

DEVELOPING CAPACITIES FOR STRENGTHENING THE APPLICATION OF CEDAW

A TRAINERS' GUIDE



PARTNERS FOR LAW IN DEVELOPMENT

PARTNERS FOR LAW IN DEVELOPMENT, NEW DELHI

Partners for Law in Development (PLD) is a legal resource group working in the fields of social justice and women's rights in India. Founded in 1998, the organization locates women's rights as integral to its work on social justice, engaging with it in contexts of family, sexuality, culture, caste, conflict and development. We promote and facilitate the application of rights through capacity and perspective development programmes, production of knowledge resources, and advocacy. The organisation is a leading resource centre on CEDAW in India. Its work in South Asia on CEDAW extends through its publications, resource packages, website and its capacity building initiatives. The resource book, 'CEDAW: Restoring Rights to Women' (PLD, 2004) is a key publication on the treaty used across the region and beyond, available in three Indian languages (Hindi, Malayalam, Oriya), besides English; PLD's dedicated CEDAW web portal- www.cedawsouthasia.org (with support from UN Women) is a key regional resource.

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CEDAW in this report refers to the UN Convention on the Elimination of All Forms of Discrimination Against Women, and the term Committee refers to the UN Committee on the Elimination of All Forms of Discrimination Against Women.

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To the participants in the South Asia trainings of trainers held in April and July 2011, we owe the first chapter outlining the constitutional and statutory framework for each of the countries in South Asia, together with a description of the challenges faced in the realisation of women's equality. The country-specific information consolidated in this chapter was put together by the participants, who provided several examples to illustrate the national and regional contexts.

For transforming the long-winded discussions during the two workshops into this document, credit goes to the many hands that rapporteured, transcribed, cross-checked, and merged the session content of the two trainings of trainers, filling in gaps to improve every successive draft. For undertaking this multilayered and painstaking exercise, thanks are due to Aditi Malhotra, Arani Sinha, Gayatri Sharma, Pooja Badarinath, Poulomi Pal, and Runa Bhuyan; and to Madhu Mehra for the editing. Mention must also be made of IWRAP Asia Pacific whose direct inputs in terms of agenda development and flow charts and slides (each of which is credited), and beyond that, through the longstanding association with PLD, have enriched our work on, and understanding of, CEDAW.

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LIST OF ABBREVIATIONS

AFSPA	:	Armed Forces Special Powers Act, 1958
BPFA	:	Beijing Platform for Action, 1995
CAT	:	United Nations Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, 1987
CEDAW	:	Convention on the Elimination of All Forms of Discrimination against Women, 1979
CO	:	Concluding Observation
CRC	:	United Nations Convention on the Rights of the Child, 1989
DAW	:	The Division for the Advancement of Women
GA	:	General Assembly
GR	:	General Recommendation
ICCPR	:	International Covenant on Civil and Political Rights, 1976
IDP	:	Internally Displaced Person
ICESCR	:	International Covenant on Economic, Social and Cultural Rights, 1976
IECR	:	Independent Expert on Cultural Rights
INSTRAW	:	United Nations International Research and Training Institute for the Advancement of Women
IPC	:	Indian Penal Code, 1860
IWRAW, AP	:	International Women's Rights Action Watch, Asia Pacific
LTTE	:	Liberation Tigers of Tamil Eelam
NAP	:	National Action Plan
NAWO	:	National Alliance of Women
NGO	:	Non Government Organisation
NHRC	:	National Human Rights Commission
OIC	:	Organisation of Islamic Cooperation
OP, CEDAW	:	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
OSAGI	:	Office of the Special Adviser on Gender Issues and Advancement of Women
PLD	:	Partners for Law in Development
SAARC	:	South Asian Association for Regional Cooperation
SRVAW	:	Special Rapporteur on Violence Against Women, its Causes and Consequences
ToT	:	Training of Trainers
UDHR	:	The Universal Declaration of Human Rights, 1948
UNIFEM	:	United Nations Development Fund for Women
UNSCR	:	United Nations Security Council Resolution
WLUML	:	Women Living Under Muslim Laws
WTO	:	World Trade Organisation

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INTRODUCTION

This trainers' guide meets the longstanding demand of trainers and programmers working with and on CEDAW. Participants in successive training programmes conducted by PLD on developing capacities in implementing CEDAW have expressed the need for a document that provides guidance on content and perspective, and also suggests tools and exercises for facilitating communication, learning, and the application of CEDAW. This document endeavours to meet these needs. Although the structure of this guide has been developed around a comprehensive training agenda on the Convention, it is not a step-by-step trainers' manual. Rather, it is a guide that focuses on knowledge content and perspective, illustrations and examples, communication tools and application exercises, all of them meant to be adapted or borrowed selectively at the discretion of the user. It is designed to meet the varied needs of the users/trainers, and the diverse constituencies with which they work.

This trainers' guide draws upon the two CEDAW South Asia regional trainings of trainers organised by PLD in 2011, 'Strengthening the Application of CEDAW in South Asia Training of Trainers', from 8–12 April 2011 (Nepal) and from 14–21 July 2011 (India), and conducted with the support of UN Women. The brief biographies of the resource persons who facilitated the sessions are attached as Annexure I and a detailed agenda of the trainings of trainers is attached as Annexure II. The structure of the guide is based on the agenda of the above-mentioned trainings of trainers, and draws upon their presentations, illustrations, and case studies; the respective resource person for each session is credited.

The scope of this guide is comprehensive. It covers concepts and perspectives, as well as issue-specific aspects, integrating information about complementary international standards where relevant. In addition, it covers implementation of CEDAW and mechanisms for reviewing and reporting domestic application of the treaty obligations, including the Optional Protocol. The structure is based on the trainings of trainers on CEDAW, which is divided into broad categories or 'topics', which, in turn, cohere clusters of sub-categories or 'sessions'. The session objectives establish its linkage with the topic under which it falls, while connecting it with the sessions that precede and follow. The breaking up of the topic content into smaller sessions, which, in turn, cluster smaller pieces of information, allows the user to exercise selectivity in sequencing and planning a workshop on CEDAW that best suits the needs of the target group.

This document is informative for additional reasons as well. It sets out the constitutional and statutory framework of each of the South Asian countries, while also outlining the country-specific challenges with respect to the realisation of women's equality. This section was compiled largely by the participants of the regional trainings as part of their preparatory work carried out in advance of the trainings. Specific attention was paid to three thematic areas, which have been integrated within CEDAW. The first area relates to conflict and post-conflict situations. The second relates to the area of culture, which is the justification offered for the largest number of reservations limiting the obligations of state parties to CEDAW. The third area is gender ideology and its relationship with discrimination, which integrates concerns relating to sexual orientation and gender identity.

While the topic and session content is substantively strong, this guide is not intended as a comprehensive resource on CEDAW. A trainer or user of this guide is therefore advised to supplement this guide with other readings. We recommend that the resource package prepared by PLD (2011) should accompany the CEDAW trainings as companion readings, as well as a host of resources produced and compiled by IRAW Asia Pacific, available on their website.

Trainers typically employ a variety of means of beginning conversations, and keeping them informed, stimulating, and ongoing. Here are some methods that we have found useful in our training programmes, and we share these in the hope that readers may also find them helpful.

- ▶ Apart from the training and communication tools discussed during the respective sessions, films are an excellent medium for provoking, reflecting, and contextualising discussion. Some of the films we recommend are: *Who Can Speak of Men* (director: Ambarien Al Qadar, India); *Another World is Possible: CEDAW in South Asia* (director: Aisha Gazdar, Pakistan); *A Jihad for Love* (director: Parvez Sharma, USA/ India); *Shifting Prophecy* (based on the work of STEPS, an organisation working with Muslim women in Tamil Nadu, by PSBT Films, India); and *Welcome to Sajjanpur* (director: Shyam Benegal, India).
- ▶ Collaboration with organisations that have engaged intensively in issue-specific activism is useful for bringing out the conceptual and political dimensions, as well as the challenges and strategies, specific to that thematic context. In the case of the two trainings of trainers, the collaboration with Musawah, a global movement that promotes women's rights within the framework of Islam, enriched and concretised the discussions on cultural contestations and strategies for bringing about change in the context of women's equality and Islam.
- ▶ Ideally, the participants should be familiar with the agenda and the course content in advance of the workshop. The reading materials or resource package designed for the workshop must be provided to them in advance of the sessions. Where internet facilities are reliable, this may be done by e-mailing a soft copy of the reading materials or resource package to the participants prior to the training programme, with a few essential readings highlighted. During the workshop, two or more participants may be asked to volunteer to read and present a summary of the material that is relevant to the forthcoming sessions each morning, and this is then discussed by the group in more detail.
- ▶ A blank chart paper may be pinned to the wall in a prominent place, functioning as a 'parking lot' for issues that have received inadequate attention during the workshop, or for issues that were not included within the scope of the workshop, but which many participants are keen to discuss. Depending on the interest generated on these issues, smaller informal group discussions may be organised in the evening, after the formal workshop hours.
- ▶ It is important to ensure that the discussion during the workshop is grounded in concrete policy frameworks and based on factually correct, context-specific information. One way of achieving this is to get all the participants to undertake a short assignment prior to arriving at the workshop venue. We found this particularly useful with respect to collating information on legal and constitutional frameworks relating to women's equality in each of the countries of South Asia, and with respect to the concluding observations by CEDAW on each of these countries. In the case of a national meeting, this exercise could be adapted to seek information on policies and initiatives at the province/state level, as well as data on the de facto situation of women. This preparatory exercise makes for more informed discussion during the workshop.

- ▶ Finally, to make the most of the opportunity to share and learn, it is desirable that the participants set the ground rules for the training right at the beginning, such as: (a) participating actively in discussions and other activities; (b) observing punctuality in attending the sessions; (c) speaking one at a time; (d) refraining from holding small discussions on the sidelines while the session is underway; (e) ensuring that mobile phones are set on vibration mode or are switched off; (f) raising one's hand to ask a question or to make a point; (g) speaking crisply and keeping to the point during discussions and interactions; (h) not repeating a point already made by another participant or by oneself; (i) being non-judgmental about one another; and (j) respecting each other's views and opinions.

Training programmes on CEDAW at the regional, national, and local levels are varied, as is the approach to the application of CEDAW in different settings. In community settings, PLD's approach to capacity development on CEDAW has largely focused on the core concepts of equality and non-discrimination, rather than international law, grounding these concepts in locally relevant thematic issues, accompanied by application exercises that involve field investigation. This trainers' guide is not designed for such community-level trainings. Instead, it is designed for regional and national trainings where the participants are familiar with CEDAW in the form of an international treaty, are experienced women's rights trainers or programmers, and have been exposed to a broad spectrum of concerns, both nationally and regionally. The guide is thus not intended to serve the needs of community-based trainings, and if at all it is used for this purpose, it will require considerable innovation and adaptation on the part of a skilled trainer. It is our hope that this guide fulfils the demand it seeks to respond to.

We encourage users to share with us the ways in which this trainers' guide was used by them, their feedback on what worked well and what didn't, as well as their suggestions for improvement. We welcome engagement and exchange. Please write to us at resources@pldindia.org

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New Delhi

Setting the Context for Understanding Women's Rights in South Asia

Session I

Mapping Challenges and Opportunities: Examining Constitutional Law and Statutory Law in our Countries

Session Objectives

- ▶ Examining the constitutional and statutory law from the region to assess challenges and opportunities at the formal/ de jure level in respect of CEDAW implementation;
- ▶ Mapping the general situation in respect of human rights in South Asian countries and specific challenges in respect of women's rights and minorities, to highlight the de facto reality of women as well challenges specific to women from minority communities;
- ▶ Examining barriers to implementation of human rights standards/ law in local and national (domestic or municipal) contexts (to explain the differences between the de jure and de facto situations in the country).

Resource Person: Deepika Udagama

This session sets the context of women's realities and the domestic/ national legal framework within which CEDAW implementation is situated. It establishes the context within which the gap between the formal legal status (de jure) and realities of women's lives (de facto status) must be examined; it also makes visible the disadvantages specific to different groups of women, highlighting the differentiated degrees of disadvantages amongst women. Although the questions here pertain to a regional training – it can be adapted for a national or a sub-national training, focussing instead on province or state level policies and contexts. Ideally, the participants must be asked to collate the information in advance of the training; upon arrival at the training venue, the participants can group according to country/ province/ theme clusters (depending on the session design), to consolidate their presentations into one collective (in this case, country specific) presentation. Advance preparation enables accuracy of information and informed discussion. The guidelines for country specific preparation and presentation are outlined below.

Guidelines for country specific preparation and presentations

The following sets of questions were given to the participants in advance of the training event, to allow sufficient time to access records pertaining to constitutional and statutory law in their country. This exercise is important for mapping the opportunities and barriers to women's equality and non discrimination within the constitution. Systems vary and knowledge of the political and legal systems is essential for understanding obstacles and challenges as well as for planning strategies for protection of human rights.

Part A: the Formal/ De Jure position of human rights in your country

1. How is your country's political system defined in the Constitution (is it democratic, secular, theocratic, monarchic, etc)?
2. How are human rights protected in your Constitution or by laws? For example, through fundamental rights, and/ or special law on human rights?
3. Who are the dominant ethnic and religious minority and majority groups in your country? Are there any special constitutional protections for the minority groups?
4. What is the status of international human rights law in your legal system?
5. Please specify the constitutional provisions relating to equality, non discrimination and women.
6. Are the family and/ or penal laws based on religion in your country?
7. What is the legal system in your country based on - does it follow a common law system, civil law, religious law, or any other system?
8. Is it possible to challenge a discriminatory law in the superior courts of your country? (Judicial Review)
9. What is the official relationship between the formal legal system and the informal mechanisms of justice, i.e panchyat, jirgah, shalish, etc? Does the official relationship correspond to reality, or is it divergent from reality in rural areas, in certain provinces, limited to certain communities, or across the country? Please specify.

Part B: The De Facto position of human rights in your country

1. What are the domestic and international challenges that impact the fulfilment of the political, social, economic, cultural rights in your country?
2. What are the three key areas in which gender justice has progressed in your country?
3. Explain how rights have expanded for women in these three areas.
4. What are the three areas of gender justice issues that have seen regression in your country?
5. Explain the regression on rights and the factors contributing to the regression?
6. How does your assessment of the areas of progression and regression compare with the Concluding Comments of the CEDAW committee on your country?

The findings common to all the eight South Asian country presentations that have a bearing on women's status and CEDAW implementation, are as follows:

- ▶ The constitutional guarantees tend to uphold human rights and the principle of universality of rights.
- ▶ The statutory laws are not always consistent with the constitutional standards (for instance, family laws across the region are at variance with the constitutional rights of women). This disparity between the constitutional standards and the law is a key barrier to equality and non discrimination, as discrimination is legalised.
- ▶ There are wide inconsistencies between the de jure position and de facto position in each country in respect of the areas where the law is free of sex discrimination, or even where the law is specifically designed for gender justice. Implementation of the laws is in the breach; cultural values, customs as well as the lacunae in legal structures combine to undermine de jure standards. Overall, the constitutional promise remains a distant reality for many sections of the population, typically for women who face additional grounds of disadvantage (on account of poverty, minority status, caste, sexual orientation, disability and so on).
- ▶ In all countries with the exception of Bhutan, family laws are derived from custom, tradition or religion – and these laws discriminate against women. While in Nepal, the law is not explicitly based on religion, it is derived from Hindu law. Secular family laws, where they do exist, operate in the shadow of de facto customary norms and customary mechanisms of adjudication, making implementation of good laws difficult.
- ▶ There is need for greater enquiry and linkages between the status of women and the economic policies of the country, including global economic policies that impact the country. To understand and address barriers and opportunities as they relate to different groups of women, a greater investigation into interconnections between the economy and the status of women is necessary.
- ▶ While judicial review of laws is available in all countries with the exception of Sri Lanka, it is the political environment and judicial independence that make challenges to discriminatory laws possible.

A synopsis of country presentations is provided below:

Afghanistan

Article 1 of the 2004 Constitution proclaims that 'Afghanistan is an Islamic Republic independent, unitary and indivisible state.' The legal system is a mixture of Islamic law and Romano – Germanic law.

Article 7 of the Afghan Constitution observes that 'The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.' Article 58 of the Constitution commits the government to establish a National Human Rights Commission to monitor and protect citizens' rights. Apart from the

Constitution, human rights protections are provided in other statutes as well – for example, the Interim Criminal Procedure Code lists the rights an accused is entitled to upon arrest.

Article 2 of the Constitution proclaims Islam as the state religion; however, followers of other religions are free to exercise their faith within the purview of the law. There are a number of minority ethnic groups, such as Pashtuns, Uzbeks, Hazaras, Tajiks and others and article 4 of the Constitution recognises these amongst other ethnic groups as citizens of Afghanistan.

Article 7 of the Afghan Constitution observes that ‘The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.’ While Afghanistan has ratified a number of international human rights conventions, including the Convention on the Rights of the Child (CRC) in 1994, CEDAW in 2003 and discussions are being held to sign the Convention on the Rights of Persons with Disabilities – limited action has been taken in practice to implement the provisions of these conventions.

Article 22 of the Constitution recognizes equality for men and women in Afghanistan.² Article 33 provides voting rights and the right to contest elections to all citizens, including women. The Elimination of Violence against Women Act was passed by Parliament in 2011, and this Act criminalizes the traditions of forced and under-age marriage, enslavement or physical and mental abuse. The national action plan for women in Afghanistan emphasizes that women should have more political participation including key seats in Parliament.³

Family laws in Afghanistan are a mixture of statutory law and the *Shar’iah*. It is possible in theory to challenge a discriminatory law in the courts; however, in practice this is not possible as the judiciary is influenced and pressurised by tribal and customary interest groups. There is no formal relationship between the *jirgah* system (traditional tribal adjudicatory body) in Afghanistan and the official legal system. Although the *jirgah* applies customary feudal norms that are contrary to the law, they remain a popular and powerful adjudication mechanism. The *jirgah* reinforces harsh patriarchal and feudal rules upon women, as in the case of a 15 year old girl, who was advised to keep quiet about rape as it would bring shame upon her community.

Article 121 of the Constitution permits judicial review and states that ‘the Supreme Court upon request of the Government or the Courts can review compliance with the Constitution of laws, legislative decrees, international treaties, and international conventions, and interpret them, in accordance with the law.’

Internal security concerns pose the biggest challenge to human rights in Afghanistan, and also hamper access and outreach of NGO’s to remote areas. Government officials do not place priority on human rights – for example, while an arrest is being made, the accused person is rarely informed of rights available. Customary value systems as well as traditional practices, such as forced marriages and marriage of minors, accompanied by religious fundamentalism and illiteracy pose serious challenges to women’s human rights in Afghanistan.

² Article 22 of the Constitution of Afghanistan : ‘Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law.’

³ The National Action Plan for Women of Afghanistan is a 10-year plan of action by the Government of Afghanistan to implement its commitments to women constituents. It focuses on six sectors – security; legal protection and human rights; leadership and political participation; economy, work and poverty; health; and education.

Legislation, education and increasing levels of literacy among adult women were highlighted as the three key areas in which gender justice has advanced in Afghanistan. Access to justice and freedom of movement were identified by the participants as areas that have witnessed regression. The causes for regression include selective interpretations of Shar'iah, issues around internal security accompanied by patriarchy. The issue of internal security is a cause of concern for the CEDAW committee as well, which in its 45th session in 2010 called on the Afghanistan government to provide women with prominent roles in the peace, security and reconstruction process.

Bangladesh

Bangladesh is a democracy, and article 1 of its Constitution declares it 'a unitary, independent, sovereign republic.' Secularism was one of the pillars of the 1972 Constitution, but the 8th Amendment made Islam the state religion. The Bangladesh Supreme Court in 2010 upheld a judgment by the High Court that declared constitutional amendments during military rule illegal and unconstitutional, while retaining Islam as the State religion.⁴ Bangladesh follows the common law system. Human rights are protected under the chapter on Fundamental Principles of State Policy (Part II) and the Fundamental Rights chapter (Part III) of the Constitution.

The religious minorities in Bangladesh are the Hindus, the Christians, Buddhists and the approximately 45 tribal groups. Article 23 of the Constitution observes that 'The state shall adopt measures to conserve the cultural traditions and heritage of the people...', while article 28(1) prohibits state discrimination on the grounds only of religion, race, caste, sex or place of birth. Article 29(3)(a) provides for equality of opportunity in public employment, including taking affirmative action measures for backward sections of citizens, and reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; and Article 29(3)(b) allows 'for reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.'

Provisions of the Constitution relating specifically to women are Article 27 on equality before law, Article 28 (2) pertaining to women's equal rights with men in all spheres of the state and of public life, Article 28 (4) that allows the state to make special provisions in favour of women or children or for the advancement of any backward section of citizens.

The Muslim family law is derived from religious sources, while Hindu law is uncodified and based on the Dayabhaga School. There has been no reform in Hindu law as a result of which women neither have the right to divorce nor have equal rights to succession of immoveable property in their natal homes. However, penal laws are not religion based.

It is possible to challenge a discriminatory law in the superior courts. There is no official relationship between the formal legal system and the informal adjudicating bodies or the *shalish*. The *shalish* are entirely informal and their orders do not have any legal validity – although they do have social acceptance.

⁴ The Times of India 'Bangladesh moves to retain Islam as state religion' (June 21, 2011)

The challenges to human rights identified by the participants were lack of political will and knowledge of legislation, corruption, and structural lacunae in the legal system, conservative social mindsets/superstitions, and poverty. Three areas that have witnessed progress in relation to gender justice were identified as: education for women and girls, women's participation in local government bodies/legislation drafting, and initiation of a gender responsive budget. Three key areas of regression identified were patriarchal norms and attitudes, discriminatory family laws, and violence against women. With regard to its obligations under CEDAW, the government of Bangladesh has passed legislation addressing issues highlighted in the concluding observations – for example, the 14th amendment to the Constitution allowed for an increase in reserved seats for women from 30 to 45, The Citizenship (Amendment) Act 2009 allowing a woman to transmit her citizenship to her children, the Right to Information Act 2009 and the Domestic Violence Act 2010.

Bhutan

Bhutan became a 'democratic constitutional monarchy' with the enactment of the new Constitution in 2008. The legal system is based on both the common law and civil law systems.

Fundamental rights are guaranteed under article 7 of the Constitution. Article 7.1 pertains to due process of law, and article 7.2 provides the right to freedom of speech, opinion and expression to a Bhutanese citizen. Buddhism is proclaimed as the spiritual heritage under article 3 of the Constitution but article 7.4 grants Bhutanese citizens the right to practice any religion. The participants claimed there were no ethnic minorities in Bhutan and that divisions are based on region alone. This position was challenged by other participants who pointed to reports on the discrimination faced by the Lhatshompas (ethnic Nepali) group in Bhutan.

Article 10.25 states that all international conventions, treaties, protocols and agreements duly acceded to by the government following the enactment of the Constitution shall be deemed to be law unless they are inconsistent with the Constitution except for the International Conventions, Covenants, Treaties, Protocols and Agreements entered into by Bhutan before the coming into force of the Constitution.

Specific provisions in the Constitution dealing with women are: Article 7.15 that states that 'all persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status'. Further, Article 9.17 enjoins upon the state 'to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres'; and article 9.18 mandates the state to 'take appropriate measures to ensure that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation.'

Laws are not derived from religion in Bhutan. It is possible to challenge a discriminatory law in the superior courts. Appeal against the decision of the Supreme Court can be made to the King. Although lacking in legal validity, village headmen conduct informal adjudication of disputes.

Challenges to human rights in Bhutan identified by the participants were poverty, unemployment, and the non recognition of the gravity of violence against women by policy makers. Three key areas in which gender justice has advanced were identified as: drafting and amendments of

laws favourable to women such as the Domestic Violence Bill, establishment of institutions favourable to women such as the National Commission for Women and Children, which was granted autonomy in 2008, and achievement of gender parity in primary and secondary school enrolment. More women have become aware of their rights and the state has become more responsive to their demands. Three areas in which gender justice has witnessed regression identified were: low representation of women in political participation, insufficient support services for women, and high dropout rates of girls at the secondary level in schools. The CEDAW committee identified low political participation of women and violence against women as priority areas for Bhutan, and the government is working on these recommendations.

India

The preamble of the Indian Constitution declares India to be a sovereign, socialist, secular, democratic republic. India follows the common law system.

On paper, the human rights guarantees are covered under Part 3 of the Constitution pertaining to Fundamental Rights and Part 4 of the Constitution pertaining to the Directive Principles of State Policy. The Fundamental Rights guaranteed by the Constitution are judicially enforceable, whereas the Directive Principles are not justiciable as they are not binding on either the central government or the state government.

The dominant ethnic/religious minority groups in India are dependent on the part of India one is in, although Hindus are the dominant religious group. Scheduled Castes and Scheduled Tribes have special protections under the Indian Constitution - article 17 specifically deals with the abolition of untouchability stating that 'the enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.' Articles 25 to 28 of the Constitution protect religious freedom, while article 29 and article 30 protect the interests of all minorities.⁵ The Fifth and Sixth Schedules to the Constitution provide for the administration of scheduled areas and tribal areas – and provide greater autonomy with regard to governance in these areas.

India follows a dualist system with regard to international human rights law, that is to say, international obligations are not directly enforceable; rather their implementation is contingent upon enabling legislation. Foreign case law and international conventions have a persuasive value in courts of law.

Formal equality before the law is guaranteed under article 14 of the Constitution.⁶ Article 15 of the Constitution deals with non discrimination⁷, mandating affirmative action through article 15(4) and article 15(3) that call for special provisions for women and children. Article 16 guarantees equality of opportunity in matters of public employment.

⁵ Article 29 (2) 'No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.'

Article 30 provides the right to minorities to establish and administer educational institutions without state discrimination.

⁶ Article 14 states 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

⁷ Article 15(1) states 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.'

While penal laws are not based on religion, personal laws are based on religious sources. Discriminatory laws can be challenged in superior courts. Penal laws, however, have limited provisions that only partially respond to sexual violence against women, and when applied within a patriarchal legal system, are unable to assure the redress that is available in the law.

Informal mechanisms of justice such as caste *panchayats* hold considerable power through extra-judicial adjudication. Despite lacking in legal recognition, there is community acceptance of decisions by caste *panchayats*.

Challenges identified at the de facto level for human rights in India were lack of political will, restriction of human rights in the name of national security, growth of right wing identity politics, growing impoverishment and patriarchy. Three areas identified where gender justice has progressed were primary education, increase in political participation in *panchayats*, and economic empowerment of women through self helps groups. Three areas of regression identified were all linked to violence and poor status of women, specifically, skewed sex ratio, domestic violence and 'honour' killings. These three areas do not fully cover all the concerns raised by the CEDAW committee, which in addition to violence against women, refers to implementation of the National Rural Employment Guarantee Act, and the conditions of tribal and rural women amongst other issues.

Republic of Maldives

Maldives enacted a new Constitution in 2008, article 2 of which states that 'the Maldives is a sovereign, independent, democratic Republic based on the principles of Islam.' Maldives is a unitary state with a Presidential system. The President is the executive head in the Republic of Maldives and is elected with popular vote. Article 109 of the 2008 Constitution does not include any restrictions based on gender under 'qualifications for election as President'.

Article 68 states 'When interpreting and applying the rights and freedoms contained within this chapter (on Fundamental Rights and Freedoms), a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.'

There are no officially recognised minority groups and Islam is the only religion recognised in the Maldives. Article 10 (a) of the Constitution clarifies that the State religion is Islam. The official position therefore is that non Muslims cannot be citizens of Maldives and citizenship can be forfeited upon conversion to another religion.

The courts are expected to adhere to international conventions in accordance with article 68 of the Constitution which states that, 'When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party'. There is a rider posed by article 93(b) that clarifies that 'citizens shall only be required to act in compliance with treaties ratified by the State as provided for in a law enacted by the People's Majlis'.

Chapter II of the Constitution deals with fundamental rights and freedoms. Article 17 deals with the principle of non discrimination and states that 'Everyone is entitled to the rights and freedoms included in this chapter without discrimination of any kind, including race, national origin,

colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island.’ Article 20 guarantees equality before the law, while article 62 (a) clarifies that the rights and freedoms are guaranteed equally to male and female persons.

Article 10 (b) states that ‘No law contrary to any tenet of Islam shall be enacted in the Maldives.’ While family laws are based on the *Shar’iah*, the penal code is influenced by common law. The Constitution provides for judicial review under Article 143 (a).

Challenges to human rights in Maldives include backlog of cases, the geographical distribution of the population is such that many violations of human rights take place in isolated areas that are difficult to reach, there are no laws for criminal procedure, evidence, for juveniles or domestic violence.

Areas of progress with regard to gender justice identified by the participants were: enactment of the new Constitution that allows women to run for the post of President, a greater number of women judges have been appointed, and there is greater reporting on violence against women. Areas of regression identified were: barriers to education for girls for religious reasons, barriers to women acquiring employment, and an increase in maternal and infant mortality due to inaccessibility of health care in remote islands.

With regard to CEDAW, it was noted that Maldives has removed its reservation on article 7 (States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country). However, despite concerns raised by the CEDAW Committee, access to health care is becoming worse and conservative interpretations of *Shar’iah* and growing conservative ideologies are negating the right to education of girls.

Nepal

Nepal is a secular, federal, democratic republic. Nepal follows both the common and civil law systems – but common law is more dominant.

Part III of the Interim Constitution of 2007 deals with fundamental rights. Article 13 guarantees the right to equality before the law. Article 20 deals with rights of women and prohibits discrimination against women, provides the right to reproductive health, equal rights to ancestral property, and penalises violence against women. Article 32 of the Interim Constitution guarantees the right to constitutional remedies under article 107.

The dominant ethnic groups are Hindu Brahmins and the Chhettris. The minority groups are Dalits, indigenous people and the Madhesi. Minority religious groups are those other than Hindus and Buddhists – such as Muslims or Christians. Article 13 of the Interim Constitution provides special provisions for the protection or advancement of minorities and other disadvantaged groups, specifically - women, Dalits, indigenous ethnic tribes (*adivasi/ janjati*) Madhesi or farmers, labourers, or those who belong to a class which is economically, socially or culturally backward, or children, the aged, disabled or those who are physically or mentally incapacitated. Further, it prohibits discrimination with regard to remuneration and social security between men and women for the same work.

With regard to implementation of international conventions, the judiciary has accepted both a monist and dualist framework.⁸ For example, marital rape was recognised as an offence in the case of *Meera Dhungana vs. Government of Nepal* (W.P 55/2001), through recognition of Nepal's commitments under international law and the Beijing Platform for Action. In addition, section 9 of the Treaty Act of 1990 provides that national laws must comply with international conventions Nepal is party to.

The family law is enshrined in the Country Civil Code of 1963 of Nepal, and applies to all persons regardless of religion. Although there is no explicit reference to religion it is considerably influenced by Hindu law.⁹ Although it is largely derived from Hindu religion, many of its discriminatory provisions have been repealed by the 12th amendment to the Code in 2006 that, amongst other things, introduced the recognition of women as heirs to parental property. Despite the formal law and legal system, informal dispute resolution is common amongst the Gurung, Yadav and Tharu community, as well as amongst the Muslims.

De facto challenges facing human rights in Nepal include political instability, patriarchal mindsets, violence against women, lack of access to economic resources for women, and weak application of international law. Areas that have seen progress with regard to gender justice were the passing of the Domestic Violence Act 2009 and Anti Trafficking Act 2007, the judicial pronouncements granting equal property rights to men and women, citizenship and abortion rights to women, and recognition of the third gender in issuing of national identification cards. Areas that have witnessed regression were lack of sanitation, inadequate representation of women in decision making bodies, and violent and manipulated electoral campaigns. CEDAW Committee in its concluding observations has also identified these concerns as limiting the participation of women.

Islamic Republic of Pakistan

Pakistan is a 'federal republic' as per Article 1 of the Constitution to be known as the 'Islamic Republic of Pakistan'. The Constitution provides for a democratic political system, with an elected Parliament. The legal system is based on common law and Islamic law. The former is more influential in commercial law while the latter is more influential in personal status. However, in 2010, the Amendment XVIII (the Eighteenth Amendment) of the Constitution of Pakistan paved the way for a parliamentary democratic system of government. The current constitution makes the Presidency a figurehead position, vesting the central and chief executive powers with the Prime Minister. The President is the chairman of the National Security Council, with Prime Minister as vice-chairman of the National Security Council. The President serves as the Commander-in-Chief of the Pakistan Armed Forces, but acts in accordance with advice and recommendations of the Prime Minister whose confirmation is also required, appoints the Chairman of the Joint Chiefs of Staff Committee as well as Chiefs of the Army, Navy, Air Force and Colonel-Commandant Marines. The official residence and the principal workplace of the President is the Presidency in Islamabad.

⁸ There is debate amongst legal scholars as to whether Nepal follows a monist legal system – that is, a legal system in which national and international legal systems form a unity, or a dualist system – that is, a legal system where international law must be enacted into national law before it can be enforced.

⁹ Recent reports state that the Country Civil Code (1963) or the Muluki Ain is likely to be replaced by a more secular system. See for example, 'Rana time Muluki Ain to be replaced' *The Himalayan Times* (7th January 2011)

Part II of the Constitution deals with fundamental rights, which provides for equality of citizens under Article 25 with a clause under Article 25 (3) stating that nothing shall prevent the State from making any special provision for the protection of women and children.

The fundamental rights chapter in the constitution enshrines the human rights obligations ratified by Pakistan. The judicial approach has been to harmoniously construe the fundamental rights with the international conventions, with the intention of promoting uniformity between the two. For example, in the case of *Saima Waheed vs. The State* (2003 PLD 747), the Supreme Court of Pakistan upheld the right of a woman to marry without the consent of her guardians. The Court held that according to Article 35 of the Constitution of Pakistan 1973 and Article 16 of CEDAW, it was mandated to provide protection to the institutions of marriage.

Article 34 deals with full participation of women in national life; article 35 calls upon the State to 'protect the marriage, the family, the mother and the child'; and article 37 (e) observes that 'the state shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment'.

Islam is the state religion, and most laws are based on *Shar'iah* and the principles of the *Qu'ran* and *Sunnah*. Family laws are entirely based on religion; however, punishments in penal laws are not based on the *Shar'iah* but on English law.

The dominant religious minorities are the Christians (1.5%), Quadianis, Hindus and Ahmadis. Article 38 of the Constitution safeguards the rights of minorities, placing upon the state the responsibility to 'safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services'. Article 20 provides that, subject to law, public order and morality, every citizen shall have the right to profess, practice and propagate his religion and every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institution. Article 22 further provides 'that no person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious workshop, if such instruction, ceremony or worship relates to a religion other than his own'. Article 26 declares that 'in respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth'. It is possible to challenge a discriminatory law in the higher courts.

Outside of the formal legal system, there are customary community adjudication systems, such as the *panchayats* and *jirgahs*. These have no official recognition except in specifically designated tribal areas.

Challenges to human rights include low literacy rates, lack of employment opportunities, lack of political will, natural disasters and extremism accompanied by the war on terror, which have increased concerns regarding internal security in the country. Three areas that have seen progress with regard to gender justice were identified as the enactment of gender sensitive legislation, political participation of women (there is 33% representation of women in local governments, women have been elected as *Nazims*) and growth in employment opportunities for women. The Criminal Law (Amendment) Act 2009 penalising harassment along with The Protection Against Harassment at Workplace Act 2010 have advanced rights protections for women. Three areas

that have seen regression are absence of women in peace negotiations, ineffective implementation of laws and growth of right wing extremism. These areas identified correspond with the concerns of the CEDAW Committee.

Sri Lanka

Under Article 1 of the Constitution, Sri Lanka is a Free, Sovereign, Independent and Democratic Socialist Republic. Sri Lanka is not a secular state - article 9 states 'that the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by articles 10¹⁰ and 14(1)(e).'

¹¹

Chapter III of the Constitution deals with fundamental rights, which cover most civil and political rights such as the right to freedom from torture, freedom from arbitrary arrest, freedom of speech/expression, right to vote, and right to livelihood. Article 12 guarantees the right to equality and forbids discrimination against any citizen 'on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.' Article 12 (3) deals with non discrimination and states that 'No person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, and places of public entertainment and places of public worship of his own religion'. Article 12 (4) of the Constitution provides for affirmative action and states that 'Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.' The Directive Principles of State Policy cover issues of education, health and other social, economic and cultural aspects but they cannot be questioned in a court of law. Sri Lanka has ratified a number of international treaties including CEDAW, CRC and the UN Convention Against Torture (UNCAT). Sri Lanka follows a dualist legal system.

The dominant ethnic group is Sinhala and the dominant religious group is Buddhist. The dominant ethnic minority is Tamil and the religious based minorities are Hindus, Christians and Muslims. There exists no special protection for minorities except for the equality clause, article 12 (2) of the Constitution.

In Sri Lanka, family laws based on religion/custom apply to Muslims, to Tamils in the North, and to Sri Lankans of Sinhalese ethnicity who are of 'Kandyan' origin, that is, from the province of Kandy. The Muslim minority is governed by the Muslim Marriage and Divorce Act 1951; the Sinhalese are governed by Kandyan law; and the Tamil Hindus from the Northern Province are governed by a body of customary law known as Thesawalamai in relation to property matters. Each of the customary or personal laws contain provisions that are discriminatory towards women.

Judicial review is not possible in Sri Lanka once a law is enacted, but is only possible when a law is at the stage of a Bill. There are no informal dispute resolution bodies at the community level, but mediation is being promoted by the state Mediation Board Act as a means of informal adjudication.

¹⁰ Freedom of thought, conscience and religion.

¹¹ Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice or teaching.

Challenges to human rights were identified as lack of political will, restriction of human rights in the name of 'development' by the state, and regressive customary laws. Three areas where gender justice has progressed according to the participants were: legal progress, that is, the enactment of the Domestic Violence Act 2005 and greater number of female lawyers and judges in the judiciary; social welfare, such as high education, health and employment indicators; and economic development through self help groups. Areas of regression identified were: low representation of women in political organisations, discriminatory customary laws, inadequate functioning of institutions such as the National Women's Committee and lack of support for women affected by the conflict. The concerns of the CEDAW committee are similar and include reform of discriminatory laws, establishing a National Commission on Women, and providing protection to women affected by the conflict.

TOPIC 2

Gender Ideologies and Structural Discrimination

Rationale: CEDAW recognises that discrimination stems from social and cultural norms that shape our lives, societies and institutions. Accordingly, CEDAW calls for a change in ideologies, attitudes, as well as practices, systems and structures that are embedded in social and cultural norms. This topic is foundational to any training on CEDAW, to remind participants about the influence of ideology and social norms on our systems, institutions, state policy and the law. It also sets out the different fields of interventions and range of actors that must be part of any effort to eliminate 'gender discrimination.' The topic clarifies that the scope of the term gender discrimination includes the differential impact of caste, ethnicity, religion, rural-urban location, class, migrant/ disability status, sexual orientation and gender identity on women and men.

Session 2:

The Ideology of Gender

Session Objectives

- ▶ To develop an understanding of the social construction of gender and inequality;
- ▶ To understand the relationship between the ideology of gender, gender stereotyping and discrimination;
- ▶ To understand intersectionality: through recognition of ways in which multiple marginalities of caste, class, sexual orientation, gender identity, age, migrant status and disability intersect with gender to compound disadvantage for some women more than others.

Resource Person: Madhu Mehra

Gender Ideology and Inequality

Discrimination begins at home and is manifested in all spheres of life - at the community level where women occupy subordinate positions in social groups, in decision-making bodies where women are fewer in numbers, in workplaces where women occupy lower paid jobs. Women's stereotypical roles, lesser status and low worth in society are shaped by a dominant understanding of gender roles and norms that privilege men and subordinate women. This understanding draws upon social norms that view women as capable of certain things and not capable of others and shapes the way men and women relate to themselves and to each other in ways that subordinate women to men. This construction of women and men in society constitutes the ideology of gender. This ideology combines with parallel ideologies of caste, class, notions of ability and disability and sexuality in a given culture, to differentially impact women according to their status along these categories. The impact of this ideology is not limited to women's roles in

their family, or within the community – but in all fields of life, including the public sphere. Importantly, this ideology has material and legal consequences for women.

CEDAW connects discrimination against women in public and private life with ‘the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women,’ and mandates the elimination of such discrimination from all spheres. It therefore directs that discrimination against women must be eliminated simultaneously wherever it occurs –that is to say, within the home, the community, the workplace, the public and the political spheres, as well as the law. The terms sex and sex stereotyping used in CEDAW are with reference to ‘gender ideology’, and how this ideology operates in all spheres of life, resulting in discrimination against women. This ideology is as much internalized by women as it is by men, and constitutes the value systems that inform structures, systems and practices in society. Change in ideology and practice is possible, and CEDAW sets out the framework of operationalising change. However, it requires the state, non state actors, and indeed all persons to implement and pursue this change – placing upon the state the primary responsibility to initiate and implement change. CEDAW places priority on tackling patriarchal ideology that stereotypes men and women, placing women as inferior. It is for this reason that a discussion on sex and gender, as well as the relationship between gender ideology and discrimination, is a necessary part of a training on CEDAW.

Even as the term ‘gender’ here pertains to the ideology and the unequal power relations between men and women within patriarchy, CEDAW recognises that women are differentially affected on account of their specific context, status, or identity. The treaty articles and the General Recommendations make references to this differential impact upon different groups of women. CEDAW recognises that gender ideology intersects with other systems of inequality based on sexuality, caste, ability-disability, rural-urban location, minority or migrant status, and so on – putting some women at additional risk of higher levels of discrimination.

It is suggested that trainings on gender discrimination, women and the law, or on CEDAW need to integrate a component on social norms to understand the ideology that upholds patriarchy, and factor into this the influence of inequalities stemming from caste, class and other ideologies of inequality. Orientation on sex and gender, and gender ideologies is common to a range of work within the social justice sector. The emphasis here is therefore to distinguish popular approaches on this topic from the approach of CEDAW, to guide the perspective rather than methodology of training.

There are several approaches to the session on ‘sex and gender’ – and the purpose here is to distinguish those that are flawed, from those that are consistent with CEDAW. The following are some of the problematic approaches to ‘sex and gender’ across the social justice sector, and for this reason must be avoided:

- ▶ Although the terms ‘sex’ and ‘gender’ have different meanings, they are mistakenly used inter-changeably, conveying a conflation between the two;
- ▶ Sometimes the term ‘gender’ or social construction of gender is viewed as a neutral process of social differentiation between men and women. Such approaches de-link gender differentiation from power, privilege and structures that entrench inequality. Gender

differentiation is not merely about different roles ascribed to men and women; it is about the subordination of women, and the privileging of men. The ideology underpins unequal distribution of power, resources, benefits and access to opportunities within systems and structures, so as to disadvantage women.

- ▶ Sometimes 'sex discrimination' is seen as perpetrated by all men and against all women. This individual focus on men as aggressors and women as victims takes attention away from ideology or social norms that infuse our institutions, structures and systems in all spheres of life. Looking at all women as victims, and all men as abusers, obscures the fact that we're all bearers and reproducers of gender ideology. Such an approach is unhelpful as it reduces the debate to one of men versus women, taking the focus away from ideology and the need for systemic change.
- ▶ Generally, the term 'sex' is used to imply biological categories of male and female, and 'gender' is used for social categories of masculine and feminine. Limiting the two terms to the binary of male and female is not just incorrect, but also part of the dominant understanding of sex and gender that this session is meant to critique/ unpack. That the biological categories of the human race are more complicated than those of male and female, and gender categories more fluid and diverse than masculine and feminine; this needs to be part of any discussion on stereotyping, marginalisation and discrimination. Invisibility of lesbian, bisexual, transgender and intersex persons in the discussion on gender reinforces discrimination against women on account of sexual orientation and gender identity, in the same way that non recognition of caste, class, disability, migrant status conceals rather than advances the project of eliminating discrimination against the most vulnerable groups of women.

The linkage between Sex, Gender, Stereotyping and Discrimination

Sex is what you are born with, and gender is the socially constructed identity given to the two sexes by society. There are more than the two sexes of male and female – for example, historically *hijras* have neither been male nor female. Similarly intersex persons also defy this simplistic biological binary of male and female. The expectations society has from men and women constitute gender. Gender, as opposed to sex, is a term associated with the understanding of social construction of men and women in ways that stereotype their roles, capacities, identities and opportunities – to result in unequal status of women in social, economic, cultural, civil, political and all other fields.

It is important to note that while sex is a biological category it is often presented as fixed and unchangeable, around which gender roles develop. However this is not so, biology is not fixed or a given. Not all women and men can reproduce or are fertile in the way the flattened understanding of biology tells us. Sex is also not fixed and unchangeable - not all persons are born with genitalia that falls within neat male or female categories, and those with distinct male or female genitalia may also opt for sex reassignment, thereby altering their biology. There exists a need to revisit the position that biology determines sex; that biology makes us either male or female; or that it is unchangeable. Sex and gender do not exist independently of each other and both can impact on each other. The gender ideology is often the prism through which society looks at sex itself. For example, 'perfect' physical attributes of masculine or feminine

standards often become the yardstick for ridiculing flat-chested biological females (despite the conformity to gender roles) for not being female enough; or for belittling 'effeminate' men, as well as men with sexual dysfunction.

The Case of Shahzima Tariq and Shamial Raj (Pakistan)

Shamial had a sex change operation and was living as a man for years. He married his cousin, Shahzina Tariq despite opposition from her father, Hussain, who had wanted her to marry a person to whom he owed money. Hussain and other family members harassed the couple and took legal action against Shamial accusing him of kidnapping their daughter, despite the consensual nature of their marriage. The two of them then approached a lower court in Faisalabad to prevent such harassment. The lower court decided in their favour since they produced their marriage certificate and because both of them were adults. Shahzina and Shamial then came to Lahore High Court and filed a writ petition to end such harassment. On the 4th of May 2007 the father of Shahzina appeared before the Court and gave testimony that Shamial was actually a woman. The Judge ordered a physical examination to be done by a five member medical team at the government Services Hospital on Shamial. The medical team reported that while Shamial 'is a well built muscular person with moustache and beard and has a hoarse voice' that physically he is a woman. They did however propose additional tests. This report changed the nature of the writ application and turned the complainants into defendants. During his physical examination and later in Court Shamial admitted that he was a woman. Shahzina and Shamial were given a sentence of 3 years each.

Societies go to great lengths to enforce gender stereotyping; however, in any society there exist dominant social norms and a spectrum of deviances from dominant norms. Society practices an exercise of selectivity - some deviance is tolerated, while some is not – this establishes a hierarchy and labels such as normal – deviant; natural – unnatural; good – bad. An intersectional approach to gender discrimination helps identify the women who are at the margins, or lowest in the hierarchy.

Gender roles and expectations vary with region, caste, class, disability-ability, and over time. They are shaped by factors other than just sex, or biology. The following are some of the examples of how gender roles and expectations vary from region, caste, ethnic context and over passage of time:

- ▶ Hindu brides in North India cover their heads, but in South India they do not;
- ▶ Upper caste Hindu and Muslim communities do not allow women to publicly smoke or drink, but this is not true for Dalit women;
- ▶ Urban women are increasingly expected to work and bring in an income;
- ▶ Burqa or the veil is becoming more prominent amongst Muslim women in Kerala and Nepal, regions where it was not traditionally worn;

- ▶ Tamil women who were combatants in the conflict in Sri Lanka are expected to return to their domestic and reproductive responsibilities in the post conflict period;
- ▶ Women are differentially situated in privilege and status. Married women are highest in the hierarchy of women, and amongst them, the mother of sons is more privileged. In contrast, single women, women with HIV, lesbians and sex workers bear a higher degree of stigma and subordination.

Gender and Intersectionality

Stigma and disadvantage are not determined by gender stereotypes alone, but with the interaction of gender with other systems of power and inequality. An intersectional approach to understanding how gender is constructed helps us understand why deviance of some kinds and in some situations is tolerated more than others.

The CEDAW text is premised on two categories—male and female—and states that there shall be no discrimination on the grounds of ‘sex.’ However, CEDAW recognises explicitly discrimination specifically in respect of rural women, HIV positive women, women migrants, women in situations of armed conflict, and so on. Additionally, the Committee’s General Recommendation 28 on Article 2 says, ‘there shall be no discrimination on the grounds of sexual orientation and gender identity,’ establishing that sex must be expansively interpreted to include these. While ‘sexual orientation’ is easier for the CEDAW Committee to accept, the question of gender identity remains open ended – for instance, the Committee might respond more easily to a woman who may identify as a male, but it is yet to be seen how will it respond to a male who identifies as a woman.

Issues of sexual orientation and gender identity, affecting in particular lesbian, gay, transgender, intersex and bisexual persons, are protected under the term sex discrimination in CEDAW as in international law. Their struggles and experiences of discrimination may vary. For example, in some societies there is greater sympathy for the intersexed in the category of LGBTI persons, as it is assumed that intersex persons do not have a choice in determining their sex – and therefore they are worthy of ‘pity’ more than rights protection. In contrast, transgender persons, or those who are physically male or female but identify with the other sex, and/or may dress/behave like the other sex, face hostility from society.

The participants at the training shared an important concern. For many, to raise issues of sexual orientation and gender identity would be difficult, if not outright risky in a discussion on sex and gender, as in their contexts, even discussion on equality between men and women had to be approached through culturally appropriate ways. In many contexts that the participants or trainers work in, even discussions on women’s equality and basic freedoms evoked resistance; and the word ‘feminism’ was alienating and hostility producing. The resource persons explained that the best way to initiate change and inclusiveness was often not explicitly within training agendas across contexts, but more tactically – for instance, to probe the correctness of two biological categories of male and female. More importantly, smaller and more meaningful initiatives around sexuality concerns can be through provisioning of support services, creating safe spaces for LGBTI women to meet and talk, mobilizing those who do not conform to heterosexuality, creating spaces for questioning dominant sexual and gender norms/ stigma in smaller groups, in the community or even within organizations. Raising awareness on specific forms of discrimination

need not be limited to training programmes only, but needs to be undertaken in various ways; to unpack and question binaries of sex and gender, and create space for the affected constituency to find its voice; amongst others.

Session 3:

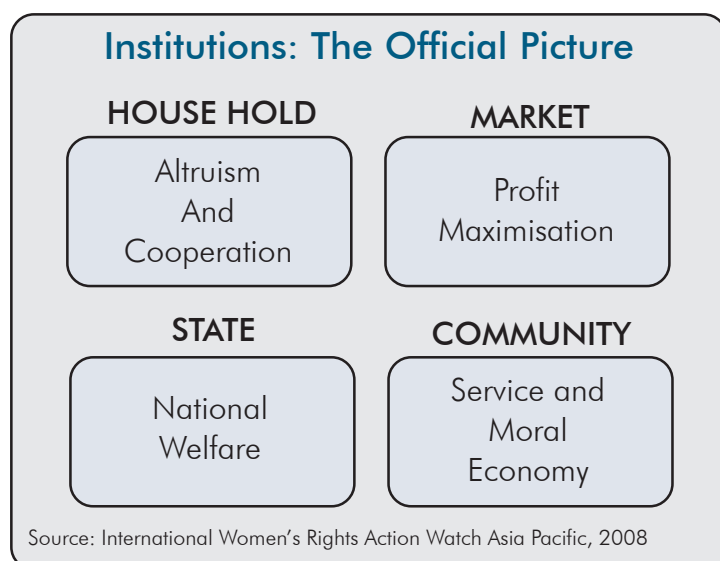
Institutions and Inequality

Session Objectives

- ▶ Recognize the contexts in which discrimination against women occurs and the manner in which discrimination is structured;
- ▶ Understand the role and dynamics of different institutions in reinforcing discrimination;
- ▶ Understand that discrimination is interconnected;
- ▶ Establish that discrimination results in inequality, loss of benefits, rights and power for women.

Resource Person: Shanthi Dairiam

The concepts of equality and non discrimination are interrelated. Discrimination results in inequality and loss of benefits, rights and power for women. The material consequence of discrimination fuels inequalities in power. In this regard, it is important to recognize the manner in which discrimination against women is produced and reproduced, and the manner in which this shapes different institutions, both public and private, so that discrimination becomes entrenched in structures and systems of the state and society. Different social institutions play a role in reinforcing and perpetuating discrimination against women, and such discrimination results in loss of benefits, rights and power for women. To illustrate the structural nature of sex discrimination, four institutions can be examined, to unmask the values with which they approach men and women. The following four institutions were discussed, brining out first, the values that are commonly associated with



these institutions, followed by a discussion on the 'real' values with which these institutions operate. The image reflects the values the institutions claim to operate with.

The next step is to look at the ways in which these institutions reflect and reproduce gendered norms and assumptions relating to men and women (sex and gender), and how these norms and assumptions cut across all of them. These institutions do not function in isolation from society and social values, but in fact are

embedded in them. All four institutions have an impact on women and they all together work towards shaping and reinforcing gender equations. They reproduce social norms relating to sex and gender. Just as these institutions play a powerful role in reinforcing and enriching these norms to perpetuate structural discrimination, they have the potential to challenge and transform these roles if they are designed to do so. Institutions have the potential to be sites of social transformation, and means of changing entrenched social patterns and values that stereotype men and women in ways that privilege men over women – which is why CEDAW seeks changes at institutional and systemic levels.

Exercise 1. Basic exercise of mapping structural discrimination

The following exercise aims to help participants understand the role of the four institutions in perpetuating discrimination – the family, the community, the market and the state. To orient the participants on what is required of them, it is recommended that one exercise be conducted collectively in the plenary, following which break-away groups are formed to conduct the exercise in smaller groups. Each group chooses a social norm for their exercise, such as ‘women are home makers’ or ‘women must be indoors’ or ‘women are natural child rearers’. Keeping the selected social norm in mind, the group must answer the questions asked below in respect of each of the institutions:

- ▶ Select a social rule or norm
- ▶ On the basis of the rule/ norm selected, list the gender-based distribution of resources and responsibilities for women in the household
- ▶ On the basis of the same social rule, analyse how the market allocates resources and rights to women and men and builds on existing inequalities
- ▶ Identify how the various institutions of the community reinforce the social norm through unequal distribution of privileges
- ▶ Identify how state intervention builds on this unequal distribution through law and policy.

An example of the group work is as follows -

Social norm selected: Women are homemakers and men are bread winners.

Household: The gender based distribution of responsibilities for women are shaped by this social norm, and require that - girls should be trained in household keeping and cooking; marriage is important for women; the family is less likely to invest resources towards making girls independent; women have unequal inheritance rights, and in reality may not even inherit; girls not allowed out of the house in the evening; women encouraged to be submissive.

Market: The market too sees women’s paid work as secondary to their roles in the house – as a consequence paying women less than men. There is little structural change in workplaces to make crèche facilities mandatory, and the community reinforces this stereotype by valourising motherhood and mothers who stay at home and don’t work. Jobs that seek women in particular often build upon their domestic roles of caring and nurturing.

Institutions within the community that reinforce the social norm: religious bodies, cultural bodies, educational institutions, and media.

State: An example of how the law perpetuates the norm of women as homemakers is, women not entitled to matrimonial property but only to maintenance upon separation or divorce; women may only marry a man (compulsory heterosexuality enforced through family law); under some laws, man may divorce without reason whereas a woman may apply for divorce stating legally prescribed grounds for seeking it.

The social norms therefore create a continuum of discrimination that starts from the private sphere of the home, and continues to shape women's experiences and opportunities in public spheres outside the home. The way in which public/private discrimination is inter-connected was exemplified by a Nepali woman's testimony to CEDAW committee, who had been trafficked from Nepal to India. She explained, 'I was discriminated against but the discrimination started when I was born.' Her relationship with the state intersects with the discrimination she experienced in her family, her community and the market.

Exercise 2: Advanced exercise for mapping intersectional discrimination and institutions

Participants work in smaller groups, to map the way social norms are played out in a woman's life – identifying the norm, how this norm shapes her responsibilities, the resources allocated to her, her place in the market, community and the state. Each group is to highlight the intersecting characteristics or identifiers of the woman who they chose as the subject of this exercise – as for instance, a Dalit woman, transgender person, a woman in a context of conflict (over land or identity struggles) as all these shape a woman's situation differently. The participants could be asked to select the intersecting identifiers of the woman they want to base this exercise on, or they may be given images/ photos of women to work with. The exercise helps apply gender ideology as it intersects with caste, as the group presentation on a Dalit woman (below) seeks to unravel.

Social norms pertaining to a Dalit woman: while she is expected to be a home maker like others, she is also expected to labour outside the home and earn.

- ▶ Her responsibilities require her to cook for the family, procure fuel and water, clean the house, look after the animals (if there are any), and eat last, as is common to most women. In addition, she must labour outside the home for others to eke an income for the family.
- ▶ The resources invested in her: She learns household skills like cooking, cleaning, and at a very early age, is made aware of her place in the caste hierarchy within society. She therefore learns what role, functions and tasks society expects from her as a Dalit woman. She will be taught the necessity of performing menial physical labour outside the home that is usually considered dirty or polluting for higher caste groups to take up. This is to be combined with housework. The available family resources and social barriers often make it difficult for a Dalit family to acquire education and related opportunities for their daughters. Her housework is likely to be more laborious than other women, since she will not have easy access to community water sources.

- ▶ Role of the market: She will be the likely candidate for most menial jobs, such as those related to waste removal and disposal. In India, in some cases she may even have to undertake manual disposal of excreta. In most other cases, she will be a farm labourer, as she is not likely to have her own land, or her family land. She will typically be a low paid daily wage. Also, as she has to provide care giving in the family, she must perform multiple roles with little or no income or recognition at home or in the workplace. Her work opportunities outside of the traditional roles will be more limited than most women, because of the caste stigma.
- ▶ Community: Dalit women are assigned jobs that are lowly paid and not valued, particularly involving manual work. Violence is justified, particularly if the perpetrator is an upper caste person. The risk of sexual violence is high for Dalit women and girls, as their sexuality and labour have traditionally been exploited by the upper caste groups, and are commonly viewed as being available to the community (unlike the case of upper caste women).¹ They may be assigned manual scavenging work, or similar manual work that is considered dirty, lowly and polluting.
- ▶ Role of the state: The institutions of the state are also influenced by the same social values and gender-caste ideology. Manual scavenging is prohibited by law, but this law is not implemented. For example, the Indian Railways is the largest employer of female scavengers in India. There is a need to eliminate all discrimination against women not just in the laws, but also in practice. Further, discrimination in the private sector must be addressed through legal regulation of the market and workplace, in this case the unorganized work sector. Prohibition without developing non traditional income generation skills in women is not useful. The state provides minimum wage but not a living wage. Thus, even the state exploits the cheap labour of women and, thus, is complicit in perpetuating discrimination.²

The exercises and discussion above bring out the ways in which gender and sex discrimination are constituted by structures and institutions in society, making it difficult for women to exercise choice and access opportunities. The need to transform institutional values and processes, as well as address such stereotyping is important – as highlighted by CEDAW. The next section relates to law, to explore ways in which law too is embedded in social values, reproducing gender stereotypes that privilege men and place women at a disadvantage – exploring also, ways in which law has and can be transformed to reverse discrimination.

¹ For higher castes, sexual control over women is a means to preserve purity in lineage. In contrast, amongst the lower caste dalit community, sexual exploitation of women is common and in some parts of India, sex between a dalit women and the upper caste landlord is expected. See for example, Human Rights Watch, (1999) 'Broken People – Caste Violence against India's "Untouchables"'.

² Malaysia's combined initial and second periodic report to the CEDAW Committee shows that more women are in universities than men, but employment statistics show that not many women are in senior level positions in the workforce. The CEDAW Committee asked the government to put in temporary special provisions to rectify the situation. This example was cited as part of the discussion.

Session 4:

Understanding the Substance, Structure and Culture of Law in the Context of Gender Ideology and Norms

Session Objectives

- ▶ To unpack different elements that comprise law
- ▶ To examine ways in which each of these elements can reinforce/ challenge gender inequality
- ▶ To assess the role of law in society
- ▶ To assess how law can be transformed into an agent of reform

Resource person: Deepika Udagama

The Role of Law

Law plays an important role towards redressing gender injustice, but at the same time law can also perpetuate gender stereotypes. Laws are a potent tool of social reform and it is largely expected that where rule of law prevails, human rights can be protected. For instance, the preamble to the UDHR states '...it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.' Article 2 (c) of CEDAW obliges state parties to establish legal protection of the rights of women on an equal basis with men and to ensure, through competent national tribunals and other public institutions, effective protection against discrimination. Article 3 of CEDAW observes that 'States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.'

Although the human rights obligations set the highest standards for national legal frameworks relating to women's equality, the laws are frequently inconsistent with the standards. They have historically been negative for women, and in many cases continue to be so, thereby reinforcing discriminatory social norms.

The role of law can be analysed based on the following three elements:

- (a) Protection of rights
- (b) Regulation of behaviour/ conduct
- (c) Law as an agent of social reform

Although the law is often considered and held out as neutral and impartial (the idea of legal positivism views law as a separate from the social values and context of a situation), there are many studies and examples to show that laws are not independent of ethics and subjectivities in

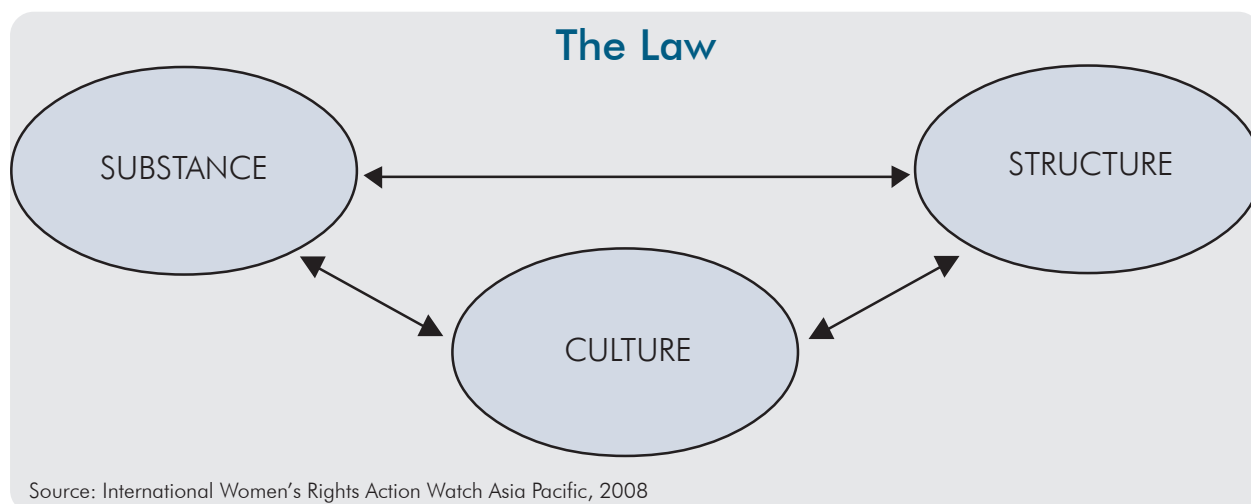
society. Rather, the law is embedded in these (despite claims of objectivity and impartiality). It is therefore not surprising that those whom the law impinges on question the legitimacy of law. The following are some examples where groups consider laws that target them as illegitimate, and even challenge the constitutionality of the law where the right to seek judicial review exists:

- ▶ In Sri Lanka, while the Constitution guarantees equality of all persons, the customary provisions under the Thesawalamai law state that women cannot inherit property.
- ▶ In Nepal, the Foreign Employment Act of 1985 prevented women from going to foreign countries without permission from their guardians, and while initially the Supreme Court stated it was for the protection of women, later the court struck down this law.
- ▶ In the case of Bhutan, The Tobacco Control Act 2010 is strictly implemented to ban smoking. In one case, the court sentenced a man to three years imprisonment for merely carrying a packet of cigarettes.
- ▶ In India, one of the basic principles of criminal law holds the accused as innocent until proven guilty. However, this presumption of innocence is suspended when the burden of proof shifts onto the accused in anti-terror laws such as Unlawful Activities (Prevention) Act 2008 and The National Investigation Agency Act 2008.

In Afghanistan, Pakistan, India, Bhutan and Nepal laws can be challenged and reviewed in courts. In Sri Lanka, judicial review of a bill is possible, but once enacted the laws cannot be challenged in a court. Cultural and social norms play a central role in determining perspectives on what rights women are entitled to or not. Laws can be used to change values and introduce new ideas and value systems, or reinforce existing social values.

The different elements that comprise the 'law': substance, structure and culture

The term 'law' is usually used to refer to the written piece of legislation, although it comprises much more. It encompasses the substance or the written law, the structure or the procedural aspects and mechanisms of law enforcement and dispensation of justice, and finally, the culture, or the value systems and social environment within which the law is interpreted, and operationalized.



These are not three watertight and disparate categories that are always distinct as the three blend into each other. For example, culture shapes the content or substance of the law resulting in an obvious gender bias, and influences the way the functionaries implement the law; culture might render a good law ineffective. The following table explains the intersections between substance, structure and culture of law in a sexual assault case, an example from India, that resonates with all countries in the region:

Case study on sexual assault prosecution (India)		
Structure	Content/Substance	Culture
<i>The response of the police to woman alleging sexual violence is unsympathetic. An FIR may not be registered in a case of sexual assault, the medical examination may be conducted in a hostile and humiliating way.</i>	<i>The law on sexual assault is inadequate as it simply does not criminalise certain serious forms of sexual violence. Penetrative sexual assault, other than penile vaginal, is not recognised in the penal provision pertaining to 'rape', leaving them to be prosecuted (if at all) under lesser offences such as 'outraging the modesty of a woman'.</i>	<i>The victim of sexual offence is blamed – she is assumed to have provoked the assault by her dress, conduct or speech. Her character becomes central to the determination of the crime.</i>

The changing positions and contradictions in the law relating to statutory rape in Sri Lanka are another example of how the three categories substance, structure and culture of law intersect with each other. The age of consent is the age when 'consent' to sexual intercourse is recognized in law. All sex below the statutory age, with or without consent is deemed as statutory rape.

Law as an agent of reform

Advocacy strategies for reforming laws must be specific about the components of the law they seek to target, and indeed must work at all three levels - (i) the law's substance (the content of the law), (ii) the legal structure and enforcement agencies, and (iii) the broader culture sustaining the law.

Law might follow social change, and often in the region, has been a trigger for countering existing gender bias and cultural practices that are derogatory or oppressive to women. An example of law's role in facilitating social change is as follows: in Nepal abortion was a criminal offence punishable with imprisonment until 2002, when the parliament passed a liberal abortion law. This law changed values and perceptions regarding abortion, particularly as maternal mortality decreased following the enactment of this law. Domestic violence laws have similarly been enacted to counter value systems, while also criminalising wife beating, a socially accepted practice. A social reform law on its own is not enough to generate social change. The law can become a tool of public education and awareness raising, of empowering women to resist, and

Case Study on Statutory Rape (Sri Lanka)

Amendments were introduced to the Penal Code of Sri Lanka in 1995 with regard to rape laws. The amendments were as follows:

- (a) No evidence of physical struggle required to prove rape
- (b) Age of consent for girls raised to 16 from 14 years
- (c) Sexual intercourse with girls under 16 years of age is an offence carrying a mandatory minimum sentence. If the offender is under the age of 16, discretion can be applied.

Although the law was passed in 1995, in practice proof of physical struggle is still demanded by prosecutors, judges, and medical officers during trial.

An appeal was made that the age of consent should be dropped because in rural areas, women marry early. The counter argument made was that if women marry early, their lives lose meaning because of early pregnancies. Therefore early marriages should be prevented.

In a particular case, a woman judge observed that it was against her conscience to impose the mandatory sentence in a case of statutory rape. The Chief Justice took it upon himself to review this legislation under the Fundamental Rights chapter and said that mandatory sentence for statutory rape is unconstitutional, but justifiable in serious offences such as organized crime. Thus, laws are often based on the subjective opinions and interpretations of those in power and can be influenced.

changing the attitude within law enforcement and the justice sector towards women to slowly usher in change.

There is a circular connection between advocacy, law reform and social change. For example, strong mobilisation and visibility of the LGBTI community in India, media support and advocacy created the public opinion critical for creating the environment for de-criminalising homosexuality. The Delhi High Court de-criminalised homosexuality by reading down section 377 in India, at a time when the issue was already visible in the media and many prominent voices and movements were talking about it.³ While the background of the legislators often shapes the drafting of the law, one cannot assume that women legislators or judges will always support women's issues. For example, in Sri Lanka, when the Domestic Violence Act was proposed in 2005, the right wing labelled it as against Sri Lankan culture and the women parliamentarians kept quiet as they did not want to be branded as feminists. The Act was passed only after a senior male doctor made a presentation to the Parliament on the negative effects of domestic violence on the health of women. In the early 1990's Nawaz Sharif's government in Pakistan decided to introduce *Shar'iah* law; however, the idea was killed due to the intense controversy it created and the opposition from minority groups.

³ Same-sex relationships were until recently criminalized as part of 'unnatural sexual offences' under s. 377 of the penal code. In the case of Naz Foundation, the Delhi High Court by its judgment dated 2 July 2009, read down s. 377 to exclude adult consensual same-sex relations from the purview of criminality. However, several appeals against the judgment are pending before the Supreme Court, and it remains to be seen what the final verdict of the apex court on the status of same-sex relationships will be.

Strategies for effective reform

Strategies for effective reform in law vary. For example, women's groups in Sri Lanka required a senior gynaecologist to speak about wife battering from the health perspective - which worked in convincing the legislature about the need for a domestic violence law (in an environment where women's physical dignity and security was not considered adequate reason). For women, the obstacles in challenging any legal provision are great as the resistance is institutional. The saying 'behind every woman carrying a slogan of protest, is the entire community telling her that she is wrong' captures the challenges to women's rights advocacy aptly.

Certain strategies for legal reform include: convincing legislators of political dividends, using effective language and arguments that can break through cultural barriers, and engaging in parallel processes. In all cases parallel processes, such as public education, training key actors, effective resource allocation, institutional reform, and acquiring a platform for voicing women's opinions can work in advocacy. The parallel processes act as effective checks and balances on the legal system and are essential for the well being of any society.

TOPIC 3

Human Rights and Women

Rationale: This session serves an important purpose of grounding human rights in diverse local histories, to reflect the multicultural sources the standards draw from. We feel human rights education needs to establish the connection of human rights standards with national and social movements and events so as to root it in our respective contexts, cultures, histories, and philosophical traditions. Although as a term ‘human rights’ is modern and codified in international law, and reference to that is intrinsic to human rights education, but an orientation on human rights must ideally not begin with or be limited to international law, for this would render invisible diverse histories and struggles and create an erroneous impression of human rights as being modern in origin, and embedded in western histories alone.

Session 5

The History of Exclusion and Human Rights Movements: Globally and Nationally

Session Objectives

- ▶ To discuss the meaning of human rights;
- ▶ To recall the history of human rights law at the local, national and the global level, and its roots in movements in the region;
- ▶ To highlight the exclusion and marginalization of women’s rights.

Resource person: Deepika Udagama

The history of human rights has been long, and the process of standard setting has helped challenge many barriers to recognition of rights. One of the main arguments against human rights has been that it is ‘western’ and has been implanted onto an existing culture unsettling the traditional equilibrium in society. However, if we reflect on the philosophical foundation of human rights it becomes clear that there is nothing ‘western’ about them. Rather, human rights principles are grounded in religious, legal and political philosophies from all civilizations and cultures. For example, concepts of equality, non discrimination, freedom of thought, right to life and ideas of human liberty cannot be said to be emanating from a particular religion, a particular region (west) or a specific period (enlightenment). As trainers our approach should be to establish the legitimacy of human rights by rooting them in diverse cultural traditions. This is not to legitimise or celebrate cultural relativism, a ploy used to evade the issue of universal human rights standards. It is therefore equally important to challenge traditional cultural values, and indigenous references that are projected as ethical standards, but are in fact counterproductive to human rights.

The contemporary sources of reference for human rights are treaties, resolutions, customary international law, domestic constitutional histories. However, for any discussion on sources one

needs to recall the historical sources from across countries and civilisations, where standards of human dignity were codified to guide governance, define ideal conduct and establish the relationship of the state/ sovereign with its people thousands of year back. Some ancient sources codifying concepts of governance, just rule, equality and secularism are the Code of Hammourabi (2000 BC); Proclamations of Cyrus the Great (Iran) (500 BC); Edicts of Asoka (274 BC), Magna Carta (1215) and Akbar's secular welfare policies (late 16 century). Though the present concepts typifying human rights ideas of human liberty, fraternity and democracy are thought to be derived only from revolutions in the West, the culture of human rights is located in all societies. The modern concept of human rights is based on the idea of individual autonomy and inherent right to human dignity, with equality as a cornerstone. Among the most modern sources of human rights is the international bill of rights or the Universal Declaration of Human Rights (1945) read with the International Covenant of Civil and Political Rights (1966) and the International Covenant of Economic, Social and Cultural Rights (1966). These form the key texts that other human rights treaties draw upon in relation to specific groups of persons, or specific forms of discrimination – such as women, children, migrant workers, persons with disability, and in respect of racism. Despite pioneering ideas, and normative consciousness as reflected in the rich history of human rights, large swaths of people have been excluded from being claimants of human rights, leading to modern movements and struggles for recognition and inclusion – of women, Dalits, minorities, indigenous people; and more recently, migrants, disabled, elderly, and the LGBTI.

Inclusiveness, an unfinished agenda of human rights struggles

Equality is the cornerstone of the concept of human rights; however, the concept of equality has not been inclusive of all marginalized groups (including women) in human rights movements through the ages. Human rights struggles show that every achievement and pronouncement, while laudable in spirit, was in fact limited to a specific group of persons, and applied as such. Even when such pronouncements were phrased inclusively, such as using the term 'all persons', they remained limited to the groups and interests that led the movement/ struggle. Therefore, marginalised groups including colonial subjects, women, minorities, persons with disability and the LGBTI have at various points in history been excluded from the enjoyment of human rights.

This has been true of local, national and international struggles. For example, while the American Declaration of Independence refers to natural rights, its application was pertinent only to a liberal democracy where a violation had taken place against constitutional rights. Following the French revolution, the Declaration of the Rights of Man and the Citizens, August 1789 was adopted, which provided rights to the 'citizen', who could only be male. Slavery was only revoked a century later.

A moot question is how inclusive were the human rights revolutions and movements like the French, American and Russian revolutions? With regard to the Indian independence struggle, the role played by women in the movement was significant, but post independence, women played a minimal role in drafting the Constitution.¹ The revolutionary gains hard fought for by

¹ See for example, Agnihotri Indu, and Mazumdar Vina 'Changing Terms of Political Discourse: Women's Movement in India, 1970s to 1990s' *Economic and Political Weekly* July 22, 1995

both men and women, were not enjoyed by women whose participation in the nation building process in the post independence era was marginalised. A recent example is the non involvement of women combatants in the post conflict political struggle in Nepal.

While much marginalisation may be arguably the result of blindness or the assumption that formal equality in law books is all that is needed to transform social realities, a large part of marginalisation and inequality is the result of unequal structures of power, intentionally sustained for the enjoyment of power and privilege by a few. The roots of such structural inequality might stem from or be justified by religion, patriarchy, culture, or political hegemony to further the interests of any one section or population group. The Christian Right is one example, that has contested women's reproductive rights, in particular abortion in the U.S.A.

Nature and extent of the inclusion of women in current human rights movements in South Asia

To unpack the extent to which contemporary human rights movements have integrated women and women's agendas in South Asia, participants can be asked to discuss specific areas that they are familiar with. In this case, women's leadership in conflict situations and in political participation in post conflict processes and in peace time have been discussed to highlight the ways in which exclusion and marginalisation operates in specific contexts and movements.

Women's Leadership and Conflict Situations:

In 1992 there was a ceasefire in Sri Lanka following which a peace process started. A committee was constituted to work on gender issues along with the LTTE. Five women were nominated by the LTTE to dialogue with five women from the South of Sri Lanka. Despite participation of women combatants within the LTTE, the findings of this dialogue reveal that the women's roles and lives had not transformed radically to transcend their gender roles. The study of women's roles in the LTTE revealed that while women may be seen to play an active role in carrying out tasks in the militant or liberation struggles, the struggle itself did not absorb women's concerns, or include women in the decision-making bodies. In the North East of India the peace process has little to no women representatives. The Maoists in India have women as combatants, and women cook, wash, clean and also face killings. Much of this is gendered, and an extension of their work in the family. In Nepal, in many peace-building talks, there are usually no women in negotiating processes, with women present only as facilitators in mainstream politics. In Afghanistan, women are not part of decision-making processes. Women's rights advocates try to involve more women but local women are hesitant to take that step.

Women's Political Participation:

Even in peace situations, women's participation in leadership is minimal. In Bhutan, there were just two women representatives in the constitution drafting committee. In the first round of the constitution drafting committee there were no women representatives, but after civil society interventions, at the second round, two women lawyers were included. While their inclusion in law making bodies was welcomed, it was limited to lawyers. Women from other backgrounds were not included.

In terms of the value of women's participation, it was felt that while women bring different experiences and perspectives to the table, and inclusion makes the processes more democratic,

women may not necessarily make the most progressive or gender just decisions. Women in positions of power and privilege do not necessarily make progressive decisions. For example, women legislators were not supportive of the passing of the Domestic Violence Act in Sri Lanka which was ultimately only passed after a medical practitioner made a presentation on health implications of domestic violence on women. Further, women leaders often adopt the party positions and do not take independent stands on issues. Strategies and steps to advance women's leadership and decision-making is an area that needs continuing attention, through implementation of CEDAW.

Session 6:

Journey to CEDAW and beyond

Session Objectives

- ▶ To provide a brief background to CEDAW;
- ▶ To examine its key features – specifically, Articles 1–4, Articles 5 –16 and the salient General Comments.

Resource person: Shanthi Dairiam

The CEDAW Convention was adopted by the UN General Assembly on 18th December, 1979 and entered into force on September 3, 1981. With 187 States parties, it remains one of the most highly ratified human rights treaties. Along with the CRC, CEDAW is the most ratified UN Convention to date.

The CEDAW is a treaty – and treaties are the most binding form of international law as they require an explicit ratification by the state, reflecting its commitment to incorporate the obligations set out, and be monitored by the international community for its implementation. The Vienna Convention on the Law of Treaties (1969) governs all treaties at the international level and sets out the binding nature of the obligation. It also stipulates the legally permissible limits that a nation might subject its treaty obligations to, and what is legally impermissible as outlined below:

- ▶ Article 26 states: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith;'
- ▶ Article 27 states: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'

Once CEDAW is ratified, the Vienna Law of Treaties imposes upon the ratifying states the following obligations:

- ▶ Treaty law imposes obligations that are legally binding on the state party;
- ▶ States commit to amending domestic law and policy, on all matters that are the subject of the treaty concerned;
- ▶ States parties submit themselves to international scrutiny by reporting periodically to the United Nations.

Key features of the CEDAW Convention

- I. Engages the state to be responsible for women's rights
- II. Provides a philosophical basis for women's rights: substantive equality and non-discrimination
- III. Provides an expansive definition of discrimination, that includes direct and indirect/intended and unintended discrimination; and establishes that discrimination in all its forms will have to be proactively eliminated in order to bring about equality between women and men
- IV. Provides a comprehensive bill of rights for women—all rights in all fields (economic, political and social) and establishes the inter-relatedness of civil, political, social and economic rights
- V. Addresses not only individual violations but also the weaknesses in the system and institutions that permit such violations
- VI. Places an obligation on the state to address stereotypes, challenge entrenched social and cultural values and practices that deny women the exercise of their rights
- VII. Demands that equality be achieved in the private and public spheres, be it the sphere of the family or the private sector
- VIII. Demands that the state be responsible for the practical realization of rights - the gap between law, policy and practice has to be closed

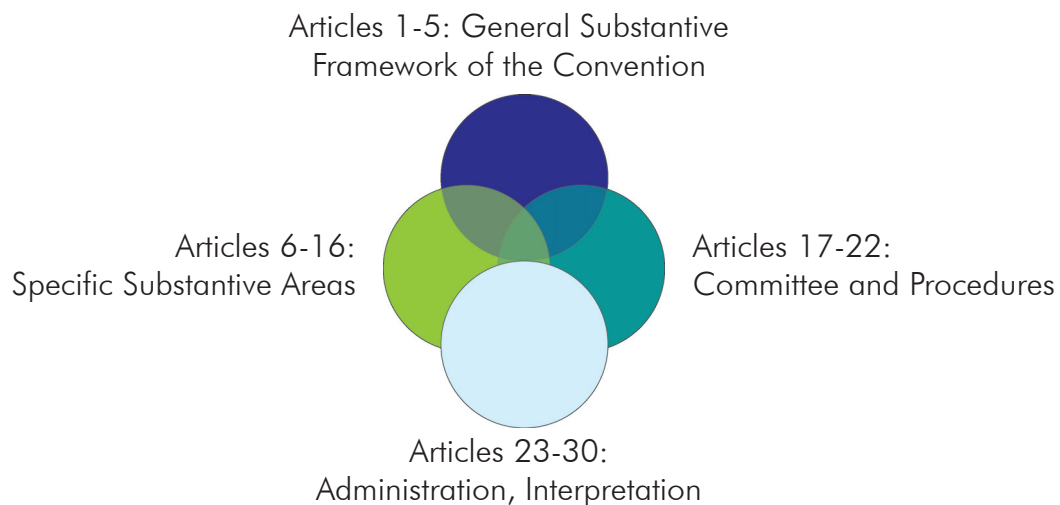
Source: Shanthi Dairiam – Based on IWRAW A.P's Training Materials

General Framework of CEDAW

The core framework of CEDAW is covered by Article 1 to Article 5:

- ▶ Art. 1: Definition of Discrimination
- ▶ Art. 2: Legal and Policy Measures to be Taken to Eliminate Discrimination
- ▶ Art. 3: Guarantees full development and advancement of women
- ▶ Art. 4: Temporary Special Measures
- ▶ Art. 5: Modifying Social and Cultural Patterns of Conduct

Structure of the Convention



Source: Shanthi Dairiam, Based on IRAW AP's Training Materials

Specific thematic areas, including trafficking and prostitution, political and public life, nationality, education and employment are dealt by Article 6 to Article 16 of the Convention. The periodic country reports are written and submitted by state parties for each article of the Convention until Article 16.

Articles 17 to 22 deal with the establishment and functioning of the CEDAW Committee, while Articles 23 to 30 deal with the administration, interpretation and implementation of the Convention.

Article 23 is interesting as it argues that through the Convention, the state party can be made accountable for non implementation of other conventions. Article 23 states:

'Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: (a) In the legislation of a State Party; or (b) In any other international convention, treaty or agreement in force for that State.'

Therefore, the state can potentially be held accountable for obligations undertaken in other conventions or agreements as they pertain to women through the CEDAW Convention, as posited by the dissenting opinion in a case from Netherlands, decided by the CEDAW in this regard.² The case was of a Chinese trafficked woman, seeking asylum in Netherlands. The woman was 17 years old, with a child, and illiterate. The Government of Netherlands concluded she did not identify as a trafficked woman as they did not find her story to be convincing. The woman had also allegedly not applied the right procedures for seeking asylum. The government's position was unfortunately accepted by the CEDAW Committee. The dissenting opinion noted that the Netherlands had ratified Palermo Convention 2000, which states that a trafficked victim should not be burdened with the onus of having to prove she was a victim - but rather the government has to determine this and point out the right procedure for relief. The victim should not be responsible for these procedures.

² Zhen Zhen Zheng vs The Netherlands Communication Number 15/2007

Any ratifying country needs to make changes in domestic law in accordance with the CEDAW treaty and face international scrutiny. A state party has the obligations to eliminate discrimination, and promote and fulfil substantive equality.

Elimination of Discrimination

CEDAW contains the most expansive definition of discrimination in human rights law. Discrimination may be intended or unintended, direct or indirect. Under Article 1 of CEDAW, discrimination is an act that has the purpose or the effect of denying women the exercise of human rights and fundamental freedoms in economic, social, political and cultural fields. The Global Gender Gap Index published annually by the World Economic Forum ranks countries according to their gender gaps and provides information about gender imbalances.³ However, comparisons between countries on the basis of this Index do not provide a clear picture of discrimination within a country. For example, Norway and Sweden are ranked high on the Index; however, gender norms still determine that women largely do household work in these countries. Article 1 of CEDAW incorporates de facto realities within its scope and therefore perceives a clearer picture of gender discrimination within a country.

Achieving Substantive Equality

The following are pre-requisites under CEDAW to achieve substantive equality:

- (i) The principle of equality must underpin all laws; equal value of women and men underpins all laws and policies (Articles 1 and 2)
- (ii) Temporary special measures that translate into restorative measures that include a redistribution of socio-economic resources (Articles 1, 3 and 4)
- (iii) Creation of an enabling social environment (Article 5).

These obligations entail not only prohibiting discrimination in law and practice in the present but addressing the effects of past and present discrimination and the resultant existing unequal position of women in accordance with Article 4.1 of CEDAW.⁴

The Convention is to be implemented holistically by state parties - fulfilment of specific Articles alone is insufficient. The standards of the Convention must be applicable at the domestic level through the Constitution, as well as policies, statutes, programmes and other measures. Additionally, regulation of the private sector to make it compliant with CEDAW has been specifically mentioned with regard to India and Sri Lanka by the CEDAW Committee.

The CEDAW Committees' recommendations are not enforceable; however it is possible for the citizens of a state party to make the recommendations binding. There are instances where women's groups have picked up a CEDAW recommendation and sought to enforce it at the domestic level through the judiciary. For example, the CEDAW Committee's recommendations on the rights of women in employment were picked up by activists in Japan to engage with the Japanese government.

³ The Global Gender Gap Index is available at www.weforum.org/issues/global-gender-gap

⁴ Article 4.1 states 'Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.'

General Recommendations

Finally, CEDAW does not explicitly cover a wide range of concerns, such as violence against women, particular references to caste-based discrimination and violence, new economic policies that may disadvantage women, issues pertaining to migrant or refugee women and so on. But the strength of CEDAW lies in its interpretation. The Committee expands the meaning and scope of the Convention through General Recommendations (GR's), concluding observations and its jurisprudence. The obligation of the State is towards all women within its jurisdiction and not only to those who are its citizens. It is possible to bring into the purview of the CEDAW Convention groups of women or contexts not specifically mentioned in the text of this treaty.

Listed below are some important General Recommendations:

- GR 19: Violence Against Women
- GR 21: Article 16 – Marriage and Family Life
- GR 23: Public Health
- GR 24: Health
- GR 25: Temporary Special Measures
- GR 26: Migrant Women Workers
- GR 27: Elderly Women
- GR 28: State Obligations under Article 2

Reservations

States can place reservations on Articles, which are allowed under Article 19 of the Vienna Convention on the Law of Treaties. Those reservations that go against the object and purpose of the treaty are impermissible. However, interpreting what is the 'purpose of the treaty' can often be difficult. The CEDAW Committee has identified Article 2 and Article 16 as those Articles against which reservations cannot be made. Reservations are expected to be temporary, and are justified in order to give the state party space to implement the Convention fully. The Committee continuously persuades the States parties to lift the reservations.

The rationale at the country level for denying women the right to CEDAW provisions lies in culture, religious belief, history and tradition, and stereotyping of roles and power relations of women and men especially in the family. Awareness generation on women's rights is a top priority. For generating awareness and results the following are necessary:

- ▶ Counter customary practices;
- ▶ Reform in the legal system;
- ▶ The principles of equality and non discrimination must be adhered to;
- ▶ Government policies and programmes must be representative of women and their constituencies.

Session 7:

Substantive Equality

Session Objectives

- ▶ To enable participants to differentiate between the various approaches to equality and their relative merits;
- ▶ To understand the linkage of different treatment and affirmative action with equality of outcomes.

Resource person: Madhu Mehra

This session is integral to developing conceptual understanding of equality, and indeed of CEDAW. There are many understandings of equality; at the individual level, in our laws and in policy. Because of these diverse understandings, it is useful to invite participants to share their understandings at the outset. This will help the trainer map the range of understandings that emerge, identify the areas of ambiguity or confusion and to address these in a more focussed way through the session. For instance, the following responses emerged at the training of trainers when the meaning of equality was asked in an open (plenary) exercise, giving a good indication of how much the participants knew, and the areas of inadequate clarity. Participants were asked what they felt was integral to achieving equality for women:

- ▶ Both equal opportunity and equal treatment are important for fulfilling women's rights, and these may apply to different situations, or sometimes be simultaneously applicable.
- ▶ Equal opportunity is better than equal treatment as the former allows a concrete entry point that leads to change or results.
- ▶ Equal access and opportunity is a way of gaining benefits, or achieving equality in benefits.
- ▶ Opportunity should be differentiated based on the context within which the person is located.

Following this, the two main approaches to equality were discussed to understand the background and context in which the equal treatment or sameness approach emerged, as well as the approaches in which difference and different treatment of women on the basis of sex is considered necessary. The summary of the two approaches follows.

Difference and Sameness Approach to Equality

There are two main approaches to gender equality - the sameness approach and the difference approach. The sameness approach, also known as the formal approach, treats women the same as men. It believes that the different treatment of men and women, or indeed the recognition of gender difference, amounts to an admission of the negative stereotypes attached to women that reinforce their subordination to men. Its principal aim is to achieve 'equal treatment' rather than equality of outcomes. The formal or the sameness approach in failing to recognize gender difference perpetuates the unequal status of women in the long run.

Formal equality regards women and men as being the same and, therefore, sets out to treat women same as men. Formal equality does not take into account biological and gender differences between men and women. Its 'neutral' standards are in fact based on male experiences and standards. By imposing male standards on women it excludes or disables women from equal access. It promotes gender bias and blindness, which reinforces dominant standards based on male experiences and interests. For example, in a given case in Rajasthan, India, women did not go to a state run health centre nearby because there were only male doctors available in the centre. This is an example of formal equality, which is insensitive to women's specific needs – in this case for female doctors.

The difference model of equality recognizes that men and women have different lived realities and that both are very differently placed in society. The rationale for this difference may vary, and corresponding to that, so would the response to it. Consequently, there are two approaches that are based on the difference model of equality. The two main approaches are protectionist and corrective approaches.

Protectionist approach

Protectionism accepts the differences between men and women in society as natural and inherent to the two sexes, and therefore not needing the same treatment. This approach views biological difference and social assumptions as standards for the roles and capacities attached to men and women. This approach justifies differential treatment of men and women since men and women are viewed as inherently different, and equal treatment is only for those similarly placed, that is to say, 'likes are to be treated alike'. The problem in relation to this approach arises not in the recognition of difference but in how it rationalizes and treats the difference. It accepts the difference as a natural phenomenon, hence sanctioning differential treatment of women without seeking to change their status in society. An example is job stereotyping, like empowerment programmes for women which involve making pickles and embroidery.

Complementarity and Equity approaches

Protectionist approaches are in some cases similar to complementarity or equity approaches, and may drawn upon their rationale. The complementarity approach emphasizes that women and men have distinct and complementary roles set out by biology and in society. To tamper with these is to destroy what nature has ordained and the balance within society. For example, women do child-rearing work, while men work and provide protection. In this regard, women

are entitled to maintenance and allowances while men get inheritance rights and hold the property.

Equity is based on the assessment of needs in policy and law. In most situations, the needs of women are assessed on the basis of male or patriarchal judgment, to reinforce rather than transform gender roles - avoiding the goal of equality. Some activists avoid equality as they read 'equal treatment between men and women' literally to imply the need for a male comparator to determine rights for women. They argue equity is better as it addresses women's needs and facilitates choices other than what male standards dictate. While it is true that women's needs cannot be based on a male standard, this can be achieved by equality better than equity. This is because equity is not a recognised right in human rights law, and consequently the interpretation of equity is not developed, and remains subjective – tending predominantly towards male assessment of women's needs.

Substantive Equality

The corrective approach, or substantive equality model, is an approach that is also based on the recognition of difference. Unlike the protectionist approach, this approach does not treat difference as unchangeable, natural and inherent, but recognizes difference for the purpose of assessing the different treatment that will be necessary for realising equality in outcomes between men and women. In this case, the recognition of difference is an acknowledgment that some people are unequally placed, and as a consequence cannot participate or access opportunities on equal terms with others. Different treatment for those unequally placed is necessary in order for them to benefit from policy or other measures put in place. For example, if night work for women is unsafe, the environment should be made safe to allow women to work easily and with confidence of security, rather than stop women from opting for night work. This approach seeks a paradigm shift from 'equal treatment' to 'equality of outcomes' and it is this outcome that CEDAW is concerned with. The Convention promotes the corrective or substantive equality approach, that recognizes gender differences as products of the negative stereotyping of women, and consequently seeks to correct them.

Corrective measures include temporary special measures or affirmative action. Affirmative action is the means by which historical, systemic, structural, and cross cutting disadvantages to women can and must be offset. Gender discrimination persists due to social conditioning and temporary measures seek to break through the worst barriers posed by regressive social conditions. Affirmative action for women is not about treating one sex better than the other, but recognizing the inequality and addressing it by providing temporary solutions to the problem.

It is most useful for participants to come up with examples of affirmative action and debate its relevance from different positions, with the trainer facilitating the discussion, keeping the focus on the reasons for accepting or rejecting the example as being corrective equality. The quota system in Nepal is a contentious example – in the training, the participants debated its merits. There was disagreement about its value as an affirmative action measure, in terms of rendering equality of outcomes for women. Many expressed that quotas in parliament do not imply that feminists will enter the parliament, and some even criticized the quota system as being more protectionist. Some argued that while feminists may not enter political decision making through quotas, it did ensure greater participation of women in the parliament, making it more

representative of society, and less discriminatory. Another example that generated debate was that of the Aga Khan Foundation, working in the Northern areas of Pakistan, focused on educating women and girls. Within a short time, a high rate of suicides was recorded in this region, on account of reportedly increasing social incompatibility between men and women, as women were now more educated than men. This stemmed from the basic problem that educational facility for the population at large was weak, and the Foundation's efforts were skewing the scenario. Many felt that this example was not appropriate for affirmative action, as it singled out women for special educational opportunities in an environment where there were no, or poor educational facilities for society, creating new disparities.

Session 8:

Non discrimination

Session Objectives

- ▶ To understand the different elements that comprise discrimination, and its scope
- ▶ To understand that discrimination in one sphere is interconnected with and impacts on other areas of life
- ▶ To recognize direct and indirect forms of discrimination
- ▶ To understand that discrimination is inter-connected—past, cross cutting and present
- ▶ To realize that the obligation of the state does not rest with just the prohibition of discrimination but that it includes the obligation to ensure *de facto* equality, or equality in outcomes.

Resource person: Shanthi Dairiam

Discrimination essentially entails denial of rights and leads to inequality. Non discrimination is a necessary condition for the existence of equality. However, the obligation of the state is not limited to eliminating discrimination, but extends to taking proactive steps to ensure *de facto* equality in a given context, using temporary special measures and enabling conditions to achieve equality in outcomes.

Discrimination

- ▶ Discrimination is defined as **direct or indirect** discrimination or **intended or unintended** discrimination.
- ▶ Article 1 of the Convention states that any **distinction, exclusion or restriction** made on the basis of sex which has **the intention or effect** of **nullifying or impairing** the **recognition, enjoyment and exercise** by women of all rights in the social, cultural, political and economic spheres is discrimination.
- ▶ Therefore, under the Convention discrimination will occur when an apparently neutral condition or requirement is imposed that has a discriminatory effect on women, although discrimination was not intended.
- ▶ **DIRECT:** That which has the intention of discriminating. Different treatment leading to non-recognition of human rights of women both in the private and public sphere (direct discrimination). For example, a nationality law that prohibits women from transmitting citizenship to their children but allows men to do so.
- ▶ **INDIRECT:** Unintended, any action or inaction that has the effect of denying women the exercise of all rights in all fields. For example, in a particular institution, playing golf is given a certain number of points for promotion irrespective of whether they are women or men. However, this gives men an advantage as it is mainly men who play golf.

Source: Shanthi Dairiam, Based on IWRAW A.P's Training Materials

Discrimination may be current, cross cutting (multiple or intersecting discrimination), or historic (the effects of past discrimination). Discrimination can be direct (de jure) or indirect (de facto). Direct discrimination is any law that has the intention of discriminating, while indirect discrimination is unintended, and may result from a neutral law which has the effect of denying women, or a certain group of women, the exercise of rights. Discrimination can take place through both state and non state actors. Under Article 1 of the CEDAW Convention, as long as any right or freedom is impaired or denied in any way, it amounts to discrimination regardless of whether such denial was intended or unintended. In this sense, protective measures such as barring women from night work constitute discrimination because they deny women the right to choose work freely, the right to work under safe conditions and to enjoy a full range of work experiences.

The state is obligated to ensure that corrective measures are implemented to help women overcome the effect of past or socially constructed discrimination that leaves women disadvantaged vis-a-vis the men.

Case Studies: group exercises

Here are two case studies that may be provided to participants, alongwith with guidelines, for discussion in small groups. It is suggested that a single group may be given only one study.

Case study 1

A fish farm project sponsored by the government in Lomak is based on a policy that it will provide equal opportunity to women and men to be trained as fish farmers. One of the conditions for taking part in the programme was that all applicants must have a pond. Everything else such as fish fry, technical training, fish food, etc would be provided to them.

As the implementation of the project proceeded, it was seen that women were not participating as they did not own ponds. Most of them had married into the village, leaving their natal villages. The inheritance laws were discriminatory and did not allow women to inherit property. Because they had moved into their husbands' village, they also had no control over the ponds in their own villages. In Lomak, because of the culture, women also do not have control or even access to family income and assets.

Discussion guidelines

- ▶ Assess whether the fish-farming project discriminated or not against the women
- ▶ Give reasons for your conclusion
- ▶ In case the group is of the opinion that there was discrimination against women in this project, discuss in what ways the project could be re-formulated to ensure equality of outcomes for women, referring to the obligations under CEDAW and citing relevant articles of CEDAW.

Case study 2

A steel mill in country X was reducing production and was obliged to retrench workers. It implemented a neutral policy of retrenching workers who had been most recently hired. The vast majority of those who were retrenched were women, although the company did not intend to retrench women first. This was because women had been the last to be hired, as result of a previous discriminatory policy of not hiring women in the steel mill.

The women workers filed a complaint alleging discrimination on the basis of sex with the Anti Sex Discrimination Commissioner. The Anti Sex Discrimination Commissioner ruled that the women had been discriminated against on the basis of sex. Thus, the women workers were reinstated.

Discussion guidelines

- ▶ State whether one agrees or disagrees with the decision of the Anti Sex Discrimination Commissioner
- ▶ Explain the rationale for the group's conclusion with reference to the principles of CEDAW citing appropriate articles of CEDAW, if relevant.

Sample Discussion on Case Study 1

The participants agreed that there was discrimination against women, even though it was not a case of direct but rather indirect discrimination. There was equal treatment in this example but no provision for equal opportunity. This is an example of the formal model of equality. However, creating and providing opportunities should be enhanced with underlying enabling conditions that would give women access to these opportunities. What was missing in this case was the access, which rendered an equitable provision fruitless in terms of achieving the intended results. CEDAW Articles 1, 2, and 5 are directly linked to this.

The state failed in its obligation to provide equal opportunities to women, as well as the obligation to modify cultural practices that hinder women's access to family/ community/ development resources. The issue of access is often the biggest challenge for a state to overcome. Often there are no statutory impediments to equality, and a state party may argue that there is no discrimination in the laws. Therefore, the *de facto* situation, women's realities and context specific obstacles to access must be considered in any project, to ensure equality of access and opportunities.

This project could be made more inclusive by involving women's participation at every stage, including whilst designing the project. A baseline survey with reference to the socio-economic status of the communities and land ownership patterns needs to be conducted to design affirmative action in this context. In the context of the case study, instead of providing fishing material alone, the project could have made available a pond to the local women. Even so, this would only be a short-term measure, as it would not enable inclusion of all women. The succession laws should also change to give women equal rights to property. This would help in the transformation of social norms and values that will ultimately enable equality for women in society.

Sample Discussion on Case Study 2

The participants concluded that there was discrimination in the case of retrenching women workers as well. Even though the policy was gender neutral, the results led to discrimination. In this case, there is an effect of the past discrimination on the final outcome. Discrimination can occur even when an apparently neutral condition or requirement is imposed, although discrimination was not intended. Articles 11, 3, and 10 require policies to take into account how historical discrimination impacts women in the present, and ensure that such impact is avoided. In this case, women were historically excluded from employment in the steel mill, and were hired only in recent years – any policy that would adversely strike the last hired would impact women disproportionately, reproducing the historical exclusion from steel mills.

An example from Hong Kong is also relevant. Here boys were not doing as well as the girls in schools. The Ministry of Education had decided to put in place affirmative action measures supporting boys. In response, parents of the girls filed an application in court stating that girls were being discriminated against. The court observed that if the girl students are disciplined while the boy students are undisciplined and unruly then that does not constitute discrimination meriting affirmative action policies.¹

¹ *EOC v Director of Education* (2001) 2 HKLRD 690

Session 9:

State Obligation under CEDAW

Session Objectives

- ▶ To understand the binding nature of the state's obligation under CEDAW
- ▶ To distinguish between the obligation of means and obligation of results
- ▶ To understand the relevance of temporary special measures
- ▶ To understand the concept of Due Diligence

Resource person: Deepika Udagama

The obligations of a state party to implement the provisions of a treaty under international law, arise upon ratification of the treaty. The following points are important to note:

- ▶ Treaty ratification is a sovereign act of the state;
- ▶ The difference between signing and ratifying a treaty is that the process of ratification leads to the state accepting legal obligations in terms of implementing the provisions of the treaty, while signing a treaty does not imply the state is bound by the treaty;
- ▶ Domestic law or local factors (constitutional, political, cultural, economic) are no justification for non compliance and such excuses are not acceptable under any treaty;
- ▶ Violation of treaty obligations amounts to violation of international law, which is liable to penalties or repercussions from the international community. For example, the international community may refuse to allow trading rights unless certain treaties are properly implemented.

GR 28 (2010) deals with the core obligations of states under Article 2 of CEDAW. The GR highlights the core obligations spelt out in Article 2 (condemnation of discrimination against women in all its forms and steps to be taken), read together with Article 3 (to take all appropriate measures to ensure full development and advancement of women in all fields), Article 4 (temporary special measures), Article 5 (modify social and cultural patterns of conduct of men and women to eliminate practices based on the idea of superiority or inferiority of either sex) and Article 24 (obligation to take all necessary measures at the national level to achieve full realization of rights recognized under CEDAW).

Generally states will enter reservation at the time of ratification. The international treaty will either mention whether reservations can be made or not, or it will be implied in the nature of the treaty. For example, the International Covenant on Civil and Political Rights (ICCPR) is not capable of denunciation. Likewise, there is a need to advocate non denunciability of Article 2 of CEDAW.

State obligations can be classified under four heads:

- (1) Obligation to respect - which entails refraining from taking steps which would directly and indirectly deny equality.
- (2) Obligation to protect - from discrimination by third parties and to eliminate practices based on prejudice. For example, in cases where women are not employed for night duty in private firms, the state should take action and adopt regulatory frameworks to change this policy.
- (3) Obligation to fulfil - which includes taking steps to ensure de jure and de facto equality. These may include temporary special measures or special laws and their implementation.
- (4) Obligation to promote - under which the state has to actively promote gender equality and provide space and resources to civil society organizations that work in this field.

Due Diligence Standard

The due diligence standard has a long history in international law where the state is obliged to act with due diligence to prevent, investigate, punish and provide remedies for acts of violence regardless of whether these are committed by private or state actors. The standard of 'due diligence' applies to preventing discrimination and to preventing, investigating, prosecuting and punishing acts of gender based violence. The concept of due diligence provides a yardstick to determine whether a state has met or failed to meet its obligations in combating violence against women. The application of this standard to women's equality must be extended to the state's duty to transform patriarchal gender structures that perpetuate violence against women and thereby address the root causes of violence.²

Temporary Special Measures, the Obligation of Conduct and the Obligation of Results

The obligation to fulfil implies that state parties adopt a wide variety of measures to ensure equality and non-discrimination, which may include the adoption of temporary special measures in accordance with Article 4 (1) of CEDAW, and GR 25. These entail the obligation of conduct or means, and the obligation of results. The obligation of conduct refers to creating action indicators to demonstrate that the necessary means for gender equality exist – for example, institutions, mechanisms, gender budgeting, or establishing gender focused bodies in the executive. state parties should consider that they have to fulfil their legal obligations to all women through designing public policies, programmes and institutional frameworks that are aimed at fulfilling the specific needs of women leading to the full development of their potential on an equal basis with men.

States also have obligations to ensure equitable outcomes of their policies and to demonstrate the impact through performance indicators. For example, in credit schemes, it is often seen that more men than women manage to access credit, even though the scheme itself is not gender biased. The state's responsibility goes beyond ensuring the gender-neutral credit scheme to ensuring material conditions for equal opportunity.

² Report of the SRVAW Yakin Erturk 'The Due Diligence Standard as a Tool for the Elimination of Violence Against Women' E/CN.4/2006/61 (20th January 2006)

The obligation of results refers to the effects of an obligation. Each State party must be able to justify the appropriateness of the particular means it has chosen and demonstrate whether it will achieve the intended effect and result. Ultimately, it is for the Committee to determine whether a State party has indeed adopted all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the Convention.

Institutions and mechanisms are effective if they in fact work to fulfil their objectives. There is a need to review institutions and mechanisms, as well as budgets, for their performance and outcomes, and monitor corruption. For example, during the Commonwealth Games in India, money for the ST/SC welfare was diverted to funding the games.³ Instances of non spending, diversion of funds, corruption often render ineffective the very means created to enable equality. International mechanisms such as CEDAW need to ask for performance audits to assess the value of mechanisms.

Obligations are meant to take effect for the entire territory under jurisdiction, and for all population groups, and these obligations are non negotiable. GR 28 highlights that state parties cannot discriminate through acts or omissions, and the obligations are towards all including non citizens (eg refugees, migrant workers, stateless people). Obligations take effect immediately and local factors, including lack of resources, are not an excuse.

In many cases states have failed to fulfil their obligations. For example, reservations to Article 2 lead to a failure to meet state obligations and make a mockery of the whole purpose of CEDAW. Further, global geopolitical forces have always allowed more powerful countries to enjoy relaxed scrutiny, or for such states to not pay adequate attention to what the international human rights mechanisms ask of them. While India and China enjoy such status in Asia, many countries similarly do so, and some like in the case of USA have refused to even ratify CEDAW. A common example highlighting the divergence between international standards and domestic practice is that despite the 2010 report of the Special Rapporteur on Violence Against Women (SRVAW) on restorative justice to the victim,⁴ in most of South Asia it is difficult to even register a rape case, on account of social stigma and hostile legal process. Fulfilment of international standards requires more than law, and includes measures such as training, sensitization, gender/sex education, support services, psycho social counselling to address crimes against women. The National Women's Commission or the Human Rights Commissions could also take up these cases in their respective capacities. Although states often treat reporting as their main obligation under CEDAW, it is not so. The main obligation is to ensure gender equality in reality, demonstrated through results.

³ See for example Housing and Land Rights Network http://www.hic-sarp.org/documents/Whose%20Wealth_Whose%20Commons.pdf (2010)

⁴ A/HRC/14/22, (23 April 2010)

Group Exercise

Case Study

State Party X wishes to launch a nationwide programme to introduce IT education through the formal education system using the network of science schools. Most of the schools offering science education are fee levying. The implementation of the program is to be outsourced to five private IT companies that play a major role in manufacturing of software. The companies are required to invest financial and human resources in the programme. The companies have indicated that the best students graduating from the programme will form a pool of potential employees.

X is a middle income country with male and female literacy levels being 58% and 42%, respectively. The rural/urban divide is quite sharp. The investment in education is 1.8 % of the national budget.

What advice would you give the relevant government authority to be complying with state obligations under CEDAW? What information will you require to formulate your advice?

Group discussion to focus on the following:

- ▶ What is the status of ratification of CEDAW and whether it is directly enforceable/implemented in the country;
- ▶ What will be the location of the schools in terms of rural urban divide;
- ▶ Number of science schools;
- ▶ Disaggregated data on attendance, dropout rates and their gender divide is required;
- ▶ Admission criteria and potential employment scenarios for IT studies;
- ▶ Details of the memorandum of understanding (MOU) between the state and the IT companies;
- ▶ What is the total enrolment in all schools and not only science schools;
- ▶ How is the budget being allocated?

While IT education is largely perceived as linked to employment generation, it is also about enriching one's life. There is a need to ensure that both male and female teachers benefit from the course. If literacy for women is low, and as a consequence – results in low enrolment for women, then informal ways of teaching IT should be explored. While one cannot ignore the formal education system, there is a need to adopt temporary special measures to ensure those who are unable to access the formal system, can avail themselves of the opportunity as well. The government should assess the programme - in terms of how are men and women using IT, enrolment rates, admission details, the cultural dimensions of the context and so on. There is a need to look into the issue of budgeting; whether 1.8% is enough and also how it is being distributed. The role of the private sector and its impact on the social sector was also discussed, with a view to making the private sector accountable to women's equality and non-discrimination.

Context Setting: Issue Specific Application of CEDAW

Session 10:

Culture and Women's Human Rights

Session Objectives

- ▶ Relationship of culture with women's rights activism
- ▶ Understanding the scope of culture and cultural rights
- ▶ To understand the ways in which the mandate of the SRVAW and the independent expert on cultural rights have defined the relationship of culture and women's equality, and its linkages with CEDAW

Resource person: Madhu Mehra

The role of culture in constructing women as secondary to men makes culture key to shaping the ideology of gender that underpins discrimination. The treaty is explicit in linking discrimination with social and cultural norms that stereotype women to naturalise and legitimise their subordination to men in society and in the law. The treaty calls for transformation of such norms, as well as elimination of cultural practices that are oppressive to women, placing upon the state the obligation to initiate and support such change. Culture as a consequence, is a key area of CEDAW application, and merits discussion in a distinct session.

Relationship of culture with women's equality and non-discrimination

- ▶ While social norms determining gender roles are shared across communities, each culture gives gender norms a particular shape
- ▶ The nature and form of gender roles vary across cultures and over time – a differentiation shaped by culture

CEDAW makes an explicit linkage between culture and possibilities of equality, in terms of barriers posed by culture, or transformational possibilities it holds for women. The linkage between equality/ CEDAW and culture is reflected in the many reservations made by State Parties to CEDAW on the basis of culture/ religion/ custom – illustrating how culture becomes a justification for continuing sex inequality. Culture needs to be looked at specifically with its relationship to women and women's rights. Culture influences gender ideology. Both culture and gender constructions are not static but change over time, across generations and vary according to

context. It is neither homogenous nor uniform, but at any given time, embraces a diversity that also includes conflicts and contestations over norms, meanings and practices. Law is also embedded within culture and religion, privileging some norms over others; some laws have explicit cultural references, while some do not. Penal laws are not explicitly derived from custom and religion, yet the adultery provisions are religiously derived. Culture and religion are known to strongly influence the regulation of women's sexuality and freedoms, including through the law.

Culture is also associated with many general and specific forms of violence against women that target women's real or perceived transgression of gender roles. An example of a specific form of culture specific gender based violence is that of witch hunting. Although the qualities attributed to a 'witch' are gender neutral – in that it alludes to persons perceived as commanding destructive super natural powers – it is predominantly women who get targeted as witches. In Nepal and India, there have been many women accused of being witches, who are brutalised and sometimes killed. In Sri Lanka, women identified as witches are blamed for negative occurrences, face social stigma but not beaten and killed. In Bhutan, certain women identified by traditional healers, are accused of harming people, and labelled as witches. Likewise, in Maldives, women get labelled as such although there is no physical abuse. During the tsunami, the Mullahs blamed the occurrence of tsunami on account of women not covering up enough, alluding to women's evil qualities that wreak destruction upon the community. Across the region, the identification of women as witches leads to social boycott and in some cases, violence. Other examples of culturally justified oppression of rights to women are the practice of dowry, child marriage, and domestic violence and in some cases public morality laws and penal laws based on religion.

What is culture?

- ▶ Culture can be understood as a product, as a process and as a way of life, and culture includes references beyond ethnicity, language and religion
- ▶ Culture is derived from both religious and secular strands including folklore, history, relationship with production patterns, environment, land/ natural resources, and relationship with other communities
- ▶ Religion alone does not determine culture; culture also comprises secular influences.

There is a need to understand and unpack the meaning of culture – for challenging the popular proposition that culture is inconsistent with women's equality, or that it is homogenous and unchangeable. Culture is in fact a way of life and constantly evolving in every society; it is a composite of many factors including rural-urban location, modes of production, history, environment, religion and proximity with and influences of other cultures, migration and so on. It is not static but changing, and at any given time, a person is part of more than one culture or sub-cultures, reflecting the multiple identities embodied in every individual. For instance, a woman lawyer might have a professional affinity with legal fraternity, subscribing to professional practices and rules; as a mother she might share common interests and concerns with working mothers and be part of such a social grouping; as a woman she will have concerns she shares broadly with other women; then her religion, language, ethnicity, class, education, city of residence, and memberships of groups – all combine to make who she is. Therefore, there is no such thing as

monoculture at the individual or the collective levels, and it is incorrect to ascribe one set of norms as constituting the culture of an individual or a collective. The multiple identities we hold are what makes for diversity within and amongst cultures, in ways that intersect and interlock us with other communities and individuals. This is what makes for cultural diversity that is an essential aspect of all cultures:

- ▶ Cultural diversity exists both between communities and within communities
- ▶ There is no community or society that has just one culture
- ▶ Individuals have multiple identities and hold complex identities simultaneously
- ▶ People belong to multiple intersecting cultural communities at the same time

Calls to return to the original or primordial cultural form are therefore politically motivated, rather than an accurate or scientific aspect of culture as it is lived. For instance, in Java (Indonesia) women are forced to a dress code and headdress in the name of traditional Muslim attire which is not indigenous to the region's syncretic Muslim traditions and humid environment. This is cultural engineering in the name of religion, and is usually integral to fundamentalist movements that allude to religion, and cultural identity projects. Culture must not be conflated with religion, and any such projection of culture is a politically motivated act that must be contested.

Human rights framework in respect of culture and women's equality

Cultural practices may be good or bad, in terms of their positive or negative influence on women's equality. To the extent a cultural practice is negative, it undermines the human rights of women and must be eliminated or transformed. Drawing upon General Recommendation 19 of CEDAW, the work of the Special Rapporteur on Violence Against Women (UNSRVAW) and the work of the Independent Expert on Cultural Rights (UNIECR), as well as the Declaration on the Elimination of Violence Against Women and CEDAW, the following key elements frame women's equality discourse in respect of culture:

- 1 Cultural practices that involve torture, violence, pain or harm – these must be eliminated under CEDAW, as well as under customary international law that forbids torture regardless of treaty obligations.
- 2 Discriminatory laws and practices – must be changed and transformed. The state has an obligation to initiate change, and debate against norms and practices that subordinate women, impeding their freedoms and rights – to root out discrimination.
- 3 Protection of cultural diversity, not just amongst communities but within – by protecting the right to belong to multiple cultures simultaneously, and the right to opt out of a community or adopt one without forgoing rights and freedoms.
- 4 The right of all individuals to access, to participate in and to contribute to culture, as well as the right to exit – this includes the state obligation to protect the right to debate and contest cultural norms and practices, and the right to dissent and disagree. This obligation is especially important to ensuring that the marginalised in every culture have a voice, and the exercise of their right to dissent and debate is protected.

Under international standards, protection of cultural diversity/ cultural rights includes the right to participate, choose when not to participate, right to belong to multiple communities, not be

forced to choose one community over the other, right to interpret, debate, and the right to contribute to one's culture. As a consequence, the following trends, positions, and discourses would amount to undermining cultural diversity:

- ▶ Discourses and representations of any society being monocultural undermine cultural diversities. For example, references such as 'typical Hindu woman' or a 'typical Muslim woman' mean nothing in face of caste, class and region specific differences – in addition to individual differences.
- ▶ Norms and practices that forbid anyone to opt out of a cultural community or deny rights to exercise choices or practice social rituals based on gender identities are detrimental to harmonious diversities.
- ▶ Using cultural diversity or cultural values to justify setting disparate family laws for different population groups that compromise human rights and fundamental freedoms of women.

The thematic reports of the SRVAW have consistently held culture based identity politics to be one of the most serious challenges to women's human rights. While the mandate has produced reports entirely dedicated to the intersections between culture and violence against women, it has integrated concerns arising in the context of culture and cultural rights in other thematic reports as well.¹ The Report, *Cultural Practices in the Family that are Violent towards Women*² suggested a two-pronged approach to defining the State's obligation in relation to the eradication of such harmful practices:³ (a) Distinguishing between practices that amount to torture from those that amount to discrimination. The Report argued that cultural practices that involve pain and suffering and violation of physical integrity can amount to torture under customary international law, and should be addressed without delay; (b) With regard to discriminatory practices such as unequal family law systems, the Report discusses a range of approaches adopted by different countries to respond to the diversity of contexts, which ultimately aim towards incremental change including through attitudinal change, so that social transformation is realised gradually with the participation of the community.

Scope of Culture and Cultural Rights:

The Independent Expert on Cultural Rights (IECR) has clarified in her report that a definitive understanding of cultural rights is not necessary to the mandate because the concepts and contents of rights are constantly evolving and it is important to allow for such evolution.⁴ Human rights activism has not engaged with cultural rights adequately, so it remains an evolving right. The International Covenant on Economic Social and Cultural Rights (ICESCR) talks about cultural rights, but this is often overlooked in mainstream discourse.

¹ E/CN.4/1995/42, 22 November 1994 'Preliminary report'; E/CN.4/1996/53, 6 February 1996 'Violence in the Family'; E/CN.4/1999/68 10th March 1999 'Violence against women in the Family'; E/CN.4/2002/83 31 January 2002 'Cultural practices in the family that are violent towards women', A/HRC/4/34 17, January 2007 'Intersections between Culture and Violence against Women'

² E/CN.4/2002/83 31 January 2002

³ E/CN.4/2002/83, 31 January 2002 at para 119.

⁴ A/HRC/14/36, 22 March 2010

Cultural rights mean that bearers of cultures should have the freedom to practice their cultures. Cultural rights are related to what we have inherited and are linked to traditions and customs, as well as the cultures that we chose to assimilate into, adopt, create and identify with. They consist of the right to believe, right to food, indigenous knowledge system, and so on.

Culture is important in relationship with history, production, environment, land/ natural resources, and with other communities. Therefore individuals and communities have the right to simultaneously practice and contribute to the multiple cultures they belong to and connect with. Cultural relations are based on commonalities shared in terms of clothing, common sense, market, education, belonging to the soil, food, hospitality, common interest, common cause, etc. For instance, women rights communities form distinct cultures and different work environments have different cultures. Culture is produced every day and is not necessarily a product of the past. It is produced by technology (like today's phenomenon of social networking sites) and is never static. It is evolving, defined, re-defined, produced and reproduced. For instance, in India, the *bindi* in the forehead is worn for various reasons—decorative, religious symbol, exotic symbol, symbol of Bengali identity, of marital status, or a political identity.

Cultural Rights and Women's Rights Activism:

Cultural rights are part of the spectrum of human rights, and interconnected with all other human rights. It is therefore important to be vigilant about what or who decides what the culture is, to define the terrain of cultural rights and rights holders. If we unpack the culture of any society, we find multiple cultures. This diversity is an inherent part of all and every culture. Ignoring this diversity allows for the creation of cultural stereotypes, as evident in the frequent references to 'typical' in descriptions of culture. Cultural hegemony is a discourse on which one builds stereotypes and discriminates against those who do not conform to what might be considered a typical or authentic description of culture. Due diligence needs to be observed in preventing the propagation of any culture in broad brushstrokes, stereotypes, thereby constructing mono-cultures.

For example, a woman from Pakistan can carry the multiple identities of being a Muslim, and a Punjabi (depending on her place of origin). One of the participants claimed to be a typical Naga woman; but on being asked whether she shared the same aspirations as all other Naga women, she conceded that aspirations vary from person to person. Hence, she is a 'typical' Naga woman only in certain respects, but shares different aspirations and identities in many areas – which connect her more with persons, both men and women, who are not Naga. Conflicts arise when contrasting set of values collide, when new aspirations do not gel with those projected as typically defining gendered aspirations specific to one community. The question is how to reconcile the two, and whether there is a need to reconcile these.

Culture shapes social norms and values of not just a community as a whole but also the gender roles specific to men and women within that community. To that extent, the nature and form of gender roles vary across cultures, just as they vary across time. Such changes may be progressive or regressive, impacting women and other communities positively or negatively. There is a process of selectivity that decides which practice and value stays and which practice is discarded, there is an evolution in meanings attached to old and new practices – as manifested by the example of the many reasons why women wear '*bindi*' on their forehead. Often a regressive practice

might disappear but patriarchy stays, and manifests in new forms. For example, there was a time in the past when women were not allowed to study law or medicine, and that has changed. Yet gender discrimination and patriarchy remain, as manifested in new forms. Although a large number of women study law, they are not seen in equal numbers in the courts or the judiciary. The cultural rights of all marginalised groups must be seen as intersecting and simultaneous concerns, be they women, minority communities, or the LGBTI. None of these concerns or constituencies can be viewed in isolation or treated as homogenous, they embody diversity within and across groups.

Session 11:

Feminism and Islam

Session Objectives

- ▶ To contextualise the framework of the previous session on culture and women's human rights, with reference to women's rights activism and Islam;
- ▶ To introduce Musawah, the global movement for equality and justice in the Muslim family;
- ▶ To discuss feminist engagements and readings of Islam that highlight that gender equality is necessary and possible within Islam.

Resource persons: Zainah Anwar and Cassandra Balchin

Musawah (equality) – a global movement for equality and justice in the Muslim family - was founded in the backdrop of the rise of political Islam.⁵ Musawah was initiated in March 2007 by Sisters in Islam, a Malaysian women's organisation that promotes women's rights within the framework of Islam, and a twelve-member international planning committee of activists and scholars from eleven countries. Musawah is led by Muslim women who seek to publicly reclaim Islam's spirit of justice for all, applying these to contest and engage with the dominant, statist and patriarchal versions of Muslim law. Musawah views the principles of Islam to be a source of justice, equality, fairness and dignity for all human beings, and applies these to the lived realities of women in diverse contexts to operationalize Islamic values.

Musawah's central focus has been the Islamic family law as it is codified in various countries. They approach Islamic law through Islamic teachings and values that support human rights, and apply these to the lived realities of people for the realisation of dignity and equality. Specific Islamic injunctions according to them cannot be applied literally, without measuring their impact on women against the overarching Islamic values. Many of the codified laws that are projected as Islamic in fact rely upon literal interpretation of terminology from a different era in contemporary times. This approach, they assert, does not do justice to Islam – proposing instead, a context specific, value imbued reading of Islam. The approach to family law determines the impact of

⁵ www.musawah.org

the law upon women – a literal reading for instance reinforces patriarchy and subordination of women, whereas an interpretation guided by overarching Islamic values, applied to the contemporary gendered realities of women, will advance women's dignity and equality. This can be illustrated by the marriage contract in Islam, and different ways of reading it. The marriage contract in Islam was influenced by the slave system of the period, involving the submission of the wife (*tamkin*) in return for the dower. The wife is given *nafaqa* or maintenance, which includes shelter, food and clothes in exchange for her sexual and other services. *Nafaqa* is a woman's right and a man's duty. The system of *tamkin* and *nafaqa* were formulated in the tenth century, in a particular context – in the backdrop of slavery, and other forms of exploitation of women that Islam combated at the time. Despite social transformations over time, the terminology used for the marriage contract remains the same today. This is the predominant basis for the social and legal presumption that husbands are to provide maintenance, and demand in return the wife's obedience. This interpretation is not that of the *Qu'ran* but in fact is based on and further developed by *fiqh* or human beings. *Fiqh* refers to human efforts to determine legal rulings and is distinct from the *Qu'ran*. In today's context, there cannot be justice without equality, and Islam has adequate tools for transformation of the family law. Islam as a religion mandates justice and equality and Islamic legal theory provides concepts to enable reform of family laws and practices to reflect the lived realities of Muslims. *Ikhtilaaf* refers to diversity of opinions within Islam, and the concept indicates there is no one single Islamic law, opening possibilities for interpretation and approaches that challenge patriarchal ones or literal application of historical terms in contemporary times. For instance, with regard to polygamy – Islamic teachings offer space for alternative interpretations, and Tunisia became the first Arab country to abolish polygamy in 1956.

Globalisation has affected the overall employment trends and there is employment of women in some spheres. There is also a greater trend of women being educated in Arab countries and Muslim countries. Traditionally the understanding of Muslim laws is that the husband would be provider and the wife would be obedient. Primarily Musawah is a movement led by women to reclaim the spirit of justice in Islam and to create possibilities of justice and equality within Islam.

There is a need to discuss equality within families, and where that is lacking, ways of realising it. In Pakistan there are many laws that are discriminatory and there is a definite need to bring in equality within these areas. Pakistan's constitution states that all laws have to conform to *Qu'ran* and *Sunnah* and this has not been defined anywhere. This condition in itself does not prevent an egalitarian interpretation of Islamic law that is consistent with human rights and CEDAW. The Muslim Family Laws Ordinance allows women to impose several conditions upon her husband, allowing as well the right to divorce. Further, it provides adequate space for women's rights to be consistent with equality and justice. Pakistan has signed CEDAW, reinforcing the possibilities of equality within families. UK laws are more self evident in providing equality. The lived realities of women reflect severe inequalities, making a strong case for interpretations and approaches that advance equality. However, such steps require debate, discussion and a political will to accelerate rather than obstruct the women's equality agenda. Failure of political will and adequate initiatives to overcome discrimination reinforces women's existing social and economic inequalities. In Maldives, the men have the right to divorce and they have the power in gender relations as well as within marriage. A woman seeking divorce would generally be asked to reconcile with her husband.

At the social and political level, there are changes that can potentially strengthen the value of human rights for the Muslim community. For instance, Muslim girls are getting more educated than the boys in Britain; besides racism against Muslims manifests in the labelling of Muslim boys as terrorist suspects. The marginalisation of the Muslim community globally has helped make Muslim conservatives also interested in human rights. This, along with the constitutional guarantees and the international human rights treaties, and select progressive decisions, makes it possible to attain equality. There are possibilities within every society that make it possible to instil equality if there is a political will - the religious interpretations that are presented as an impediment to equality are merely a political perspective, not Islam itself. The laws and practices are unjust and change is possible as there is scope in each society to bring about this change.

An example of these politically motivated interpretations is the reservations to CEDAW:

Reservation trends in the Organisation of Islamic Countries (OIC)

Out of the 57 OIC countries, all have ratified CEDAW except for Iran, Sudan and Somalia. Of those that have ratified:

- a. 29 have ratified without reservations. These are mostly African and Central Asian countries.
- b. Yemen and Indonesia are the only two countries outside of Africa and Central Asia that ratified without reservations.
- c. Mauritania and Niger (the only two sub-Saharan African countries) have ratified with reservations.

Most commonly 'reserved' articles of CEDAW are:

- a. Article 16 on marriage and family relations
- b. Article 9 on nationality and citizenship
- c. Article 5 on modifying social and cultural patterns
- d. Article 2, which condemns discrimination in all its forms

State Party approaches or justifications:

Shar'iah is the principal source of law defining rights, duties, and responsibilities of men and women. Most OIC's while placing reservations state their national laws cannot be changed as that would 'transgress the Islamic *Shar'iah*'. The state parties further state that *Shar'iah* is fixed and there are no contradictions or different interpretations and the state laws cannot change that.

Further, countries justify differential treatment of women and men by pointing to reciprocal obligations expected of men:

- a. A man is responsible to support his family, whereas a woman has no such obligations (Egypt, Malaysia, Pakistan, UAE)
- b. A man is obligated to pay alimony for a year, not a woman (Egypt)
- c. Even if brother and sister divided inheritance equally, the brother is still obligated to financially support his sister (Bahrain)
- d. Another justification is that minority rights should be protected and that the community and its people are not ready for change.

Culture, customs, or traditions prevent full implementation of CEDAW. Thus change is difficult and takes time. For example, in the Maldives legal amendments are envisaged, but impeded by the socio-cultural and political situation and current interpretation of *Shar'iah* on matters relating to polygamy. India has stated that no change will be made in religious personal laws without community initiative and consent. In Singapore, amendments are not pursued so as to preserve the harmony of a multi-racial, multi-religious and multi-cultural society. In Sri Lanka, amendments are not sought due to the religious sensitivities of the Muslim community. State intervention to reform the law, it is said, will need the approval of the community.

Source: Musawah (2010)

The following are some reservation details from five countries:

1. **Maldives:** reserves the right to apply Article 16 on the equality of men and women in all matters relating to marriage and family relations without prejudice to the provisions of the Islamic *Shar'iah*, which govern all marital and family relations of the 100% Muslim population of the Maldives.
2. **Malaysia:** accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic *Shar'iah* law and the Federal Constitution of Malaysia.
3. **Morocco:** reserves the right to apply Article 16 relating to the equality of men and women, in respect of rights and responsibilities on entry into and at dissolution of marriage.
4. **Iraq:** reserves the right to apply Article 16 'without prejudice' to the provisions of the Islamic *Shar'iah*.
5. **Egypt:** has made reservations without prejudice to the Islamic *Shar'iah* provisions.

The diversity of positions illustrates the problem and the solution. Rather than relying upon literal meanings of old terminologies, or carrying forward historical interpretations from a different era, to accept CEDAW's application to women there is a necessity in contemporary times to test the existing national laws against Islamic values. There is a need to distinguish Muslim family laws and practices that are unjust from those that are just – those that subordinate women and those that accord them equal dignity in their contemporary contexts, as Islam in fact seeks to do. The impact of patriarchal laws for women is highly adverse – for example, in Yemen the law requires a male member of the family or a male guardian to pick up a female detainee from prison once she completes her sentence. As most women are in prisons for violating moral codes of conduct, the families are ashamed and often the male guardian does not come to pick up the woman. Therefore, many women end up languishing in jails even after they have served their prison sentence. There is need to question, engage with laws that derive legitimacy from Islam, to test their substantive content and impact on the individuals/ group concerned, measuring these against core Islamic values – rather than accepting them at face value.

The discussion needs to probe the agenda of people in power who use religion to obstruct rights. In a refugee camp on the border of Sudan in Chad, Oxfam decided to spray the refugee tents for mosquitoes. The men objected to women being trained as women were not supposed to go into the tents of other men. Women were trained because they highlighted the point of other women who were without a male head of house and had only women. Since strange men could not enter their tents they were also trained. Then the men said that women would not spray but only mix chemicals. The next day they said the women would only spray and not mix. Oxfam workers found out that the spraying was more burdensome than mixing chemicals, and that religion was being used as an excuse used to control women's work and male privilege. Although religion was used as the excuse and the argument but it was not really the reason for the obstruction of the rights. Similarly, states also use religion to obstruct change, or alter power relations and male privilege. Political power rather than religion is the real reason for the denial of rights.

Session 12:

Women in Conflict and Post Conflict Settings

Session Objectives

- ▶ To apply equality and non discrimination, both core to CEDAW, to conflict and post conflict contexts, discussing standards in this regard;
- ▶ To understand and distinguish between standards developed in relation to conflict and post conflict settings that integrate gender justice: the International Criminal Court statute, and the UN Security Council Resolutions 1325, 1820, and 1888 respectively.

Resource person: Deepika Udagama

In recent times with inter and intra state conflict becoming a reality it is imperative to examine its impact at various levels, and on various groups. A closer analysis will indicate that women and children constitute the majority of the affected civilian population. This section should be read in two parts: the first part discusses causes and consequences of conflict from a gender perspective; the second section details the international human rights standards in this regard. In relation to conflict, the session discusses the International Criminal Court, and in relation to post conflict situation, the session discusses relevant UN Security Council Resolutions (UN SCR) for addressing gendered violations in conflict, and for ensuring women's participation in post conflict processes respectively.

Women and Conflict Situations

War is essentially about power struggles, and is initiated by those holding public office or seats of power, traditionally male domains. Women are impacted by the conflict, in specific ways that men are not; being the inevitable yet invisible casualty of conflict. With community honour being so closely tied to women's bodies and sexuality, women are targeted systematically as part of the strategy of attack, humiliation and ethnic cleansing. Women also play a role in conflict, often in ways that are determined by the gender roles of a given society. Given the gendered way in which society functions, conflicts accentuate those inequalities in society. Apart from being victims in a conflict situation, women may also play combative roles in some cases. Women in power may take on leadership roles as well – for example, the tenure of Indira Gandhi as Prime Minister of India witnessed war with Pakistan while Margaret Thatcher's regime in England witnessed the Falkland Wars. Within armed groups, gender hierarchies operate to maintain women combatants at subordinate, non decision making levels. In Sri Lanka, even very prominent and powerful LTTE women activists functioned within a strict gender hierarchy. What needs to be questioned is whether women have decision making powers or is their role limited to execution of decisions. Often women in combative roles as in the case of LTTE, have had problems reintegrating in society. Participants have also cited examples where households that were proud of their daughters being in war, refused to accept them back and ostracised them after the war,

as the men would not accept them as partners. A similar example was cited from Afghanistan where after much persuasion, women were made part of peace negotiation process but their role was limited to note taking. In Nepal, the struggle resulted in many women headed households without any aid or support services.

More often than not, women and girls are the victims and survivors brutalised by the conflict, as civilians, IDPs or as refugees. In such cases, women are more vulnerable than men because of the high threat of sexual abuses. Besides experiencing a range of gender violations, sexual violence is systematically directed at women, as they are widely viewed as cultural mascots of a community.

A comparative look at women's role in conflict and post conflict situations in the South Asia region is useful. Comparing women's roles in the North East of India - although the Forum for Naga Reconciliation has active women members, there are more women in decision-making positions in Manipur, these differences could be attributed to cultural reasons. The movement for repeal of the Armed Forces Special Powers Act (AFSPA) is stronger in Manipur with women activists and Irom Sharmila leading the agitation.⁶ An example from caste conflict near Madurai in South India: on hearing of the killing of the president of a Dalit *panchayat* in an ambiguous accident, women from the constituency sent their children away in anticipation of mob violence. The upper caste women mobilized to warn their men against violence against Dalits, saying that it would mean no one would work on their land. Thus, the women from both the communities proactively diffused the tension. In Nepal a group of women have formed an organisation known as 'Shanti Mallika' for the restoration of peace in the country, but they do not have much visibility.

The struggle for promoting the role of women in conflict resolution is an uphill task. In the Chittagong Hill Tribes region in Bangladesh, many women were widowed during the conflicts. After a peace accord, the regional council gave the opportunity to women to access decision-making bodies. But in the last 13 years no woman has been posted in any of these bodies.

International Standards

Two categories of international standards in respect of armed conflict are discussed – first, standards for redressing violence against women in conflict, including but not limited to sexual violence; second, ensuring women's participation in decision making in conflict and post conflict peace processes using UN SCRs 1325, 1820 and 1889.

The Scope of the International Criminal Court (ICC)⁷

The ICC is the permanent international court established to deal with war crimes, crimes against humanity, and genocide. The ICC is based in the Hague and was established by an international agreement, the Rome Statute, and came into force on July 1, 2002 after being ratified by 60 states. The ICC is an international mechanism for justice, however it is independent of the UN

⁶ The Armed Forces Special Powers Act 1958 confers special powers upon the armed forces in disturbed areas. These powers include firing, even up to causing death of a person acting in contravention of any law, to arrest without warrant and to enter and search any premises in order to make arrests. This Act has been criticized by many human rights organizations and the UN Human Rights Committee has questioned the validity of this Act.

⁷ <http://www.icc-cpi.int/Menus/ICC/About+the+Court/> , Last accessed on November 8, 2011

system. The UN-ICC Agreement⁸ which came into force in 2004 recognises the mandates and independence of both institutions, defines the scope of their relationship and outlines the conditions under which the UN and the ICC will cooperate. The Rome Statute sets out the Court's jurisdiction, structures and functions. Only crimes committed on or after the Rome Statute came into force can be prosecuted by the ICC.

The formation of the ICC is a result of years of debates and was established to help end impunity and the gross violations of international human rights and humanitarian law. The ICC can receive complaints and try individuals (not States) for genocide, crimes against humanity and war crimes both in international or non-international armed conflict. The Court can exercise its jurisdiction (to investigate and prosecute) for war crimes, crimes against humanity, and genocide in a situation where one or more of these crimes is:

- ▶ Referred to the Prosecutor by a State Party (as is the case of Uganda and the Democratic Republic of Congo);
- ▶ Referred to the Prosecutor by the Security Council of the United Nations (as is the case of Darfur, Sudan); or,
- ▶ Prosecutor initiates an investigation.

Under the principle of 'complementarity' the national courts have the responsibility to prosecute and investigate violations, failing which the ICC could take up the case (if the Prosecutor receives information on violations from individuals and groups in the country concerned). Even if the state conducts token investigation, the ICC could take over on bona fide grounds. A case in point would be Kenya when the civil society in Kenya sent information to the Prosecutor about mass and grave incidents of sexual violence during electoral process of December 2007. As soon as the Prosecutor began his investigation, the Kenyan government started its own parallel investigation. However, ICC continued with its process citing as a reason that since incumbents were named and involved in the crimes, it could not accept that Kenya would conduct an impartial investigation. Further the Prosecutor continuously received information from Kenyan civil society.⁹

The power of the ICC lies in that its orders cannot be denied or ignored even by non-state parties to the Rome Statute. A recent example of this was when the Sudanese President was invited to the annual economic forum in Malaysia attended by Heads of States. International outcry against the Sudanese President Bashir's participation, against whom the ICC has issued two arrest warrants for genocide, crimes against humanity and war crimes in Darfur, forced Malaysia to uninvite him.¹⁰

Under the Rome Statute, state and non-state parties who have agreed to cooperate with the ICC under article 87(5) may be asked to comply with requests for cooperation and assistance on a variety of matters other than those relating to the arrest and surrender of suspects.¹¹

⁸ The terms of the agreement are available at <http://www.iccnw.org/?mod=agreementsun>, Last accessed on November 11, 2011

⁹ <http://minnijil.org/pdf/Singoei.pdf>, Last accessed on November 8, 2011 And http://www.fidh.org/IMG/pdf/Q_A_Kenya-ICC.pdf, Last accessed on November 8, 2011

¹⁰ Amnesty International Appeal to arrest the Sudanese President <http://www.amnesty.org/en/news-and-updates/malaysia-arrest-sudanese-president-wanted-war-crimes-2011-06-13> Statement of Human Rights Watch against the invite to Sudanese President by Malaysia - <http://www.hrw.org/news/2011/06/15/malaysia-withdraw-invitation-sudanese-president>

¹¹ <http://www.gerjc.u-3mrs.fr/MASTER2XP/Handbook.pdf>, Last accessed on 9 November, 2011

While criminal actions can be sought for specific but grave crimes, the broad objective is also integration of women's experiences, needs, perspectives into the political, legal, social decisions that determine a just and lasting peace. It is here that the UN SCRs help to promote human rights of women in conflict and post conflict settings.

ICC and women: ICC (and the Rome Statute) is a powerful mechanism to advance women's rights and gender equality domestically and internationally. In this regard ICC is different from other mechanisms that promote non discrimination and equality like CEDAW's GR 19 because it has criminal jurisdiction. Sexual violence against women is a distinct and expansive category that can be/ is tried by ICC. In a way it integrates international human rights and humanitarian law into international criminal law. As in the case of Kenya, ICC would not wait or base its investigation of sexual crimes against women on the national government's report. Additionally the violations do not have to be strictly in a conflict context for ICC to initiate investigation.

Article 7 of the Rome Statute recognizes rape, sexual slavery, trafficking, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity as crimes against humanity. In addition, the Statute states that persecution against any identifiable group or collectivity on the grounds of gender, if committed in connection with any other crime within the jurisdiction of the ICC, is a crime against humanity.¹² Additionally, the UN Security Council Resolution (UNSCR) 1325 calls on state parties to take special measures to protect women and girls from gender based violence, particularly rape and other forms of sexual abuse, and all other forms of violence during armed conflict.

Women's participation in post conflict peace processes

The UN Security Council Resolution (UNSCR) 1325 (2000) calls on states to ensure increased participation of women at all decision-making levels at national, regional and international institutions for the prevention, management and resolution of conflict. It calls on all actors involved in negotiations and peace agreements to adopt a gender perspective. All parties are called to respect international law under the Geneva Convention (1949), Refugee Convention (1951), CEDAW and the Optional Protocol, Convention on the Rights of the Child (1990), and The Rome Statute (2002). The UNSCR 1820 (2008) confronts sexual violence in conflicts and deals with ending the impunity of war parties during armed conflicts. The UNSCR 1888 (2009) comments on the lack of progress in preventing sexual violence and suggests deployment of experts to look into situations of sexual violence in armed conflict. The UNSCR 1889 (2009) talks of institutional measures within the UN to realize the goals of UNSCR 1325 and deals with gender mainstreaming in the peace building process.

National Plans to implement UNSCR 1325: In Nepal a National Action Plan (NAP) on 1325 has been formed in consultation with civil society members.¹³ In Afghanistan a national plan to address past crimes known as 'The Peace, Justice and Reconciliation Plan' (2005) was ratified by the President upon persuasion by the victims of past violence. In 2010, a conference took place in London for developing reconciliation in Afghanistan as a way of initiating the peace

¹² Article 7, Rome Statute <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

¹³ The full text of the NAP 1325 by Nepal is available at <http://saathi.org.np/uploads/images/reports/UNSCR%20Leaflet%20Final%2014Feb2011.pdf> (last visited 20/9/2011)

¹⁴ A loya jirgah is a special or emergency jirgah held to resolve serious national problems.

processes but no women were invited to this conference. Following the London conference, a peace *jirgah* (*loya jirgah*)¹⁴ with 6% representation of women was established and women's groups started advocacy activities. While women's representation is growing in *jirgahs* - women can do very little when they face warlords who control arms and violence in Afghanistan and can only offer token protests.

The CEDAW Committee has suggested state parties develop action plans on UN SCR 1325. Most countries with action plans are developed/donor countries. Nepal is the only South Asian country which has drafted an action plan. Participation of civil society groups such as *Shanti Mallika* and conflict survivors benefited the formation of the action plan.

Mechanisms and Procedures for Implementation and Monitoring of CEDAW

Session 13:

Role and Functions of the CEDAW Committee

Session Objectives

- ▶ To discuss the composition and functions of the Committee.

Resource person: Shanthi Dairiam

▶ Composition

The CEDAW Committee (hereafter Committee) comprises 23 experts who monitor the implementation of the Convention through a review of the reports submitted by the state parties. Article 17 of the Convention provides for the establishment of a Committee on the Elimination of Discrimination against Women to consider the progress made in the implementation of the Convention by each state party.

The Committee members are nominated and selected by state parties, due consideration is given to ensure equitable representation across regions. Despite being nominated and elected by state parties, the experts serve in their personal capacities in the Committee and are not official representatives.

▶ Functions

The Committee members are independent experts in their fields. The role of the Committee is to review implementation of CEDAW through initial and periodic reports and issue country specific concluding observations. The Committee also interprets and expands the articles in the Convention by issuing General Recommendations. Since the creation of the Optional Protocol (OP), the Committee decides cases resulting from individual complaints or through inquiries initiated by the Committee. It cannot take punitive action but sends recommendations to states on how to undo the discrimination once it is clear that discrimination exists.

Session 14:

Reporting Process

Session Objectives

- ▶ To discuss the nature and process of reporting to the Committee;
- ▶ To familiarise participants with the content, purpose and pattern of initial and periodic country and shadow/alternative reports;
- ▶ To draw attention to the post reporting follow up and implementation of the Concluding Observations by the State Parties and NGOs.

Resource Person: Shanthi Dairiam

Ratification of CEDAW requires the State Parties to submit reports periodically to the Committee, detailing measures put in place for implementing the Convention, the quantitative and qualitative impact of its actions, and information on challenges obstructing implementation. The reporting process includes initial reports, periodic reports, list of issues and questions, responses from State Parties, constructive dialogue and concluding observations. From the periodic reports, the Committee reviews the progress made in terms of implementation of the obligations of the State Party under CEDAW, through action taken, the impact of the action, and the different challenges that the State Party has to contend with, while fulfilling its obligations under Article 2 of the Convention.

Government Reports

State Parties' reports on the implementation of the Convention constitute two parts: a common core document and a document that specifically relates to the implementation of the Convention to be submitted every four years. The common core document contains information of a general and factual nature containing all relevant statistical data disaggregated by sex. It is the first part of any State report prepared for the Committee in accordance with the reporting guidelines. Information in the common core document need not be repeated in the periodic reports.

▶ Initial report

The initial report is due a year after ratification. This initial CEDAW specific report together with the common core document, constitutes the State party's initial report and is the first opportunity to present the laws and practices which comply with the Convention. The initial report should be about 60 pages long and should elaborate both de jure and de facto situation while dealing with each article.

▶ Periodic reports

The subsequent Convention-specific document, together with the common core document forms the periodic report. The periodic reports are due every four years, and should focus on the

period between the consideration of the State party's previous report and the presentation of the current report. The content of the periodic report should focus on the status of the implementation of the Concluding Observations and the implementation of any OP decisions if that is applicable for the country concerned. In the consideration of subsequent periodic reports, articles are clustered in accordance with the four substantive parts of the Convention. These are part (i) Articles 1 to 6; part (ii) Articles 7 to 9; part (iii) articles 10 to 14; and part (iv) Articles 15 to 16.¹

► **Exceptional reports**

When an extraordinary situation arises in a country, the Committee may request the state party to submit an exceptional report on the subject. Such exceptional reports are different from, and are in addition to, the periodic reports. They are specifically requested and limited to the context that compels the exceptional report, varying from situations of conflict, mass violence or political strife that are likely to have an extraordinary impact on women. For example, India was asked to report on the situation in relation to the 2002 communal violence in Gujarat as an exceptional report.

► **Follow-up report**

A 'follow up report' was introduced by the Committee since 2008 to strengthen its monitoring. This follow up mechanism allows the Committee to request a State Party for information on steps taken to implement selective recommendations contained in the Concluding Observations within one or two years time frame (prior to the next reporting). This measure seeks to significantly enhance the State Parties' accountability towards fulfillment of women's human rights, and is monitored by specific Committee members designated as 'follow up rapporteurs' along with the member appointed internally as the 'Country Rapporteur'.

► **Reporting to CEDAW Committee: Challenges, purpose and content**

The content of the country report to CEDAW remains an area that needs attention of State Parties, as all too often the reports may be inadequate. Governments seem to be unclear regarding the purpose of the report and its role in treaty implementation. Reporting should be used as a planning tool to reflect and further the implementation of the treaty, to record progress in a cyclical manner and understand existing challenges. Report writing is often considered tedious and a mere procedural tool by governments, as a consequence of which they do not look at the Concluding Observations or put in place reporting processes, until the next report is due. In addition there are many instances where consultants are hired to write the government report a year or so before the report is due, while the bureaucrats in charge of implementing the Convention are disengaged from the report writing and may have no ownership over the report. Orientations to government must emphasise the core purpose of reporting (distinct from the obligation to periodically report) as a medium to reflect on gaps, challenges; while also reviewing implementation so as to institute corrective measures. The reports must go beyond narrative of legal standards and *de jure* framework, to highlight indicators that show *de facto* realization of rights, and identification of base line status, setting of benchmarks and related indicators to measure progress. Such an exercise should be supported by appropriate sex disaggregated and comparative data. Finally, the States in their reports should mention successful and unsuccessful

¹ The UN Guidelines for reporting can be found at <http://www2.ohchr.org/english/bodies/cedaw/>

interventions towards fulfilling commitment to women's equality. In the process the State could benefit and evaluate unsuccessful interventions, using the Committee's vast experience to obtain ideas for improvement.

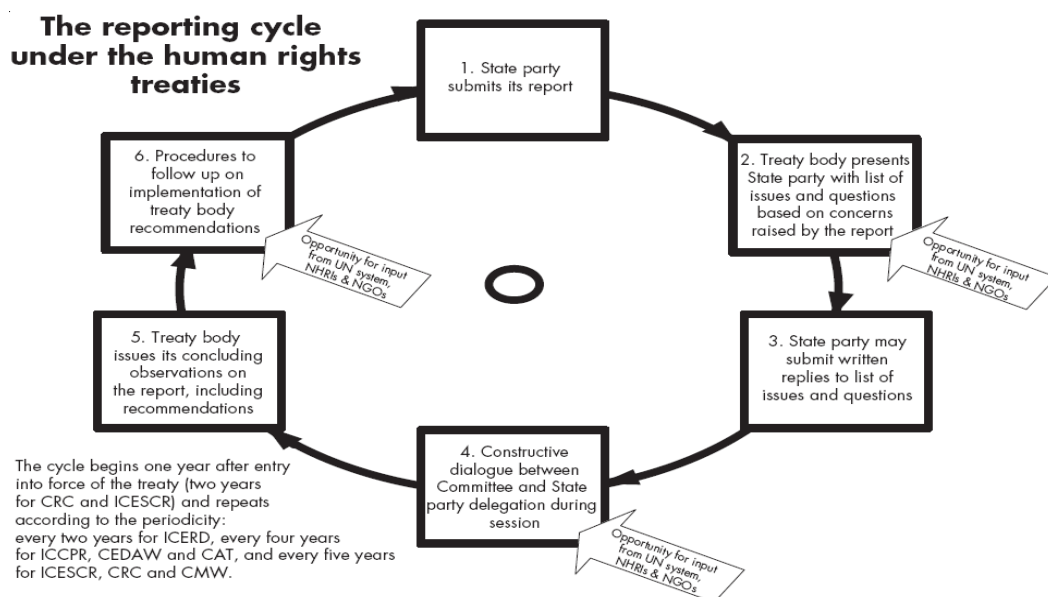
Sometimes there is no clarity in the content of the report, and the reasons for this are often political. More specifically states choose to remain discreet and hide structural problems within the country. A multidisciplinary approach at horizontal alliance building is required to overcome these factors. Reporting is an accountability mechanism for the State to show good faith in living up to its obligation by consenting to an open and transparent process of review and scrutiny at the international level.

Reporting cycle

Different countries have different mechanisms for preparing reports to CEDAW. In Pakistan, four ministries along with civil society groups contribute to the report. In Bhutan, the Ministry of Foreign Affairs takes the lead in the reporting process. Nepal has a high level committee to represent government members and civil society representatives, that is led by the Ministry of Women, Children and Social Welfare. The common core document in India is the responsibility of the Ministry of External Affairs, which is approved by the Home Ministry.

However, timely reporting is a recurring concern of the CEDAW Committee. Many State Parties have not submitted their reports within a year of ratification – for instance, Afghanistan has missed three deadlines. In cases of delays, the Committee sends reminders to governments asking them to submit their reports in six months time, failing which the Committee may review the country in absentia.

The State Party submits its report in one of the UN languages, which in turn is translated into all UN languages. In the case of countries that do not officially follow the UN languages, three months time is given to translate the report. The Committee meets in January, July and October every year. The State Parties are issued a list of questions by the Committee, usually restricted to 30, once they submit the report – and given three months submit their responses to these questions.



General Recommendations

The Committee conducts the review of the State Party in the form of a constructive dialogue with the State Party's delegation, the aim of which is to improve the situation of women. The nature of the dialogue is open, friendly but critical. It is geared towards the assessment of the *de facto* situation and aims to assist in improving it. The State Party's delegation should include political leaders and high-level government officials who are in a position to respond to the Committee's written and oral questions on the Convention, as well as others who are responsible for implementation of the Convention.

Leadership at this level is very critical not only as an expression of political will and commitment to the rights of women, but is also necessary for effective follow up of the Committee's Concluding Observations. The Committee devotes two open meetings (of three hours each) to the consideration of reports. The list of issues and questions provided by the Committee form the basic agenda for the consideration of the report. Representatives of the state party are invited to make introductory comments for a maximum of 30 minutes.

Role of NGOs in CEDAW Monitoring and Implementation

NGOs play an instrumental role in monitoring and advancing the implementation of CEDAW. The Committee recommends NGO presence during the review of State reports and also recommends that States Parties involve NGOs in the implementation of the Convention and consult them in the report writing process. In addition NGOs also submit shadow or alternative reports to supplement information with regard to the government periodic report on the country's progress on various counts. In addition, the Committee receives reports from the UN agencies and other sources. The comments, observations and recommendations of the Committee following the conclusion of the review comprise the Concluding Observations issued to the State Party.

NGOs can cooperate in providing data and other information to assist the review by the Committee. However, NGOs need to retain an independent standing of their own; they may sometimes be part of the government delegation but cannot represent the government. In fact, according to the Paris Principles 1993, even the National Human Rights Commissions cannot be a representative of the government.

The ratification of the treaty by a country constitutes a contract between the UN treaty body and the State Party, for fulfilment of obligations for which the State Party alone is accountable. NGOs can only advocate for proper implementation, and should avoid becoming part of the implementation machinery.

NGOs often form coalitions that work with collective priorities on which they prepare a unified shadow report. Countries like China, which have a special administrative arrangement, hardly submit shadow reports. India has succeeded in doing a collective report, coordinated by the National Alliance of Women's Organisations (NAWO). Usually, if NGOs fail to build a national consensus then more than one shadow report is submitted. There are provisions for anonymous reports as well, and often such reports are submitted to the Committee too. While the Committee

refers to the shadow reports to conduct the review, it responds to the State Party report and not the shadow/alternate report.

Concluding Observations

The Committee issues Concluding Observations on the State Party following the review of the State Party's report, considering the achievements, concerns and challenges related to the implementation of CEDAW. The Concluding Observations provide direction for fulfilling obligations under CEDAW, through suggestions and recommendations to the State Party. Since 2008 the Committee has begun to ask the State party to report on fulfilment of its obligations with respect to two of the recommendations made in the Concluding Observations, to be submitted in two years. This does not compromise the obligation of State Parties to submit their periodic report in four years time.

The responsibility to implement the Concluding Observations rests with all branches of government, and across the federation (as may be the case). All sectors of government have an obligation to report and a State Party must put in place effective structures through which capacities of state functionaries in human rights are developed, and implementation is effected, budgets allocated and monitoring undertaken. The UN and the donor community assist State Parties through technical and financial assistance, upon request of the State Party.

Session I 5:

Optional Protocol (OP) to CEDAW

Session Objectives

- ▶ Explain the features of OP to CEDAW
- ▶ Explain the mechanism pertaining to Inquiry and Communication Procedures
- ▶ Discuss some of the important cases as illustration

Resource person: Shanthi Dairiam

The Optional Protocol (OP) was adopted on the 6th of October 1999, by the General Assembly and entered into force on 22 December 2000. There are 102 state parties to the OP. An Optional Protocol is a legal instrument related to an existing treaty which may address points not covered by the mother treaty or which may introduce procedures for the effective implementation of the mother treaty. These include procedures such as an individual complaints procedure and an inquiry procedure.

- ▶ The OP-CEDAW is a treaty connected with the CEDAW. It does not introduce any new substantive rights for women. Instead, it introduces two new procedures, the communications and inquiry procedures, to supplement the Convention.
- ▶ It consists of 21 articles, structured around four principal sections:
 - the preamble;
 - the complaints procedure (Articles 1-7);
 - the inquiry procedure (Articles 8-10);
 - and administrative provisions (Articles 11 – 21).
 - Art. 10: Provides an opt-out clause permitting the State Party to decide it does not recognize the competency of the Committee to conduct an inquiry.
 - Article 17: Does not permit any reservations to any articles of the Convention.
- ▶ Only State Parties to the CEDAW Convention can become parties to the OP-CEDAW.
- ▶ State Parties have to specifically ratify the OP-CEDAW to become bound by it.
- ▶ By becoming a State Party to the OP-CEDAW, a State recognizes the mandate and jurisdiction of the CEDAW Committee to review cases and situations in which alleged violations of women's human rights have occurred.
- ▶ The OP-CEDAW creates access to justice for women at the international level. It provides a mechanism through which the rights contained in the CEDAW can be interpreted and applied. It provides the means to further promote the implementation of the CEDAW at the national level.
- ▶ The OP-CEDAW will only be available as means of 'last resort' once all effective remedies available at the national level have been exhausted.

The Procedures under the OP-CEDAW

There are two procedures under the Optional Protocol to the Convention – (i) the communications procedure and (ii) the inquiry procedure. These procedures enable the Committee to review violations of women's human rights in specific circumstances. Through these procedures, the OP-CEDAW creates access to justice for women at the international level, in particular, for women who have been denied access to justice in their countries.

(1) The Communications Procedure

Article 2 provides for a communications procedure giving individuals and groups of women the right to complain to the Committee as victims of a violation of any of the rights enshrined in the Convention.

Conditions to observe when using the communications procedure

- ▶ Exhaustion of Domestic Remedies - Article 4(1) requires that a complainant must first attempt to seek a remedy within the State Party's own judicial or human rights system. The exception

to this requirement exists when such remedies are unreasonably prolonged or are unlikely to bring effective relief or don't exist at all.

- ▶ Inadmissibility Criteria - Article 4.2 requires that the complaint will become inadmissible under a number of circumstances:
 - The same matter has already been examined by CEDAW Committee or by another treaty body or international body.
 - The right being claimed is incompatible with the provisions of CEDAW.
 - The claim is manifestly ill-founded or not sufficiently substantiated.
 - The claim is an abuse of the right to submit a complaint.
 - The facts of the case occurred prior to entry into force of the OP-CEDAW for the relevant State party unless violation concerned can be deemed as continuing after entry into force.

Remedies available

Remedies available to a victim(s) under the communications procedure include:

- ▶ Interim guidelines, instructions and steps to end continuing violations or prevent repetition of these in the future;
- ▶ Restitution or actions necessary to restore the victim(s) to the conditions she/ they would have been in had the violation not occurred (e.g. release from prison);
- ▶ Settlement, compensation and/or rehabilitation for the victim(s);
- ▶ Retrial;
- ▶ Enforcement of domestic court judgments establishing conditions to enable the victim(s) to exercise a right (e.g. inheritance rights, visitation rights); and
- ▶ Review of laws, administrative decisions and/or policies, which are disputed in the case.

Remedies available to a victim(s) that have a public interest component include:

- ▶ Development of directives, guidelines or policies to prevent similar violations in the future;
- ▶ Adoption of measures and remedies to effectively address similar violations;
- ▶ Action and measures to ensure the full recognition, enjoyment and exercise of rights contained in CEDAW;
- ▶ General review or amendment of laws inconsistent with provisions of CEDAW (e.g. repeal of legislation and/or a review of relevant legislation to ensure that neither the law itself, nor its application, is discriminatory);
- ▶ Adoption of temporary special measures in a particular field (e.g. quota system in parliament);
- ▶ Recognition of the 'justiciability' of specific rights enshrined in CEDAW as a whole;

- ▶ Enactment of new legislation – if this was not available previously – to recognize the right(s) alleged to have been violated;
- ▶ Take steps to condemn, sanction or regulate discrimination by private and public actors; and
- ▶ The creation of appropriate support services for victims of abuse such as shelters, counselling services, legal aid, etc.

(2) The Inquiry Procedure

- ▶ Article 8 enables the Committee to launch, on its own initiative, on the basis of reliable information, inquiries into ‘grave or systematic’ violations of the rights of women as contained in CEDAW. The Committee can consider information from credible sources, including information provided by NGOs, when initiating an inquiry.
- ▶ **Grave** violations comprise severe abuses. For example, discrimination against women linked to violations of their right to life, physical and mental integrity, and security (as in the case of forced disappearance of women’s human rights defenders).
- ▶ **Systematic** refers to the scale or prevalence of violations, or to the existence of a scheme or policy directing violations. Violations not amounting to the level of severity implied by ‘grave’ may still be the focus of inquiry if there is a pattern of violations or abuses, committed pursuant to a scheme or policy. For example, forced sterilization of indigenous women in public hospitals.

Advantages of the inquiry procedure

The inquiry procedure is less formal than the complaints procedure. The procedure is helpful to assess the scale or prevalence of a violation.

Remedies available

Remedies are not available only to victims, since many possible remedies have a public interest component that will benefit all or many other women. Remedies given by the Committee can broadly encompass the following:

- ▶ Restitution, compensation or rehabilitation for victim;
- ▶ Steps to end ongoing violations;
- ▶ Law reform and changes in policy;
- ▶ Developing directives, guidelines or policies to monitor, provide early warning and address grave and/or systematic violations of women’s human rights;
- ▶ Steps to stop on-going violations and prevent the repetition of similar violations in the future. These may include legal and administrative measures addressing a wide range of issues, including building capacity of the authorities concerned and budgetary allocations;
- ▶ General review or amendment of laws inconsistent with the provisions of CEDAW;
- ▶ Enactment of new laws if appropriate;
- ▶ Improving the effectiveness of investigative methods including strengthening of gender perspectives within this;

- ▶ Regular inspections of public facilities (e.g. prisons and detention centres where immigrants are housed);
- ▶ Creation of a national machinery for women or a human rights commission;
- ▶ Adoption of temporary special measures in a particular field;
- ▶ Establishment of programmes or centres to assist women (e.g. legal aid);
- ▶ Recognition of the 'justiciability' of specific rights in CEDAW as a whole;
- ▶ Taking steps to condemn and sanction discrimination by private and public actors;
- ▶ Provision of legal and other support for victims to access the justice system;
- ▶ Developing a plan of action to implement recommendations of the Committee and strengthen relationships with civil society organizations to carry out the plan; and
- ▶ Setting of a timeframe for the government to give feedback to the Committee on steps taken to implement its recommendations.

The OP enables States Parties to develop the means by which the Convention is effectively implemented and equality for women is achieved. When a woman files a complaint to the Committee after having exhausted all domestic remedies, it points to the existence of some weakness in the national justice system that is unable to provide redress.

Further, in the adjudication of individual cases, there is the potential that international norms - that may otherwise seem general and abstract - are given concrete meaning and specific obligations of the State Party are identified. This in turn will become a guide for States, NGOs and individuals in interpreting the meaning of the texts concerned. For example in the dissenting opinion related to communication 15/ 2009 it was pointed out that –

'...an important purpose served by the Optional Protocol under the CEDAW Convention, when it is used by women, is that it provides States parties the opportunity to assess the weaknesses in the procedures, the legal and administrative institutions and implementation processes of the legal system that do not allow women to obtain the benefit of the law as intended and to take remedial action.'

When the Committee receives a complaint and makes a decision on the merits of the case, it not only issues recommendation for redress of the violation of the individual but also makes recommendations for the reform of the system that permitted the violation. *AS vs. Hungary* (see 'case studies' below) is an example of how by examining the complaint of one woman the Committee's recommendations gave guidance on improving the system to benefit all women.

By studying the norms and standards of CEDAW as a step towards ratification of the OP, a better understanding of the obligations under CEDAW is created within and among relevant government bodies such as the Law Ministry, Ministry of Women, Finance Ministry, the Planning Ministry, Line Ministries, Parliament, and the judiciary.

Ratification of the OP-CEDAW is an expression of the State Party's confidence and positive political will. Ratification of the OP-CEDAW shows good faith on the part of the government and intent to implement the CEDAW nationally. As CEDAW is a multi lateral treaty, it also shows

good faith at the international level to all other State Parties that the State concerned intends to honour its commitments under this treaty and that it is willing to take all measures to make sure that discrimination against women is eliminated. This mechanism was drafted and adopted by the UN on a basis of consensus by all member States. Ratification of the OP-CEDAW is hence an expression of the confidence of governments in a mechanism that they have created.

Examples of OP-CEDAW cases

- ▶ *AS v Hungary* 4/2004: Recommendations of the Committee were (i) Review domestic legislation to ensure that the principle of informed consent in cases of sterilization operates, and ensure that this is in conformity with international human rights and medical standards, including the Convention of the Council of Europe on Human Rights and Biomedicine (the Oviedo Convention) and World Health Organization guidelines; (ii) In that connection, consider amending the provision in the Public Health Act whereby a physician is allowed 'to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances'; (iii) Monitor public and private health centres, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.
- ▶ In *B.J vs Germany*, Communication No 1/2003, the Committee found that the woman had failed to exhaust domestic remedies. Her claim was denied as she had failed to meet stipulated deadlines, and satisfy the requirement of approaching lower courts. The Committee came to a decision that the domestic laws were not exhausted and refused to intervene.
- ▶ In a case from Austria, *Sahide Goekce vs. Austria*, Communication No. 5/2005, a woman of Turkish origin was shot dead when her plea for a restraining order on her husband harassing her was not executed, as the husband's argument of 'right to freedom of movement' had been prioritised over the right to life and safety of the wife. In this case, protection orders had been issued which prohibited the man from coming close to where the woman lived. This case came to the Committee, which concluded that despite the presence of gender sensitive laws, the law enforcers gave priority to the wrong law in this case. The Committee observed that the right of the perpetrator to fundamental freedoms including mobility cannot supersede the woman's right to life and physical and mental integrity. The Committee wrote to the government stating that the justification for not taking action was due to the bias of gender and race. One of the recommendations of the Committee was to better train the police to deal with such cases.
- ▶ In a case from Philippines, *Karen Tayag Vertido vs The Philippines*, Communication No 18/2008, a woman went out with her boss consensually but was raped. The Committee suggested that the woman should be given compensation and the legal system should be reformed. In such cases, the NGOs should form a support group, to ensure prompt steps are actually taken by the governments.

Where a State Party has not ratified OP-CEDAW, individual complaints or instances of grave violations may be sent to the relevant Special Rapporteur, such as the UNSRVAV, or even the Universal Periodic Review (UPR).

Session 16:

Implementation of CEDAW

Session Objectives

- ▶ Municipal incorporation and domestic application of CEDAW;
- ▶ Implementation of Concluding Observations (CO's).

Resource person: Deepika Udagama

Implementation of CEDAW

Judicial Application

- ▶ In a monist legal system, there is no separation between the local and the international legal system. In a dualist legal system, there is no mandatory judicial application of an international treaty, and a separation between national laws and international laws exists
- ▶ **Monist legal system** – mandatory judicial application of the treaty as domestic law
- ▶ **Dualist legal system** – requires enabling domestic legislation

Implementation of Concluding Observations (CO's)

- ▶ CO's are not directly legally binding, but only binding under the maxim 'pacta sunt servanda' (agreements must be fulfilled in good faith)
- ▶ CO's are key to advocacy
- ▶ A careful study of CO's required

Source: Deepika Udagama

Domestic Application of CEDAW

Domestic implementation and application of CEDAW requires either enabling legislation in a dualist legal system, or direct incorporation in a monist legal system. The legal frameworks of most of the South Asian countries are dualist. Thus, any ratification of an international accord or convention by a state in a dualist legal system needs to be followed up by enabling legislature at the domestic level. In monist frameworks, any treaty that the state signs is automatically applicable locally via direct incorporation. Judicial application in a monist system is easier as under such a system, in case of any contradiction between the domestic law and the international law, the latter always prevails. However, in a dualist legal framework, the issue is more complicated as conflicts between national laws and international laws may arise.

Where enabling legislation is absent, international law can be used as persuasive authority. That is to say, in countries with dualist legal frameworks, the solution can lie with the courts being more persuasive – and indirectly applying CEDAW. The case of *Vishaka vs. State of Rajasthan*¹ in India is such an example wherein a public interest litigation on sexual harassment at the work place was filed. It was argued in the case that Article 51 of the Indian Constitution observes that the state shall endeavour to respect international law and treaty obligation – and Articles 11, 24 of CEDAW and the General Recommendation 19 on violence against women were cited. The Supreme Court formulated guidelines to fill the legal vacuum until such time as a law was enacted, to regulate sexual harassment at the workplace. The Supreme Court held that any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into the constitutional provisions. Similarly, in the case of *Sharma and Ors. vs. Ministry of Women, Children and Social Welfare*², a public interest litigation was filed in the Supreme Court of Nepal to protect the interest of workers in dance bars and restaurants. CEDAW and ICESCR were invoked together with constitutional provisions, and the Supreme Court issued guidelines for protection against sexual harassment until legislation is passed. These guidelines are based on a constitutional interpretation, using CEDAW provisions.

Implementation of Concluding Observations

CEDAW places upon the State Party the obligation of immediate implementation upon ratification. The state in principle is supposed to take immediate action in this regard. However, to ensure that the State Party takes necessary steps, it is necessary for NGOs to undertake informed knowledge based advocacy to guide legislative and policy reforms, and monitor implementation of existing laws and policies.

Concluding Observations issued by the CEDAW Committee are not directly legally binding on a State Party. Concluding Observations are key to advocacy and civil society organisations need to promote and disseminate information on these, ensuring that these are acted upon by the state. Some of the good practices suggested in terms of implementing Concluding Observations by civil society groups /individuals are:

- ▶ Debriefing and wide dissemination of the CO's, using the media and other forms of campaigning.
- ▶ Drafting of policy papers with careful research and tailored demands on legislative reform, institutional reform, and resource allocation.
- ▶ Adopting an interdisciplinary approach involving lawyers, health care professionals, social activists and other stakeholders.
- ▶ Political demands and political dividends need to be factored in when advocating with MPs or other office bearers.

At its forty-first session, the Committee introduced a follow-up procedure whereby it sought information from individual States Parties on select recommendations in the Concluding Observations to be submitted to it in two years, i.e prior to the next periodic report. In this way,

¹ AIR (1997) SC 3011

² Writ No. 2822 of 2062

the Committee gets the State Party to follow up on priority areas, and work and reporting on the progress after two years. For example, in the case of Bhutan, the Committee has identified two priorities for the government to address - violence against women and political participation of women. The Committee offers technical assistance to all countries that express requirements for such assistance.

Implementation of CEDAW is not about how efficiently a country follows the reporting process. Often, problems arise when too many recommendations are passed by the Committee and the reporting process becomes tedious and the reports too bulky; all of which delay the reviewing process and ultimately hinder prompt action.

Another problem arises when countries make arrangements to write the report with rushed inter-ministerial committees and the hiring of consultants. In such cases, the mainstream means of data gathering and a sustained substantive process of report writing is bypassed. For example, future commitments are made, when the governments are expected to report on what concrete steps have already been taken and not just make future commitments in their reports to the Committee.

There are some countries which have not ratified CEDAW – and the question arises, how does the Committee engage with such countries. The list of countries that have not ratified CEDAW are USA, Iran, Somalia, Sudan and certain island countries in the Pacific. CEDAW held discussions with US officials in which the representatives were presented with a paper on the reservations the U.S sought to make to CEDAW. The USA intended to place reservations on Article 12 on women's health with regard to the right to have abortions and reservations on Article 2 pertaining to state obligation with regard to the free market economy. If the US ratified and placed a reservation on Article 2 then this would send a negative signal to other countries that had already ratified CEDAW. However, it is not the responsibility of the Committee to put pressure on states to ratify the Convention.

Session 17

Obstacles and Opportunities - charting our roles in advancing the implementation of CEDAW

Session Objectives

- ▶ To surface issues pertaining to the implementation of the Convention in all the countries with special reference to facilitating or hindering factors – social, legal and institutional
- ▶ To share practical approaches to enforcement from around the region
- ▶ To share strategies for getting CEDAW reflected in national budgets
- ▶ Roles in change, and the next steps in advancing implementation of CEDAW

Group work and Presentation

Facilitator – Shanthi Dairiam

This session is a fitting conclusion to a training on CEDAW, and allows the participants to plan the next steps for implementation of CEDAW within their spheres of work. It helps map capacities and strategies, and identify areas where further capacity building or inputs are required.

The participants must work in country groups (in a South Asia workshop), or state/ sub regional groups in a national or provincial level workshop. In their groups, the following guidelines steer their discussion and subsequent presentation.

- ▶ Identify three priority recommendations in the Concluding Observations for the country on the basis of the assessment made of the human rights challenges in the country.
- ▶ Identify a critical human rights situation in the country for women not covered by the Concluding Observations as part of the priorities for action.
- ▶ Identify actions that the participant organization takes to further the implementation of these priorities including legal reform, policy measures, institutional measures - capacity building, data gathering, budget allocations etc.
- ▶ Identify the strengths of the organization to work on these priorities. Give examples of good practices such as budget allocations for implementation of gender equality, development of indicators, effective structures etc.
- ▶ Present any framework that the organisation may have developed for monitoring and application of CEDAW.
- ▶ Identify the challenges that the organisation will face in implementing this agenda at the social, economic, legal, and institutional levels.
- ▶ Identify the needs of one's organization to cope with these challenges.

Sample responses to this group work at the South Asia training of trainers were as follows:

The participants from Sri Lanka referred to women's political participation, women and conflict and reforms in discriminatory laws as the three priority recommendations in the CO's. Participants from Nepal referred to amending discriminatory laws, participation of women in conflict resolution, and strengthening the national machinery for women as three priorities. Participants from India referred to addressing gender based violence during communal violence as in Gujarat, violence against women including witch hunting, and trafficking of women as the three priority issues. Participants from Maldives referred to discriminatory laws regarding land ownership, health reform policies and law reform; while participants from Bhutan referred to women's political participation, economic empowerment and violence against women as the three priority issues. Participants from Bangladesh referred to women's political participation, and discriminatory family laws, while participants from Afghanistan referred to security, health and education.

Some of the critical human rights situations not covered by the CO's according to the participants were trafficking of women in the north east region of India, the need to make central level laws to address witch hunting (India) and the need to address the role of women in the war against terrorism (Pakistan). Participants from Bhutan and Afghanistan referred to economic empowerment of women as an area not referred to in the CO's and participants from Pakistan referred to natural disasters and women as areas not mentioned in the CO's.

Some examples of good practices that were given included funding for women to contest elections (Sri Lanka), over 9% of the national budget allocated directly for women (Nepal), safe rehabilitation centres run through public private partnership (Nepal), use of media to disseminate information (Bhutan and Afghanistan), and annual sensitisation on the CEDAW CO's (Bhutan).

Some strategies for application of CEDAW and getting CEDAW reflected in the national budget that were shared include providing technical assistance to the government to ensure a gender responsive budget (Nepal), setting up of gender units in all the government agencies (Nepal), trainings on CEDAW (India), increasing public awareness on misconceptions regarding Islamic law (Maldives), forming networks of human rights defenders (Maldives), and creating strong networks between civil society organisations and the media (Bangladesh).

Examples of frameworks developed for the monitoring and application of CEDAW include – the formation of the Ministry for Women in Nepal with offices in around 75 districts, developing training programmes on CEDAW, using the COs to question the state government of Tamil Nadu on violence against women and women's political participation, drafting of five year plans in consultation with civil society members/ organisations and development of gender departments in government machineries.

Common challenges identified were lack of resources, low literacy levels, religious fundamentalism, lack of awareness of rights and patriarchal mind-sets. Participants from Sri Lanka referred to legal structures as a challenge since they have high levels of impunity, while participants from Nepal referred to lack of women in decision making positions as a challenge. The participant from Maldives referred to the need to withdraw the reservation to Article 16.

The needs identified to cope with such challenges include greater security for women human rights defenders, support for queer rights, increase in resources allocated for women's causes, capacity building, increasing awareness, international support and an efficient bureaucracy.

Resource Persons

Mary Shanthi Dairiam from Malaysia is a former member of the CEDAW Committee and the founder member of International Women's Rights Action Watch (IWRAP) Asia Pacific. She has served as an advisor and consultant to several UN agencies, Office of the High Commissioner on Human Rights; has served as the Personal Consultant to UN High Commissioner for Human Rights for East Timor (October 2000-January 2001), and to the governments of Malaysia and Bangladesh.

Deepika Udagama from Sri Lanka is currently serving as the member of the Board of Trustees of UN Voluntary Fund for Technical Cooperation in the Field of Human Rights. Her former positions within UN human rights system include serving as Sri Lanka's former alternate member to the then United Nations (UN) Sub-Commission on the Promotion and Protection of Human Rights, and UN Sub-Commission's Special Rapporteur on Globalization and its Impact on Human Rights. At the national level, she was the former Head of the Faculty of Law, University of Colombo. She has also served as a member of Sri Lanka Human Rights Commission and as the founding director of the Centre for the Study of Human Rights in the Faculty of Law, University of Colombo. She is also the former Chairperson of the Sri Lanka Foundation's Commission on Democracy and Human Rights. She is presently with the Department of Law, University of Peradeniya.

Madhu Mehra from India is a feminist lawyer, a founding member and Executive Director of Partners for Law in Development, a legal resource group working in the fields of social justice and women's rights in India and a leading resource group on CEDAW. She conducted the 15 year review of the mandate of the UN Special Rapporteur on Violence Against Women in 2009. Since 1996, at the Asia Pacific level, she has worked as a member of Asia Pacific Forum for Women, Law and Development (APWLD) and International Women's Rights Action Watch (IWRAP-AP). Her research papers and publications are on women's human rights, in particular, on CEDAW, women's rights in the context of culture, family, sexuality. She has served as a member on government advisory committees on women's rights.

Guest Resource Persons

Cassandra Balchin is currently the chair of Muslim Women's Network, UK. She is an active member of Women Living Under Muslim Laws (WLUML) for 15 years, and is on the international advisory group for Musawah: a global initiative for equality and justice in the Muslim family. She is a freelance journalist, researcher, writer and human-rights advocacy trainer. Her research and writing has focused on Muslim family laws and law-reform processes, and more recently on critiques of international development policy and practice regarding religion. Her recent publications include 'Towards a Future without Fundamentalisms: Religious Fundamental Strategies and Feminist Responses', AWID.

Zainah Anwar from Malaysia is a founding member of Sisters in Islam, a women's group in Malaysia and is currently the director of a global project of Sisters in Islam on equality and justice in the Muslim family called, Musawah. During her career of 20 years, she has also served as a (former) member of the Human Rights Commission of Malaysia, a Chief Programme Officer for the Political Division at the Commonwealth Secretariat in London, and a Senior Analyst at the Institute of Strategic and International Studies. She is an internationally respected voice of Islamic feminism, and is part of several policy discussions, think tanks globally.

Draft Agenda

**Strengthening Application of CEDAW in South Asia
Regional Training of Trainers**

14th -21st July 2011

Ashok Country Resort, New Delhi

Objective

The objectives of the training are as follows:

- 1. To create awareness about the basic concepts and principles of CEDAW.
- 2. To enhance clarity about CEDAW Procedures for monitoring the implementation of the Convention.
- 3. To highlight the role of Optional Protocol and its mechanisms.
- 4. To create awareness on thematic areas in relation to CEDAW, the TOT will focus on two themes i.e. culture, cultural rights and conflict/ post conflict situations
- 5. To strengthen capacities of participants in advancing application of CEDAW in local and national context.
- 6. To invigorate and expand the available resource persons on CEDAW in the countries to strengthen domestic application, capacity building and advancement of CEDAW.

Inaugural Day, 14 July 2011	
4.30 pm	Registration
5.30 pm	Welcome Address by PLD and UN Women Introduction to CEDAW programme in South Asia
6.15 pm	Introduction of Participants
Welcome Dinner 7.30pm	

Time	Session Content/Topics	Objectives	Methodology	Resource Person / Facilitator
Day 1, 15 th July 2011				
9.00 am- 9.45 am	Introduction to the workshop and Setting Ground Rules	<ul style="list-style-type: none">Mapping the objectives against participants expectationsSetting the ground rules for the workshop		Madhu Mehra
Topic I Setting the Context for Understanding Women’s Rights in South Asia				
9.45 am – 1.00 pm	Session 1: Mapping challenges and opportunities Examining Constitutional Law and Statutory Law	<ul style="list-style-type: none">Mapping the general situation in respect of human rights in South Asia and specific challenges in respect of women’s rights in South AsiaExamining barriers to implementation of human rights standards/law in local and domestic contextsExamining Constitutional and statutory law from the region to assess challenges and opportunities in respect of CEDAW implementation	<p>Inputs from Resource Person</p> <p>Participants are expected to have prepared for this session prior to arrival at the workshop. They will sit in country wise groups to collate their information for a power point presentation</p>	Deepika Udagama
11.00 am	Tea Break			
Topic II Gender Ideologies and Structural Discrimination				
1.00 pm	Lunch Break			
2.00 pm - 4.00 pm	Session 2: The Ideology of Gender	<ul style="list-style-type: none">To develop an understanding of the social construction of gender and inequalityUnderstand the relationship between the ideology of gender, gender stereotyping and discriminationIntersectionality: to examine how multiple marginalities of caste, class	<p>Interactive Plenary</p> <p>Resource Inputs</p>	Madhu Mehra

			sexual orientation, gender identity, age, migrant status, disability intersect to compound disadvantage for some women more than others		
4.00 pm 4.15 pm- 5.30 pm	Tea Break Session 3: Institutions and Inequality		<ul style="list-style-type: none"> To recognize how gender ideology shapes all institutions in society, and shapes opportunities and obstacles at the individual level To understand how multiple structures of discrimination interconnect to create specific barriers for marginalised women. 	Resource Person Input Groupwork Group work to be done after the session in the evening and presented the following morning	Shanthi Dairiam
5.30 pm	Film Show- Who Can Speak of Men?				

DAY 2, 16th July 2011

9.00 am- 9.30 am	Reflections and Discussion on readings				
9.30 am- 10.30 am	Presentations of Session 3				
10.30 am 10.45 am- 1.00 pm	Tea Break Session 4: Understanding Substance, Structure and Culture of Law in the Context of Gender Ideology and norms	<ul style="list-style-type: none"> To unpack different elements that comprise law To examine ways in which each of these elements can reinforce/challenge gender inequality 			Deepika Udagama
1.00 pm 2.00 pm - 3.00 pm	Lunch Break Process Session for Topic II	<p>Recall main messages covered by Topic 2 and identify-</p> <ul style="list-style-type: none"> What you are fully convinced about What you are not fully convinced about What you are fully convinced about but not sure of how you will communicate outside 			Shanthi Dairiam

Topic III Human Rights and Women				
3.15 pm – 5.00 pm	Session 5: The History of Exclusion and human rights movements – globally and nationally	<ul style="list-style-type: none"> To discuss the meaning of human rights. To recall the history of human rights law at the local, national and the global level, and its rootedness in movements in the region. The exclusion and marginalization of women's rights. To understand the defining features of human rights, its politics and practice Introducing the relevance of CEDAW 		Deepika Udagama
4.00 pm	Tea Break			
5.00 pm	Film- Another World is Possible			

DAY 3 1 st July 2011				
9.00 am – 9.30 am	Reflections and Discussion on readings			
9.30 am – 11.15 am	Session 6: Journey to CEDAW and beyond	<ul style="list-style-type: none"> To provide a brief background to CEDAW To examine its key features and its dynamic nature, Arts-1-4; 5-16 and the salient General Comments. To introduce OP-CEDAW but leave discussion to the later session on it. 		Shanthi Diariam
11.15 am	Tea Break			
11.30 am – 1.00 pm	Process Session for Topic III	<ul style="list-style-type: none"> Form mixed groups and identify a thematic area of your choice Read all articles related to the thematic area, as well as General Comments (earlier Gen Recommendations), pertaining to that thematic area Is there something that you find 		

1.00 pm	Lunch Break	missing in the framework you are able to piece together through these articles and comments Read the CEDAW text and Restoring Rights to Women (which has summary of articles and summary of relevant GRs for reference).		
Topic IV Core Concepts of CEDAW				
2.00 pm – 4.30 pm	Session 7: Substantive Equality	<ul style="list-style-type: none"> To enable participants to differentiate between the various approaches to equality and their relative merits To understand the linkage of different treatment and affirmative action with equality of outcomes 	Case studies and group work	Madhu Mehra
3.30 pm 4.30 pm – 5.30 pm	Tea Break Session 8: Non Discrimination	<ul style="list-style-type: none"> To understand the different elements that comprise discrimination, and its scope To understand that discrimination in one sphere is interconnected with and impacts other areas of life To recognize direct and indirect forms of discrimination 	Interactive discussion and group work Group work to be done after the session in the evening and presented the following morning	Shanthi Diariam
DAY 4, 18th July 2011				
9.00 am – 9.30 am	Reflections and Discussion on readings			
9.30 am – 10.30 am	Presentation on Session 8			
10.30 am 10.45 am – 1.00 pm	Tea Break Session 9: State Obligation	<ul style="list-style-type: none"> To understand the binding nature of the state's obligation under 	Interactive discussion and group work	Deepika Udagama

1.00 pm	Lunch Break		<p>CEDAW</p> <ul style="list-style-type: none"> To distinguish between the obligation of means (creating institutions, mechanisms, gender budgeting, etc) and obligation of results Relevance of Temporary Special Measures Due Diligence 		
Topic V Context Setting: Practical Application of CEDAW in Specific Contexts					
2.00 pm-4.00 pm	Process Session on Topic IV		<ul style="list-style-type: none"> Discuss the necessity of different communication strategies to ensure that the content is accessible to diverse target groups Anticipating resistance and sharing approaches and methods to address it Clarify any content related aspects 		
4.00 pm	Tea Break				
4.15 pm	Film- A Jihad for Love Shifting Prophecy				

DAY 5, 19th July 2011					
9.00 am – 9.30 am	Reflections and Discussion on readings				
9.30 am – 1.00 pm	<p>Session 10: Culture and Women's Human Rights</p> <ul style="list-style-type: none"> Cultural Rights Framework 	<ul style="list-style-type: none"> Understanding the scope of culture, and cultural rights Relationship of culture with women's rights activism. Mandate of the SRV/AW and the Independent Expert on Cultural 			Madhu Mehra

	<ul style="list-style-type: none"> ▪ CEDAW and Muslim Family law 	Rights and linkages with CEDAW <ul style="list-style-type: none"> ▪ Examining common ground between CEDAW and Muslim family law 		
1.00 pm 2.00 pm – 3.00 pm	Lunch Break Session 12: Feminism and Islam	<ul style="list-style-type: none"> ▪ Why is gender equality is necessary and possible within Islam ▪ Introduction to Musawah and other feminist engagements with Islam 	Film show and discussion <ul style="list-style-type: none"> ▪ Musawah 	Cassandra Balchin
	Sight Seeing			

DAY 6, 20th July 2011				
9.00 am – 9.30 am	Reflection and Discussion on readings			
9.30 am – 11.00 am	Session 11: Women in Conflict and Post conflict setting	UN SR 1325, 1820, 1888 read with CEDAW in post conflict settings		Deepika Udagama
11.00 am 11. 15 am	Tea Break Process Session for Topic V	<ul style="list-style-type: none"> ▪ Discuss the necessity of different communication strategies to ensure that the content is accessible to diverse target groups ▪ Anticipating resistance and sharing approaches and methods to address it ▪ Clarify any content related aspects 		
1.00 pm	Lunch Break			

Topic VI Mechanisms and Procedures for Implementation and Monitoring of CEDAW				
2.00 pm – 3.00 pm	Session 13: Role and Functions of the CEDAW Committee		Resource Inputs	Shanthi Dairiam
3.00 pm – 3.15 pm	Tea Break			
3.15 pm – 5.00 pm	Session 14: Reporting Process	<ul style="list-style-type: none"> Initial and Periodic Reports by states Shadow Reports by NGOs Reporting guidelines, Common core document Post reporting follow up/ implementation of the CEDAW Concluding Observations Assessment of challenges and needs in respect of reporting and follow up on concluding comments by the state and the NGOs 	Group work to discuss country specific concluding comments	Shanthi Dairiam
5.00 pm	Session 15: Optional Protocol	<ul style="list-style-type: none"> Features of O.P CEDAW Mechanism: Inquiry and Communication Procedure Important cases 		Shanthi Dairiam
DAY 7, 21st July 2011				
9.00 am – 9.30 am	Reflections and Discussion on readings			
9.30 am – 11.00 am	Process Session for Topic VI	<ul style="list-style-type: none"> Sharpen knowledge and skills in applying the CEDAW framework in the analysis of specific women's human rights issues and in developing strategies/ solutions (programs, law proposals, development plans) Introduce analytical tools for monitoring and application of CEDAW 		Shanthi Dairiam

11.00 am	Tea Break			
Topic VII Bringing CEDAW Home				
11.15 am – 1.00 pm	Session 17: Implementation of CEDAW	<ul style="list-style-type: none"> ▪ Municipal incorporation and Domestic application of Concluding Comments ▪ Sharing of Strategies and good practices 		Deepika Udagama
1.00 pm	Lunch Break			
2.00 pm – 4.00 pm	Session 18: Obstacles and Opportunities/ and charting our roles in advancing the implementation of CEDAW	<ul style="list-style-type: none"> ▪ To surface Issues pertaining to the implementation of the Convention in all the countries with special reference to facilitating or hindering factors – social, legal, institutional ▪ To share practical approaches to enforcement from around the region ▪ To share strategies for getting CEDAW reflected in national budgets ▪ Our roles in change, and the next steps in advancing implementation of CEDAW ▪ Identification of needs for to advance implementation of the Convention 	Group work and Presentation	Shanthi Dairiam
4.00 pm	Tea Break			
4:15 pm	Evaluation and Closing	Assessment and evaluation		

A

Ahmadi: The Ahmadis are the adherents of the Ahmadiyya religious movement. Ahmadis are not considered to be Muslims by some sections as certain Ahmadiyya beliefs differ from mainstream Islam. Ahmadis have been subjected to various forms of persecution since the movement's inception and continue to face discrimination in many countries.

B

Brahmin: The Brahmins are the highest of the four caste groups according to Hindu texts, and constitute the priestly caste.

Burqa: The Burqa (or Burka, Burkha) is an outer garment worn by some Muslim women to cover themselves with, in public places. It consists of a loose body cover, a head scarf and a face veil.

C

Chettri: Chettris are Nepal's largest caste group and fall under the warrior or ruler (Kshatriya) caste.

D

Dalit: Dalit (or literally 'suppressed') is a term used by the 'untouchable' caste to define themselves. This term emphasizes their oppression at the hands of upper caste groups unlike other terms for the untouchables such as 'Harijan' (children of God).

Dayabhaga: The Dayabhaga is a Hindu law treatise which focuses on inheritance. It was relied on in courts in East India prior to the enactment of the Hindu Succession Act 1955.

F

Fiqh: Fiqh is Islamic jurisprudence, and compliments the Shariah with interpretations of the law.

H

Hijra: Hijras is a term used in South Asia to describe physiological males with female gender identity. Many hijras live in well-defined, organized, all-hijra communities, led by a head, and most hijras earn a living either through sex work or by begging.

I

Ikhtilaf: Ikhtilaf is an Islamic scholarly religious disagreement.

J

Jirgah: The jirgah is a tribal assembly of elders, particular to the Pashtun community but also other communities, which takes decisions by consensus.

L

Loya jirgah: A loya jirgah is a special or emergency jirgah held to resolve serious national problems.

M

Madhesi: Madhesis reside in the southern Terai region of Nepal and are ethnically similar to the people of neighbouring areas in India – that is Bihar and Uttar Pradesh. Despite diversity within the Madhesi community, their shared experience of discrimination in terms of citizenship, language and lack of representation in the police, armed forces and the bureaucracy has unified the group for the demand for autonomy within Nepal.

N

Nafaqa: Maintenance.

P

Panchayat: Panchayats are local level government institutions at the village or small town level in India. State governments are obliged to establish panchayats at the village, intermediate and district levels under Part IX of the Constitution.

Q

Qu'ran: The Qu'ran is the central religious text of Muslims. It is believed to have been sent by Allah to the Prophet Muhammad and is consequently a series of divine messages. The Qu'ran is open to wide interpretations.

S

Sanyasin: A sanyasin under the Hindu scheme is a person who renounces worldly and material pursuits.

Shalish: The traditional alternative dispute resolution mechanism in Bangladesh is known as Shalish. Many of the decisions of the Shalish rely on Islamic Shariah law and customary practices.

Shariah: The Shariah (or Sharia or Shar'iah) is the sacred law of Islam. It is derived from the Qu'ran and the sayings of the Prophet Mohammad. Shar'iah law has been interpreted differently by different groups and individuals, and there are conflicting opinions on many of the topics it covers.

Sunnah: Sunnah (or 'a clear path) is the practice of Shariah and includes the specific words, practices and habits of the Prophet.

T

Tamkin: A woman's duty to submit to her husband's will in Islam.



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