradual progress towards the goal of gender equality. The study will conclude with a few recommendations to improve CEDAW's implementation in general and in the Islamic Republic of Pakistan in particular.

## Chapter 1

### Development of CEDAW

In 1948, the United Nations Universal Declaration of Human Rights (UNDHR)<sup>20</sup> was established, which guarantees inalienable rights to all human beings “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>21</sup> After the adoption of UDHR, the Commission on Human rights adopted two international treaties: the International Covenants on Civil and Political Rights (ICCPR) and the international Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR guarantees among other rights, “the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, equality before the law, freedom of movement, freedom of thought, conscience and religion, rights relating to citizenship and political participation, and minority groups’ rights to their culture, religion and language.”<sup>22</sup>

The ICESCR guarantees rights such as the right to work, the right to form trade union, the right to adequate standard of living and health services, and rights relating to education, culture, and marriage. The UDHR along with the ICCPR and ICESCR make the up the international treaty of human rights.<sup>23</sup> The international human rights treaties guarantees these fundamental rights (as stated above in UDHR, ICCPR and ICESCR) to all human beings without any conditions and forms of discriminations.

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<sup>20</sup> The United Nations Declaration of Human Rights (UDHR) adopted by the UN General Assembly on December 10, 1948. For further discussion on UDHR see: Suzanne Egan, *The United Nations Human Rights Treaty System: Law and Procedure* (Haywards Heath, West Sussex: Bloomsbury Professional, 2011), 51–54.

<sup>21</sup> Article 2 of UDHR, Accessed at: <http://www.un.org/en/documents/udhr/>

<sup>22</sup> “Women’s Rights are Human Rights,” *United Nations Human Rights Office of the High Commissioner* (New York and Geneva: United Nations Publication, 2014), 4. Accessed at: <http://www.ohchr.org/Documents/Publications/HR-PUB-14-2.pdf>

<sup>23</sup> Ibid

A treaty can be defined as a "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."<sup>24</sup> Treaties can be referred to by a number of different names such as international conventions, international agreements, constitutions, charters, covenants and accords. Treaties can be bilateral (between two parties) or multilateral (between several parties). The international treaties are only binding on the States that ratify or accede to them. State parties that ratify these international human rights treaties periodically report to the Committee of experts, which then issue recommendations on steps required to fulfill obligations laid down in treaties.

The UDHR along with other human rights treaties uses the term all human beings to ensure equal rights to both men and women, and condemns discrimination based on sex. However, despite these provisions women continue to suffer discrimination, violence and secondary status across most regions of the world. Feminists criticized that the UDHR mainly represent men's perspectives and experiences at the time it was created.<sup>25</sup> It is argued that "even in the era predating the so-called internationalization of rights which is viewed as the time when the rights of individuals were 'born', women were excluded from the 'rights of man's evolution."<sup>26</sup> Women were marginalized as a group and excluded from taking leading positions in national and international legal institutions, intergovernmental organizations, and until relatively recently, even from non-governmental organizations (NGOs).<sup>27</sup> The exclusion of

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<sup>24</sup> Article 1 (a) of the Vienna Convention on the Law of Treaties, entered into force on January 27, 1980. Accessed at: [http://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>25</sup> Beate Rudolf, Marsha A Freeman, and C. M Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford; New York: Oxford University Press, 2012), 5; Julie Peters and Andrea Wolper, *Women's Rights, Human Rights: International Feminist Perspectives* (New York: Routledge, 1995), 13.

<sup>26</sup> Askin and Koenig, *Women and International Human Rights Law*, 30.

<sup>27</sup> Ibid., 3.



women from the development of UHR instruments inevitably resulted in its failure to properly address issues pivotal to women. As a result, demands for a women focused human rights treaty (also known as women's human rights treaty) started to emerge. An international women's human rights treaty operates under the larger umbrella of the UN Charter. It incorporates provisions of other human treaties including the UDHR, ICCPR, ICESCR, and the International Labor Organization (ILO) while recognizing their shortcomings.<sup>28</sup> A women's human rights treaty addresses the marginalization of women's rights issues in other international treaties by stating:

“Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women's human rights has not always been a priority. Achieving equality between men and women requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination.”<sup>29</sup>

A women's human rights treaty aims to raise an international consciousness of women's issues which has taken shape into asking the so-called 'woman's question.' In Rebecca J. Cook's words, “the woman's question response is to apply feminist methods of legal, ethical and related analysis to the circumstances of women's lives in order to highlight their invisibility and better understand and remedy injustice.”<sup>30</sup> CEDAW as a women's rights treaty goes further than other IHR treaties by also defining state obligations to achieve the objective of gender equality in practice. The concept of substantive equality and formal equality are the key concepts in the Convention that sets it apart from other IHR treaties (discussed in section 1.5).

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<sup>28</sup> Sally Engle Merry, “Constructing a Global Law-Violence against Women and the Human Rights System,” *Law & Social Inquiry* 28, no. 4 (October 1, 2003): 948, doi:10.1111/j.1747-4469.2003.tb00828.x; Anne F Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Ardsley, NY: Transnational Publishers, 2001), 2.

<sup>29</sup> “Women's Rights are Human Rights,” *United Nations Human Rights Office of the High Commissioner* (New York and Geneva: United Nations Publication, 2014), 1. Accessed at: <http://www.ohchr.org/Documents/Publications/HR-PUB-14-2.pdf>

<sup>30</sup> Cook, *Human Rights of Women*, 92 and 242.

Discussion of violence against women as a human rights issue started in the 1980s and expanded enormously in the 1990s. A global women's movement emerged in response to continuous discrimination against women and failure of the UNDHR to protect fundamental rights of women. "This movement seeks to demonstrate both how traditionally accepted human rights abuses are specifically affected by gender, and how many other violations against women remain invisible within the prevailing approaches to human rights"<sup>31</sup> The United Nations (UN) hosted various world conferences on 'equal opportunity for women' such as in Mexico City (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995). "Accordingly, demands began to be made for a more comprehensive and well targeted international focus on women, including development of a norm of non-discrimination against women within the emerging human rights legal framework"<sup>32</sup>

In 1993, the global women's movement took an important turn at the UN Conference on Human Rights in Vienna where human rights theory and practices were challenged. The conference was attended by approximately 7,000 participants including academics, treaty bodies, government delegates and NGOs. This conference marked an unprecedented participation of diverse human rights advocates around the globe. The conference accumulated over 300,000 signatories from 123 countries advocating to place violence against women as an international concern.<sup>33</sup> The Conference addressed the issue that many crimes committed specifically against women were not being taken seriously such as battery, rape, early and forced marriages, sexual harassment, forced pregnancy, honor killing, widowhood violation, trafficking and prostitution, genital mutilation, female feticides and infanticide. The UNDHR was criticized for its narrow

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<sup>31</sup> Peters and Wolper, *Women's Rights, Human Rights*, 91.

<sup>32</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 5.

<sup>33</sup> Peters and Wolper, *Women's Rights, Human Rights*, 18–35.

approach to human rights, which facilitates the perpetuation of male-defined norms at the expense of women's rights.<sup>34</sup>

The concluding document known as the Vienna Declaration and Program marked a formal consensus on marginalization of women's issues in UDHR discourse. It officially recognized human rights of women as "an alienable integral and indivisible part of human rights."<sup>35</sup> The working paper adopted by the UN General Assembly known as the 'Declaration on the Elimination of Violence against Women' condemns all forms of gender based violence crimes. The Declaration also criticized public and private dichotomy in the international law, which fails to address crimes committed against women in the latter domain. Although, the Declaration does not have any legal binding force, it serves as a significant moral and ethical foundation for the UHR discourse.<sup>36</sup>

In 1995, The UN fourth world conference on women was held in Beijing. This conference is considered as a high-point for international women's rights activism. Finally, historical efforts of women's movement were transformed into a concrete agenda for empowerment.<sup>37</sup> The document known as 'the Platform for Action' was developed, which included a separate section on violence against women (VAW).<sup>38</sup> VAW was broadly defined as "any act of gender-based violence that results in, or is likely to result in physical, sexual or

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<sup>34</sup> Askin and Koenig, *Women and International Human Rights Law*, 92.

<sup>35</sup> Vienna Declaration and Program of Action, Adopted by World Human Rights Conference in Vienna on 25 June 1993.

<sup>36</sup> Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006), 22–27.

<sup>37</sup> The UN Fourth World Conference on Women, "Beijing Declaration and the Platform for Action," "Adopted on 15 September 1995. See Para.112-130 in UN Doc A/CONF.177/20/Rev.1. For Detail Discussion on Beijing Conference see: Rebecca J. Cook, "Effectiveness of the Beijing Conference Advancing International Law Regarding Women," *Proceedings of the Annual Meeting (American Society of International Law)* 91 (April 9, 1997): 310–17.

<sup>38</sup> The UN Fourth World Conference on Women, "Beijing Declaration and the Platform for Action," "Adopted on 15 September 1995. See Para.112-130 in UN Doc A/CONF.177/20/Rev.1

psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private sphere”<sup>39</sup> The main concern at the Beijing Conference was the problem of accountability and implementation of UHRL. Feminists demanded that violence against women be treated as a punishable crime in all situations. This includes crimes committed by individuals, family, a community and even a state (i.e., in case of both normal circumstances and/or during an armed conflict). In this way, women’s rights agenda was moved forward from visibility to accountability by declaring that:

“Violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms. The long-standing failure to protect and promotes those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed”<sup>40</sup>

These World Conferences were seen to define as ‘the UN Decade for Women’ (1975-1985), which placed ‘women’s rights as human rights’ on the international intergovernmental agenda. For instance, the Rome Statute of the International Criminal Court adopted a binding treaty in 1998 which brought crimes against women under its ambit.<sup>41</sup>

### **1.1 The Convention**

CEDAW is one of the major outcomes of this global women’s movement. It is described as a ‘landmark treaty in the struggle for women’s rights.’<sup>42</sup> The Convention was developed over the 1960s and 1970s, and eventually adopted by the UN General Assembly on 18 December 1979. It was finally put into force on 3 September 1981. CEDAW is one of the most widely ratified

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<sup>39</sup> Ibid at para.113

<sup>40</sup> Ibid at para. 112

<sup>41</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 6.

<sup>42</sup> Overview of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Accessed at: <http://www.un.org/womenwatch/daw/cedaw/>

human rights treaties of the UN Conventions. As of 2014, CEDAW has been ratified by 187 out of 194 countries. The remaining seven countries are the United States, Sudan, South Sudan, Somalia, Iran, and two small Pacific Island nations (Palau and Tonga).<sup>43</sup>

As a women-centered treaty, CEDAW specifically focuses on pervasive and structural nature of violence against women. Based on the concern that: “despite various instruments extensive discrimination against women continues to exist. Concerned that in situation of poverty women have the least access to food, health, education, training and opportunities for employment and other needs.”<sup>44</sup> CEDAW consolidates these concerns into a single document and mandates its state parties to eliminate all forms of discrimination against women.<sup>45</sup> The Convention explicitly condemns discrimination based on sex and guarantees equality between men and women. The Convention defines gender equality as:

“the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without limitations set by stereotypes, rigid gender roles and prejudices. The concept of equality includes both formal and substantive equality”<sup>46</sup>

CEDAW is not limited to any specific area or field of concern but covers a wide range of discrimination against women. Article (1) defines discrimination against women in terms of its impact on women’s ability to enjoy fundamental rights as laid down in international human rights treaties (such as the UDHR, ICCPR and ICESCR ). Article 1 of CEDAW defines discrimination as:

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<sup>43</sup> Accessed at: <http://www.cedaw2014.org/index.php/about-cedaw/cedaw-by-the-numbers>

<sup>44</sup> Article 1 of CEDAW

<sup>45</sup> Rebecca J. Cook, “Reservations to the Convention on the Elimination of All Forms of Discrimination against Women,” *Virginia Journal of International Law* 30 (1990 1989): 665.

<sup>46</sup> “Women’s Rights are Human Rights,” *United Nations Human Rights Office of the High Commissioner* (New York and Geneva: United Nations Publication, 2014), 35.

“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 field.”

The Convention contains a preamble and total of 30 articles covering a wide range of issues faced by women. The first 16 articles lay out different forms of discrimination against women and state parties’ obligation to eliminate it in ‘all forms’ at a national level. Articles 17 to 22 deal with the overall functioning of the Convention: its implementation mechanisms, administrative procedures, and guidelines for effective communication with the CEDAW Committee. Articles 22-30 cover effects of the Convention on other treaties, obligations of state parties and overall administration procedure. CEDAW requires state parties to take positive measure in all spheres of life and to instill principles of gender equality in its national laws. In addition, state parties should aim to “ensure full development and advancement of women on a basis of equality with men” (Article 3).

The Convention further addresses discrimination rooted in socio-cultural patterns and attitudes of people (Article 5). Political rights and participation of women receives the broadest attention (article 7) including the right to represent their countries at the international level (article 8). Article 9 guarantees women’s protection under a state by allowing acquisition and retention of nationality, and transmission of nationality to children irrespective of women’s marital status. Women’s rights to non-discrimination in education (article 10), employment (article 11), and health care (article 12) are also covered. Furthermore, women’s right to participate in social and cultural activities including sports is guaranteed (Article 13). Rural women are given special protection through improvement in public policy programs (Article 14). Article 15 aims to increase women’s freedom of movement and participation in civil and

business matters. Finally, article 16 is dedicated to family laws: issues related to family relations, marriage, divorce, custody of children, and the right to choose a spouse.

## **1.2 Obligations of State Parties**

CEDAW contains thirty articles that cover wide range of discrimination against women. It provides detailed guidelines to eliminate discrimination at a national level. In doing so, the Convention does not only establish an international bill of women's rights but also sets an agenda for state action.<sup>47</sup> State parties are required to perform three key obligations to ensure that CEDAW's objectives are achieved in practice. According to the article 2 of CEDAW, the first obligation of a state is to condemn discrimination against women in all forms.<sup>48</sup> State parties must condemn both direct and indirect forms of discrimination against women. Direct discrimination is based on the grounds of sex and gender differences. Most state parties do not commit direct discrimination as most of them guarantee formal equality in their constitutions or other national laws. However, direct discrimination does persist in countries where a government prohibits women to vote, run for elections, hold judicial positions and/or serve in certain occupations. Direct discrimination can also take place when private individuals (such as family members) don't allow women to exercise their rights.<sup>49</sup>

Indirect discrimination could take place when a law or policy appears gender neutral on the face but it has adverse impact on women. Sometimes gender neutral laws can lead to indirect discrimination due to pre-existing inequalities in socio-legal structures. For example, in some regions men can meet a job criteria or promotion requirements more easily than women because of their better access to education and the job market.<sup>50</sup> State parties should understand that the

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<sup>47</sup> Generally see: Egan, *The United Nations Human Rights Treaty System*, 92–94; *ibid.*, 92–95.

<sup>48</sup> Also see General Recommendation no. 28 Paragraph 15 of CEDAW in UN Doc. CEDAW/C/GC/28

<sup>49</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 212–213.

<sup>50</sup> *Ibid.*, 213.

failure to address power relations between men and women often lead to indirect discrimination against the latter. State parties are required to implement the Convention and refrain from introducing laws and administrative procedures that leads to discrimination against women.<sup>51</sup>

Second, CEDAW members should protect fundamental rights of women and prevent all circumstances that may hinder their access to attain rights. State parties are not directly responsible for acts committed by non-state actors but for its failure to control, prevent, investigate, punish, and do justice.<sup>52</sup> The Convention requires “governments to take preventive steps to protect the exercise and enjoyment of human rights, to investigate violations that are alleged, to punish violations that are proven, and to provide effective remedies, including the provision of compensation to victims.”<sup>53</sup> State parties should actively take actions against violation of women’s rights which includes crimes committed by individuals, family and community members.<sup>54</sup>

Third, state parties are responsible to take “all appropriate measures without delay”<sup>55</sup> to ensure advancement of women’s right in “all fields.”<sup>56</sup> Appropriate measures may include reforming discriminatory national laws, introducing women-focused policies, and increasing budget allocation for women focused projects.<sup>57</sup> The meaning of “appropriate” is not defined which allows a state to devise implementation strategies according to its socio-legal, administrative and institutional settings. Cook points out that the term “appropriate” signifies that state parties should also accommodate basic biological differences between men and

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<sup>51</sup> General Recommendation no. 28 Paragraph 16 of CEDAW in UN Doc. CEDAW/C/GC/28

<sup>52</sup> General Recommendation no. 19 paragraph 8 and 9 of CEDAW in UN Doc. CEDAW/C/GC/19

<sup>53</sup> Cook, *Human Rights of Women*, 229.

<sup>54</sup> See Article 2 (e) of CEDAW, General Recommendation 28 Paragraph 13 of the CEDAW in UN Doc. CEDAW/C/GC/28, Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 20; Peters and Wolper, *Women’s Rights, Human Rights*, 126–134.

<sup>55</sup> Article 2 (c) of CEDAW

<sup>56</sup> Article 3 of CEDAW

<sup>57</sup> General Recommendation no.28 paragraph 9 of CEDAW in UN Doc. CEDAW C/GC/28



women. For example, women require “appropriate” treatment in the case of reproductive health, pregnancy and child-birth.<sup>58</sup> Under the Convention, a high rate of maternal mortality rate due to the negligence of a government will be considered as a violation of women’s rights.<sup>59</sup>

State parties should take an active role in the further development of women’s rights through short-term and long-term public policy programs. Governments should address root causes of gender discrimination and take measures “towards a real transformation of opportunities, institutions, and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.”<sup>60</sup> CEDAW emphasizes that state parties must understand that discrimination against women based on sex and gender is inextricably linked to other factors such as race, class status, religion, caste, ethnicity, age, and sexual orientation.<sup>61</sup> Furthermore, CEDAW offers recommendations to protect rights of particular group of women such as disabled women,<sup>62</sup> older women,<sup>63</sup> and migrant workers.<sup>64</sup> “State parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on concerned women and prohibit them.”<sup>65</sup>

CEDAW also encourages governments to take additional temporary measures to move beyond formal policies.<sup>66</sup> Temporary measures are defined as “time-limited positive measures intended to enhance opportunities for historically and systematically disadvantaged groups, with a view to bringing group members into the mainstream of political, economic, social, cultural,

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<sup>58</sup> Simone A. Cusack and Rebecca J. Cook, “Combating Discrimination Based on Sex and Gender,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 2009), 206, <http://papers.ssrn.com/abstract=1499367>.

<sup>59</sup> Rebecca J. Cook, Bernard M. Dickens, and Mahmoud F. Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law*, 1 edition (Oxford ; New York: Clarendon Press, 2003), 199.

<sup>60</sup> General Recommendation no.25 paragraph 10 of CEDAW in UN Doc. CEDAW/C/GC/25

<sup>61</sup> General Recommendation no.28 paragraph 21 of CEDAW in UN Doc. CEDAW/C/GC/28

<sup>62</sup> General Recommendation no.18 of CEDAW in UN Doc. CEDAW/C/GC/18

<sup>63</sup> General Recommendation no.27 of CEDAW in UN Doc. CEDAW/C/GC/27

<sup>64</sup> General Recommendation no.26 of CEDAW in UN Doc. CEDAW/C/GC/26

<sup>65</sup> General Recommendation no 28 paragraph 18 of CEDAW in UN Doc. CEDAW/C/GC/28

<sup>66</sup> See Article 4 of CEDAW and General Recommendation no. 25 of CEDAW in UN Doc. CEDAW/C/GC/25

and civil life.”<sup>67</sup> For example, the CEDAW Committee has urged state parties to provide training sessions on changes in legislations and implementation measures to police, judges, health professionals, and lawyers etc. It has also recommended to create public awareness on socio-legal reforms through media campaigns, publications, and NGOs.<sup>68</sup>

CEDAW allows state parties to devise measures that are appropriate in their socio-legal context. In this way CEDAW encourages state parties to take a leading role in the implementation of the treaty. At the same time, it increases their accountability for breaches of international obligations that are imputable to the state. State parties must be able to justify appropriateness of their measures and demonstrate how it is the most suitable choice. The responsibility to evaluate validity and effectiveness of these measures rests with the CEDAW committee.<sup>69</sup> On this basis, it can be argued that CEDAW has adopted a constructive strategy towards the development of women’s rights as opposed to simply enforcing the Convention on its signatories.

### **1.3 Reservations**

CEDAW is a unique human rights treaty that allows its signatories to temporarily limit their legal obligations through reservations. A reservation is defined as:

“A unilateral statement made by a State which purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. Reservations enable a State to become party to a treaty despite its unwillingness or the impossibility of a State to comply with certain minor provisions of a treaty.”<sup>70</sup>

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<sup>67</sup> Ineke Boerefijn, *Temporary Special Measures: Accelerating de Facto Equality of Women Under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women* (Intersentia nv, 2003), 119–141, 119.

<sup>68</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 216–217.

<sup>69</sup> General Recommendation no. 23 of CEDAW in UN Doc. CEDAW/C/GC/23.

<sup>70</sup> Ekaterina Yahyaoui Krivenko, *Women, Islam and International Law within the Context of the Convention on the Elimination of All Forms of Discrimination against Women* (Leiden; Boston: Martinus Nijhoff Publishers, 2009), 76–77, <http://dx.doi.org/10.1163/ej.9789004171442.i-268>.

Article 28 (2) of CEDAW allows state parties to hold reservations given that they are not “incompatible with the object and purpose” the treaty. Reservations are meant to serve as a tool to make CEDAW more globally inclusive and diverse without compromising its objectives. The final aim of state parties should be to progressively move towards full ratification of CEDAW. Reservations can be only made at the time of accession. State parties cannot formulate new reservations after ratification, they may, of course withdraw them at any time.

There are different kinds of reservations made by state parties based on various rationales and socio-political motives. General reservations do not refer to specific articles of the Convention and are usually used to grant higher status to constitutional system, national or religious laws. Some states make reservations to specific articles of the Convention. Specific reservations clearly identify provisions of CEDAW that are in conflict with national laws of a country. States also make unilateral statements under the label of ‘declarations’ which aims to alter legal effects of the Convention.<sup>71</sup>

CEDAW is among the most heavily reserved international human rights conventions. Many critics argue that CEDAW’s aim of universal ratification is achieved at the cost of compromising its integrity. Rebecca J Cook explains that the issue of reservations is contentious because CEDAW aims to eliminate all forms of discrimination against women. Reservations to CEDAW signify that its state parties are willing to accept less than this goal.<sup>72</sup> Cook further notes that “reservations offer a middle path by which a convention’s universality can be served

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<sup>71</sup> Ingrid Westendorp, *The Women’s Convention Turned 30: Achievements, Setbacks, and Prospects*, 2012, 421. For detail see United Nations Report of the International Law Commission sixty-fifth session August, 2010 Paragraph no.50 in UN Doc.Supplement No.10 A/65/10.

<sup>72</sup> Cook, “Reservations to the Convention on the Elimination of All Forms of Discrimination against Women.”

by selective amendments that permit a state party to adjust its relations with other state parties while preserving the Convention's integrity.”<sup>73</sup>

Lisbeth Lijnzaad explains that normally states are look down upon for making reservations because they undermine potential impact of human rights conventions. However, the attitude of state parties with reservations is not necessarily worse than the states that ratify completely but fail to implement the treaty. It is important to understand reasons and motivation behind reservations as opposed to simply condemning states on the face-value. States make reservations to IHR treaties for several reasons.<sup>74</sup>First, state parties that make reservations aim to clarify their limit/commitment to a treaty. States may have substantive interests that they do not want to sacrifice when ratifying a treaty. It is also possible that reservations are made due to lack of clarity about treaty obligations. “The drafting process may have led to provisions that are not completely clear, that may compromise solutions, hiding disagreements behind general formula.”<sup>75</sup>

Second, developing countries usually make reservations due to lack of financial resources to attain the goals set by a treaty such as obligation to social development, improving education sector and health care services. Third, reservation can be a direct outcome of a state's failure to bring its legislations in conformity with a treaty's standards. Human rights treaties aim to govern the relationship between a state and individuals under its jurisdiction. As a result, sometimes there is a tension between treaty rules and preexisting domestic legislations. Thus, a number of reservations are made regarding problems associated with implementing treaty provisions in a domestic judicial system.

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<sup>73</sup> Ibid., 684.

<sup>74</sup> Liesbeth Lijnzaad and T.M.C. Asser Instituut, *Reservations to UN-human rights treaties: ratify and ruin?* (Dordrecht; Boston: M. Nijhoff, 1995), 77–80.

<sup>75</sup> Ibid., 79.

Fourth, division of power within a state poses another challenge. “In this respect the federal clause is widely used to emphasize that it is not within the power of the central authority to legislate in the fields mentioned in the treaty.”<sup>76</sup> More often, states make reservations because their constitutional laws are inconsistent with a treaty. In this case “states try to shield their domestic human rights situation against the dynamic forces of a treaty.”<sup>77</sup>

The majority of state parties that have ratified CEDAW with reservations are Islamic states or countries with majority of the Muslim population. Muslim countries have entered reservations explicitly to Article (2) and (16) or those which are justified on the basis of religion and culture.<sup>78</sup> Article (2) requires state parties to condemn all forms of discrimination against women and agree to take all appropriate measures to eliminate it. Article (16) explicitly deals with women’s equal right to marriage, divorce, maintaining family relations, child custody, and equality within the family. CEDAW discourages reservations in general but explicitly focuses on reservations to articles (2) and (16). The Convention declares these articles as central to the objectives of the treaty.<sup>79</sup> The Committee expresses its concern regarding the negative effects of reservations by stating:

“The Committee has been concerned about reservations since an early sessions. The Committee has since questioned respective state parties about the specific impact of such reservations on the women living under their jurisdictions and has urged state parties in its constrictive dialogue and concluding comments and more generally in several suggestions general recommendations and statements to review, amend, and withdraw such reservations.”<sup>80</sup>

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<sup>76</sup> Ibid., 78.

<sup>77</sup> Ibid., 79.

<sup>78</sup> Westendorp, *The Women’s Convention Turned 30*, 417–434; Courtney W Howland, *Religious Fundamentalisms and the Human Rights of Women* (New York: St. Martin’s Press, 1999), 81.

<sup>79</sup> Lijnzaad and T.M.C. Asser Instituut, *Reservations to UN-human rights treaties*, 303.

<sup>80</sup> Hanna-Beate Schöpp-Schilling and C Flinterman, *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (New York, N.Y.: Feminist Press at the City University of New York, 2007), 255.

State parties are required to evaluate the impact of their reservations on women's rights agenda. States should also report the progress made towards withdrawing their reservations in periodic reports submitted to the Committee. State parties are also requested to include an estimated timeline required to bring its national laws in full harmony with CEDAW. In this way, State parties are continuously encouraged to progress towards achieving the goal of gender equality in practice.<sup>81</sup>

### **1.4 Monitoring and Implementation Process**

CEDAW is a treaty without sanctions which means that it doesn't have authority to fine or punish States that fail to comply with obligations of the treaty.<sup>82</sup> This section will closely analyse implementation mechanisms and working methods of CEDAW that allows it to achieve its objectives without imposing sanctions. CEDAW uses myriad techniques to guide, monitor, and follow-up and communicate with the state parties to ensure effective implementation of the Convention at a national level.

**1.4.1 The CEDAW Committee:** Under the article 17 of CEDAW, a committee was established to act as an independent monitoring body to overlook state parties' progress in bringing their national laws in harmony with the Convention. The Committee is also known as "a treaty body" which consists of 23 experts, selected by a secret ballot from the list of people nominated by state parties. These professionals are known for their "high moral standing and competence in the areas of the Convention."<sup>83</sup> The experts come from diverse professions including lawyers, government diplomats, medicine, scholars, public health, judges, and NGOs specialists.

However, they all share demonstrated expertise in advancing women's rights in different ways,

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<sup>81</sup> Cusack and Cook, "Combating Discrimination Based on Sex and Gender," 209–211.

<sup>82</sup> Anne Hellum and Henriette Sinding Aasen, *Women's Human Rights: CEDAW in International, Regional, and National Law*, 2013, 51; Rosemary Foot, *Rights beyond Borders: The Global Community and the Struggle over Human Rights in China* (Oxford; New York: Oxford University Press, 2000), 269–270.

<sup>83</sup> Article 17 (1) of CEDAW

generally over a long period of time. The Committee members serve as independent experts, working in their personal capacity and not as representatives of their countries.<sup>84</sup> Every two years, state parties elect new experts to serve for a four years term.

The Committee consists of professionals from all over the world to ensure equal geographical representation of different forms of civilizations and legal systems. The diversity within the Committee allows for a holistic understanding of women's rights issues across the globe. "The acceptance of such political, legal, cultural and development differences; however, does not allow for a relativistic view of experts in evaluating the achievements of a given State Party. Nor do experts 'judge' any of these systems"<sup>85</sup> In other words, the experts do not criticize or judge any state party regarding its approach, methodology and performance on eliminating discrimination against women. The main focus of the Committee is to read period reports, meet with delegates of state parties in review meeting, ask questions, offer recommendations and write concluding observations.

**1.4.2 The Reporting System:** Reporting is one of the main sources to monitor and evaluate state parties' compliance with the Convention. State parties are required to submit reports to the Committee on the legislative, judicial, administrative or other measures that have been taken to implement the Convention.<sup>86</sup> The documents are prepared in accordance with the standard international guidelines as well as a specified document containing information particular to the implementation of CEDAW.<sup>87</sup> A state party should submit an initial report within one year after ratifying CEDAW. The initial report provides a comprehensive review of compatibility of state

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<sup>84</sup> For detail on the current members of the Committee see:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx>

<sup>85</sup> Schöpp-Schilling and Flinterman, *The Circle of Empowerment*, 249.

<sup>86</sup> Article 18 of CEDAW

<sup>87</sup> *Guidelines for Preparation of Reports by State Parties* in UN Doc. CEDAW/C/7/Rev.3 (26 July 1996). *Compilation of Guidelines on the Form and Content of Reports to be Submitted by State Parties to International Human Rights Treaties* in UN Doc. HRI/GEN/2/Rev.6 (3 June 2009).

party's national laws with each article of the Convention. The report should also include statistical data which shows effects of current legal measures on the social, economic and political realities of women in the reporting country. State parties should also identify issues faced by women to exercise fundamental rights and challenges faced by the state to implement CEDAW.<sup>88</sup>

Subsequent periodic report should be submitted at least every four years or whenever the Committee requests an update on the progress made by a State party towards better application of the Convention. Periodic reports focus on the period between the consideration of the first report and presentation of the current report due. In addition, state parties should include the information that was not provided in previous reports and respond to concerns raised by the Committee. In the case of extraordinary circumstances such as natural disaster or political crises, state parties are allowed to submit up to three pending reports in a single document.<sup>89</sup> An initial report is approximately sixty pages long and periodic report is up to hundred and fifty pages. The reports are submitted in English language and later translated into French, Spanish, Arabic, Russian and Chinese.<sup>90</sup>

The process of preparing and presenting reports to the Committee varies from state to state. Some governments use the reporting process as an opportunity to work with NGOs and benefit from their feedback. The Committee use these reports to assess development of women's rights in the reporting country and measure the progress it has made over time. The reporting process is over all a "process of consciousness-raising and learning"<sup>91</sup> which aims to "promote

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<sup>88</sup> Ibid

<sup>89</sup> CEDAW Decision 16/III, adopted at the sixteenth session in *Report of the Committee on the Elimination of Discrimination against Women* in UN Doc. A/52/38/Rev.1 (1997), 1.

<sup>90</sup> Anne F Bayefsky, *The UN Human Rights Treaty System in the 21st Century* (The Hague; Boston: Kluwer Law International, 2000), 23–34.

<sup>91</sup> Cusack and Cook, "Combating Discrimination Based on Sex and Gender," 212.



change in the government by forcing it to review domestic laws, policies and practice, and to assess to what extent it is complying with the standards of the Convention”<sup>92</sup>

Like other human rights treaties, the overall record of submission of reports to CEDAW has been poor. Andrew Byrnes explains that “most state parties have submitted initial reports, though not frequently on time, and many state Parties have submitted one or more subsequent periodic reports. There are still a few countries that have not submitted initial reports, some of them delinquent for extended periods.”<sup>93</sup> Another issue faced by the Committee is that state parties tend to overemphasise or exaggerate their achievements rather than focusing on the weak areas and seeking help from the Committee. A number of strategies have been introduced to overcome limitations of the reporting process: submitting detailed reports, strictly following the guidelines, and clearly responding to the questions raised by the Committee. State parties are also required to present their progress in implementing CEDAW at the Committee review meeting.

**1.4.3 The Committee Review Meetings:** After a State party submits its report, the Committee prepares for the discussion of reports. The Committee draws upon list of questions, concerns, and clarification needed on the basis of information provided. The material is sent back with the request to receive answers in written form and also to be discussed in a formal meeting with delegates of the respective country. State parties are then invited to present their report to the Committee in a session known as a “constructive dialogue”. The Constructive dialogue takes place to review reports, give feedback, exchange ideas and experiences, and work in a

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<sup>92</sup> Sally Engle Merry, “Gender Justice and CEDAW: The Convention on the Elimination of All Forms of Discrimination Against Women,” *Hawwa* 9, no. 1 (January 1, 2011): 66, doi:10.1163/156920811X575505.

<sup>93</sup> Hellum and Aasen, *Women’s Human Rights*, 32–33.

collaborative manner with state parties.<sup>94</sup> The central aim of this dialogue is to promote compliance by state parties which they have undertaken by ratifying to the Convention.

The review meeting is a non-contentious and non-adversarial process in which “Committee members often raise critical questions and point to what they consider shortcomings in implementation. Nevertheless, the Committee does not act as a court and pass judgement.”<sup>95</sup> This allows the Committee to evaluate the extent to which treaty obligations have been met by the reporting state party and provide assistance at every level. The meeting also provides an opportunity for state parties to learn from external experts and their objective assessment of women’s rights in their country. The Committee also plays a crucial role in encouraging state parties to take positive measures.

**1.4.4 Concluding Observations:** The examination of reports culminates with the concluding observations in which collective view of the Committee is given after careful consideration of the reporting state. Concluding observations are the most immediate and focused form of assessment on whether a State party has satisfied its treaty obligations. The overall objective is to challenge a State party “to identify the measures that it thinks will be most effective in the national context in addressing identified failures to guarantee equality, ensuring that the State party addresses those problems through the adoption of concrete steps that will bring measurable progress.”<sup>96</sup> Concluding observations aim to make CEDAW more accessible by offering practical measure to government officials, policy makers, civil servants and NGOs. The direct feedback given in concluding observations serves as an important tool for state parties in shaping

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<sup>94</sup> Overview of the working methods of the committee on CEDAW in UN Doc. CEDAW/C/2007/I/4/Add.1. Accessed at: <http://www.un.org/womenwatch/daw/cedaw/committeeworkingmethods.html>

<sup>95</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 500.

<sup>96</sup> Hellum and Aasen, *Women’s Human Rights*, 50.

national laws and public policy programs. The success of concluding observations depends on the rigorous assessment of human rights conditions and their practical functionality.<sup>97</sup> In 2008, the Committee introduced a follow-up procedure under which states are requested to provide follow-up information on whether it has adopted the measures which were recommended in the previous concluding document.<sup>98</sup>

**1.4.5 General Recommendations:** General recommendations offer explanation of particular articles of CEDAW which require further clarification and propose measures that state parties should seriously consider taking. General recommendations aim to provide guidance and facilitate consistency in application of CEDAW at a national level. By 2013, CEDAW has adopted 30 general recommendations that cover range of issues that had not been properly covered in the Convention.<sup>99</sup> For example, the Convention did not address violence against women directly probably because of the time it was drafted; however, this issue has gained a lot of attention over time. General recommendation no.19 reinterprets the definition of discrimination in the article 1 of CEDAW and includes the definition of gender-based violence (GBV) crimes. GBV is defines as a “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict moral, physical, mental or sexual harm or suffering, threats of such acts, coercion and any other deprivations of liberty”<sup>100</sup>

The Committee criticizes that GBV crimes violate fundamental rights of women including protection, freedom, and equality within a family. “The committee has specified

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<sup>97</sup> Bayefsky, *The UN Human Rights Treaty System in the 21st Century*, 62–66.

<sup>98</sup> *Information on the follow up procedure of CEDAW* in UN Doc. CEDAW/C/54/3, accessed at : <http://www2.ohchr.org/english/bodies/cedaw/docs/followup/InfomationOnTheFollowUpProcedure.pdf>

<sup>99</sup> The General Recommendations adopted by CEDAW: <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>

<sup>100</sup> General Recommendation no. 19 paragraph 6 of CEDAW in UN Doc. A/47/38

measures states should take to combat domestic violence, including criminal penalties where necessary, and civil remedies; the abolition of the honor defense; and services to ensure women's safety and security."<sup>101</sup> State parties are now required to provide statistical data on GBV crimes and to report measures that have been taken to punish the perpetrators. General recommendations are also used to pay special attention to the issues that have not been previously addressed or covered by the Convention. For example, recommendation 16 and 17 addresses women's unpaid work within the family and domestic sphere. Other Recommendations spell out the applicability of Convention in situation where women are at disadvantage position such as those infected with HIV or AIDS (15); unpaid workers in rural areas (16); disabled women (18); women migrant workers (19); and older women (20).<sup>102</sup> These recommendations are based on expertise of the Committee and overall information received by state parties, and NGOs experts.<sup>103</sup> General Recommendations also serve as a rich source for public policy programs.<sup>104</sup>

**1.4.6 Optional Protocol:** The Optional Protocol was introduced in December 2000 as a direct response to improve international law: its protection, promotion, and implementation of women's rights at a national level. The optional protocol has two mechanisms: a communication procedure and an inquiry procedure.<sup>105</sup> The communication procedure allows an individual, group of individuals or person acting on their behalf (such as legal counsel or NGO) to submit complain to the Committee concerning alleged violations by a State party to the Convention.

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<sup>101</sup> Peters and Wolper, *Women's Rights, Human Rights*, 132.

<sup>102</sup>For detail on General Recommendations see: <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>

<sup>103</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 21.

<sup>104</sup> Article 21 of CEDAW

<sup>105</sup> Andrew Byrnes and Jane Connors, "Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention," *Brooklyn Journal of International Law* 21 (1996 1995): 679; Egan, *The United Nations Human Rights Treaty System*, 193–205.

However, this option should be used only as a last resort where all domestic remedies have been exhausted.

The inquiry procedure covered in Article 8 to 10 allows the Committee to initiate inquiries where it receives reliable information regarding a situation of grave or systematic violations by a State party of women's rights protected under the Convention. The information can be submitted by anyone; however, decision to initiate inquiry rests entirely with the Committee. The Committee appoints one or several rapporteurs from its midst who examine and evaluate the reliability of the information received and pursue formal investigation procedure after Committee's approval. If a State party agrees, an on-site inquiry visit to the state may be undertaken. At the end, the inquiry information is consolidated in a report along with the recommendation from the Committee to the respective State party.<sup>106</sup>

"It may also elect to follow-up on its inquiry in order to determine what, if any, measures the state has taken in response to its recommendations. The follow-up mechanism has particular relevance for the inquiry procedure considering that it addressed questions which are broader than individual problems and not likely to be solved by individual answers, legal or administrative."<sup>107</sup> The Optional Protocol procedure is only applicable in countries that have agreed to go through the process and no reservations should be made to this procedure. The Optional Protocol also includes opt-out clause which allows state parties to refuse the inquiry procedure.<sup>108</sup>

### **1.5 Key features of CEDAW**

Like other international human rights treaties, CEDAW is committed to universalism: the idea that there are minimal standards of human rights and dignity that must be protected in all

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<sup>106</sup> Schöpp-Schilling and Flinterman, *The Circle of Empowerment*, 256.

<sup>107</sup> Cusack and Cook, "Combating Discrimination Based on Sex and Gender," 219.

<sup>108</sup> For detail on the Optional Protocol to CEDAW see: <http://www.un.org/womenwatch/daw/cedaw/protocol/>

societies.<sup>109</sup> According to S.E. Merry, rather than being strictly neutral as it pretends, CEDAW articulates a particular cultural system which is rooted in a ‘secular transnational modernity.’ It proposes that gender equality is the fundamental principle of human rights which should be established and protected in all societies. The underlying principle is to empower an individual’s capacity, autonomy, safety, and ability to exercise basic rights. These universal principles cannot be compromised by claims to culture, customs or religious differences.

The Convention’s “human rights approach resists seeing claims to cultural difference as a valid justification for practices harmful to women, children and other vulnerable populations.”<sup>110</sup> In other words, religion and cultural preservationism claims are acceptable but not in the case where they justify discrimination against women or violate their rights. The universalizing approach is structured by the Convention itself and the Committee’s mandate is to implement it equally in all countries. This vision of a global just society is often resisted by claims to maintain privacy in domestic sphere, preserve culture and religion, and stereotypical mindsets in a society. Some of the challenges faced by CEDAW includes (a) elimination of gender stereotypes, (b) claims to religion and cultural particularism, and (c) making a distinction between the concept of gender equity and equality (discussed in section 1.5.3).

**1.5.1 Eliminating Gender Stereotypes:** The Convention recognizes that equality between men and women cannot be established without addressing the role played by gender stereotypes. The term “stereotype” refers to “a generalized view or preconception concerning attributes, characteristics, or roles by reason only of her or his membership in a particular group.”<sup>111</sup> The

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<sup>109</sup> Schuler, *Freedom from Violence*; Ignatieff and Gutmann, *Human Rights as Politics and Idolatry*; ‘Abd Allāh Aḥmad Na‘īm, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992).

<sup>110</sup> Merry, *Human Rights and Gender Violence*, 91.

<sup>111</sup> Rebecca J Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (Philadelphia, PA: University of Pennsylvania Press, 2010), 12.

gap between theory of women's rights and its practical application is embedded in people's perception of how men and women should behave and which characteristics befit either. It also includes associating negative connotations towards these assigned gender roles. For example, women are inferior to men, motherhood is women's primary duty and natural destiny, women cannot make best health or financial decisions etc.

These kinds of stereotypical thinking regard women as subordinate to men and encourage gender based violence. As a result, women are often forced into caregiving roles, secondary status within a family and society. Gender stereotypes renders particular individual's ability to create or shape their identity and participate in socio-political activities according to their own will.<sup>112</sup>Article 5 (a) of the Convention require state parties “ to modify the social and cultural patterns of conduct of men and women, with a view of achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotypes role for men and women.”

The Convention specifically challenges traditional perspective towards women's biological function by highlighting the “great contribution of women to the welfare of the family and the development of society, [...] the social significance of maternity, and the role of women in procreation should not be a basis of discrimination but that the upbringing of children requires a sharing responsibility between men and women, and society as whole.”<sup>113</sup> CEDAW emphasizes that changes in gender roles should be discussed and reinforced in order to establish a new international justice system. Due to this reason, general recommendation no. 3 call state parties to adopt education and public information programs to “help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of

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<sup>112</sup> Cook and Cusack, *Gender Stereotyping*. At pg. 224

<sup>113</sup> Full Text of the Convention, Accessed at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

women.”<sup>114</sup> State parties are also requested to closely work with media, influence it and use the media itself as a mean to change stereotypical mindsets. Despite all the efforts of the Committee, gender stereotypes continues to remain one of the most serious and significant global challenges faced in establishing gender equality.

**1.5.2 Engaging Religion and Culture:** The implementation of human rights are always impeded where there is a tension between legally formulated standards and deeply rooted religious and custom beliefs. The Convention explicitly calls for culture changes in gender roles and require state parties to “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”<sup>115</sup> Some of the harmful practices includes child marriage, forced marriage, polygamy, dowry/marriage payments, honor killing crimes, domestic violence, female genital cutting, restriction on women to hold property, and restriction to engage in legal and financial matters. Sally E. Merry points out that often states uses religion and culture to justify discrimination against women. She observes that “at CEDAW hearings, governments sometimes blame their failure to achieve gender equality on intractable patriarchal culture, presenting this as an apparently fixed and homogeneous cultural space that seems beyond intervention and change”<sup>116</sup> State parties often refer to “traditional societies” as something “static and timeless social system” which is almost impossible to reform.

The Committee has urged state parties to take culture as a dynamic concept which is far more fluid, multilayered and a complex system that is continuously evolving over time. One of the aims of CEDAW is cultural reformulation where culture is perceived as a resource of transformation rather than as an obstacle to social change. State parties are required to take an

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<sup>114</sup> General Recommendation no.3 of CEDAW in UN Doc. CEDAW/C/GC/3

<sup>115</sup> Article 2 (f) of CEDAW

<sup>116</sup> Merry, *Human Rights and Gender Violence*, 90.



active role in bringing a positive change as opposed to simply justifying culture and traditions as a monolithic and rigid system of beliefs.<sup>117</sup> In conformity with the principles outlined throughout the Convention, state parties are urged to focus on changing public mindset through education and awareness programs. Other measures include working in collaboration with Civil Society Organizations (CSO) and Non-governmental Organizations (NGOs). CEDAW also place a lot of emphasis on giving special education and gender sensitization training to teachers, judges, police, and conservative religious scholars. State parties are also advised to revise contents in text books for school children with the purpose of changing traditional gender roles.

Religious claims are particularly more complex and strongly defended than the culture because they are based on sacred texts. Religious practices are perceived as divine rules which are not open to question or debate in religious societies. Majority of the Muslim countries have ratified CEDAW with reservations, declarations, or making their ratification subject to conform to Islamic Sharia. CEDAW's unique procedures and implementation mechanisms allows to address this issue effectively. The Committee encourages state parties to reinterpret Islamic laws according to the changing needs of a society, and modern conception of human rights. It also suggest to actively engage Islamic scholars and councils to reinterpret gender discriminatory laws and bring socio-cultural change through awareness. CEDAW promotes cross-cultural dialogue through various procedures to foster debates on how harmful religious-cultural practices can be eliminated at a national level.

### ***1.5.3 The Concept of Equity and Equality:***

The Convention assumes that equal treatment of men and women under the law is the best way of ensuring women's access to justice and improving their overall socio-legal status. This does

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<sup>117</sup> Westendorp, *The Women's Convention Turned 30*, 118–120.

not means that men and women should be treated identically under the law. CEDAW recognizes that gender discrimination and inequality occurs in different forms and levels. Gender neutral policies could also have detrimental effects on women also known as de facto discrimination. For instance, CEDAW notes that aid programs which aim to provide benefits to the “head of the household” may not be very beneficial because in many societies men are considered the bread winner or head of the household.<sup>118</sup> Keeping this issue in mind, CEDAW advocates for both formal and substantive equality. Formal equality requires eliminating discriminatory laws and policies against women, which treats women unequal and inferior to men. Substantive equality, also known as equality of result/outcome requires “taking both historical inequalities and the present conditions of women in a certain context into account. Substantive equality may consequently require positive action by the State to address the specific disadvantages and needs of women.”<sup>119</sup> In other words, CEDAW is based on the vision that women must enjoy their rights both formally and in practice.

CEDAW offers measures to implement a global vision of a fair society (based on IHR treaties) which cannot be justified or replaced by other norms such as religion or culture. Some Muslim state parties have challenged CEDAW’s gender equality approach by arguing that discrimination against women can be eliminated by assigning different roles to men and women. These gender roles are different but nonetheless complement each other and are equally valuable.<sup>120</sup> The alternative concept “equity” is advocated on the belief that equity serves a better form of justice because it assists men and women according to their needs. It is argued that the

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<sup>118</sup> “Women’s Rights are Human Rights,” *United Nations Human Rights Office of the High Commissioner* (New York and Geneva: United Nations Publication, 2014), 30-31.

<sup>119</sup> *Ibid.*

<sup>120</sup> Lisa Hajjar, “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis,” *Law & Social Inquiry* 29, no. 1 (January 1, 2004): 1–38, doi:10.1111/j.1747-4469.2004.tb00329.x.

ultimate goal should not be treating men and women exactly the same but providing what is in their best interest.

The Committee has criticized that the term “equity” is subjective which means different things to different people at different times and places. The concept of “equity” cannot be used interchangeably or replace the aim of equality. This is because the legal principle of equality is at the heart of international human rights treaties which guarantees enjoyment of fundamental rights to all human beings. The replacement of equality with equity would undermine and violate inalienable rights of humanity.<sup>121</sup> The Committee’s concluding observations reflect the continuous challenge of dealing with patriarchal culture and resistance to change even in the societies that are not particularly religious. Gender roles developed in historically existing patriarchal systems are so ingrained in many societies that it becomes a challenging task to deconstruct and reform them. Next chapter will analyze the government of Pakistan’s effort to reform its gender discriminatory state policies and social practices in compliance with its treaty obligations of CEDAW.

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<sup>121</sup> Alda Facio and Martha I. Morgan, “Equity or Equality for Women? Understanding CEDAW’s Equality Principles,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 2009), <http://papers.ssrn.com/abstract=1469999>.

## Chapter 2

### **Challenges of Implementing CEDAW in Pakistan**

This chapter aims to understand the function of Islamic legal system in Pakistan and the way it affects the implementation of CEDAW in its given socio-historical context. This chapter will analyze the kind of mechanisms used by Pakistan to incorporate CEDAW into its Islamic constitutional system and to what extent they are effective in eliminating all forms of discrimination against women. The Islamic Republic of Pakistan's reservation to the Convention will serve as a starting point. The reservation will explain the kind of boundaries set by the government before starting the process of implementing CEDAW. Pakistan's reservation will be closely examined to understand what techniques are used to define women's rights and how these criteria are legitimized. Who has the authority to define these rights? What measures are taken by the Pakistan government in case of conflict between its Islamic Constitution and the Convention? By taking Pakistan as a case study, the broader purpose of this chapter can be described as an attempt to understand the challenges of guaranteeing fundamental human rights to women in particular socio-political context.

This study proposes that Pakistan has adopted non-participatory approach towards the Convention: the government has reduced its efforts only to nominal acts of adherence and has refrained from fully cooperating with the CEDAW committee. Pakistan submitted all four of its periodic reports late; they provide very limited and general information. As a result, determining Pakistan's attitude and motivation behind ratification of the Convention becomes a challenging task. The problem is not simply about Pakistan's failure to fulfill demands of bureaucratic system and reporting procedure of CEDAW. A close reading of the government documents,

periodic reports, and correspondence with the CEDAW committee exhibits contradictions in the claims made by the government of Pakistan on its position on women's rights.

This chapter will argue that Pakistan has ratified CEDAW but holds its Islamic Constitution superior to the Convention. In case of conflict, the Constitution would override the Convention and would prevail by default. However, the reservation does not make this claim directly. The Pakistan government has carefully worded the reservation that serves the purpose of undermining the Convention in an abstract manner. This chapter will show that the government of Pakistan has given ambiguous and contradictory statements on its justification to hold reservation and its effects on women's rights.

This chapter is divided into five short sections. The first section (2.1) will provide historical background to Pakistan's process of ratification of CEDAW. The pre-ratification period will allow us to closely analyze debates at the governmental level that delayed its ratification of CEDAW for fifteen years. Various documents produced in the process such as government surveys and reports provide valuable material for examining Pakistan's concerns about compatibility of its Islamic Constitution with regard to CEDAW. The second section (2.2) will exhibit that Pakistan's failure to resolve tensions in the pre-ratification period encouraged the government to make a 'compromise' in the form of an Islamic reservation to CEDAW. This section will critically analyze the nature and language of the reservation, and identify its adverse effects in repealing gender discrimination laws in Pakistan. Moreover, it will also exhibit ambiguous and contradictory statements given by the government of Pakistan.

The third Section (2.3) focuses on positive initiatives taken by Pakistan in eliminating discrimination against women under CEDAW reforms. This includes amendments in existing laws and introduction of new women empowerment legislations. The fourth Section (2.4) will

identify key areas of contention and controversial Islamic laws that the state refuses to repeal. This chapter will scrutinize the techniques and methodologies used by the government of Pakistan to define women's rights and how these criteria are legitimized and justified. The final Section (2.5) identifies key challenges faced by the government in repealing discriminatory laws and implementing CEDAW in Pakistan.

This study proposes that combination of several factors leads to poor implementation of CEDAW in Pakistan. The government of Pakistan is not fully committed to women's rights. The contradictory statements given by Pakistan suggest that the government is using CEDAW as a mean to improve its political image in the international community. Second, the government has not made any serious effort to reconcile local perceptions on incompatibility of Islamic precepts and universal notion of human rights. This study will argue that Pakistan is trying to fulfill its international treaty obligations without addressing local problems such as lack of consensus on how women's rights should be determined, political instability, corruption, and lack of consistency in the judicial system.

## **2.1 Pre-Ratification Period: Historical Context and Political Controversies**

The demands to ratify the Women's Convention were started by human rights advocates and NGOs in Pakistan as soon as CEDAW was adopted by the UN in 1981. On 12 March 1996, Pakistan ratified the Convention after fifteen years of continuous lobbying for women's rights. Shaheen S. Ali notes that initially the government considered the possibility of ratifying CEDAW on a number of occasions but women's rights issues were never given priority and therefore, "set placed in cold storage."<sup>122</sup>

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<sup>122</sup> Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man?* (The Hague; Boston: Kluwer Law International, 2000), 268.

In 1987, the Convention was examined for the first time by various government institutions including the Ministry of Law and Justice, Religious Affairs, Education, Cabinet Secretariat and the Ministry of Foreign Affairs in consultation with the Legal Division. It is interesting to note that the Pakistan Women's Division in the Cabinet Secretariat was established by a military dictator General Zia-ul-Haq (1977-87), known for his Islamization Project and for promoting misogynistic state policies. "The division's creation is emblematic of the country's struggle to resolve the conflict between the push toward modernity and the pull of redefined tradition: concurrent with codifying inequalities between men and women, the state actively began seeking means to improve women's standard of living to be on par with international standards."<sup>123</sup>

The Women's Division was later transformed into a separate Ministry of Women's Development and Youth Affairs in 1989. The Ministry of Women's Development was responsible for consolidating views of various government departments on the possibility of ratifying CEDAW and its compatibility with the Islamic Constitution of Pakistan. It also played a crucial role in preparing National Reports for the Fourth World Conference on Women in Beijing (1995), encouraging ratification of CEDAW and monitoring Pakistan's progress in its implementation.<sup>124</sup> On the initial stages of considering the possibility of ratification, various government departments recommended that Pakistan should ratify CEDAW with the declaration:

"The Government of the Islamic Republic of Pakistan agree to ratify the convention to the extent that articles and sub-clauses are not repugnant to the teachings of the Holy Quran and the Government of Pakistan shall be the sole judge of the question whether such repugnancy exists"<sup>125</sup>

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<sup>123</sup> Anita M Weiss and United States Institute of Peace, *Moving Forward with the Legal Empowerment of Women in Pakistan* (Washington, DC: U.S. Institute of Peace, 2012), 5, <http://purl.fdlp.gov/GPO/gpo30921>.

<sup>124</sup> Anita M. Weiss, "Interpreting Islam and Women's Rights Implementing CEDAW in Pakistan," *International Sociology* 18, no. 3 (September 1, 2003): 587, doi:10.1177/02685809030183007.

<sup>125</sup> Ali, *Gender and Human Rights in Islam and International Law*, 269.

The Ministry of Foreign Affairs criticized this, stating that this kind of reservation would not be accepted by the international community as it directly contradicted the objectives of the Convention. In the pre-ratification period, the Pakistan government had three main concerns about signing the treaty. First, the Ministry of Foreign Affairs raised the concern that CEDAW was a “Western” treaty which could be used as a political tool to condemn Islamic values and criticize the status of Muslim women. The emergence of the universal/particular and the sacred/secular debate at the governmental level is evident in the following statement by the Ministry of Foreign Affairs:

“The (Women’s) Convention was the result of Western women rights activists and does not taken into account the varied socio-economic conditions as well as the diverse customs, values, and religious and ethical perspectives of different societies in various parts of the world... Convention has been used by Western Human Rights activists as an instrument to not only criticize the situation in various Islamic countries but also the very fundamentals of the Islamic faith.”<sup>126</sup>

Second, there were disagreements within the government departments over the compatibility of CEDAW and Islamic precepts. Many government representatives expressed the concern that the “Women’s Convention somehow represents an alien Western model of rights and development which is in contradiction to Islamic values and injunctions.”<sup>127</sup> It is important to note that there was no objection made on specific articles of CEDAW which were perceived to be in contradiction with the Islamic values and the Constitution of Pakistan. In fact there seems to be a general assumption about incompatibility between Islam and universal notion of human rights, the latter perceived as a “Western” conception. In order to resolve this ambiguous debate, a

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<sup>126</sup> Ibid.

<sup>127</sup> Ibid., 271.



comparative study of the Women's Convention and Islamic laws in general, and Pakistan's Constitution in particular was undertaken.<sup>128</sup>

The study concluded that one-sixth of CEDAW signatories comprised of Muslim countries which means that there is no fundamental contradiction between the Convention and Islamic precepts. Muslim countries have responded differently to CEDAW due to the “ideological leanings” of their particular country. For instance, Iran has completely refused to ratify, whereas, others such as Indonesia, Turkey, Tunisia, Mali and Yemen became state parties without any reservations. Countries such as Egypt, Iraq, Bangladesh, Saudi Arabia, and Libya have made reservations to specific articles. This explains that Islam is not a monolithic religion and there is a great variation in Islamic practices within the Muslim world. Therefore, Pakistan should ratify after careful consideration of its own interpretation of Islamic laws and practices as opposed to blindly following the examples of other Muslim countries.<sup>129</sup>

Third, Pakistan government was mainly concerned about the international criticism it would likely face regarding the poor status of Pakistani women. The plight of women was recognized by various government institutions and development plans. For instance, the Seventh Five Year-Plan (1983-88) document notes that “in Pakistan today, the profile of women is simply shocking” and explains the “legacy of neglect” by stating: “gender disparities exist in the availability of food, education, and employment. Women suffer additional constraints because their mobility is restricted, they have little control over resources, limited decision-making power, a low-level of awareness of their civic rights, a poor self-concept and limited aspirations.”<sup>130</sup> The poor legal and socio-economic status of Pakistani women was also discussed

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<sup>128</sup> Shaheen Sardar Ali, *A Comparative Study of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Islamic Law and the Laws of Pakistan* (Shaheen Press, 1995).

<sup>129</sup> Ibid., 131–141.

<sup>130</sup> *Report of the Commission of Inquiry for Women, Pakistan* (Pakistan Law Commission, 1997), vi.

in the reports of international agencies and development program. The dilemmas faced by the government was how to address the issue that some laws currently enforced are clearly discriminatory towards women. The question was raised whether these discriminatory laws need to be modified or repealed prior to ratification or could the process of reviewing laws takes place after the accessions?

The Women's Division and human rights advocates insisted that "even if we [Pakistan] have some laws that are discriminatory and incompatible to the substantive provisions of the Women's Convention, it should not preclude us from signing."<sup>131</sup> The Convention will serve as a guiding tool to overcome problematic provisions of the domestic laws. According to the policy, CEDAW simply persuades its state parties to comply with the provisions of the Convention without enforcing any sanctions. Therefore, "the government of Pakistan should not feel threatened in any way. All it is required to do at this point in time is to show good-will and genuine concern for promoting gender equality."<sup>132</sup> Despite all these efforts, the government departments failed to reach a consensus and the matter of ratification was delayed once again.

During time of Benazir Bhutto's first time serving as Prime Minister (1988-90) some serious efforts were initiated towards becoming a State party to the Convention based on the concern that "Pakistan's non-ratification was creating international embarrassment."<sup>133</sup> At this time, Pakistan was also facing external pressure to pursue women's rights "friendly" national and international policies. Especially after General-Zia-ul- Haq's military project of the Islamization of society (1977-87) implemented misogynistic state policies that adversely affected the political,

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<sup>131</sup> Ali, *Gender and Human Rights in Islam and International Law*, 271.

<sup>132</sup> Ali, *A Comparative Study of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Islamic Law and the Laws of Pakistan*, 132.

<sup>133</sup> Ali, *Gender and Human Rights in Islam and International Law*, 269.

social, and legal positions of women and religious minorities in Pakistan.<sup>134</sup> The government expressed its concern regarding the increasing pressure of international accountability of human rights and the influence of globalization by stating that:

“No community or nation is an island anymore, and Pakistan cannot remain unwashed by the rising global currents. It needs to address its domestic issues in ways that are in *some* harmony with the international perspective and universally accepted norms. *If it does not do it now, it will be compelled to do later, after much change* (emphasis mine)”<sup>135</sup>

The above statement shows that the government of Pakistan was not very keen to address its gender discriminatory laws. The international political pressure to adopt women friendly laws on a national level can be observed clearly in the case of Pakistan which has now started to seriously consider becoming a member of the Women’s Convention. A series of meetings were held to reach a consensus on the possibility of becoming a state party to CEDAW. These meetings were attended by representatives of all relevant ministries including the Ministry of Religious Affairs, the Interior Ministry, the Council of Islamic Ideology (CII) and NGOs. The women’s rights advocates and NGO members proposed that Pakistan should ratify CEDAW without reservations but this was strongly opposed by the Religious Affairs Ministry.<sup>136</sup> The final outcome of these meetings ended with a proposal that Pakistan should prepare a case to sign the Convention with a specific “temporary” reservation to article 2(f) which requires state parties to “take all appropriate measures including legislation to modify or abolish existing law, regulations, customs, and practices which constitutes discrimination against women.”<sup>137</sup>

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<sup>134</sup> Khawar Mumtaz and Farida Shaheed, *Women of Pakistan: Two Steps Forward, One Step Back?* (London; Atlantic Highlands, N.J., USA: Zed Books, 1987).

<sup>135</sup> *Report of the Commission of Inquiry for Women, Pakistan*, xi.

<sup>136</sup> Accessed at : <http://www.ipsnews.net/1995/06/pakistan-women-activists-pressure-government-to-ratify-cedaw/>

<sup>137</sup> Article 2(f) of CEDAW

The government of Pakistan was wanted to take reservation specifically to this article for two reasons. As required by the Article (2) of the Convention, Pakistan was not willing to take “all appropriate measures” to establish gender equality and bring its national laws in *full* compliance with CEDAW. In fact, the government was willing to do only the minimum amount of work and to limit the effects of the treaty by holding reservation to Article 2(f). As the government report clearly states, “it needs to address its domestic issues in ways that are in *some* harmony with the international perspective and universally accepted norms [emphasis mine]”.<sup>138</sup> The lack of effort to fully comply with the provisions of the Convention continues to be a serious challenge today (to be discussed in the next section).

Second, article 2 of CEDAW is the article to which the most Muslim countries take exception. Pakistan wished to become part of the “Muslim world” by expressing similar reservations and reasserting its Islamic identity in the international community. During the meetings, “the case of other Muslim countries who had entered substantial reservations was also highlighted and it was argued that a similar expectation was being held with regard to Pakistan’s position.”<sup>139</sup> This attitude is problematic because it reasserts the dichotomy between the “Muslim” and the “Western” world. In other words, it reinforces the idea that UHR treaties are a reflection of Western norms, which are alien and incompatible with Islamic precepts.

The existence of these binary perceptions at the governmental level in Pakistan is precisely the reason that first delayed the ratification process of CEDAW for fifteen years and then its effective implementation. The main issue with the pre-ratification period is that the Pakistan government was mainly concerned with drafting and reaching a consensus on the

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<sup>138</sup> *Report of the Commission of Inquiry for Women, Pakistan*, xi.

<sup>139</sup> Ali, *Gender and Human Rights in Islam and International Law*, 266.

language of the reservation(s) as opposed to focusing on eliminating the very tensions on which its stated reservations were made.

On 21 August 1995, the Cabinet announced the decision to ratify the Convention, less than two weeks before the Beijing Conference. Prime Minister Benazir Bhutto was leading the country's delegation at the UN Fourth World Conference for Women in Beijing in September 1995. This was politically a good time for the government of Pakistan to demonstrate its commitment to women's rights in the international community. The government spokespersons had expressed the intention to ratify CEDAW without reservations. However, it turned out to be a surprise for many when the official accession to CEDAW was done with a general declaration and reservation.<sup>140</sup>

## **2.2 Problems with Pakistan's Reservations to CEDAW:**

On March 1996, Pakistan ratified CEDAW with the following reservations:

General Declaration: "The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan."

Reservation: "The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of Article 29 of the Convention."<sup>141</sup>

This study argues that Pakistan's reservation to CEDAW is problematic for four reasons. First, Pakistan named its statement as a "general declaration" which is in fact a reservation. A general declaration would simply mean that Pakistan declares itself as a 'Muslim state' which may be defined as a state in which the majority of the population is Muslim, Islam is the official religion of the state and/or it is a member of the Organization of the Islamic Conference (OIC). The OIC defines itself as an intergovernmental organization of 57 states which presents a collective view

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<sup>140</sup> Ibid., 272; Anita M. Weiss, "Women, Civil Society and Politics in Pakistan," *Citizenship Studies* 3, no. 1 (February 1, 1999): 144–145, doi:10.1080/13621029908420704.

<sup>141</sup> *Combined initial, second and third periodic report of Pakistan* in UN Doc. CEDAW/C/PAK/1-3, 8.

of the Muslim world.<sup>142</sup> The Islamic Republic of Pakistan has been a member of OIC since 1969.<sup>143</sup>

The term “general declaration” undermines the fact that Pakistan is not simply declaring itself as a Muslim state and Islam as its official religion. In fact, it is making an ‘Islamic reservation’ that only those articles/elements of CEDAW be implemented that are in harmony with the Islamic Constitution of Pakistan. The term “Islamic reservation” relates to the status and role of Sharia (Islamic laws) within the domestic legal system which is commonly referred to as the ‘hierarchy of norms.’<sup>144</sup> Sharia consist of “the totality of divine categorizations of human acts, the aim of which is to foster obedience to God and serve and protect religion, life, lineage, property, and intellect.”<sup>145</sup> Normally, states are looked down upon for making reservations because they restrict and undermine potential impact of human rights conventions.<sup>146</sup> The government of Pakistan made a political choice to avoid international criticism by labelling its ratification status as a ‘general declaration’ when it is clearly an Islamic reservation.

Second, this study proposes that globalization and international politics played a crucial role in motivating the government to ratify the Convention. Anita M. Weiss notes that development assistance is often tied to human rights records of the recipient country. “Donors and Western governments shy away from supporting those states which are condemned by popular culture in their treatment of women and their treading on women’s rights.”<sup>147</sup> As a result many states become parties to international human rights treaties where “they can reap the immediate public relations benefits of joining the treaty even if the national leaders are not fully

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<sup>142</sup> For detail see: <http://www.oic-oci.org/oicv2/home/?lan=en#>

<sup>143</sup> For detail on the members of the OIC see: <http://www.oic-oci.org/oicv2/states/>

<sup>144</sup> Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations*, 21.

<sup>145</sup> Ibid., xviii.

<sup>146</sup> For detail discussion on reservations to the Convention see Chapter 1, section 1.3.

<sup>147</sup> Weiss, “Interpreting Islam and Women’s Rights Implementing CEDAW in Pakistan,” 582.

informed or committed to implementing it.”<sup>148</sup> This is true in the case of Pakistan because it has been one of the top recipient of humanitarian aid in the world. In 2012, Pakistan received US\$529 million in international humanitarian assistance, making it the fifth largest recipient. According to the data based on development initiatives of OECD,<sup>149</sup> DAC,<sup>150</sup> United Nations OCHA<sup>151</sup> and FTS,<sup>152</sup> and the World Bank<sup>153</sup>:

“The United States (US\$186 million) was the largest donor of humanitarian assistance to Pakistan in 2012, followed by the EU institutions (US\$140 million) and the United Kingdom (US\$77 million). The US provided 27% (US\$1.7 billion) of all humanitarian assistance to the country between 2003 and 2012.”<sup>154</sup>

The international humanitarian aid is given on the condition that the government is not directly involved in the violation of human rights. For instance, the Human Rights Watch study on humanitarian assistance of the United States to Pakistan notes that: “the law requires the US State Department to certify that no military unit receiving US aid is involved in gross human rights abuses and, when such abuses are found, to investigate them thoroughly and properly.”<sup>155</sup> After the September 11th terrorist attack in the United States, Pakistan has been in the limelight of political discourses, especially of those pertaining to Islam and women’s rights. In order to improve its global image and continue receiving international aid, the government should at least show the willingness to address human rights issue at the national level. The government of Pakistan is fulfilling this minimum requirement to reap political benefits and it is not fully committed to establish gender equality in practice, for the reasons I state below.

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<sup>148</sup> Ibid., 584.

<sup>149</sup> The Organization for Economic Cooperation and Development (OECD), for detail see: <http://www.oecd.org/>

<sup>150</sup> The Development Assistance Committee, for detail see: <http://www.oecd.org/dac/>

<sup>151</sup> The United Nations Office for the Coordination of Humanitarian Affairs (OCHA)

<sup>152</sup> The Financial Tracking Services (FTS) is managed by United Nations OCHA, which records all reported humanitarian aid contributions. For detail see: <https://fts.unocha.org/>

<sup>153</sup> For detail see: <http://www.worldbank.org/>

<sup>154</sup> For detail see: <http://www.globalhumanitarianassistance.org/countryprofile/pakistan>

<sup>155</sup> Accessed at: <http://www.hrw.org/news/2011/01/28/pakistan-year-abuses>

Pakistan holds its Islamic Constitution superior to the Convention but does not clearly make this statement. If one pays close attention to the general declaration above, it becomes evident that it is actually based on the initial idea of ‘Islamic reservation’<sup>156</sup> that was set aside over the concern of being rejected by the international community. The official declaration expresses the same idea and serves the same purpose as the initially drafted reservation but in a more subtle and abstract manner.

Pakistan’s Constitution declares Islam to be the state’s religion and places the Quran and *Sunnah* above the normative legal system and all other authorities. The Constitution contains many provisions to bring the entire legal system in accordance with Islamic law. For instance, article 227 of the Constitution requires that “all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and the Sunnah [...] and no law shall be enacted which is repugnant to such injunctions.” As a result, Constitutional reservation would have the same impact as an Islamic reservation or making direct reference to the Islamic law. In other words, the reservation made by Pakistan grants supremacy to its Islamic Constitution over the Women’s Convention but does not clearly state this. The issue is not that Pakistan grants higher status to its Islamic Constitution but its failure to clearly states its position on women’s rights. Pakistan doesnot draw attention to women’s rights which are compromised due to the tension between its Islamic Constitution and CEDAW (See section 2.4 of this chapter). In contrast, it makes a general and ambiguous statement that “the said Convention is subject to the provisions of the Islamic Republic of Pakistan.”

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<sup>156</sup> Discussed in the previous section (2.1) of this chapter. The initial recommendation given by various government departments on making reservation to CEDAW was as follow: “The Government of the Islamic Republic of Pakistan agree to ratify the convention to the extent that articles and sub-clauses are not repugnant to the teachings of the Holy Quran and the Government of Pakistan shall be the sole judge of the question whether such repugnancy exists”



Fourth, Pakistan's reservation is problematic because it does not identify any specific articles of CEDAW that are in tension with its Islamic Constitution of Pakistan, and thus subsequently need to be reconciled. General Reservations may be described as "ones entered using justification of supremacy of religion, the country's constitution, cultural practices, and other laws encompassing the entire ambit of substantive rights protected in the Women's Convention. General Reservations are considered the most controversial, over-arching, and amounting to negating any treaty obligation undertaken."<sup>157</sup> General reservations raise serious problems about the interpretation and implementation of human rights in a religion-based country such as Pakistan. For example, the general reservation made by Pakistan fails to clearly explain the level of compatibility between Pakistan's Constitution and CEDAW. It does not identify key issues of contention and which areas or forms of women's rights are affected by this reservation.

The Committee requires state parties to explain the reasons for expressing reservations and its negative impact on effective implementation of the Convention. Pakistan has failed to properly justify the reason for holding reservation and its adverse effects on women's rights. On the contrary, the government has given ambiguous statements in its periodic reports and other corresponding document exchange with the Committee. In its *combined initial, second and third periodic report*, Pakistan explains the reason for expressing reservation in the following words:

"The declaration was carefully worded. The objective was not to go against the purpose of the Convention while *assuaging the concerns of those who had misgivings* about the Convention. Subjecting the implementation of the Convention to the Constitution of Pakistan's general sensible course of action [emphasis mine]."<sup>158</sup>

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<sup>157</sup> Ali, *Gender and Human Rights in Islam and International Law*, 250.

<sup>158</sup> *Combined initial, second and third periodic report of Pakistan* in UN Doc. CEDAW/C/PAK/1-3, 8.

In the above statement, Pakistan clearly states that it does not aim to “go against” the purpose of the Convention or limit its implementation in any way. The reservation only serves the purpose of “assuaging the concerns of those who had misgivings about the Convention.” This signifies that despite all the efforts made by Pakistan in the pre-ratification period, there is a significant amount of people and/or institutions that are still against the universal notion of women’s human rights reflected in CEDAW. This kind of justification is problematic because Pakistan should not make reservations simply to mitigate the misconceptions/misgivings about CEDAW on the national level. It should clearly address those concerns so that an appropriate action plan could be developed to resolve them.

Pakistan also fails to explain what exactly those concerns are by making an abstract statement: “there had been wide divergences in views among the stakeholders on *some points* and the Government had worked *to arrive at consensus language* [Emphasis mine].” This suggests that Pakistan is not very concerned about the compatibility of its Islamic Constitution with CEDAW, and adverse effects of its reservation. In fact, Pakistan has given priority to “arrive at consensus language” of periodic reports as opposed to focusing on the points of disagreements within the government over the Convention.

The Committee has demanded clarification on the issues faced by the government and questioned “what was being done to reconcile the State’s obligation under the Convention with the requirements of Islamic codes of conduct.”<sup>159</sup> Moreover, “what mechanisms were available to challenge laws not in line with the Constitution or with the Convention”<sup>160</sup> In response,

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<sup>159</sup> *Consideration of Combined first, second and third periodic report of Pakistan*, Summary record of the 781<sup>st</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781, 3.

<sup>160</sup> *Consideration of Combined first, second and third periodic report of Pakistan*, Summary record of the 781<sup>st</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781, 4.

Pakistan has maintained a firm position that its Islamic Constitution guarantees equal rights to all citizens without any discrimination on the basis of religion, caste, color, or sex.

The Constitution ensures full participation of women in all spheres of life. Many of the principles contained in international human rights documents are reflected in the Constitution. On this basis, Pakistan argues that “in substance the declaration did not have any negative impact on the implementation of the Convention while at the same time enabling Pakistan to accede to the Convention.” In other words, there are no gender discriminatory laws in the country and its constitution is in full harmony with the Convention. The Committee has criticized that if there is no tension between the Islamic Constitution of Pakistan and the Convention then “from a legal point of view, the Declaration was not necessary.”<sup>161</sup>

The government of Pakistan claims that the “obstacles that still existed to women’s full enjoyment of their rights were due to traditional attitudes which the Government had taken steps to overcome.”<sup>162</sup> The CEDAW committee questions that if traditional attitudes and gender stereotypes are the main issues then, “how was Pakistan dealing with them and correcting them, especially those that are related to religion? In Egypt there were advocates promoting an improved image of women in education and the media. Did Pakistan have such advocates seeking to disseminate the real tenets of Islam with regard to the role of women?”<sup>163</sup> Pakistan has yet to give a response to these questions.

Pakistan’s latest periodic report covers the period from January 2005- April 2009 and updates the Committee on the progress made to improve implementation of CEDAW. In its

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<sup>161</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, Summary Record of the 782<sup>nd</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.782, 8.

<sup>162</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, Summary Record of the 782<sup>nd</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781 at 2.

<sup>163</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, Summary Record of the 781 meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781 at 7.

fourth periodic report, the Pakistan government explains that it cannot withdraw the reservation because there are still disagreements within the government ministries. Only twenty-one percent have voted in the favor of withdrawing the reservation.<sup>164</sup> According to Pakistan, it is not a matter of serious concern because the reservation does not directly affect the women's rights agenda. As the report states that:

“It is worth mentioning that the General Declaration did not affect the legislation process for eliminating discrimination against women and State Obligation towards CEDAW implementation as various amendments in the existing laws are being made and new acts/bills are also introduced to protect women's rights.”<sup>165</sup>

The above statement is not completely true because Pakistan's reservation clearly contradicts the spirit of the Convention by making it “subject to the provisions of the Constitution of the Islamic Republic of Pakistan.” There are numerous gender discriminatory laws in Pakistan (to be discussed in the next section) that contradict the CEDAW's provisions. These laws cannot be reformed because according to Pakistan's reservation no law/policy can be implemented that is in tension with its Islamic Constitution.

In the case of conflict between the CEDAW and Pakistan's Constitution, the latter prevails by default. In this way Pakistan holds its constitution superior to CEDAW and limits its effective implementation. Mr. Mahmood Salim, representing Pakistan at CEDAW's review meetings confirms the limiting effect of the reservation in the following words:

“The Constitution guaranteed equality of rights of men and women and banned discrimination based on race, religion, caste or sex. It was also true that no law could stand if it were found to be inconsistent with the basic law in the Koran, which provided the basis for Pakistan's traditional respect for women and protection of their rights.”

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<sup>164</sup> *Fourth periodic report submitted by Pakistan* (24 September 2011) in UN Doc. CEDAW/C/PAK/4, 11.

<sup>165</sup> *Fourth periodic report submitted by Pakistan* (24 September 2011) in UN Doc. CEDAW/C/PAK/4, 11.

The CEDAW Committee and many state parties<sup>166</sup> have criticized Pakistan's declaration as contrary to international law and the Convention.<sup>167</sup> Pakistan has been asked that "if implementation of the CEDAW is limited by what already exists in Pakistan's Constitution, then why agree to a Convention which by its nature implies that to be in a compliance it might be necessary to make some constitutional changes?"<sup>168</sup> The Committee has requested Pakistan to reconsider its reservations so that they can be withdrawn as soon as possible. It has also proposed that if full withdrawal of reservation is not possible then its scope might be narrowed by expressing reservation to specific articles of CEDAW.

In response to these concerns, one of the Pakistan delegates argued that "there was [is] no need to be concerned about any conflict between the Convention and Muslim principles, as Islamic law provided even more effective protection of women's rights than the Convention."<sup>169</sup> This statement clearly signifies existence of a 'hierarchy of norms' within Pakistan in which Islamic Law and its Constitution is accorded a higher status than the universal notion of women's human rights. The government of Pakistan claims that it has become a state party to a number of gender-focused UN human rights treaties including the 1953 Convention on the Political Rights of Women; the 1993 Vienna Declaration 'which recognized women's rights as human rights'; the 1994 Cairo Population Program Action; and the 1995 Platform for Action in Beijing.<sup>170</sup> In its *combined initial, second and third periodic report*, Pakistan government declares that, "Pakistan had ratified the Convention with the sole objective of reaffirming its

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<sup>166</sup> This includes Austria, Germany, Norway, Netherlands, Denmark, Sweden, and Portugal.

<sup>167</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, Summary record of the 782<sup>nd</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781, 3.

<sup>168</sup> Anita M. Weiss and Palgrave Connect (Online service), *Interpreting Islam, Modernity, and Women's Rights in Pakistan*, 2014, 49, <http://www.palgraveconnect.com/doifinder/10.1057/9781137389008>.

<sup>169</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, Summary record of the 782<sup>nd</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781, 5.

<sup>170</sup> Weiss, "Interpreting Islam and Women's Rights Implementing CEDAW in Pakistan," 586.

commitment to the empowerment of women and becoming accountable to the world community.”<sup>171</sup> If Pakistan’s “sole” aim is to get political recognition in the international community then it raises serious concerns about its commitment to repeal gender discriminatory laws in practice.

In order to limit international criticism and accountability, Pakistan also made a reservation that “The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of Article 29 of the Convention.”<sup>172</sup> According to CEDAW, if there is a dispute between two or more state parties concerning the interpretation or application of the Convention which cannot be resolved through negotiation then any one of those parties can take the issue to the International Court of Justice. Article 29, paragraph (1) of CEDAW states that:

“Any dispute between two or more States parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”<sup>173</sup>

Pakistan’s reservation to this article does not contradict the Convention but rather counters the prospect of other state parties holding Pakistan legally accountable for its failure to fulfill treaty obligations. In other words, this reservation has allowed Pakistan a safe space because its poor implementation of CEDAW cannot be referred to the International Court of Justice. The government of Pakistan has not given any clear statement on the withdrawal of this reservation but only stated that “the question of option for the Optional Protocol to CEDAW shall therefore

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<sup>171</sup> *Consideration of Combined initial, second and third periodic report of Pakistan*, Summary record of the 781<sup>st</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781, 2.

<sup>172</sup> *Combined initial, second and third periodic report of Pakistan* in UN Doc. CEDAW/C/PAK/1-3, 8.

<sup>173</sup> Article 29 (1) of CEDAW

be taken up at *the right time*. Views of any proposal for amendment to paragraph 1 of Article 20 of the Convention *shall be duly submitted when received* [emphasis mine].”<sup>174</sup>

Pakistan’s lack of commitment to women’s rights can be observed from its contradictory statements, limited participation and its failure to provide clear response to the issues raised by the Committee. For instance, the government of Pakistan has refused to provide clear and concise answers on its plan to withdraw its reservation, its methodological framework and implementation plan, and any time line for attaining goals set by the Convention. In contrast, Pakistan has given ambiguous and contradictory statements that place a serious challenge in evaluating its progress in improving women’s socio-legal status overtime. On 12 February 2013, the Pakistan delegate at the latest review meeting with the Committee reported that “although ratification of the Optional Protocol was under consideration *she could not provide further information* [emphasis mine].”<sup>175</sup>

CEDAW requires its state parties to submit a compliance report within a year of ratification to illustrate the compatibility of its national laws with the Convention. A periodic national report should be submitted at least once every four years by the government to report the measures it has taken to implement its treaty obligations into practice. Pakistan ratified the CEDAW on 11 April 1996; the compliance report was due within a year, i.e., on 11 April, 1997. The government not only failed to submit its compliance report on time but also the first, second and third periodic report. All three reports were submitted late and together as a single document on 3 August 2005 which covered the period from 1997 to 30 December 2004. The fourth

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<sup>174</sup> *Response to the list of issues and questions for consideration of the combined initial, second and third periodic report of Pakistan* (38<sup>th</sup> session, 14 May- 1 June, 2007) in UN Doc. CEDAW/C/PAK/Q/3/Add.1, 12.

<sup>175</sup> *Consideration of fourth periodic report submitted by Pakistan*, Summary record of 1101<sup>st</sup> meeting (12 February 2013) in UN Doc. CEDAW/C/SR.1101, 4.

periodic report was due on 11 April 2009 which covers the period from January 2005 to April 2009. However, it was also submitted late on 16 June, 2011.

Pakistan did not explain the reason for the late submission of its report but simply made the abstract statement: “A compliance report was due within a year’s time but *somehow* it could not be produced along with subsequent two periodic reports” [emphasis mine].<sup>176</sup> It further explains that preparation of the report took more than a year. Thus, once there was willingness to submit the report it did not take much time. The choice of word “somehow” explains the reluctance of the government to explain real issues behind non-submission of the reports.<sup>177</sup> Anita M. Weiss notes the arbitrary language used by the government in its periodic reports and argues that “although the language resembles the requirement of CEDAW-such as using the terminology of ‘creating enabling conditions’ –it draws the deep commitment of the state into questions somewhat.”<sup>178</sup> Pakistan’s use of arbitrary language and contradictory statements on women’s rights issues is problematic because it creates ambiguity about the way CEDAW is interpreted and implemented by the state.

This study proposes that women’s rights is not the priority of the government as number of court decisions and political events exhibit deteriorating status of women as citizens. For instance, Mukhatra-Mai case of gang rape (committed by fourteen men) achieved global attention. After nine-years of court procedures, the Supreme Court of Pakistan overturned death penalty of six men and acquitted eight men based on appeal, with only one man serving as a life-sentence. The court cited insufficient evidence to proof the gang rape and justified its decision

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<sup>176</sup> *Combined initial, second and third periodic report of Pakistan* in UN Doc. CEDAW/C/PAK/1-3, 7.

<sup>177</sup> Yahyaoui Krivenko, *Women, Islam and International Law within the Context of the Convention on the Elimination of All Forms of Discrimination against Women*, 166.

<sup>178</sup> Weiss, “Interpreting Islam and Women’s Rights Implementing CEDAW in Pakistan,” 589.



for acquittal.<sup>179</sup> This signifies an urgent need to draw attention to discrimination, weaknesses, and loopholes in Pakistani laws that the government has failed to clearly address in its periodic reports to CEDAW.

### **2.3 Legal Reforms and State policies introduced under CEDAW**

A close reading of the Pakistan's report to CEDAW shows that the government has taken a number of small initiatives and programs for the empowerment of women. For example, the government has taken an initiative in conjunction with the International Labor Office (ILO) to draft a national policy for the protection of home based workers, who are predominantly women. The draft of the policy also emphasize the importance to collect gender-segregated data and includes the question of 'place of work' in the next National Census. The federal government has not made any further progress on this initiative; however, the Punjab provincial government has incorporated a policy for Home Based Workers in its Punjab Women Empowerment Package 2012.<sup>180</sup> Pakistan has also amended a number of discriminatory legislator acts towards women and also introduced some new laws for empowering women in different spheres of life. Some of the major legal reforms introduced under CEDAW are as follows:

**2.3.1 The Protection of Women (Criminal Law Amendment) Act 2006** has significantly altered the treatment of rape in the national laws of Pakistan. Previously, cases of rape and adultery were governed by the Islamic Hudood Ordinance of 1979 (more specifically the Zina Ordinance) which failed to make a clear distinction between the two. The Hudood Ordinance was criticized on the basis that if a victim of rape fails to provide enough evidence then she could be charged with committing adultery (*zina*) which is a punishable crime in Pakistan. "What is controversial

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<sup>179</sup> For detail see *Human Rights Commission of Pakistan Report* (2011), Accessed at: <http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2011-A.pdf>

<sup>180</sup> Weiss and Palgrave Connect (Online service), *Interpreting Islam, Modernity, and Women's Rights in Pakistan*, 53.

about this law is that both adultery and rape are subject to same stringent evidentiary requirements which are either a confession by the accused, or the testimony of four adult Muslim men of ‘good character’ who personally witnessed the act of sexual penetration.”<sup>181</sup>

The two Ordinances (*Zina* and *Qazf* Ordinance) have been finally amended to make a clear distinction between rape and adultery (*zina*) the new laws provide more protection to women by making a clear distinction between rape and adultery and bringing them under the consideration of Penal Code, secular criminal law.<sup>182</sup> The government of Pakistan recognized the effectiveness these amendments by reporting that “the separation of *zina* from rape has resulted in the law being implemented more effectively, for example, in Baluchistan. Since the Law was promulgated not a single case of *zina* has been reported. Instead those cases are reported as rape. Now more women are receiving justice instead of being both victim and accused.”<sup>183</sup> The real effectiveness of the enactment of Women Protection Act 2006 cannot be measured because no formal study to assess its impact has not been carried out. Moreover, it is also important to note that adultery is still punishable under Pakistani law.

**2.3.2 Protective Legislations:** The government has introduced a number of protective legislations for women. The Acid Control and Acid Crime Prevention Law is introduced which declares that “the act of mutilating women by the use of acid or other corrosive substance is punishable with death or life imprisonment.”<sup>184</sup> The Prevention of Anti-Women Practices Act was enacted on 22 December, 2011 according to which longstanding harmful customary practices are considered criminal offences. These include practices such as giving females in

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<sup>181</sup> Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations*, 134; Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction? : A Research Study of the Hudood Ordinances and Their Effect on the Disadvantaged Sections of Pakistan Society* (Lahore: Rhotas Books, 1990).

<sup>182</sup> “Consideration of fourth periodic report submitted by Pakistan in UN Doc. CEDAW/C/PAK/4 at 13, 24-25.

<sup>183</sup> *Fourth periodic report of Pakistan* in UN Doc. CEDAW/C/PAK/4, 25.

<sup>184</sup> *Fourth periodic report of Pakistan* in UN Doc. CEDAW/C/PAK/4, 7.

marriage to settle disputes (*badla-e-sulh*); wanni or swara; depriving women from inheriting property; forced marriages and marriages with the Quran. The Protection of Women against Harassment at the Workplace Act 2010 was also introduced. According to this Act, all public and private organizations are required to adopt an internal code of conduct and a complaint/appeal procedure that establishes a non-discriminatory, safe working environment, free of intimidation and abuse for all employees. A clear definition of sexual harassment has been added and punishment of up to three years of imprisonment and/or up to a five hundred thousand rupee fine. According to the Women in Distress and Detention Fund (Amendment) Act 2011 the Human Rights Ministry is responsible for providing psychological and financial support to women in detention, disabled women and other women in distress.<sup>185</sup>

**2.3.3 The Domestic Violence Prevention and Protection Act 2009** was prepared to treat domestic violence as a punishable act. It defines domestic violence in terms of physical, emotional, psychological, verbal, and economic abuse.<sup>186</sup> After the 18<sup>th</sup> Amendment in April 2010, the devolution of power from federal authority to provinces made provincial assemblies responsible for their own legislations. This has led to lack of uniformity and implementation of the law across Pakistan. Sindh was the first province to pass the Domestic Violence Bill in March 2013 followed by the Baluchistan Assembly in 2014. The proposed bill was passed by the National Assembly; however, it has not been passed by the Senate which means it has not yet become a law. The government of Pakistan is not sure when the Bill is going to be passed as it is still under the consideration.

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<sup>185</sup> Weiss and Palgrave Connect (Online service), *Interpreting Islam, Modernity, and Women's Rights in Pakistan*, 44.

<sup>186</sup> Ibid at 24

The Domestic Violence Bill is contentious because it aims to overcome the public and private dichotomy which is perceived as a “threat” to the domestic sphere, family life and stability. The Bill has been opposed by the Council of Islamic Ideology (CII)<sup>187</sup> and conservative religious parties. For instance, one of the woman legislators from Jamiat Ulema-i-Islam-Fazl criticized the Bill for disrupting family by raising the question: “Isn’t it breaking up a family if a husband goes to jail for beating up his wife?”<sup>188</sup> The government has taken initiative to introduce a number of important legislation; however, it has failed to properly implement anything due to a number of factors. These include but are not limited to the lack of centralized and uniform system of government, divergent views on women’s rights, gender stereotypes, and the high level of illiteracy and awareness of gender issues in Pakistan.

#### **2.4 Key areas of Contention:**

The Pakistan government claims that its Islamic Constitution is in full harmony with CEDAW but a closer look at the documents produced during the implementation process reveals some key areas of contention. This section will identify some of the controversial Islamic laws implemented by Pakistan and responses given by the government in its effort to justify them. The explanation given by Pakistan will allow us to understand its approach to women rights reforms and its compatibility with CEDAW’s framework.

**2.4.1 Definition of Discrimination:** The Pakistan Constitution contains various articles that guarantee fundamental human rights and equality before the law to all citizens without any discrimination including on the basis of sex. However, it doesn’t define the term ‘discrimination’ and doesn’t specifically address the issue of discrimination against women. The government of Pakistan has refused to make any legislative changes based on the argument that “the concept of

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<sup>188</sup> Accessed at: <http://www.dawn.com/news/1096299>

discrimination is integral to the Constitution and is implicit in its content.”<sup>189</sup> For example, the Constitution calls upon the state to eliminate all forms of exploitation (Article 3) and to ensure the right to enjoy the protection of law (Article 4). Article 25(2) deals directly with the issue by stating that “there shall be no discrimination on the basis of sex alone.” According to article 27, “No citizen shall be discriminated against in respect of any such appointment (in the service of Pakistan) on the ground only of race, religion, caste, sex, residence or place of birth.” The government of Pakistan argues that “the Constitution thus established clear and specific guarantees against discrimination on the basis of sex.” Therefore, there is no need to include any definition of discrimination against women or introduce special legislations for women.<sup>190</sup>

The CEDAW committee has criticized Pakistan’s stance by arguing that “examples all around the world show that constitutional guarantees of equal treatment for men and women were never enough and had to be backed by specific legislation.”<sup>191</sup> It is extremely crucial to introduce women-focused legislation because the 18<sup>th</sup> Constitutional amendment has devolved power to the provinces in Pakistan. The concept of discrimination cannot be left open to the interpretation of courts and judges in each province. There is a need to ensure that the concept of discrimination is uniform and must be implemented in the same manner across the country. This can only be assured if a clear and concrete legislation for women is included in Pakistan’s Constitution.

**2.4.2 Qisas and Diyat Law (retribution and money compensation):** Pakistan is ranked among the top countries in the world where women become victims of honor killings. The patriarchal culture and customary practices reinforce the idea that women are the “honor” of the family. Any

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<sup>189</sup> *Combined initial, second and third periodic report* submitted by Pakistan in UN Doc. CEDAW/C/PAK/1-3, 2.

<sup>190</sup> *Combined initial, second and third periodic report* submitted by Pakistan in UN Doc. CEDAW/C/PAK/1-3, 21.

<sup>191</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, Summary Record of the 782<sup>nd</sup> meeting (22 May, 2007) in UN Doc. CEDAW/C/SR.781, 4.

action taken by women against the will of the family often results in her killing (mostly in villages and remote areas) which is justified in the name of preserving “honor.” In 2013, 869 women were killed in the name of honor.<sup>192</sup> Many cases are not even reported due to the social taboo, poor justice system, and lack of gender-sensitivity of government official to deal with the victims.

Another major reason for the high rate of this crime is imbrication in the law. The Criminal Law (Amendment) Act of 2004 has been amended and honor killing is now recognized as a criminal offense in Pakistan Penal Code. A definition of honor killing has also been introduced with a minimum penalty of ten years and a maximum of fourteen years of imprisonment. However, under the Qisas & Diyat Law (Q & D) the family of the victims has the right to forgive or take blood money as a form of compensation. A majority of honor killings go unpunished because the victims’ family often accepts the compensation money or justifies it in the name of preserving family honor.

There is a controversial debate taking place in Pakistan as to whether the Qisas and Diyat Law should be revised, replicated or simply eliminated because it provides the loophole to commit crimes against women. The critics argue that the law is problematic because it considers bodily harm and murder as a private affair as opposed to a crime against the state. In order to eliminate violence against women, Pakistan needs to eliminate private/public dichotomy from its jurisprudence system. The government of Pakistan has stated that under its treaty obligations, Section 311 of the Penal Code empowers the Court to punish an accused even after the family has exercised the right to forgive.

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<sup>192</sup> For detail see Human Rights Commission of Pakistan Report (2013), 180. Accessed at: <http://www.hrcp-web.org/hrcpweb/report14/AR2013.pdf>

The government has refused to make further amendments based on the justification that the superior courts have successfully handed down judgments and punished perpetrators for the offenses they committed in cases of honor killing. The killings in the name of honor continue due to harmful customary practices as opposed to “discretionary powers of the court.”<sup>193</sup> The CEDAW committee has criticized the measures taken by the government as being insufficient. The crimes against women will continue to exist as long as people think they can escape prosecution and conviction by offering monetary compensation.<sup>194</sup> The Committee points out that there is a need to ensure uniformity and proper implementation of the law so that all honor killing crimes are effectively sentenced irrespective of the relationship between the perpetrator and the victim.

**2.4.3 The Citizenship Act (1951)** does not grant equal nationality rights to men and women which contradicts the Article 2 and 9 of CEDAW and Article (25) of the Constitution of Pakistan. Pakistani women were not allowed to transfer nationality to their children and foreign husbands. In 2000, the government amended the Act to enable a child to inherit the nationality from its mother even if his or her father is not a Pakistani citizen. However, under the law a woman is not able to transmit nationality to her foreign husband. In 2007, the government announced that the matter is under consideration but the government has “decided to issue identity cards to those spouses and allowed them to own property in order to ease their integration into Pakistani life”<sup>195</sup>

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<sup>193</sup> *Replies of Pakistan to the list of issues to be taken up in connection with the consideration of its fourth periodic report* at fifty-fourth session of CEDAW (11 February- 1 March, 2013) in UN Doc. CEDAW/C/PAK/Q/4/Add.1, 7.

<sup>194</sup> *Concluding Observations on the fourth periodic report of Pakistan*, adopted by the Committee at its fifty-fourth session of CEDAW (11 February- 1 March, 2013) in UN Doc. CEDAW/C/PAK/CO/4, 6.

<sup>195</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, summary record of the 782<sup>nd</sup> meeting (22 May 2007) in UN Doc. CEDAW/C/SR.782, 3.

**2.4.4 Minimum Age for Marriage:** The minimum age for marriage is eighteen for boys and sixteen for girls. The law is gender discriminatory and clearly violates Pakistan's international treaty obligations under CEDAW and the Convention on the Rights of Child. There is a lot of opposition to raising the minimum age of marriage for girls from sixteen to eighteen years. The Council of Islamic Ideology declares the proposed bill "unIslamic" and argues that according to the Islamic law any child could get married when he or she attains puberty. The minimum age of marriage cannot be set because the age of puberty varies from individual to individual.<sup>196</sup> The government of Pakistan recognizes that the law needs to be reformed. A bill for standardization of marriage age for males and females is under process in the Sindh Assembly.<sup>197</sup>

## **2.5 Challenges of Implementing CEDAW**

The government of Pakistan has drafted a number of women-friendly legislative acts but the main challenge is effective implementation of these provisions. After all, new laws are beneficial only when they are successfully integrated into the Constitutional system and applied in practical situations. There are number of factors that pose a serious challenge to achieving this goal. This section will show that although Pakistan doesn't make any direct reference to the Quran, the main challenge it faces is reconciliation of its Islamic laws and precepts with the notion of universal human rights.

**2.5.1 Political instability and Politicization of religion:** In 1947 Pakistan was established by abandoning the former homeland (India) and heredity linkages in favor of an idea of membership solely based on "Muslim identity." However, the role that Islam was to play within the

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<sup>196</sup> Accessed at: <http://www.dawn.com/news/1092468>; and <http://www.dawn.com/news/1107849>

<sup>197</sup> *Replies of Pakistan to the list of issues to be taken up in connection with the consideration of its fourth periodic report* at fifty-fourth session of CEDAW (11 February- 1 March, 2013) in UN Doc. CEDAW/C/PAK/Q/4/Add.1, 17.



Constitutional framework of the State was unclear.<sup>198</sup> The Pakistan Constitution guarantees equality before the law; however, pursuit of gender equality has frequently been sacrificed to gender stereotypes, religious-cultural claims, nationalist claims, politicization of religion and an agenda of Islamization. The failure to clearly identify the boundaries within which the ‘injunction of Islam’ should be applied has led to conflicting measures being taken by Pakistan on women’s rights.<sup>199</sup> This becomes evident in a number of judicial decisions in Pakistan, constitutional reforms, and participation in international human rights treaties (including CEDAW) which has “been influenced by a political history that has oscillated between elected governments and military regimes, both of which have used Islam as a tool of expediency.”<sup>200</sup>

Ann Elizabeth Mayer rejects the idea that states uphold reservations solely based on religious beliefs and draws our attention to the political motives behind such measures. She argues that Muslim countries may claim that their religion is universal and timeless; however, their reservations to CEDAW are mutable outcomes of politics. The understanding of Islamic principles including Islamic law and treatment of women vary significantly within the Muslim world. Similarly, Islamic reservations made by Muslim countries in the name of religion are diverse, and they too are subject to change. After ratifying CEDAW, some countries may modify discriminatory laws/practices or discard reservation. Therefore, it is the “evolving political contingencies, not Islamic beliefs that turn out to be determinative factors.”<sup>201</sup>

Mayer’s observation applies accurately in the case of Pakistan where Islam has been used both for and against the empowerment of women, depending on who is deploying it and for what

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<sup>198</sup> Faisal. Devji, *Muslim Zion: Pakistan as a Political Idea*, 2013, <http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=654355>.

<sup>199</sup> Siobhán Mullally, “‘As Nearly as May Be’: Debating Women’s Human Rights in Pakistan,” *Social & Legal Studies* 14, no. 3 (September 1, 2005): 342, doi:10.1177/0964663905054908.

<sup>200</sup> Hellum and Aasen, *Women’s Human Rights*, 435.

<sup>201</sup> Howland, *Religious Fundamentalisms and the Human Rights of Women*, 106.

reasons. For example, Islamic law such as the Muslim Law of Shariat (1948) recognized a woman's right to inherit all forms of property. The 1961 Muslim Family Laws Ordinance (MFLO) gives economic and legal protection to women by regulating marriage and divorce, and restraining polygamy. It required registration of all marriages; written permission of a wife to be presented before an arbitration council before a man could get second marriage; prohibited abolition of divorce by oral announcement (*talaq*), and provided other safeguards for women in case of divorce. The MFLO was the first ordinance to guarantee women's rights and protection, and their "proper place in society according to the fundamentals of Islam" through a codified system of law.<sup>202</sup> The 1973 Islamic Constitution further enhanced women's status by condemning discrimination based on sex, and guarantee equality of rights and protection to all citizens.

The laws passed by Zia-ul-Haq's military regime (1977-87) six years later were also justified on the basis of establishing "Islamic system in the country." Zia-ul-Haq's regime offers a good example of politicization and exploitation of religion as a means to introduce misogynistic state policies. The Council of Islamic Ideology was established to ensure successful implementation of the "Islamization" project and whose role/judgments are controversial yet today (to be discussed later). The "Islamization project" claimed to restore the sanctity of the *chador aur chardiwari* (veiled women kept within the confines of the homes). The Hudood Ordinance focused on implementing punishment based on Shari'a (Islamic law) related to crimes such as theft, consumption of alcohol, adultery and fornication. As discussed earlier, this law failed to create a clear distinction between adultery and rape. As a result, a number of women victims of rape were sent to jail for committing adultery because they failed to provide "enough"

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<sup>202</sup> "Report of the Commission on Marriage and Family Laws" *Gazette Extraordinary* (June 20, 1956), 119-8.

evidence of being raped. The Hudood Ordinance was implemented in the name of Islam when it clearly violated article 25 of the Constitution which guaranteed equality to all citizens. Under the treaty obligations of CEDAW, the law has finally been amended under the Criminal Law Amendment Act of 2006.

Even after Zia's military dictatorship period, women's rights activists found themselves struggling against inconsistencies in the government policies and religio-political conservatism. Nawaz Sharif serving a Prime Minister during the second term (1997-99) developed a National Plan of Action to undertake writing of CEDAW reports and expressed intention of ratifying other UN human rights treaties. On the other hand, it did not repeal gender discriminatory laws based on the recommendations of the Commission of Inquiry for Women's Report. In October 1997, the Punjab government announced a ban on cultural activities in girls' schools and colleges, and instructed them to follow a 'modest' code of dress. It also declared that women should not appear in close proximity with men in commercials, TV series or in other media broadcasts. Dance performances by women were banned but no restriction was placed on male artists and dance performers. Tahmina Rashid, rightly observes that "these were mere announcements and none were backed by official notifications or legislative measures, making it difficult for women's organizations and activists to respond to a situation where ambiguity existed reading the legal status of these announcements."<sup>203</sup>

During the military rule of General Pervez Musharraf (1999-2008) special emphasis was made on the social and political empowerment of women. He introduced a number of important women focused legislative acts such as increasing the number of seats reserved for women in national and provincial assemblies. The National Commission on the Status of Women (NCSW)

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<sup>203</sup> Tahmina Rashid, *Contested Representation: Punjabi Women in Feminist Debate in Pakistan* (Karachi: Oxford University Press, 2006), 147.

was established to work specifically for ‘the protection of women in the country.’<sup>204</sup> He approved the Women Protection Act of 2007 which finally reformed the controversial Zina Ordinance after twenty-five years of demands of women’s rights activists. Moreover, a three-month amnesty was given to women prisoners involved in minor crimes, mainly those charged with adultery under the Zina Ordinance. Musharraf’s ‘enlightened moderation’ policy aimed to eliminate gender discriminatory attitudes and social practices through various social awareness media programs and public-debate forums. He also encouraged co-education, women’s participation in public activities and sports, and increased the appointment of women in the armed forces.

Weiss contends that Musharraf aimed to improve Pakistan’s image in the global community so he focused on only improving women’s political and legal status as opposed to paying attention to other equally important issues. She argues that “in the various initiatives Musharraf’s government undertook, it often used language that resembles the requirements of CEDAW such as the terminology of “creating enabling conditions. This signifies that the Government of Pakistan’s concerns were more with its reputation within the international diplomatic community than necessarily with promoting substantive transformations domestically.”<sup>205</sup> This signifies that religion-based politics in Pakistan has allowed each government to use ‘religion’ to advance its own political agenda. As a result, there is lack of consistency in the government’s approach to women’s rights issues and the measures it has taken to resolve them.

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<sup>204</sup> For detail on the National Commission on the Status of Women (NCSW): <http://www.ncsw.gov.pk/>

<sup>205</sup> Weiss and Palgrave Connect (Online service), *Interpreting Islam, Modernity, and Women’s Rights in Pakistan*, 36.

**2.5.2 Constitutional framework:** Another reason for the failure to successfully repeal all gender discriminatory laws is that Pakistan's Constitutional framework is not consistent on women's rights.<sup>206</sup> Mullally argues that "tensions between the constitutional commitment to equality and the 'Islamization' of the state continue to fragment Pakistan's constitutional framework. These tensions suggest a conflict between the requirements of Islam and the egalitarian values enshrined in the fundamental rights provisions of the constitutional text."<sup>207</sup> On the one hand, Pakistan's Constitution guarantees that there can be no discrimination based on sex and all citizens enjoy equal rights before the law. On the other hand, the Constitution requires that no law can be implemented which is against the injunctions of Islam. This poses a serious challenge in the case where certain Islamic laws are interpreted in a way that are clearly gender-discriminatory in nature such as the Hudood Ordinances, the Law of Evidence and the Law of Inheritance.

The Islamic Law of Inheritance is based on verses eleven and twelve of the Quran (Chapter: 'The Women') which are commonly interpreted to mean that a male shall inherit twice as much as a female.<sup>208</sup> For example, a son's inheritance would be equal to that of two daughters. In Pakistan inheritance are determined based on the school of jurisprudence to which the deceased subscribed or as stated in their will. If there is no will then the Law of Inheritance is applied according to which men and women do not have equal rights. As a result, the state fails

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<sup>206</sup> For example see: Weiss, "Interpreting Islam and Women's Rights Implementing CEDAW in Pakistan"; Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Leiden; Boston: M. Nijhoff, 2006), <http://dx.doi.org/10.1163/ej.9789004149274.i-250>; Jan Michiel Otto, ed., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2011); Fred Halliday and Hamza Alavi, *State and Ideology in the Middle East and Pakistan* (Houndmills, Basingstoke, Hampshire: Macmillan Education, 1988).

<sup>207</sup> Mullally, "As Nearly as May Be," 342.

<sup>208</sup> The Quran, *Surat An-Nisa* (The Women), and 4:11: "Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half." Accessed at: <http://quran.com/4/11>

to provide equal inheritance rights to women because it goes against the way Islamic inheritance law is implemented by the State. This directly contradicts article 15 of CEDAW according to which women should be accorded equal legal status to men under the law,<sup>209</sup> and equal legal capacity to perform civil and administration tasks concerning property management and court procedures.<sup>210</sup>

The Law of Legal Evidence is more problematic which is based on verse 282 in the Quran (in the Chapter ‘The Cow’).<sup>211</sup> The Law of Evidence promulgated in 1983 did not treat women’s testimony equal to men and could treat woman’s testimony irrelevant unless other woman corroborated it. In practice, this law has been interpreted in a number of ways. In Pakistan, women’s testimony is treated equal to that of men except in certain kinds of financial matters. As a result, women’s rights to participate in financial matters in an equal manner to men is clearly violated. The Law of Inheritance and the Law of Legal Evidence exemplifies that in some cases women and men are treated differently under Pakistani law based on the way Islamic laws are interpreted and implemented by the state. The inconsistency in the constitutional framework and implementation of women friendly legislations signifies that:

“Pakistan’s discourse on women’s rights and on the CEDAW is influenced by the interpretation of those in positions of power (often mitigating against women’s rights), who are not necessarily those in government. While the government may subscribe to the rhetoric of women’s rights, and may desire to be seen as subscribing by the international community and by elements of Pakistan civil society, there exists a dissonance between formal

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<sup>209</sup> Article 15 (1) of CEDAW

<sup>210</sup> Article 15 (2) of CEDAW

<sup>211</sup> “A common translation of the Quranic verse on which the Law of Evidence is based reads as follow: “Call in two male witnesses from among you, but if two men cannot be found, then one man and two women whom you judge fit to act as witnesses; so that if either of them commit an error, the other will remember” in Kenneth M Cuno and Desai, *Family, Gender, and Law in a Globalizing Middle East and South Asia* (Syracuse, N.Y.: Syracuse University Press, 2009), 169, <http://site.ebrary.com/id/10493609>.

laws and governmental policy on the one hand, and practicing belief on the other.”<sup>212</sup>

The prevailing sense is that Pakistan cannot guarantee equal rights to women in all spheres of life as it may contradict Islamic precepts and common sentiments of the local populace. Pakistan’s reservation to CEDAW creates further complications because by “subjecting the Women’s Convention to the requirements of constitutional law, already problematic from the point of treaty law, leaves the pursuit of gender equality vulnerable to religious-cultural claims and the political agendas of conservative nationalists.”<sup>213</sup> The government of Pakistan must find a way to reform its contradictory political stance: simultaneously claiming to reform women’s rights in compliance with its international commitments while maintaining traditional and conservative Islamic precepts on the national level.

**2.5.3 Various Conceptions of Women’s rights:** Weiss notes that Pakistan faces a unique challenge in implementing women’s rights because “the very concept of women’s rights elicits disparate, conflicting images in contemporary Pakistan. What constitute women’s rights, who is to define what these rights are, and where responsibility lies for ensuring these rights is hotly discussed in Pakistan, though rarely actually debated.”<sup>214</sup> There are various conceptions of women’s rights and social roles within Pakistan. For example, members of conservative religio-political parties such as the Jamaat-i-Islami and the Sipah-sahaba experience their identity as inseparable from Islam. These groups practice rigid interpretation of the sacred text and reject other egalitarian approaches towards Islam.

In 2004, the Jamaat-i-Islami organized an international conference titled ‘Strong Family, Surety of our Survival and Women’s Rights.’ They also established an ‘anti-obscenity campaign’

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<sup>212</sup> Hellum and Aasen, *Women’s Human Rights*, 436.

<sup>213</sup> Mullally, “‘As Nearly as May Be,’” 352.

<sup>214</sup> Weiss and United States Institute of Peace, *Moving Forward with the Legal Empowerment of Women in Pakistan*, 2.

for the ‘protection of women’ and their representation in media.<sup>215</sup> Advertising flyers and billboards were destroyed and images depicting female models were defaced in all major cities of Pakistan. According to the youth wing of Jammat-i-Islami (Sahab e Milli) the anti-obscenity campaign was a ‘feminist act’ because it discouraged sexualization of women.<sup>216</sup> This conception of women’s empowerment contradicts the aspect of the CEDAW that prohibits the practice of making decisions on behalf of women and its guarantees equal participation and representation of women in all spheres of life.

Some of the other approaches to women’s rights in Pakistan include faith based activism practiced by the Islamic revivalist, piety movements and Islamic feminists<sup>217</sup> who consider themselves ‘moderate.’ They aim to empower women by reinforcing religious identity of Muslim women and guarantee rights within the Islamic framework.<sup>218</sup> In contrast, urban-based women rights activists reject the practice of determining women’s rights by Islamic injunctions and adhere to the universal notion of human rights.<sup>219</sup> The failure of Pakistan government to create social awareness and public consensus on women’s rights has led to an unforeseen circumstance of fueling the ‘culture wars’ between these different groups.<sup>220</sup>

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<sup>215</sup> Nazish Brohi, *The MMA Offensive: Three Years in Power, 2003-2005* (ActionAid International, 2006), 68.

<sup>216</sup> Ibid., 78.

<sup>217</sup> The term refers to scholars and activists that aim to establish gender equality through research and reinterpretation of the Islamic history, the Quran and Islamic Law. They offer egalitarian readings of the sacred text and advocate for egalitarian approaches to Islam. This includes authors such as Farida Shaheed, Amina Wadud, Fatima Mernissi, Margot Badran, Miriam Cooke, Leila Ahmed and Khaled- Abou-el-Alfadi. Some of the organizations include *Women Living Under Muslim Law (WLUML)*: <http://www.wluml.org/> and *Musawah* (meaning equality): <http://www.musawah.org/>

<sup>218</sup> For example, *Al-Huda* (meaning guidance) Movement in Pakistan: <http://www.alhudapk.com/>. For detail discussion on Al-Huda movements and its role in Pakistan see Sadaf. Ahmad, *Transforming Faith: The Story of Al-Huda and Islamic Revivalism among Urban Pakistani Women* (Syracuse, N.Y.: Syracuse University Press, 2009).

<sup>219</sup> This includes urban-based women’s rights activists and NGOs such as Aurat Foundation, AGHS, Simorgh, Women Action Forum, Shirkat Gah, and Action Aid. For detail on the role of these groups see Weiss and Palgrave Connect (Online service), *Interpreting Islam, Modernity, and Women’s Rights in Pakistan*, 75–99.

<sup>220</sup> ANITA M. WEISS, “ISLAMIC INFLUENCES ON SOCIOLEGAL CONDITIONS OF PAKISTANI WOMEN,” *Oriente Moderno*, Nuova serie, 23 (84), no. 1 (January 1, 2004): 322.



There is also a lack of consensus and consistency on women's rights policies on the governmental level. Under the eighteenth amendment to the Constitution of 2010, the federal government transferred greater power and responsibility to the provinces to create their own policies. This includes significant sectors such as health, education, employment and all matters related to the advancement of women. The federal Ministry of Women's Development was the entity responsible for women's rights issues in Pakistan. Its main responsibilities include investigating issues concerning women; proposing new laws; preparing and compiling reports for CEDAW and responding to gender-related inquiries by national and international human rights agencies. After the devolution of power, each province is responsible for creating its own provincial Ministry of Women's Development, as well.

This devolution of power has led to a lack of coordination and an integration of policies between the provinces to ensure uniform implementation thereof policies from the national to provincial level. For example, the Sindh government has approved important legislations for women such as the Domestic Violence Bill, and the Minimum age for Marriage Bill whereas other provinces have failed to do so. The Women Development Department of Sindh claims that women's lives needs to be improved in all spheres to truly establish gender equality, a vision that is aligned with CEDAW. However, the provincial government of Kyber-Pakhtun-Khaw (KPK) has failed to distinguish between women's empowerment programs and social welfare activities and continues to focus on the latter. This signifies KPK's different interpretation of women's rights in which women are perceived as a group in 'need' of social welfare assistance.<sup>221</sup>

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<sup>221</sup> For detail on Khyber Pakhtunkhwa's (KPK) Provincial Ministry for Social Welfare and Development see: <http://www.khyberpakhtunkhwa.gov.pk/khyberpk/homepage.php?deptID=41>

In November 2002, the Muttahida-Majlise-Amal (MMA) came into power in collaboration with six conservative Islamist parties in KPK.<sup>222</sup> The alliance aimed to implement a more conservative approach to Sharia as the rule-of-law and proposed the Hisba Bill to eliminate “non-Islamic” practices from the province. The Bill claimed to ‘implement an Islamic system and protect Islamic values’ with the aim of ensuring the ‘supremacy of Islamic Law and enactment of legislation according to the recommendation of the Islamic Ideological Council.’<sup>223</sup> In 2005, the MMA proposed a ‘Prohibition of Indecent Advertisements Bill 2005’ to label “indecent” advertisements as criminal offence. MMA came into power in October 2002 and was subsequently voted out of power in February 2008. The party is no longer in power; however, it set a significant precedent that such conservative Islamic provincial governments have a significant impact on women’s rights agenda in Pakistan.

Pakistan has failed to develop a uniform approach and policy in the application of women’s rights laws across the country. The CEDAW committee has expressed its concern that different levels of authority and competence within Pakistan may result in different interpretation and application of the law.<sup>224</sup> The devolution of power also poses a serious challenge for the government to manage and follow-up on the fulfillment of its treaty obligations in each province. In other words, “the issue today concerning the state’s interpretation of women’s rights is how can the vision at the federal level—which is heavily focused on conforming to and responding to

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<sup>222</sup> Jamaati-Islami, Jamiat ulema-e-Islam (Fazl-ul-rehman group), Jamiaat ulema-e-Islam (Sami ul- Haq group), jamiat ulema-e-Pakistan, Markazi Jamiat Ahle-Hadith, and Tehrik Nifaz Jaferiya cited in Weiss 2014 article 173)

<sup>223</sup> Anita M Weiss, Khattak, and American Institute of Pakistan Studies, *Development Challenges Confronting Pakistan* (Sterling, VA: Kumarian Press, an imprint of Stylus Publishing, 2013), 173.

<sup>224</sup> *Concluding Observations on the fourth periodic report of Pakistan*, adopted by the Committee on at its fifty-fourth session (11 February- 1 March, 2013) in UN Doc. CEDAW/C/PAK/CO/4 at 3.

international treaties—be translated to the various provinces, especially as there is no way the federal government can compel them to “keep in line?”<sup>225</sup>

**2.5.4 The Council of Islamic Ideology (CII):** The CII was established as an advisory constitutional body to ensure that no law is enacted which is repugnant to the Holy Quran and Sunnah.<sup>226</sup> The CII offers only recommendation; it does not hold power to enact laws. However, it does play a crucial role in influencing decision making and implementation of the law. The CII is dominated by men with conservative religious views. According to the rules, the council should have at least eight and not more than twenty members, and at least one should be a woman. There is a clear gender disparity within the CII body that needs to be reformed. The CII should have more female representatives who have expertise in Islamic law and also understand international commitment to universal human rights principles. Moreover, the CII committee is not elected through any proper procedure as there is no eligibility criteria. The Council members are nominated for three-year terms and are eligible for re-nomination. The CII remains a controversial body especially with regards to women’s rights issues and politicization of religion. For example, in its annual report of 1997, the CII recommended making hijab obligatory.<sup>227</sup> The CII condemned the Domestic Violence Bill on account of which it failed to pass the Senate on time and it is still under consideration. It also voted against raising the minimum age of marriage for girls from sixteen to eighteen. As a result, the Minimum Age for Marriage Bill is also waiting to be passed by the government. On this basis, it can be argued that the CII has not only failed to

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<sup>225</sup> Weiss and Palgrave Connect (Online service), *Interpreting Islam, Modernity, and Women’s Rights in Pakistan*, 42.

<sup>226</sup> For detail on the functions of the CII see: *Fourth periodic report of Pakistan* in UN Doc. CEDAW/PAK/4 at 97 and Annex II.

<sup>227</sup> Rashid, *Contested Representation*, 147.

support women's rights legislation but plays a crucial role in resisting progressive reforms in Pakistan.

**2.5.5 Illegal Dispute Resolution Mechanisms:** *Jirgas* and *panchayats* (tribunal/feudal groups) are illegal conflict resolving systems commonly practiced in various parts of the country (more common in villages and/or remote areas). These consist of elderly and respected male members of the community that give judgements to resolve conflicts in a speedy manner. It is used as a substitute for court procedures and aims to provide cheap and speedy "justice." These illegal systems are strongly patriarchal in nature and known for archaic use of customary practices to resolve conflicts due to the high level of illiteracy, lack of knowledge of the law or human rights. They have passed a number of inhumane and degrading judgments especially against women such as the use of rape, honor killing and forced marriage to resolve conflicts. The tribunal/feudal groups and their practices violate various Articles of the Constitution (such as article 4, 9, 10, 14, 25, 34, 37), which guarantees legal protection, the right to enjoy liberty and justice, and the right to be treated in accordance with the law to all citizens of Pakistan.<sup>228</sup>

The CEDAW committee has raised the issue of illegal systems operating in the country. Initially the government made troubling statements such as "no one was under the obligation to use it." The government has taken measures to ensure that "more serious cases that fell outside their sphere of Jirga's competence should be reported to the police."<sup>229</sup> Despite the illegality aspect, the government statement is unacceptable because "unlike the regular court system, jirgas focus on 'settlement' not 'trial' to prove anyone guilty or innocent and have the inherent flaw of

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<sup>228</sup> *Pakistan NGO Alternative Report on CEDAW*, (Lahore: Aurat Foundation Publication, 2012), 10. Accessed at <http://www.af.org.pk/cedaw-reports.php>

<sup>229</sup> *Consideration of combined initial, second and third periodic report of Pakistan*, summary record of the 781<sup>st</sup> meeting (22 May 2007) in UN Doc. CEDAW/C/SR.781, 9.

condemning the accused without the hearing.”<sup>230</sup> In addition to international criticism, the government has finally taken the matter somewhat seriously.

The fourth periodic report states that: “In April 2004, the Sindh High Court imposed a ban on holding jirgas in the province. Subsequently, in 2008, the Sindh Government issued directives to all District Police Officers to ensure a complete ban on holding illegal jirgas and arresting those involved.”<sup>231</sup> The measures taken by the government are not sufficient because the judgment passed is binding only to the Sindh High Court and not all over the country. Even the Sindh High Court has imposed a “ban” as opposed to clearly declaring these systems as illegal. The Sindh High Court has played a crucial role in passing sanctions against members of these systems. However, the cases are pending since 2008 and have not been resolved yet.<sup>232</sup>

S.S. Ali notes that one way to evaluate a country’s progress towards effective implementation of international human treaties would be the use of its provisions in judicial contexts. In Pakistan the reported case laws of superior judiciary<sup>233</sup> from accession in 1996 to 2010 consist only of four judgments where the court specifically alluded to CEDAW. Two judgments are delivered by the same judge of the High Court.<sup>234</sup> The CEDAW committee has also expressed the concern that Pakistan has not fully incorporated the Convention into its national legislation.<sup>235</sup> It is true that Pakistan is struggling to incorporate CEDAW into its constitution and socio-cultural system. However, it is important to note that the effective use of CEDAW in these four cases signifies Pakistan’s ability to implement an egalitarian approach to

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<sup>230</sup> Farida. Shaheed and Shirkat Gah., *Shaping Women’s Lives: Laws, Practices and Strategies in Pakistan* (Lahore: Shirkat Gah, Women’s Resource Centre, 1998), 227.

<sup>231</sup> *Fourth periodic report of Pakistan submitted to CEDAW* in UN Doc. CEDAW/C/PAK/4, 4.

<sup>232</sup> *Pakistan NGO Alternative Report on CEDAW*, (Lahore: Aurat Foundation Publication, 2012), 43. Accessed at: <http://www.af.org.pk/cedaw-reports.php>

<sup>233</sup> Consisting of Five High Courts and the Supreme Court

<sup>234</sup> Hellum and Aasen, *Women’s Human Rights*, 448.

<sup>235</sup> *Fourth periodic report submitted by Pakistan* in UN Doc. CEDAW/C/PAK/4 at 4.

Islam and High-Court concern in mediating between local and global concerns. The failure to translate these judicial initiatives and decisions into legislative reforms reflects deeper conservatism within Pakistani political institutions.<sup>236</sup>

This chapter has argued that Pakistan has failed to reform gender discriminatory laws and social practices in compliance with its international treaty obligations of CEDAW. The failure of Pakistan to justify its Islamic reservation to the Convention, lack of methodological framework and transparency in the system, inability to submit all four periodic reports on time and its refusal to provide any clear implementation plan elucidates its lack of commitment to women's rights. The poor implementation of CEDAW in Pakistan also raises questions about effectiveness of the CEDAW in implementing laws at a national level. Before making any concluding comments on the implementation of the Convention in Pakistan, it is crucial to understand the limitations and issues within CEDAW's framework as well. The next chapter will closely analyze debates on efficacy of CEDAW as an international women's right policy and its role in establishing gender equality in a global context.

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<sup>236</sup> Mullally, "As Nearly as May Be," 403.

## Chapter 3

### **Analyzing Efficacy and Contribution of CEDAW**

The second chapter used the Islamic Republic of Pakistan as a case study to examine various challenges in implementing universal women's rights on a national level. It was observed that implementing CEDAW becomes particularly more challenging in religious and cultural based societies. This is because the notion of women's rights often becomes convoluted with culture, religion, and dichotomy in the private and public sphere. Since Pakistan ratified CEDAW in 1996, one can hardly observe any significant measures taken by the government to improve the socio-legal status of women. The poor implementation of CEDAW in Pakistan signifies two important interlinked issues. On one hand, it signifies Pakistan's lack of commitment to clearly address women's rights issues at the national level. On other hand, poor implementation brings our attention to weaknesses and limitations within the CEDAW's framework.

CEDAW has been criticized for its theoretical approach to women's rights and its practical limitations in establishing gender equality. First, this chapter will critically engage with five main criticisms of CEDAW (covered in section 3.1-3.5). It will be argued that despite its limitations, CEDAW has the potential to implement fundamental rights of women around the globe. Section 3.6 will illustrate various factors that lead to poor implementation of the Convention. This chapter will argue that CEDAW provides theoretical and normative tools to eliminate all forms of discrimination against women. However, a large gap continues to exist between implementing women's rights in particular settings. This gap could be overcome by improving methodological tools and implementation strategies based on challenges faced on a national level. Finally, this study will conclude with a few recommendations to improve implementation of CEDAW. The five main criticisms of CEDAW are as follow:

### 3.1 Defining the term ‘women’

First, there is a concern whether the term “women” could be used as a universal category which has a uniform meaning around the globe. Rosenblum contends that the Convention is created for women; however, it does not make any attempt to define its central subject. He argues that using a universal term ‘women’ is problematic because its meaning varies from one country to another. The use of a general term undermines myriad ways in which gender roles and identities are constructed in different cultures.<sup>237</sup> CEDAW doesn’t make any attempt to define ‘women’ due to its fear of fragmentation of the global women’s movement. In other words, CEDAW is accused of achieving universal ratification at the cost of inhibiting cultural variations.<sup>238</sup>

**Response:** CEDAW does not contain a definition of ‘women’ because of the time it was created. Like other UN treaties, CEDAW condemns discrimination based on ‘sex’ which is understood as a biological category. It is possible that drafters of CEDAW decided to avoid contested language that may undermine its widespread ratification. The use of “women” as an open-ended term allowed to unify state parties that may have disagreed on a definition. CEDAW later included the term ‘gender,’ which signifies socially constructed identities and gender roles for men and women which vary in different cultures.<sup>239</sup> CEDAW emphasizes that “biological as well as socially and culturally constructed differences between women and men must be taken into account.”<sup>240</sup> “This understanding of gender clarifies that the term is not equated with women (as is often the case). But is rather concerned with the relations, notably those of the distribution of power, between women and men.”<sup>241</sup>

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<sup>237</sup> Ibid. 162.

<sup>238</sup> Ibid. 118.

<sup>239</sup> General Recommendation no.28 of CEDAW in UN Doc. CEDAW/C/GC/28

<sup>240</sup> General Recommendation no.25 of CEDAW in UN Doc. CEDAW/C/GC/25

<sup>241</sup> Rudolf, Freeman, and Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women*, 15.



It is also important to note that efforts to define the term ‘women’ rests on the assumption that it refers to something fixed and knowable. CEDAW offers a better approach to women’s issues that addresses political limitations of fixing its subjects through definition. CEDAW recognizes that myriad identities of women cannot be consolidated under a rigid label. Instead, it focuses on the idea that freedom from discrimination allows women to pursue their interests. In this way, “the issues outlined by CEDAW do not apply merely to a particular subset of women but, rather, to all women, regardless of any other cross-cutting identity. Most countries in the world have ratified it, giving it global legitimacy as an indicator of women’s interest.”<sup>242</sup>

This study proposes that CEDAW is a dynamic document which exemplifies the interlocking relationship between civil, political, economic and social rights, all of which are contained in the same document. It recognizes that women are actively engaged in (re)creating and (re)defining their identities and experiences on a daily basis. Therefore, the Convention regularly revises its ways of addressing women’s issues in consultation with state parties and local NGOs.

### **3.2 Accommodating socio-cultural differences**

The second concern relates to addressing socio-cultural differences among women in the discourse of universal human rights. CEDAW faces a challenge to determine “whether equal rights guarantees will translate into actual equality of opportunity and outcome for women. Since, the conception of equal rights and the balance of power between men and women may differ across national boundaries.”<sup>243</sup> Third-world feminists challenged UHRL strategies by arguing that the male/female divide obscures socio-cultural differences between first and third

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<sup>242</sup> Lisa Baldez, “The UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A New Way to Measure Women’s Interests,” *Politics & Gender* 7, no. 03 (September 2011): 422, doi:10.1017/S1743923X11000183.

<sup>243</sup> Peters and Wolper, *Women’s Rights, Human Rights*, 118.

world women.<sup>244</sup> The debate of universal and particular is not new to international human rights; however, third-world feminists have successfully called for a “culturally sensitive universalism.”<sup>245</sup> For example, Ruth Mompati explains that women in the South African Federation do not relate to the equality standards because they are more concerned about providing for their families. She observes that in this case, “the equality framework superimposed by law may serve to distort the realities of women’s lives.”<sup>246</sup>

**Response:** The Convention’s unique approach allows it to implement universal human rights while catering to the demand of ‘culturally sensitive universalism.’ As discussed earlier, CEDAW allows its state parties to hold reservations based on religion and cultural differences. The condition being that it does not undermine the objective to eliminate discrimination against women. Cook notes that “the spirit of the Women’s Convention may be subsequently realized when state parties that entered the treaty with reservations determine that legal and other evolutions have occurred domestically that set the stage for the withdrawal of their reservation.”<sup>247</sup> Hence, the Convention that emphasizes universality of right may at times also serve the goal of establishing integrity. On this basis, it can be argued that CEDAW aims to gradually establish UHR of women as opposed to simply condemning and excluding countries that are unable to meet its treaty obligations right away.

The Convention also provides a unique platform where its signatories discuss various conceptions of women’s right around the globe. Representatives of different countries engage in a constructive dialogue to develop transnational consensus building and effective solution making techniques. S. E. Merry defines CEDAW as a “transnational social and modern space”

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<sup>244</sup> Buss and Manji, *International Law*, 48.

<sup>245</sup> Ibid., 49.

<sup>246</sup> Peters and Wolper, *Women’s Rights, Human Rights*, 119.

<sup>247</sup> Cook, “Reservations to the Convention on the Elimination of All Forms of Discrimination against Women,” 686.

where “actors come together simultaneously as locally embedded people and as participants in a transnational setting that has its own norms, values and cultural practices.”<sup>248</sup> It offers a universal vision of a society in which claims to culture, religion and tradition cannot justify violation of fundamental rights.

Not only does CEDAW consider the notion of ‘culturally sensitive universalism’ seriously but it also performs an important cultural accomplishment by challenging the very notion of ‘culture’. It criticizes state parties that use culture as an excuse for their failure to achieve progress in advancing women’s rights. These countries represent culture as something fixed, patriarchal, and irrational: behavior that is beyond intervention and reformation. The Convention offers an alternative understanding of culture as a “process of continually creating new meanings and practices that are products of power relations and open to contestation among members of the group and by outsiders.”<sup>249</sup>

CEDAW recognizes the importance of building on religious and cultural practices to truly transform discriminatory attitudes towards women. Therefore, one of the critical features of CEDAW is its cultural and educational role. Its strength lies in its “capacity to shape cultural understandings and to articulate and expand on a vision of rights. This is a form of global legality that depends deeply on its texts, not for enforcement but for the production of cultural meanings associated with modernity and the international.”<sup>250</sup> In this way, the Convention challenges political power structures while respecting cultural diversity among its state parties. CEDAW is one of the human rights treaties that confronts the challenge of implementing universal human rights in particular situations.<sup>251</sup> CEDAW uses various techniques to achieve this goal such as

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<sup>248</sup> Merry, *Human Rights and Gender Violence*, 37.

<sup>249</sup> Merry, “Gender Justice and CEDAW,” 56.

<sup>250</sup> Ibid., 71.

<sup>251</sup> Merry, *Human Rights and Gender Violence*, 103.

condemning gender stereotypes, reforming discriminatory cultural practices, differentiating between gender equity and equality model, and encouraging local NGOs to participate in the process.

### **3.3 Challenging patriarchal structures**

Third, the Convention is criticized for its “gender-neutral” approach which observes the principle that “men and women should be treated equally in order to ensure that gender will no longer operate as a basis for the allocation of benefits and burdens in society.”<sup>252</sup> The underlining assumption is that empowerment of women can be achieved only when both genders are treated alike. Thus, CEDAW struggles to place women in exactly the same position as men in both the public and private sphere (except in special circumstances such as pregnancy). Many critics have challenged the “gender-neutral” approach as a “myth of rights” both in women’s rights movement and in politics at large.<sup>253</sup>

Structuralist bias critics argue that gender equality provisions assume that women can achieve equal rights within the current socio-legal system. It ignores patriarchal structure of society in which men define standards and women must meet those very standards to attain rights. Gender-equality treaties do not challenge power regimes such as law making institutions. It simply uses men as the measure against which to determine treatment of women under the law. In this way, pursuits of gender equality have the potential to conceal “the substantive ways in which men become the measure of all things.”<sup>254</sup>

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<sup>252</sup> Peters and Wolper, *Women’s Rights, Human Rights*, 114.

<sup>253</sup> Charlesworth, Chinkin, and Wright, “Feminist Approaches to International Law”; Peters and Wolper, *Women’s Rights, Human Rights*, 103–113, 114–126; Hilary Charlesworth and C. M Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester, Eng.: Manchester University Press, 2000); Catharine A MacKinnon, *Women’s Lives, Men’s Laws* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005); Catharine A MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass.: Harvard University Press, 1987).

<sup>254</sup> MacKinnon, *Feminism Unmodified*, 34.

According to Catherine Mackinnon, the issue of gender inequality is, after all, a structural problem rooted in the politics of power and domination. For Mackinnon, female sexuality is systematically exploited through the political and legal systems which has material consequences for women. This can be observed in bias standards of laws that specifically affect women such as battery, violence, rape, sexual harassment, sexual trafficking and pornography. She argues that feminism cannot change the status of women unless it challenges the very political structure itself. On this basis, women's rights treaties should not demand "gender-neutral" treatment but focus on systematic oppression of women because of sex.<sup>255</sup> Hilary Charlesworth makes a similar argument by pointing out that the definition of discrimination in CEDAW is too broad and fails to adequately challenge systematic discrimination. He argues that the problem with this approach is that "the measure of equality in Article 1 is still a male one. And the discrimination it prohibits is confined to accepted human rights and fundamental freedoms."<sup>256</sup>

**Response:** The Convention is based on the idea that women around the globe share one thing in common: systemic oppression of women's rights. However, it also recognize that oppression functions in radically different ways in different contexts. For this reason, the Committee has consistently questioned the functioning of legal institutions and the framework in which CEDAW is implemented at a national level. CEDAW places special emphasis on protecting women from discrimination and violence in the domestic sphere.<sup>257</sup> The Convention declares all forms of violence against women (physical, emotional, sexual, and psychological) as a gender-based crime. Article 5 allows women to deconstruct harmful cultural practices and create a new culture of intolerance towards discrimination. CEDAW has also questioned

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<sup>255</sup> Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989), 215–237; MacKinnon, *Feminism Unmodified*, 70–81.

<sup>256</sup> Dianne Otto, *Gender Issues and Human Rights* (Cheltenham, UK: Edward Elgar Pub., 2012), 554.

<sup>257</sup> Article 1 paragraph 2 (e) of CEDAW

different treatment of women under nationality law, Islamic inheritance law, and limited rights of women to choose a family name and to engage in financial matters. Furthermore, the underrepresentation of women in higher decision making bodies has also been questioned. This includes involvement in public policy making, political parties, international delegations and public services.<sup>258</sup>

This study proposes that CEDAW is critical of IHR standards but does not simply reject them. It has adopted a constructive approach towards the issue and aims to reform the system from within. It uses IHR platform to promote women's voices and encourage them to demand rights for themselves. CEDAW is one of the major human rights bodies that allows women to reform international policies that directly affect them. Development of recent "women's organizations are a necessary part of the process of women's acquisition of genuine political power, a critical antecedent to effective participation in integrated organizations."<sup>259</sup>

The Convention also takes a further step by incorporating "corrective provisions" which safeguard women's needs that might be marginalized in a "purely" gender-neutral approach.<sup>260</sup> For example, state parties are required to take special measures to assist women in trafficking and prostitution,<sup>261</sup> rural women,<sup>262</sup> older women<sup>263</sup> and migrant workers.<sup>264</sup> The corrective provisions also ensure job security and benefits with respect to pregnancy and motherhood.<sup>265</sup> State parties are urged to take measures against women's unpaid labor and economic contribution.<sup>266</sup> In this way, the Convention carefully considers the social conditions of women

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<sup>258</sup> Otto, *Gender Issues and Human Rights*, 441.

<sup>259</sup> Peters and Wolper, *Women's Rights, Human Rights*, 120.

<sup>260</sup> Ibid., 114–125.

<sup>261</sup> Article 6 of CEDAW

<sup>262</sup> Article 14 paragraph (e) of CEDAW

<sup>263</sup> General Recommendation no.28 of CEDAW in UN Doc. CEDAW/C/GC/28

<sup>264</sup> General Recommendation no.26 of CEDAW in UN Doc. CEDAW/C/GC/26

<sup>265</sup> Article 11 paragraph 2 of CEDAW

<sup>266</sup> General Recommendation no.16 of CEDAW in UN Doc. CEDAW/C/GC/16

rather than blindly implementing gender equality provisions. Thus, CEDAW uses gender-neutral approach as a means rather than an end unto itself.

### **3.4 Issues with the model of gender equality**

It is also argued that CEDAW has little to offer to those women who do not conform to its gender-equality model. This includes Muslim women demanding rights within the Islamic framework, women advocating for gender equity and strengthening of family structure. For example, Hina Jilani, a well-known human rights advocate explains that there is a faction within the women's movement in Pakistan. One group supports women's rights within the religious framework and the other demands a more secular basis of rights. The majority of women's rights advocates feels that reinterpretation of religious laws create controversies without offering tangible solutions. Therefore, religious discourse was set aside to conform to international human rights standards covered under the Convention.

Women's rights advocates now hold the Pakistan government accountable to guarantee rights according to these international standards. Whereas, women members of conservative religious parties demand rights within the Islamic framework.<sup>267</sup> The Convention is criticized for catering to the needs of only those women who support its gender equality model while marginalizing the voices of other women. Rosenblum argues that CEDAW also fails to address discrimination faced by all other gender/sexual identities. This includes men, lesbian, gay, bisexual, transgender, and other differently sexed and gendered people.<sup>268</sup>

**Response:** CEDAW assumes that the gender-equality model is the best way to improve women's status because it assures equal opportunities for men and women. CEDAW claims that

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<sup>267</sup> Amina Jamal, "Just between Us: Identity and Representation among Muslim Women," *Inter-Asia Cultural Studies* 12, no. 2 (2011): 202–12; Amina Jamal, *Jamaat-E-Islami Women in Pakistan: Vanguard of a New Modernity?* (Syracuse, New York: Syracuse University Press, 2013).

<sup>268</sup> Darren Rosenblum, "Unsex Cedaw, or What's Wrong with Women's Rights," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, July 31, 2011), 125, <http://papers.ssrn.com/abstract=1545302>.

all forms of discrimination against women must be eliminated before women can freely decide what is best for them. In this way, CEDAW's primary aim is to create 'enabling conditions' in which women can think and act freely. Therefore, the Convention promotes the substantive equality approach which "recognizes gender differences and views them as products of the negative stereotyping of women and consequently seeks to correct them."<sup>269</sup> It offers a universal vision of a fair society in which equality of opportunity will eventually lead to an equality of outcome. The Convention used identity focus to specifically cater to women's needs at the time it was created. Between 1994 -2001, CEDAW has gradually expand its focus on discrimination based on sexual orientation and identity. For instance, General Recommendation 28 specifically draws attention to harassment and discrimination faced by people due to their sexual orientation and gender identity.

### **3.5 Isolation of women's rights issues from the universal human rights discourse**

Lastly, some critics argue that development of a separate women's rights treaty has been valuable but not adequate to improve the status of women. In fact, separation of women's rights discourse from the core UNDHR has further marginalized and disempowered women.<sup>270</sup> Despite all the efforts, women's rights have not achieved global acceptance as compared to other mainstream international treaties. For instance, Laura Reanda observes that one of the major obstacles is that there seems to be a general consensus that racial discrimination is considerably more serious than gender discrimination.<sup>271</sup> "As a result, the establishment of separate

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<sup>269</sup> Accessed at: <http://cedawsouthasia.org/about-cedaw/core-concepts>

<sup>270</sup> Peters and Wolper, *Women's Rights, Human Rights*, 110; Tom Campbell, *Human Rights: From Rhetoric to Reality* (New York, NY, USA: Blackwell, 1986); Andrew Byrnes, "Women, Feminism and International Human Rights Law--Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation--Some Current Issues," *Australian Year Book of International Law* 12 (1989 1988): 205; Andrew C. Byrnes, "Other Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination against Women, The," *Yale Journal of International Law* 14 (1989): 1.

<sup>271</sup> Philip Alston, *The United Nations and Human Rights: A Critical Appraisal* (Oxford [England]; New York: Clarendon Press ; Oxford University Press, 1992), 288; Campbell, *Human Rights*, 86–88.



conventions and measures for women very often results in the creation of what has come to be known as a ‘women’s ghetto’ which has a lower priority than more mainstream human rights issues.”<sup>272</sup> The other human rights treaties left the discourse of women’s rights to be handled by CEDAW, which meant that the Committee’s pioneering General Recommendations had little impact on their work.<sup>273</sup>

The main concern is that establishment of a separate women’s treaty isolates the topic of gender justice from mainstream human rights law.<sup>274</sup> In order to overcome this unintended effect of CEDAW, advocates started using the notion that “women rights are human rights.”<sup>275</sup> Diane Otto observes that the dual goal of establishing gender-specific legislation and recognition of women’s rights in the UHR discourse brought women back to their initial point of struggle. In other words, feminists once again found themselves needing to make explicit reference to women’s rights and include the topic in the general human rights framework.

It is argued that emergence of the slogan ‘women’s rights are human rights’ signifies that women’s rights discourse needs UDHR to counter the “ghettoization” of CEDAW. On this basis, Otto raises the question: “Could a renewed focus on women’s specificities dislodge the masculine form of the subjects privileged by human rights law, when similar earlier efforts had failed?”<sup>276</sup> According to Rosenblum, the identity and exclusionary focus on ‘women’ becomes the core reason for the failure of CEDAW that must be eliminated to achieve the change.<sup>277</sup> As he argues that “the focus on women as a group will fail as long as it ignores the extent to which men

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<sup>272</sup> Alston, *The United Nations and Human Rights*, 267.

<sup>273</sup> Dianne Otto, “Gender Comment: Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women,” *Canadian Journal of Women and the Law* 14 (2002): 1.

<sup>274</sup> Darren Rosenblum, *Unsex Cedaw, or What’s Wrong with Women’s Rights*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, July 31, 2011), <http://papers.ssrn.com/abstract=1545302>.

<sup>275</sup> Ibid. 161.

<sup>276</sup> Buss and Manji, *International Law*, 120.

<sup>277</sup> Ibid. 134.

are excluded from any serious consideration. Gender inequalities box us all into a preordained set of advantages and disadvantages. Unsexing CEDAW is not just a remedy to a shortcoming in international law, but a model of thinking about gender issues as a human rights questions for all people.”<sup>278</sup>

**Response:** Rosenblum correctly points out that women’s rights issues concern everyone across society. However, returning to the general human rights framework does not guarantee that these concerns would be addressed seriously. Bearing in mind that the Convention was established after the decades-long failure of UDHR to accommodate women’s needs. The creation of a separate women’s treaty has not isolated women’s issues from general human rights discourse. On the contrary, it has brought more attention to women’s issues. CEDAW plays a crucial role in integrating gender analyses and broadening human rights framework.

First, CEDAW clearly establishes that women’s rights cannot be sacrificed to claims of religion, culture, nationalism, or democracy. It entitles women to rights equal to those of men even if it is against the will of a majority. In this way, “women’s rights to equality is a condition-precedent for democracy and not merely a result of democratic recognition.”<sup>279</sup> Furthermore, the Committee urges state parties to incorporate CEDAW into its legal system through legislation. If state parties are unable to do this then they must reform their discriminatory laws and bring them into compliance with the treaty provisions. It includes reforming judicial decision making process, existing national laws and drafting new constitutional policies. In this way, CEDAW does not only advocate for gender equality but also establishes it on a national level.

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<sup>278</sup> Ibid. 194.

<sup>279</sup> Frances Raday, “Gender and Democratic Citizenship: The Impact of CEDAW,” *International Journal of Constitutional Law* 10, no. 2 (March 30, 2012): 515, doi:10.1093/icon/mor068.

Second, CEDAW has expanded the vision of international human rights by integrating gender analysis in human rights law and policy making. After the establishment of CEDAW, gender inequality was officially recognized as an outcome of historically existing patriarchal structures. CEDAW sets a legitimate criterion for determining bias towards women by defining the term “discrimination” which includes both direct and indirect forms. CEDAW also drew attention to gender based crime and introduced violence against women as a criminal offence. As a result, it is now incorporated into other areas of international law especially in humanitarian law, criminal law and refugee law.<sup>280</sup> CEDAW also requires governments to present gender segregated data in each periodic report so that women’s rights progress can be evaluated overtime.

Third, CEDAW has broadened the human rights framework by obliging states to play a more constructive and positive role. It emphasizes that “human rights protection is not only about refraining from doing harm or negative obligations on the part of the state, but also about positive obligations to realize equality and the enjoyment of rights.”<sup>281</sup> The positive role includes creating human rights awareness, promoting and advancing rights.<sup>282</sup> The Convention expands the understanding of state obligations and provides a more holistic approach towards human rights issues. CEDAW broadens the understanding of women’s issues by providing an exemplary interlocking relationship between economic and development, civil and political, social and cultural rights in one complete document.<sup>283</sup>

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<sup>280</sup> Buss and Manji, *International Law*, 121.

<sup>281</sup> Anne F. Bayefsky, “CEDAW Convention: Its Contribution Today, The,” *American Society of International Law Proceedings* 94 (2000): 197.

<sup>282</sup> Ibid.

<sup>283</sup> Ibid., 198.

### 3.6 Implementation challenges

Despite its achievements and contribution to UHRL, it is also true that the Convention has remained limited in its effort to establish gender equality. This includes continued under-representation of women in political and decision making bodies; high wage gaps between men and women; unequal division of power within the family; and continued violence against women.<sup>284</sup> Implementation of CEDAW has remained especially limited in reforming personal laws relating to issues in the domestic sphere. Frances Raday observes that constitutional courts in different countries have not been successful at restricting religious and cultural claims that results in gender equality. She notes that “a theme that appears to be constant is that decisions in which constitutional courts have ruled against the popular sentiments of religious minority or large minority, without the backing of the government are rare, and when they do occur, are usually ineffectual.”<sup>285</sup>

In other words, the Convention has not been effectively implemented due to lack of commitment of its state parties. Implementation becomes particularly more challenging in South Asia where “rights course becomes a weak discourse” in the context of women and family relations. CEDAW has also been criticized for its poor reporting system; significant amount of reservations; failure to set criteria to determine incompatibility of reservations; lack of authority to implement treaty provisions; and impose sanctions.<sup>286</sup>

**Response:** It is important to note that in general human rights treaties face serious implementation challenges as compared to other treaties such as economic, development and trade agreements. There are number of factors that lead to limited implementation of CEDAW.

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<sup>284</sup> Raday, “Gender and Democratic Citizenship,” 517.

<sup>285</sup> Ibid., 523.

<sup>286</sup> Charlesworth and Chinkin, *The Boundaries of International Law*.

First, the Convention has set very high goals to the women's rights agenda as compared to other UN human rights treaties. It mandates governments to establish both formal and substantive equality. CEDAW uses a multi-dimensional approach to women's issues and mandates changes at the institutional, legal and individual levels. It requires state parties to reform both the public and private spheres, and to change social attitudes of individuals by eliminating gender stereotypes. In this way, CEDAW is working to introduce massive fundamental changes to social, legal and individual sphere which is a challenging task in itself. Furthermore, CEDAW aims to achieve this ambitious goal with its limited resources, weak implementation mechanisms and its inability to impose sanctions. CEDAW has gradually improved its working methods. The Committee now meets in Geneva three times in a year for a three-week session.

Second reason for lack of implementation is that CEDAW does not offer political, financial or other incentives to its state parties. The implementation of CEDAW highly depends on the goodwill of its state parties. The most obvious reason for poor implementation of CEDAW can be explained by concerned state parties' lack of commitment to women's rights. Many countries refer to human rights conventions they have ratified to defend themselves in reports submitted to UN bodies. Participating in various international human rights regimes also allows countries to improve their political image and appear as 'civilized' nations. Therefore, many governments take ratification of a treaty as an end in itself without being concerned about national consequences.<sup>287</sup>

Third, developing countries have usually ratified a number of human rights treaties and are responsible for preparing various reports within a short period of time. The inadequacy of reports could be due to poor coordination between government bodies, complexity of

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<sup>287</sup> Byrnes and Connors, "Enforcing the Human Rights of Women."

information required, lack of statistical data, and financial resources. Many developing countries don't have the professional expertise to prepare reports according to international standards of reporting and present them at an international forum.<sup>288</sup> Furthermore, political instability is another important cause for failure to fulfill treaty obligations within the timeline.

Based on these factors, this chapter has argued that the Convention has played a crucial role in contributing to UHRL in general and addressing women's rights issues in particular. The Convention provides a strong theoretical framework and practical guidelines to combat discrimination against women on a national level. However, it is also important that we must be careful about overstating the advances that have been achieved. As Charlesworth and Chinkin states that "the guarantee of women's human rights goes well beyond adopting a new instrument, adding a new institution, ensuring the inclusion of women in the composition of policy making committees, or extending the jurisdiction of an institution such as the inclusion of crimes against women in international criminal tribunals."<sup>289</sup> There is no doubt that CEDAW's efforts have remained limited due to many reasons. However, the Convention can overcome these weaknesses by taking its critics seriously and gradually improving its working methods. The next section will conclude the topic and offer recommendations to improve implementation of CEDAW.

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<sup>288</sup> Otto, *Gender Issues and Human Rights*, 428.

<sup>289</sup> Buss and Manji, *International Law*, 25–26.

## **Conclusion and the Way Forward**

This study used CEDAW as a tool to analyze the process of implementing universal human rights of women in particular settings. The first chapter illustrates unique features of the Convention that set it apart from other UN human rights treaties. This study showed that CEDAW does not simply mandate its state parties to ratify the Convention. It also provides detailed guidelines to implement the treaty through general recommendations, concluding observations, and constructive dialogues. CEDAW has adopted a constructive approach towards universal and particular debate by allowing its state parties to withhold reservations. The idea being that state parties will gradually work towards the final goal of full implementation of CEDAW. The Convention also performs an important cultural work by challenging the very conception of culture as something fixed and opposed to women's rights. It redefines culture as a continuously evolving notion that could be used as a means to establish gender equality. CEDAW also focuses on eliminating gender based stereotypes and reforming harmful traditional practices. It offers a transnational space where various countries engage in a dialogue to make CEDAW more universally inclusive and effective.

The second chapter used the Islamic Republic of Pakistan as a case study to examine the efficacy of CEDAW's framework and working methods. More importantly, it identified particular challenges of implementing women's rights in religious-culture based societies. Pakistan faces a unique challenge where the government is struggling to maintain a balance between two discourses. On the one hand, Pakistan is facing international pressure to reform its discriminatory national laws in compliance with universal standards of human rights. On the other hand, the government is trying to cater to demands of the local populace. The notion of women's rights is highly intertwined with dilemmas related to preserving 'authenticity' of

religion, culture and nationalism in Pakistan. This study argued that Pakistan failed to resolve tensions between these two interlinked discourses. As a result, the government tried to adopt a middle path by making a very broad reservation to CEDAW. Pakistan's struggle to maintain a balance between its national and international commitments has led to false promises of establishing women's rights and poor implementation of CEDAW.

Pakistan's reservations are problematic because they create ambiguity about the level of compatibility between CEDAW and the Islamic Constitution. This study argues that Pakistan holds its Constitution superior to the Convention. In case of conflict, the Islamic Constitution would override the Convention and would be implemented by default. Pakistan clearly undermines the universal notion of human rights by making CEDAW subject to the Islamic Constitution. However, expressed reservations were carefully worded to avoid international criticism.

The poor implementation of CEDAW is due to lack of priority given to women's rights issues in Pakistan. There are, of course, many other factors that create implementation challenges. For example, political instability, politicization of religion, and overlap of religion and culture. Furthermore, various conceptions of women's rights within Pakistan pose a serious challenge for the state. However, these issues cannot justify Pakistan's misleading statements and non-cooperative attitude with the Committee.

Pakistan has failed to submit any of the four periodic reports on time. These reports provide very general and limited information, often use repetitive phrases. Pakistan's delegates have refused to provide any further information on the government's plan to withdraw its reservations. Pakistan simply states that there are still disagreements within the government. However, it does not explain what exactly these concerns are and what is being done to resolve



them. Further, Pakistan has not yet provided any timeline to implement policies that are to be reformed under CEDAW. Pakistan's non-cooperative attitude with the Committee signifies its lack of willingness to eliminate discrimination against women. It raises the suspicion that Pakistan has ratified CEDAW solely to improve its political image in the international human rights community.

Based on the case study of Pakistan, this research proposes five main recommendations to improve Implementation of CEDAW. First, CEDAW needs to take strict measures towards reservations made by its state parties. The Committee should not accept general and abstract reservations such as the one made by Pakistan. Byrnes rightly observes that general reservations are the most contentious and threatening reservations to the integrity of a treaty. As he explains that "these reservations cause particularly severe problems, the more so as they are bound up with larger issues of cultural identity and the resistance of what is perceived as Western cultural imperialism."<sup>290</sup> General reservations are also problematic because they allow state parties to use religion as an excuse to avoid treaty obligations. The Convention should oblige state parties to clearly identify article(s) of CEDAW that are in conflict with their constitution, Islamic laws or cultural sentiments. This will allow the Committee to specifically focus on conflicting issues and devise strategies to resolve them. Reservation to specific articles of CEDAW will also allow to measurement of state parties progress towards eliminating those very tensions.

Second, the Committee should further encourage state parties to closely work with religious bodies to eliminate tensions between CEDAW and Islamic precepts. In recent years, CEDAW has supported various international Muslim female organizations to search common grounds between Islamic Family Laws and CEDAW. This includes Musawah (meaning

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<sup>290</sup> Otto, *Gender Issues and Human Rights*, 465.

‘equality’ in Arabic),<sup>291</sup> Sisters in Islam,<sup>292</sup> and Women Living under Muslim Law (WLUML).<sup>293</sup> CEDAW needs to further extend this effort to grassroots organizations. CEDAW cannot be implemented as long as it appears foreign to any society in which it is implemented. Muslim state parties must be encouraged to actively engage religious groups in a dialogue and eliminate misconceptions about CEDAW. These dialogues should take place on media forums to create awareness of women’s right issues and inform the public about measures taken by their governments.

Third, state parties are required to publish periodic reports in their home countries. Countries who fail to fulfill CEDAW obligations do not share periodic reports to avoid national criticism. Despite its performance, a state party must publish, distribute and advertise availability of CEDAW reports on a national level. This would ensure transparency of the implementation process and create public awareness about claims made by their government at the international level.

Fourth, CEDAW needs to extend its tools to grassroots organizations and increase participation of local NGOs. The most important measure of CEDAW depends on the extent to which it enables women to use equality laws while actively incorporating their own voices and concerns.<sup>1</sup> The Committee is aware that state parties often submit brief or incomplete reports that do not provide true insight into the actual situation. National NGOs play a crucial role in effective implementation of CEDAW by either contributing to government reports or by submitting their own “shadow” report to the Committee. “They often see the conventions and treaty bodies as a rare opportunity to put pressure on their own government to conform to

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<sup>291</sup> For detail see: <http://www.musawah.org/>

<sup>292</sup> For detail see: <http://www.sistersinislam.org.my/>

<sup>293</sup> For detail see: <http://www.wluml.org/>

international norms in a public procedure of reporting, dialogue and debate that may not normally occur on the national stage, nor in the other inter-governmental meetings at the United Nations.”<sup>294</sup>

NGOs do not only act as a watchdog to government policies but offer significant contribution to the articulation of women’s human rights under the Convention. NGOs provide background information, academic analysis, statistical data and input into the preparation of general recommendations. It also offers recommendations and alternative solutions for better implementation of CEDAW in their respective countries.

The Committee holds meetings with NGOs in which they orally present their reports, express concerns and financial constraints at a national level. NGOs also share different strategies to combat violence against women (VAW), and respond to the Committee’s questions. NGOs representatives are also allowed to attend the review meetings of the Committee and state parties but their intervention is limited due to time constraints. CEDAW should devise a strategy for active engagement of local NGOs in the review meetings and implementation process. CEDAW needs to extend its vision and implementation tools to local organizations. It could offer training seminars on universal human rights values and reporting procedures on a national level. This could be done through “fellowships, seminars, bilateral assistance, assistance by members of the treaty bodies or assistance from specialized agencies or independent experts.”<sup>295</sup>

Finally, the Committee could starting the implementation process by paying more attention to common goals of the Convention and its state parties as opposed to points of contestation. For example, in Pakistan CEDAW could initiate the implementation process with women’s education, health and political right to vote. Pakistan has the highest rate of cancer

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<sup>294</sup> Bayefsky, *The UN Human Rights Treaty System in the 21st Century*, 219.

<sup>295</sup> Otto, *Gender Issues and Human Rights*, 431.

among women in all over Asia. As a result, every year 40,000 women die due to breast cancer in Pakistan.<sup>296</sup> CEDAW should mandate the Pakistan government to introduce breast cancer public awareness campaigns. Schools should provide information about early symptoms and diagnosis, and encourage young women to schedule regular check-ups. CEDAW could also take up the question of women's education which is a basic human right and also a religious obligation upon every Muslim. The Pakistan government should be held accountable for its failure to improve women's access to education when it is clearly not a contentious issue. The Committee could start with those provisions of the Convention that resonate with an Islamic human rights agenda. This would allow for focus on establishing significant amount of women's rights in a way that is not disputable. Moreover, starting with common goals would also allow CEDAW to improve mutual trust and partnership with its state parties.

CEDAW started its journey by declaring discrimination against women as a global issue. It firmly established that gender discrimination is unacceptable and must be eliminated in all forms and levels. The universal ratification of CEDAW signifies that all countries around the world now recognize the issue of gender discrimination. There is no doubt that very few are working to actually achieve the goal of gender equality in practice. However, global consensus is, in itself, a big catalyst for change. CEDAW has played a crucial role in advancing women's rights although these results are not always manifested across the board. Since the establishment of CEDAW, many states have taken positive initiatives. These includes but are not limited to narrowing down a reservation, complete withdrawal of a reservation, revising discriminatory laws, integrating CEDAW into constitutional system, introducing women friendly legislations, and improving gender statistical data. CEDAW's success lies in its ability to continuously revise

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<sup>296</sup> For detail see: <http://www.dawn.com/news/1140264>

its working methods and making gradual progress towards the goal of eliminating all forms of discrimination against women.

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