The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

WITNESSING CEDAW ACROSS THREE REGISTERS: NORM, INSTITUTION AND COURT IN THE LIFE OF THE WOMEN'S CONVENTION

~ Rishav Das

INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW" or "The Convention") which was adopted by the UN General Assembly in 1979 and came into force since 1981, was also christened as the "International Bill of Rights for Women"[1], yet CEDAW, just like the 9 lives of a cat, lives numerous distinct lives at once. No matter the amount of glorification it may emit, its substantive equality guarantee is still contested by traditionalist religion and neo-liberal economics and hence, gets moulded into nothing but a institutional treaty regime of ratification, reservation and reporting, facing an uneven domestic reform record. It serves as a normative framework that has been largely bypassed by the very own instruments of the development sector for measurement of gender equality[2].

This article synthesizes three scholarly bodies on CEDAW, namely Raday's doctrinal account of this conventional equality guarantee, Byrnes' and Freeman's empirical study of its institutionalised operation, McCrudden's comparative analysis of various judicial decisions premised on CEDAW to ultimately out forward the argument that beneath the richness and

[1] Ramona Vijeyarasa, *Quantifying CEDAW: Concrete Tools for Enhancing Accountability for Women's Rights*, 34 Harvard Human Rights Journal 37, 38-39 (2021); Frances Raday, *Gender and Democratic Citizenship: The Impact of CEDAW*, 10 International Journal of Constitutional Law 512, 512 (2012).

[2] Andrew Byrnes & Marsha. A. Freeman, *The Impact of the CEDAW Convention: Paths to Equality*, World Bank World Development Report 2012 Background Paper 1-2 (2011); Christopher, McCrudden, *Why Do National Court Judges Refer to Human Rights Treaties? A Comparative International Law Analysis of CEDAW*, Public Law and Legal Theory Research Paper Series, Paper No, 482, at 2 (October 2015).

intellectual prowess of its text, the reality of its persistent shallow substantive engagement exists till date.

THE NORMATIVE PROMISE AND ITS CONTESTATION

CEDAW's conceptual originality is premised in its absolute refusal of gender neutrality. It openly commits itself to the cause of eliminating discrimination against women and pursue not merely formal, but substantive equality[3]. Its General Recommendation 25 captures this distinction, holding that "a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men", while its General Recommendation 28 makes an extension of this concern to intersecting grounds of disadvantage, that of race, religion, age, class, caste and gender identity[4]. Along with these, the Human Rights Council's Working Group on Dis crimination Against Women in Law and Practice, answer the feminist critiques that CEDAW is assimilationist or blind to intersectional differences[5].

Such a normative promise is primarily contested on two fronts. First is that, as traditionalist religious and cultural norms conceive of the two sexes (male and female) as compliments of each other whose duties are socially comparable, if not identical, this concept directly clashes with articles 5(a) and 2(f), which together place values in a hierarchical structure, where gender equality prevails over discriminatory customs[6]. An overwhelming concentration of reservations under article 16 still exists governing institutional jurisprudence, has been inclined towards privileging equality over competing cultural claims, even as municipal courts have rarely done the same[7].

At the same time, neo-liberal economics poses a second, subtler challenge by endorsing formal equality, but resisting the redistributive measures of Article 3, 4 and 11 through 14, rendering protection to maternity and equal terms in employment and health, which substantive equality requires[8]. To quote the empirical record, the 2009 Millenium Development Goals Report renders the record that women's share of non-agricultural employment had risen only from 35% to 40% since 1990 with countless women, still engaged in insecure or own-account work[9].

[3] Raday, *supra* note 1, at 512-513.
[4] Raday, *supra* note 1, at 515-516.
[5] Raday, *supra* note 1, at 513-514, 529.
[6] Raday, *supra* note 1, at 515, 520.
[7] Raday, *supra* note 1, at 520-524.
[8] Raday, *supra* note 1, at 524-527.
[9] Raday, *supra* note 1, at 528-529.

THE INSTITUTIONAL PROCESS OF RATIFICATION, RESERVATION AND DOMESTIC REFORM

As opposed to the doctrinal analysis of Raday, Byrnes and Freeman employ an empirical approach, tracing CEDAW's domestic impact through several indicators such as legislative review refencing the convention, the withdrawal of reservations following committee dialogue and the reliance of the judiciary on CEDAW standards[10]. By the end of 2010, CEDAW found 186 states as parties to it, while the 1999 Optional Protocol managed to solicit only 100 States parties[11]. Only 13 of the 52 States parties who had entered into reservations, had withdrawn, a process that took more than a decade and various reporting cycles to unfold, while reporting obligation still remain chronically overdue, most notably in Sub-Saharan Africa. [12]

The author's own country studies provide ana account of how reform actually takes place. Kenya, which ratified without reservation in 1984, entrenched discriminatory customary law referring to matters concerning marriage and inheritance until the emergence of a 1997 constitutional amendment which added 'sex' as a prohibited ground for discrimination[13]. Fiji withdrew its reservations to articles 5(a) and 9 within five years of accession. On the other hand, Morocco discriminatory nationality law gained reform only under cumulative pressure from CEDAW and foreign forces, thereby showcasing that CEDAW's influence is rarely isolable from the wider envelope of the treaty architecture[14]. Further, Beth Simmons renders us a quantitative finding that CEDAW ratification becomes directly proportional to girls' educational enrolment and greater access to contraceptives, concentrated disproportionately in transitional polities rather democracies and autocracies with the tag of being 'stable'[15].

THE JUDICIAL REGISTER OF CEDAW AS AN AUTHORITY DEVOID OF DIALOGUE

McCrudden's comparative analysis of 325 judicial decisions across 55 jurisdictions further complicated the grounding of CEDAW as a driver of principled domestic reform by highlighting four key empirical patterns - courts commonly cite CEDAW superficially rather than engaging in sustained legal interpretation; a country's official monist or dualist reception system has petite practical bearing on how courts construe the Convention's substance; courts

[10] Byrnes & Freeman, *supra* note 2, at 3-5.
[11] Byrnes & Freeman, *supra* note 2, at 6-7.
[12] Byrnes & Freeman, *supra* note 2, at 11-12, 15-16.
[13] Byrnes & Freeman, *supra* note 2, at 24-25.
[14] Byrnes & Freeman, *supra* note 2, at 18, 52.
[15] Byrnes & Freeman, *supra* note 2, at 54-55.

put forward a striking deficiency of interpretive divergence in spite of expectations of disintegration, and judges scantily contribute to transnational judicial dialogue concerning CEDAW, even in dominions where cross-referencing foreign legal precedents is customary[16]. McCrudden renders a functional explanation to this phenomenon by mentioning that judges who invoke CEDAW, act as "domestic players using international law strategically", rather than acting as the international legal order's agents and this finding holds true on account of being echoed in the Indian judicial system as well, where the Supreme Court of India has primarily used international law for pursuing domestic goals[17]. On the occasion of an interpretation, favourable to the CEDAW, being unwelcomed, the courts have the proclivity to simply decline to engage rather than reinterpret the norm, thereby mandating the entry of Anne Bayefsky's observation, endorsed by McCrudden, that "where courts are inclined to come to conclusions incompatible with the Convention, they will simply ignore it"[18].

McCrudden argues that domestic courts value CEDAW because its dual identity as binding international law and universal human rights grants judges, an authoritative, external basis to validate progressive verdicts such as upholding gender quotas, rejecting child marriage, or escalating equality rights without seeming to rely on personal subjectivity or local prejudice[19]. This summarizes the action of the Finnish Supreme Administrative Court rejecting a culturally relativistic approach to child marriage and the Kenyan Court of Appeal in Rono v. Rono[20], holding that "Kenya is moving in tandem with emerging global culture, particularly on gender issues", each invoking CEDAW to put forward a progressive outcome as a reflection of worldwide consensus rather than mere judicial preference. This was precisely the rhetorical strategy employed by Baroness Hale in Fornah v. Secretary of State for the Home Department[21], making a declaration that the "world has woken up to gendered persecution", and in the Indian Supreme Court in Hariharan v. Reserve Bank of India (RBI)[22] where the framing of "cry for equality" was staged as being 'universal' rather than being 'local'. Hence, it is this absolute same appearance of a settled, external or a foreign authority that McCrudden suggests, explains the near to complete absence of horizontal dialogue among domestic courts regarding the subject of CEDAW[23].

---

[16] McCrudden, *supra* note 2, at 4.
[17] McCrudden, *supra* note 2, at 5-6.
[18] McCrudden, *supra* note 2, at 8
[19] McCrudden, *supra* note 2, at 9-10.
[20] *Rono v. Rono & Anr*, (2005) 1 K. L. R. 803, 813 (C. A. K.) (Kenya).
[21] *Fornah v. Secretary of State for the Home Department* [2007] 1 A. C. 412, 459 (U. K.).
[22] Hariharan v. Reserve Bank of India (RBI), (2000) 2 SCC 228. (India).
[23] McCrudden, *supra* note 2, at 17-19.

THE SYNTHESIS: A SINGLE DIAGNOSIS ACROSS THREE REGISTERS

Read and compared together, these three accounts accumulate to establish a single diagnosis. CEDAW's formal authority is indubitable, but its receival of a deep substantive engagement, across doctrines, institutions, courts and metrics is consistently shallow as opposed to its textual richness. Raday enlightens that the ideological resistance of traditionalist religion and neo-liberal economics leaves the realisation of transformative promise of substantive equality partial[24]. Byrnes and Freeman showcase that even where resistance does not have an ideological basis, the institutional mechanics of reservation and reporting produce nothing, but slow, uneven and NGO-dependent reports[25]. McCrudden's courts and Vijeyarasa's policy makers exhibit a structurally similar pattern, at a further distance than the treaty text itself, where judges cite CEDAW merely cursorily to give an external, authoritative value or cover to the outcomes reached largely at the municipal level, while development sector actors have resorted to measuring gender equality through indices designed with little or no reference to the Convention[26].

The three studies also shed light and illuminate each other in more specific ways. McCrudden's finding of a noteworthy "absence of divergence" in the interpretive value of CEDAW in the eyes of the courts, in spite of the presence of interpretive fragmentation, gives an indirect, unwavering support to the base created by Vijeyarasa that the CEDAW's norms are sufficiently determinate to ground a workable index rather than being too open-textured for quantification[27]. On the contrary, McCrudden's account of the reason behind CEDAW's popularity among judges, on account of its ability to be presented as external and static, rather than being open to interpretation or reinterpretation, lends a helping hand at explaining why the convention has been proven to act resistantly to the kind systematic, evolving operationalisation of the Gender Legislative Index (GLI) attempts[28]. This synthesis also provides an exposure to the shared methodological limits. McCrudden's dataset employs a bias for capturing only those cases in which CEDAW was cited, but leaves behind the silent resistance of courts quite oblivious. This appears to occur quite systematically in China, where

[24] Raday *supra* note 1, at 523-524, 529.
[25] Byrnes & Freeman, *supra* note 2, at 51-53.
[26] McCrudden, *supra* note 2, at 5, 9-10; Vijeyarasa, *supra* note 1, at 56
[27] McCrudden, *supra* note 2, at 4; Vijeyarasa, *supra* note 1, at 70.
[28] McCrudden, *supra* note 2, at 10; Vijeyarasa, *supra* note 1, at 56

the Convention is outrightly placed under a veil of ignorance rather than a visible reinterpretation of it[29].

CONCLUSION

CEDAW'S significance can barely be assessed from a single vantage point. Doctrinally speaking, it establishes a hierarchy in which, it is pertinent to mention that women's right to equality prevails over discriminatory religious, cultural and economic practice. Institutionally speaking, near to universal ratification and an expanding process of reporting, have led to the production of domestic reforms, despite its slowness. Judicially speaking, CEDAW chiefly functions as a source of external authority that courts invoke in exercise of selection rather than interpreting it dialogically. If questions arise concerning an identification of an unfinished business across all three studies, it will be nothing but bridging the gap between CEDAW's formal authority and the depth of the engagement and effectiveness it receives, whether through political and social action which Rday specifies as a condition precedent for democratic citizenship[30], the sustained civil society advocacy[31] or more genuinely through dialogic judicial reasoning of the type that McCrudden finds to be largely absent[32]. If we read all these three accounts singularly, it is suggestive of the fact that CEDAW's future relevance and significance will have less dependence on formal ratification procedures than on the willingness exhibited by the legislatures and courts to deliberate and engage on its substance with the same rigour and seriousness as when they invoke its authority.

[29] McCrudden, *supra* note 2, at 19-20.
[30] Raday *supra* note 1, at 529-530.
[31] Byrnes & Freeman, *supra* note 2, at 51-53.
[32] McCrudden, *supra* note 2, at 9.