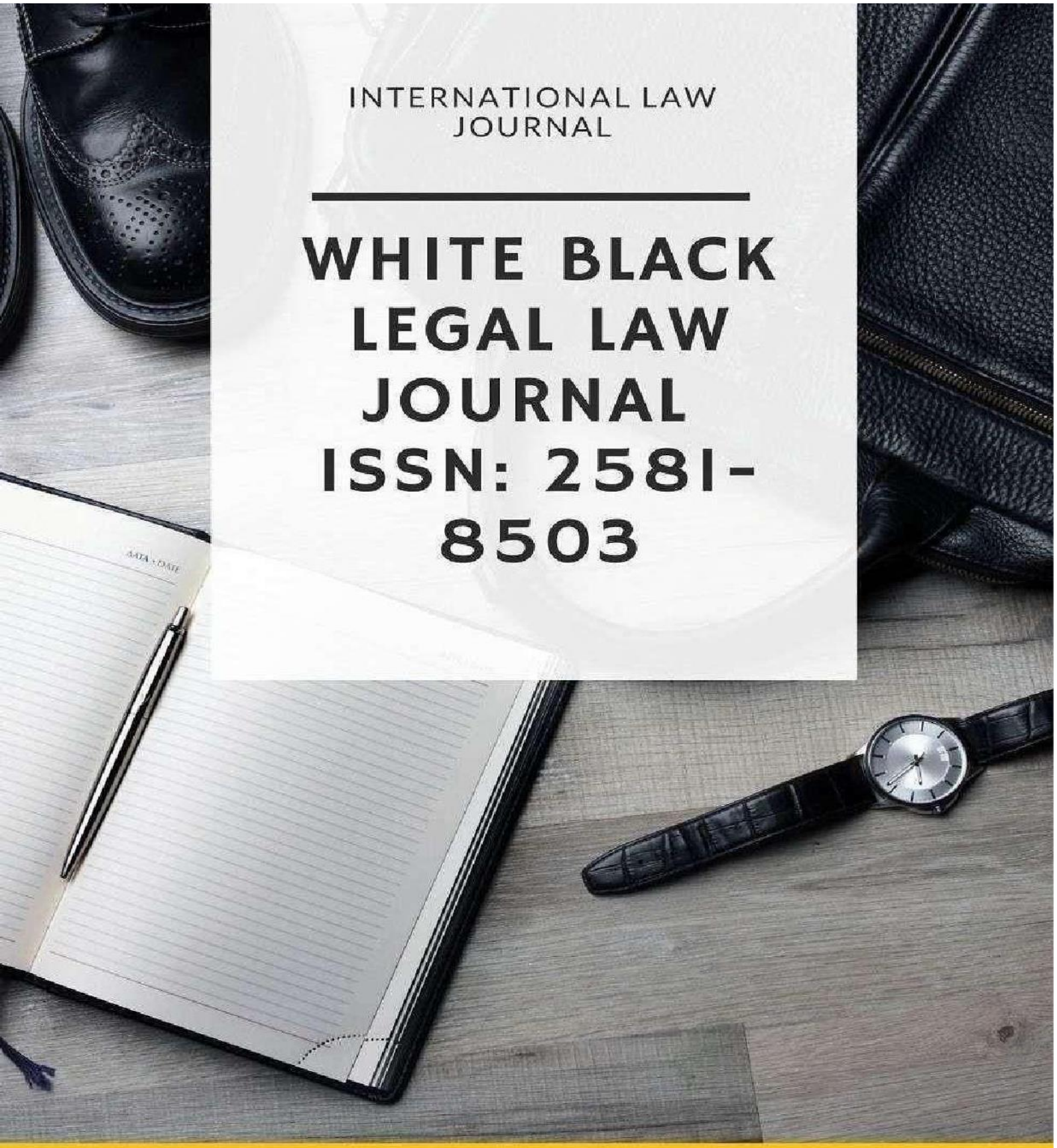


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A CRITICAL ANALYSIS OF GENDER JUSTICE UNDER INTERNATIONAL LAW WITH REFERENCE TO CEDAW

AUTHORED BY - M.CHERIF

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REVIEW OF LITERATURE.

Existing literature has extensively discussed gender equality, women's rights, discriminationand gender-based violence.The works of Poonam Saxena (2024), Shampa Dev (2018), andHarpreet Kaur (2024) provide relevant perspectives on gender justice and women'srights. Several studies have also examined domestic violence, sexual harassment, reproductive rights and women's participation. However, much of the existing literature focuses onindividual issues rather than the complete legal and institutional framework. The present study therefore examines gender justice from a broader perspective by connecting Indian laws andinstitutions with CEDAW obligations. It also considers the gap between legal protection andpractical implementation.

RESEARCH GAP.

Although considerable research has been conducted on gender justice in India, limitedcomprehensive research examines the laws and government institutions together in the contextof CEDAW.Existing studies mainly focus on specific issues such as domestic violence, sexualharassment, dowry, discrimination and women's participation. Less attention has been given tothe coordination between government departments, commissions and other institutionsresponsible for gender justice.There is also a gap in analysing the effectiveness of Indian lawsin implementing CEDAW principles of equality and non -discrimination. The gap between legal protection and actual implementation, including awareness, delayed justice and institutional barriers, requires further study.Therefore, this research aims to analyse these gaps and suggestmeasures to strengthen gender justice in India.

Chapter 1:

INTRODUCTION.

Gender justice is an important principle of human rights and social justice that seeks to ensureequality, dignity, freedom and equal opportunities for women and men. Historically, womenhave faced discrimination and unequal treatment in different areas of life, including education,employment, political participation, family relationships and access to justice.

Although manylegal reforms have been introduced to protect women's rights, discrimi nation and gender -basedviolence continue to remain significant concerns. Therefore, achieving gender justice requiresnot only the existence of laws but also their effective implementation. At the international level,the protection of women's rights has gradually developed as an

important part of international human rights law. The United Nations and ----------

footnotes.

1. United Nations, Universal Declaration of Human Rights, 1948, arts. 1 and 2.

various international human rights instruments haverecognised the principles of equality and non-discrimination. Among these instruments, theConvention on the Elimination of All Forms of Discrimination Against Women (CEDAW) holds particular importance because it specifically addresses discrimination against women and requires States to take appropriate measures to promote and protect women's rights.CEDAW provides an international framework for achieving substantive equality and eliminating discrimination against women in different areas of life. It also emphasises the responsibility of States to adopt legal, administrative and institutional measures for the effective protection of women's rights. The implementation of these principles depends upon the cooperation of governments, courts, commissions and other institutions.In India, gender justice is supported by constitutional guarantees of equality and non -discrimination, together with various laws and institutions designed to protect women. However, the existence of legal provisions does not always ensure their effective implementation. Women may continue to face problems such as lack of awareness, delay in justice, inadequate institutional support and difficulties in accessing legal remedies. Your research gap specifically identifies the need to examine these implementation issues together with India's obligations under CEDAW.This study therefore critically examines gender justice under international law with reference to CEDAW, with particular focus on India. It analyses the international legal framework, Indian constitutional and statutory provisions, government institutions and judicial approaches. It also considers selected international jurisdictions for comparison and examines gender -based violence,including the marital rape debate, as an aspect of gender justice. The study ultimately seeks to identify gaps in the existing framework and suggest measures for strengthening gender equality and the effective implementation of women's rights.

1.1 Background and Concept of Gender Justice.

Gender justice is an important principle of human rights that aims to ensure equality, dignity,fairness and equal opportunities for all individuals, irrespective of gender. It seeks to addresshistorical and continuing inequalities faced by women in social, economic, political, legal andfamily life. Gender justice is not limited to treating m en and women equally; it also requiresremoving structural and institutional barriers that prevent women from enjoying their rightsequally.Historically, women have experienced discrimination in areas such as education,employment, property, political participation, healthcare, marriage and access to

justice. In many societies, traditional social practices and unequal power relationships have limited women's freedom and participation. The development of human rights law has gradually recognised that equality between men and women is necessary for the protection of human dignity and fundamental rights.At the international level, gender justice has developed

Footnotes

1. 1. United Nations, Universal Declaration of Human Rights, 1948, arts. 1 and 2.

throughvarious human rights principles and international instruments. The United Nations has playedan important role in promoting equality and eliminating discrimination against women.International human rights standards recognise that women should enjoy their civil, political,economic, social and cultural rights without discrimination. This development has strengthened the international legal framework for the protection of women's rights.The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is ----------footnotes.

United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13.

particularlysignificant in this context. CEDAW provides a comprehensive international framework foreliminating discrimination against women and promoting equality. It places responsibilities onStates to adopt appropriate legal, administrative and other mea sures to protect and promotewomen's rights. Therefore, CEDAW is an important instrument for understanding genderjustice under international law.The concept of gender justice also includes protection from gender-based violence, access to justice, equal participation in public life and effective legal remedies. It requires governments and institutions to ensure that laws protecting women areproperly implemented. The existence of legislation alone cannot achieve gender justice ifWomen.continue to face barriers such as lack of awareness, delayed justice, inadequateinstitutional support and ineffective enforcement.In India, gender justice is supported byconstitutional principles of equality and non -discrimination and by various laws andinstitutions established for the protection of women's rights. However, the effectiveimplementation of these legal protections remains an important concern. Therefore, this study examines gender justice from both international and national perspectives, with particular reference to CEDAW, and seeks to identify the challenges and gaps between legal protection.and its practical implementation.

1.2 Significance of the Study

The study of gender justice is significant because equality between men and women is essential for a fair and democratic society. Gender discrimination affects not only individual women but also families, communities and the development of society as a whole. Although women have gained greater legal protection over the years, discrimination and violence against women continue to exist in different forms. Therefore, understanding the legal measures available for protecting women's rights is necessary for ident ifying the strengths and weaknesses of the existing system.CEDAW is particularly important because it provides a comprehensive international framework for eliminating discrimination against women. It does not merely recognise equality as a principle but also requires States to take positive measures to remove discriminatory practices. Studying CEDAW therefore helps in understanding how international law has developed f rom simply recognising equal rights to requiring governments to take practical steps towards achieving substantive equality.The study is also important in the Indian context because India has accepted CEDAW and has developed various constitutional and

Footnotes

1. United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13.

statutory protections for women. However, challenges continue to exist in the effective implementation of these protections. Issues such as gender -based violence, workplace harassment, domestic violence, unequal treatment and difficulties in accessing justice continue to affect women. This study therefore attempts to examine whether the existing legal framework is sufficient to provide meaningful gender justice.The research may also be useful to law students, researchers, lawyers, policymakers and persons working in the field of women's rights. By examining international standards, Indian laws ----------footnotes.

Constitution of India, arts. 14, 15 and 16.

Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

and judicial decisions together, the study attempts to identify areas where legal and institutional reforms may be necessary. The ultimate importance of the study lies in understanding how legal rights can be converted into actual protection and equality in the everyday lives of women.

1.3 Review of Literature

A considerable amount of literature has been written on gender justice, women's rights and CEDAW. Various scholars have examined the historical development of women's rights and the role of international law in addressing discrimination against women. Academic writings

on CEDAW generally explain its objectives, principles and obligations im posed upon States. They also discuss the importance of eliminating discrimination not only through legislation but also through changes in social practices and institutions. Indian scholars have extensively discussed constitutional provisions relating to gender equality. Articles 14, 15, 16 and 21 of the Constitution have been particularly examined in relation to equality, non -discrimination, equal opportunity, dignity and personal liberty. Several academic works have also focused on Indian legislation dealing with domestic violence, sexual harassment, sexual offences, dowry and other forms of gender-based discrimination.Judicial decisions form another important part of the existing literature. Decisions such as Vishaka v. State of Rajasthan, Githa Hariharan v. Reserve Bank of India, Joseph Shine v. Union of India and Vineeta Sharma v. Rakesh Sharma have been widely discussed because they demonstrate the role of courts in protecting women's equality and dignity. International decisions and the work of the CEDAW Committee have also contributed to academic discussions concerning State responsibility and women's rights.However, much of the existing literature examines individual issues separately. Some studies focus mainly on CEDAW, while others focus on Indian constitutional law or particular forms of violence against women. There is therefore a need for a broader study that c onnects international standards under CEDAW with Indian constitutional provisions, legislation, judicial decisions and actual implementation. The present research attempts to examine these areas together and provide a critical understanding of the development of gender justice.

Footnotes

1. women·s rights. By examining international standards, Indian laws ----------footnotes.
2. Constitution of India, arts. 14, 15 and 16.
3. Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

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1.4 Research Gap

Although gender justice has been widely studied, there continues to be a gap between legal protection and practical implementation. International treaties and domestic laws may provide strong protection to women, but the existence of legal provisions does not always result in equality in real life. Women may continue to face discrimination because of social attitudes, economic dependence, lack of awareness and difficulties in accessing legal institutions.There is also a gap in understanding the relationship between international obligations and domestic legal implementation. CEDAW establishes important standards for ----------footnotes.

Universal Declaration of Human Rights, 1948, arts. 1 and 2.

eliminating discrimination against women, but the effectiveness of these standards depends greatly on how they are incorporated and applied within individual countries. In India, courts have referred to CEDAW in several important cases, but questions remain regarding the extent to which its principles have influenced legislation, policies and practical implementation.Another important area requiring further examination is the difference between formal equality and substantive equality. Treating everyone equally under the law may

not always be sufficient when existing social and economic conditions place women at a disadvantage. Therefore, this study attempts to examine whether India's legal framework has moved beyond formal equality towards meaningful and substantive gender justice.

1.5 Research Objectives

The main objective of this research is to examine the development of gender justice under international law with particular reference to CEDAW. The study seeks to understand the historical development of women's rights and the emergence of international legal standards relating to gender equality. It also aims to examine the principles and obligations established by CEDAW and understand their significance in protecting women from discrimination.Another important objective is to analyse the constitutional and statutory framework for gender justice in India. The research examines how constitutional guarantees of equality, dignity and personal liberty support women's rights and how Indian legislation attempts to protect women from different forms of discrimination and violence. The study also aims to examine the role of the judiciary in developing and strengthening gender justice through constitutional interpretation and the use of international human rights principles. The research further aims to examine gender -based violence, including domestic violence, sexual harassment and the continuing debate surrounding marital rape in India. It also seeks to compare selected approaches to gender justice in the United Kingdom, Un ited States and Canada with the Indian position. Finally, the study aims to identify the major gaps and challenges in the existing system and suggest appropriate legal and institutional measures for improving the effective implementation of gender justice.

1.6 Research Questions

Footnotes

1. legal implementation. CEDAW establishes important standards for ----------footnotes.

2. Universal Declaration of Human Rights, 1948, arts. 1 and 2.

This research seeks to understand how the concept of gender justice has developed under international law and how international human rights instruments have contributed to the protection of women's rights. It specifically examines the development and impo rtance of CEDAW and seeks to understand the major principles and obligations that it places upon States.The study also asks whether India's constitutional and statutory framework provides adequate protection for gender equality and whether the principles of CEDAW have effectively influenced Indian law and judicial decisions. It further examines the role played by the Supreme Court and High Courts in promoting gender justice and protecting women's dignity and equality.The research also considers the continuing challenges relating to gender----------footnotes.

CEDAW, 1979, art. 2.

United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Status of Treaties.

based violence and the debate surrounding marital rape in India. Finally, it asks what India can learn from the legal approaches adopted by other countries and what reforms may be required to bridge the gap between legal rights and their actual implementation.

1.7 Research Methodology

The present research follows a doctrinal and analytical methodology. The study mainly depends upon existing legal materials rather than field surveys or interviews. International conventions, treaties, constitutional provisions, statutes, judicial decisions, books, research articles, reports and other reliable legal materials are examined to understand the development of gender justice. The research also adopts a comparative approach by examining selected aspects of gender justice in the United Kingdom, United States and Canada. The purpose of this comparison is not to treat the legal systems of these countries as identical to India, but to understand different approaches towards gender equality and identify practices that may provide useful lessons for the Indian legal system.The study is mainly qualitative in nature. It focuses on interpreting legal principles, understanding judicial reasoning and examining the effectiveness of legal and institutional mechanisms. The information collected from primary and secondary legal sources is analysed critically to id entify the strengths, weaknesses and implementation challenges relating to gender justice.

1.7.1 Primary Sources

The primary sources used in this research include international conventions, treaties, constitutional provisions, legislation and judicial decisions. CEDAW is the principal international instrument examined in the study, along with the Optional Protocol to CEDAW

and other relevant international human rights instruments such as the Universal Declaration of Human Rights and the In ternational Covenants.The Constitution of India and relevant Indian

Footnotes

1. CEDAW, 1979, art. 2.

2. United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women,

Status of Treaties.

legislation are also examined to understand the domestic legal framework for gender justice. Decisions of the Supreme Court of India and various High Courts are studied to understand how courts have interpreted equality, non -discrimination, dignity and oth er rights relating to women. Relevant decisions and materials of international human rights bodies, including the CEDAW Committee, are also considered wherever necessary.

1.7.2 Secondary Sources

Secondary sources are used to understand academic opinions and different approaches towards gender justice. These sources include books on international human rights law, women's rights, feminist jurisprudence and constitutional law. Research articles published in academic journals are also considered to understand existing debates and scholarly perspectives.Reports published by the United Nations, CEDAW Committee, government departments, human rights organisations and other recognised institutions are also used where relevant. Legal databases and reliable online legal resources may be used to obtain ----------footnotes.

Rebecca J. Cook and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives, University of Pennsylvania Press, 2010.

updated information regarding legislation and judicial decisions. These secondary materials assist in critically analysing the primary legal sources and identifying areas requiring further research.

1.8 Limitations of the Study

The present study has certain limitations. Since the research is mainly doctrinal, it does not involve extensive fieldwork, interviews or surveys with women, lawyers, judges, police officials or other stakeholders. Therefore, the study primarily examines g ender justice from a legal and institutional perspective rather than presenting detailed empirical findings.The study also focuses mainly on CEDAW and selected international and domestic legal instruments. It is not possible to examine every international treaty, every country or every aspect of gender

discrimination within the scope of a single research project. The comparative analysis is therefore limited to selected aspects of the legal systems of the United Kingdom, United States and Canada.Another limitation is that laws and judicial interpretations are continuously developing. New legislation, amendments and judgments may change the existing legal position. Despite these limitations, the research attempts to provide a balanced and comprehensive analysis of gender justice by examining international law, Indian law, judicial decisions and implementation challenges together.

1.9 Scheme of the Study

The research is divided into eight chapters. The first chapter introduces the subject of gender justice and explains the significance of the research. It also discusses the review of literature, **research gap, objectives, research questions, methodology, sources and limitations of the** study.The second chapter deals with the evolution of gender justice under international law. It Footnotes

1. and reliable online legal resources may be used to obtain ----------footnotes.
2. Rebecca J. Cook and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives, University of
Pennsylvania Press, 2010.

traces the historical development of gender equality and women's rights and explains how international law gradually developed specific standards for protecting women. The chapter also examines the development of CEDAW, its international recognition, major principles and obligations imposed upon States.The third chapter examines the international legal framework for gender justice. It discusses the role of the United Nations, the Universal Declaration of Human Rights, the International Covenants and CEDAW. The chapter also explains the role of the CEDAW Com mittee and the importance of the Optional Protocol in strengthening international protection for women's rights.The fourth chapter focuses on the legal and institutional framework in India. It examines constitutional provisions relating to equality and gender justice, important Indian laws protecting women and mechanisms dealing with gender-based violence. The chapter also discusses the role of government institutions, the National Commission for Women and State Commissions for Women, along with the implementation of CEDAW in India.The fifth chapter examines the judicial approach towards gender justice. It discusses the role of courts in promoting equality and non -discrimination and analyses important international and Indian judicial decisions. ----------footnote.
Constitution of India, arts. 14, 15, 16 and 21.

Vishaka v. State of Rajasthan, (1997) 6 SCC 241; Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228; Joseph Shine v. Union of India, (2019) 3 SCC 39; Vineeta Sharma v. Rakesh

Sharma, (2020) 9 SCC 1.

Particular attention is given to the role of the Supreme Court and High Courts and the manner in which international principles, including CEDAW, have influenced Indian judicial reasoning.The sixth chapter focuses on gender -based violence and marital rape. It examines violence against women as a human rights issue and discusses domestic violence, sexual harassment and other forms of gender -based violence. The chapter also analyses the debate concerning criminalisation of marital rape in India, including constitutional, legal and evidentiary considerations.The seventh chapter provides a comparative and critical analysis of gender justice in the United Kingdom, United States, Canada and India. It examines the differences between the legal approaches adopted by these countries and identifies the major gaps between law and implementation. The chapter also discusses institutional and practical challenges and considers lessons that India may learn from comparative legal experiences.The eighth and final chapter presents the major findings of the study and provides answers to the research questions. It examines the hypothesis and discusses the need for legal and institutional reforms. The chapter also provides recommendations for effective implementation of women's rights and discusses the importance of victim-centred legal mechanisms before presenting the final conclusion of the research.

CHAPTER II

EVOLUTION OF GENDER JUSTICE UNDER INTERNATIONAL LAW

Footnotes

1. important international and Indian judicial decisions. ----------footnote.

2.1 Historical Development of Gender Equality

The idea of gender equality has developed gradually through social, political and legal changes. For a long period of history, women were treated differently from men in areas such as education, property ownership, employment, political participation and f amily decision -making. In many societies, women were expected to remain within traditional domestic roles and had limited opportunities to participate in public life. This unequal treatment created a social and legal system in which women did not enjoy the same rights as men.The modern international movement towards gender equality became stronger with the development of the

international human rights s ystem after the Second World War. The United Nations Charter, 1945, recognised the equal rights of men and women as one of the basic principles of the international community.This was an important development because gender equality was no longer considered only a domestic or social issue. It became connected with international human rights and the responsibility of States.The Universal Declaration of Human Rights, Footnotes – United

Nations Charter, 1945, Preamble and arts. 1(3), 55(c).

Universal Declaration of Human Rights, 1948, arts. 1–2.

Economic and Social Council Resolution 11(II), establishing the Commission on the Status of Women, 21 June 1946.

1948 (UDHR) further strengthened this principle. Article 1 states that all human beings are

born free and equal in dignity and rights, while Article 2 recognises that everyone is entitled to the rights and freedoms in the Declaration without distinction, i ncluding distinction based on sex.These provisions established the basic international principle that women and men must enjoy human rights equally.However, the general recognition of equality was not sufficient to address the actual discrimination faced by women. In many countries, laws and social practices continued to create unequal conditions. Therefore, the international community gradual ly began developing specific legal instruments dealing with women's rights. The establishment of the United Nations Commission on the Status of Women in 1946 was an important step in this process.The development of gender equality therefore moved from a general principle of equality towards a more specific understanding of discrimination against women. International law increasingly recognised that treating everyone in exactly the same manner would no t always produce real equality. Sometimes special measures are necessary to remove historical disadvantages and achieve substantive equality.

2.2 Evolution of Women's Rights under International Law

After the establishment of the United Nations, several international instruments were adopted to improve the legal position of women. One of the early developments was the Convention on the Political Rights of Women, 1952, which recognised women's right to participate in political life. It addressed the right of women to vote, hold public office and exercise public functions on equal terms with men.This was significant because political participation was an important Footnotes

1. United Nations Charter, 1945, Preamble and arts. 1(3), 55(c).
2. Universal Declaration of Human Rights, 1948, arts. 1·2.

3. Economic and Social Council Resolution 11(II), establishing the Commission on the Status of Women, 21 June 1946.

area in which women had historically been excluded.Another important development was the Convention on the Nationality of Married Women, 1957. Traditionally, a woman's nationality could be affected by her marriage to a man of another nationality. The Conve ntion attempted to protect women from automatically losing or changing their nationality because of marriage.This demonstrated the growing recognition that women should have independent legal identities rather than having their legal status determined by their husbands.The international community also adopted the Declaration on the Elimination of Discrimination against Women in 1 967. Although it was a declaration rather than a treaty, it represented an important international commitment to eliminating discrimination against women.It recognised that discrimination against women was inconsistent with human dignity and the principle of equality.The adoption of the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cu ltural Rights, 1966 (ICESCR) further strengthened the legal basis of gender equality. Both Covenants contain provisions requiring States to ensure the equal enjoyment of rights by men and women.These Footnotes. Convention
on the Political Rights of Women, 1952, arts. I–III. Convention on the
Nationality of Married Women, 1957. United Nations General
Assembly, Declaration on the Elimination of Discrimination against
instruments expanded the understanding of women's rights beyond political participation and included civil, political, economic, social and cultural rights.Despite these developments, discrimination against women continued in many parts of the world. The existing international instruments were scattered across different areas and did not provide one comprehensive treaty dealing with discrimination against women. Thi s situation created the need for a specific international convention that would deal with discrimination against women in a systematic manner. This need ultimately resulted in the adoption of CEDAW in 1979.

2.3 Development and Evolution of CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the most important international instruments dealing specifically with women's rights. It was adopted by the United Nations General Assembly on 18 December 197 9 and entered into force on 3 September 1981.CEDAW is often described as an international bill of rights for

women because it provides a comprehensive framework for eliminating discrimination against women in different areas of life.One of the most important features of CEDAW is its definition of discrimination. Article 1 defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the purpose or effect of impairing or nullifying the recognition , enjoyment or exercise of human rights and fundamental freedoms by women.This definition is important because it recognises not only intentional discrimination but also discriminatory effects.

Footnotes

1. . Convention on the Political Rights of Women, 1952, arts. I·III. Convention on the Nationality of Married

Women, 1957. United Nations General Assembly, Declaration on the Elimination of Discrimination against

Article 2 places important obligations on States parties. States are required to condemn discrimination against women and pursue policies for eliminating discrimination through appropriate legal and institutional measures.This means that States cannot mere ly recognise equality in their constitutions; they must take practical steps to remove discriminatory laws, policies and practices.CEDAW also recognises the importance of temporary special measures. Article 4 permits States to adopt special measures aimed at accelerating equality between men and women. Such measures may include affirmative action or special programmes designed to address historical disadvantages faced by women. The purpose is not to create permanent inequality but to achieve genuine equality.The Convention covers several areas of women's lives. It deals with political and public participation, nationality, education, employment, healthcare, economic and social life, rural women, equality before the law and marriage and family relations.This broad coverage makes CEDAW different from earlier international instruments that dealt with individual aspects of women's rights.CEDAW therefore represents a major development from the earlier idea of formal equality towards substantive gend er equality. It recognises that discrimination can exist not only through openly discriminatory laws but also through social practices, stereotypes and institutional .structures.

Footnotes – 2.3

Convention on the Elimination of All Forms of Discrimination against Women, 1979, 1249 UNTS 13,CEDAW, art. 1,2,4(1),6-17.

2.4 International Recognition of CEDAW

CEDAW received wide international recognition because it provided a comprehensive legal framework for addressing discrimination against women. States that become parties to CEDAW accept international obligations to take measures for eliminating discriminat ion against women.The Convention therefore transformed gender equality from a broad international principle into a more specific legal responsibility of States.An important feature of CEDAW is the reporting system. States parties are required to submit reports concerning the legislative, judicial, administrative and other measures taken to implement the Convention. These reports are considered by the CEDAW Committee, which examines the progress made by States and provides observations and recommendation s. Although the Committee is not a conventional international court, its interpretation of CEDAW has significantly influenced international discussions on women's rights.India became a party to CEDAW in 1993, thereby accepting international obligations relating to the elimination of discrimination against women. India made certain declarations and reservations relating to particular provisions of the Convention. Nevertheless, CEDAW has played an important role in the development of Indian gender justice jurisprudence.One of the most important examples is Vishaka v. State of Rajasthan. In this case, the Supreme Court of India relied upon CEDAW and international principles to develop guidelines concerning sexual harassment of women at the workplace.The Court observed that i nternational conventions consistent with fundamental rights and not inconsistent with domestic law could be relied upon to interpret constitutional guarantees.The Vishaka decision demonstrated that international human rights instruments can influence domestic constitutional interpretation. It also showed that CEDAW can be relevant not merely

Footnotes

1. Convention on the Elimination of All Forms of Discrimination against Women, 1979, 1249 UNTS 13,CEDAW, art.
1,2,4(1),6-17.

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as an international document but as a source of legal principles for protecting women within the domestic legal system.

2.5 Major Principles of CEDAW

The central principle of CEDAW is the elimination of discrimination against women. Article **1 provides a broad definition of discrimination, while Article 2 requires States to take legal and**

policy measures to eliminate such discrimination.This principle requires States to examine not

only laws that openly discriminate against women but also practices that produce discriminatory effects. Another important principle is substantive equality. CEDAW recognises that simply treating men and women in the same manner may not always result in genuine equality. Women may have experienced historical, social and economic disadvantages that require special measures.

Footnotes

CEDAW, arts. 2–16.

CEDAW, arts. 17–22.

United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Status of Treaties.

Vishaka v. State of Rajasthan, (1997) 6 SCC 241

Article 4 therefore permits temporary special measures to accelerate equality .CEDAW also addresses gender stereotypes. Article 5 requires States to take appropriate measures to modify social and cultural patterns of conduct based on ideas of the inferiority or superiority of either sex or stereotyped roles for men and women.This is an important principle because discrimination often continues through social attitudes even after discriminatory laws have been removed.The Convention further recognises women's participation in public and political life. Articles 7 and 8 require States to ensure women's participation in political and public life and their representation at the international level.This reflects the understanding that women cannot achieve full equality if they are excluded from decision -making institutions.CEDAW also protects women's rights in education, employment, healthcare and family relations. Its approach is therefore comprehensive and recognises that gender justice cannot be achieved through one area of law alone.The overall principles of CEDAW demons trate that gender justice requires both legal equality and social transformation. Laws must protect women, but institutions and social attitudes must also change so that women can enjoy their rights in practice.

2.6 State Obligations under CEDAW

CEDAW places significant responsibilities on States because gender equality cannot be achieved only through declarations or constitutional principles. States are required to take concrete legal, administrative and institutional measures to eliminate discri mination against

Footnotes

1. CEDAW, arts. 2·16.

2. CEDAW, arts. 17·22.

3. United Nations Treaty Collection, Convention on the Elimination of All Forms of

Discrimination against Women,

Status of Treaties.

4. Vishaka v. State of Rajasthan, (1997) 6 SCC 241

women. Article 2 requires States to include the principle of equality in their legal systems and to provide appropriate protection through courts and other institutions.States are also required to address discrimination occurring outside the direct actions of government. Article 2(e) requires States to take appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.This is particularly important because discrimination can occur in workplaces, educational institutions, families and other private spaces.Article 5 requires States to address social and cultural patterns that are based on stereotyped ideas about the roles of men and women. This provision shows that CEDAW goes beyond traditional legal reform. It recognises that social attitudes and gender stereotype s can continue to restrict women's freedom even when formal legal equality exists.The Convention further imposes obligations relating to education, employment and healthcare. States must take appropriate measures to eliminate discrimination in education and employment and provide women with equal opportunities.CEDAW also requires States to address discrimination in healthcare and to ensure appropriate access to health services.Article 14 gives special attention to rural women,

recognising that women living in rural areas may face additional economic and social disadvantages.States are required to take appropriate measures to ensure that rural women can participate in development and enjoy economic and social rights.

Footnotes

CEDAW, arts. 1–2, 4(1), 5(a),7–8, 10–16.

CEDAW Committee, General Recommendation No. 25 on Article 4, paragraph 1, on temporary special measures, 2004.

Article 16 deals with equality in marriage and family relations. It requires States to eliminate discrimination against women in matters relating to marriage, family life, parental responsibilities and related legal rights.This provision is particularly important because discriminatory family practices can have long -term effects on women's independence and dignity.States are also required to report periodically to the CEDAW Committee regarding the measures taken to implement the Convention. Through this reporting mechanism, States are encouraged to evaluate their progress and identify areas where further reforms are

required.Therefore, the obligations under CEDAW are both legal and practical. States must adopt appropriate laws, establish effective institutions, provide remedies for violations and work towards changing discriminatory social practices. The real success of CEDAW ultimately depends upon how effectively these international obligations are implemented at the national level.

Conclusion of Chapter II

The evolution of gender justice under international law demonstrates a gradual movement from the recognition of general equality towards the development of specific legal protections for women. Earlier international instruments established the principle of equality, but they did not completely address the different forms o f discrimination experienced by women. The adoption of CEDAW in 1979 represented a major development because it created a

Footnotes

1. CEDAW, arts. 1·2, 4(1), 5(a),7·8, 10·16.
2. CEDAW Committee, General Recommendation No. 25 on Article 4, paragraph 1, on temporary special measures, 2004.

comprehensive international framework for eliminating discrimination against women.CEDAW is particularly significant because it combines formal equality with substantive equality and requires States to address discriminatory laws, practices, stereotypes and institutional barriers. Its influence can also be seen in domestic legal systems, including India, where courts have relied upon international human rights principles in interpreting constitutional guarantees. The development discussed in this chapter provides the foundation for examining the broader international legal framework for gender justice in the next chapter.

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CHAPTER III

INTERNATIONAL LEGAL FRAMEWORK FOR GENDER JUSTICE

3.1 United Nations and International Human Rights Standards

The United Nations has played an important role in the development of gender justice under international law. After the Second World War, the international community recognised that the protection of human rights should apply equally to men and women. The United Nations Charter itself refers to the equal rights of men and women and places respect for human rights and fundamental freedoms among the objectives of the international organisation.This created

the basic international foundation for developing legal standards against gender discrimination.

Footnotes

CEDAW, art. 2, 2(e), 5(a), 10–12,14,16,17,18.

The United Nations gradually developed different declarations, conventions, committees and programmes to improve the position of women. These measures were important because discrimination against women was not limited to one particular area . Women faced unequal treatment in education, employment, political participation, healthcare, property, marriage and family life. International human rights law therefore began addressing gender equality as a broad human rights issue rather than treating it as a separate social concern.The establishment of the Commission on the Status of Women was an important institutional development. The Commission was created to promote women's rights in political, economic, civil, social and educational fields.Over time, the United Nations adopted several important instruments dealing with women's rights, eventually leading to the adoption of CEDAW.International human rights standards also influenced the development of the principle of non-discrimination. The idea that every person should enjoy human rights without discrimination based on sex became a fundamental part of international law. The development of these standards created a framework within which States could be held responsible for protecting and promoting gender equality.The United Nations system therefore provides both legal and institutional support for gender justice. Its treaties establish obligations for States, while its committees and specialised bodies monitor implementation and provide guidance on emerging issues affecting women.

Footnotes

1. CEDAW, art. 2, 2(e), 5(a), 10·12,14,16,17,18.

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3.2 Universal Declaration of Human Rights

The Universal Declaration of Human Rights, 1948 is one of the most important documents in the history of international human rights law. Although the Declaration is not a treaty in the same manner as CEDAW, it established universal principles that have strongly influenced the development of international human rights law.Article 1 of the UDHR states that all human beings are born free and equal in dignity and rights.Article 2 further provides that everyone is entitled to the rights and freedoms recognised in the Declaration without distinction, including distinction based on sex. These provisions established the basic principle that women and men are equally entitled to human rights.The UDHR also recognises several rights that are particularly relevant to gender justice. It protects the right to life, liberty and security, equality

before the law, freedom from arbitrary discrimination, education, employment and participation in government.These rights created an important foundation for later international treaties concerning women's rights.Article 7 is particularly important because it recognises equality before the law and equal protection of the law without discrimination.This principle is closely connected with gender justice because discriminatory laws and unequal legal treatment can directly affect women's dignity and freedom.The Declaration also recognises the right to marry and found a family based on free and full consent .This principle later became important in the development of international standards relating to forced marriage, child marriage and equality within family relationships.

Footnotes

United Nations Charter, 1945, Preamble and arts. 1(3), 55(c).

Economic and Social Council Resolution 11(II), 21 June 1946.

The UDHR therefore provided a universal foundation for gender equality. However, its general provisions did not fully address the specific forms of discrimination experienced by women. This limitation contributed to the development of more specialised inte rnational instruments, particularly CEDAW.

3.3 International Covenants and Gender Equality

The international legal framework for gender equality was further strengthened through the adoption of the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. These Covenants transformed many principles of the UDHR into legally binding treaty obligations for States that became parties to them.The ICCPR protects important civil and political rights such as equality before the law, freedom from discrimination, personal liberty and participation in public affairs. It specifically requires States to respect and ensure the equal rights of men and women to enjoy the rights recognised in the Covenant.This provision is important because it makes gender equality an essential part of the protection of civil and political rights.The ICCPR also contains a general

Footnotes

1. United Nations Charter, 1945, Preamble and arts. 1(3), 55(c).
2. Economic and Social Council Resolution 11(II), 21 June 1946.

equality provision requiring equal protection of the law without discrimination.This principle has relevance to gender justice because women must receive equal legal protection and effective remedies when their rights are violated.The ICESCR addresses economic, social and

cultural rights. It recognises rights relating to work, education, health, social security and an adequate standard of living. The Covenant requires States to ensure equal rights for men and women in the enjoyment of these rights.These provisions are particularly significant because social and economic inequality can directly affect women's independence and participation in society.The international Covenants therefore expanded gender justice beyond political and legal equality. They re cognised that women must also enjoy economic, social and cultural rights. This broader understanding later became an important feature of CEDAW. CEDAW does not replace these general human rights treaties. Instead, it provides a more specific framework for addressing discrimination against women. Together, these international instruments create a wider system of protection for women's human rights.

3.4 CEDAW and Its Legal Framework

The Convention on the Elimination of All Forms of Discrimination against Women is the central international treaty dealing specifically with discrimination against women. It was adopted by the United Nations General Assembly in 1979 and entered into force in 1981. The Convention is often regarded as an international bill of rights for women because of its comprehensive approach to gender equality.

Footnotes – 3.2

Universal Declaration of Human Rights, 1948, art. 1. Universal
Declaration of Human Rights, 1948, arts. 3, 7, 23, 26 and 21. Universal
Declaration of Human Rights, 1948, art. 7. Universal Declaration
of Human Rights, 1948, art. 16.

CEDAW begins with a broad definition of discrimination against women. It covers any distinction, exclusion or restriction based on sex that has the purpose or effect of preventing women from enjoying or exercising their human rights and fundamental freedom s.This definition is important because discrimination may occur through both direct legal restrictions and practices that produce unequal effects.The Convention requires States to take appropriate legal and institutional measures to eliminate discrimination. States are expected to review discriminatory laws, provide effective legal protection and take appropriate steps to ensure equality in practice.This makes CEDAW a framework not only for recognising women's rights but also for changing nati onal legal systems.CEDAW covers many areas of life, including political participation, nationality, education, employment, healthcare, economic and social life,

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purpose or effect of preventing women from enjoying or exercising their human rights and fundamental freedoms.This definition is important because discrimination may occur through

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both direct legal restrictions and practices that produce unequal effects. The Convention requires States to take appropriate legal and institutional measures to eliminate discrimination. States are expected to review discriminatory laws, provide effective legal protection and take appropriate steps to ensure equality in practice.This makes CEDAW a framework not only for recognising women's rights but also for chan ging national legal systems. The Convention requires States to take appropriate legal and institutional measures to eliminate discrimination. States are expected to review discriminatory laws, provide effective legal protection and take appropriate steps to ensure equality in practice.This makes CEDAW a framework not only for recognising women's rights but also for changing national legal systems. CEDAW covers many areas of life, including political participation, nationality, education, employment, healthcare, economic and social life, rural development and marriage and family relations.Its comprehensive nature allows gender discrimination to be examined across different areas rather than treating each issue separately. Another important feature of CEDAW is its recognition of temporary special measures. States may adopt special measures to accelerate equality between men and women where historical disadvantages exist.Such measures are not considered discriminatory becaus e their purpose is to achieve genuine equality. The legal framework of CEDAW therefore combines non -discrimination, substantive equality, State responsibility and institutional monitoring. It provides a strong international standard against which the gender justice policies of States can be examined.

3.5 Role of the CEDAW Committee.

The Committee on the Elimination of Discrimination against Women is the expert body esta

Footnotes

International Covenant on Civil and Political Rights, 1966, arts. 2(1) and 3. International Covenant on Civil and Political Rights, 1966, art. 26. International Covenant on Economic, Social and Cultural Rights, 1966, arts. 2(2) and 3.

established under CEDAW to monitor the implementation of the Convention by States parties. The Committee plays an important role in evaluating whether States are taking adequate measures to eliminate discrimination against women.States parties are required to submit

periodic reports explaining the legislative, judicial, administrative and other measures adopted to implement CEDAW.The Committee examines these reports and engages in a dialogue with the State concerned. It then issues concluding observations identifying progress, continuing concerns and areas where further action is required.The Committee also develops General Recommendations to explain the meaning and scope of provisions of CEDAW. These recommendations have addressed important issues such as violence against women, temporary special measures, women's access to justice and discrimination against women in different areas of life.The Committee's work has helped expand the understanding of gender justice. For example, gender-based violence has increasingly been understood as a form of discrimination against women. The Committee has also emphasised that States may have responsibilities regarding harmful practices and discrimination committed by private individuals, not only government authorities.The Committee does not function exactly like a domestic court or an international criminal tribunal. Its primary role is monitoring, interpretation and guidance. Nevertheless, its observations and recommendations are influential in shaping international standards and encouraging States to improve their domestic laws and policies.The Committee therefore plays an important role in connecting the general provisions of CEDAW with practical problems faced by women. Its work helps States understand how international obligations should be implemented in real situations.

3.6 Optional Protocol to CEDAW

The Optional Protocol to CEDAW was adopted in 1999 and entered into force in 2000. It strengthened the international protection available under CEDAW by establishing additional procedures through which violations of women's rights can be addressed at the international level. One of the most important features of the Optional Protocol is the individual communications procedure. Under this procedure, individuals or groups of indiv iduals may bring a communication before the CEDAW Committee, subject to the conditions established by the Protocol.This provides an additional avenue for seeking international consideration when domestic remedies have been exhausted or are otherwise unavailable as permitted by the Protocol. The Optional Protocol also provides an inquiry procedure concerning grave or systematic violations of rights protected under CEDAW.This allows the Committee to examine serious situations affecting women's rights and to seek information from the State concerned.

Footnotes

CEDAW, arts. 17–18.

CEDAW Committee, General Recommendation No. 25 on Article 4, paragraph 1, on temporary.special.measures,2004. CEDAW

Committee, General Recommendation No. 35 on Gender -Based Violence against Women, updating General Recommendation No. 19, 2017.

The Optional Protocol is important because it strengthens accountability. CEDAW already imposes obligations on States, but the Optional Protocol provides additional mechanisms through which failures to protect women's rights can receive international attention.At the same time, the effectiveness of the Optional Protocol depends upon State participation and cooperation. Not every State that is a party to CEDAW has necessarily accepted all procedures of the Optional Protocol. Therefore, the availability of these international remedies differs between countries.The Optional Protocol represents an important development in international gender justice because it moves beyond general State reporting and creates mechanisms through which particular violations and serious patterns of discrimination can be examined internationally. The international legal framework for gender justice has developed through a combination of universal human rights standards, international treaties and specialised institutions. The United Nations Charter and the Universal Declaration of Human Rights established the basic principle of equality, while the ICCPR and ICESCR strengthened the protection of civil, political, economic, social and cultural rights.

Footnotes

1. CEDAW, arts. 17·18.

Conclusion of Chapter III

The international legal framework for gender justice has developed through a combination of universal human rights standards, international treaties and specialised institutions. The United Nations Charter and the Universal Declaration of Human Rights established the basic principle of equality, while the ICCPR and ICESCR strengthened the protection of civil, political, economic, social and cultural rights. CEDAW represents the most comprehensive international treaty specifically addressing discrimination against women. Its provisions require States to take meaningful legal, administrative and social measures to achieve gender equality. The CEDAW Committee further supports implementation through reporting, recommendations and interpretation, while the Optional Protocol provides additional international procedures for addressing serious violations. CEDAW represents the most comprehensive international treaty specifically addressing discrimination against women. Its provisions require States to take meaningful legal, administrative and social measures to achieve gender equality. The CEDAW Committee further supports i mplementation through reporting, recommendations and interpretation, while the Optional Protocol provides additional international procedures for

addressing serious violations. The international framework therefore demonstrates that gender justice is not simply a matter of domestic policy. It is an important part of international human rights law. The next chapter will examine how these international principles have been incorporated into the constitutional and legal framework of India.

Footnotes

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999, 2131 UNTS 83. Optional

Protocol to CEDAW, arts. 1–7. Optional

Protocol to CEDAW, arts. 8–10.

CHAPTER IV

LEGAL AND INSTITUTIONAL FRAMEWORK IN INDIA

4.1 Constitutional Provisions for Gender Justice

The Constitution of India provides a strong legal foundation for gender equality. Article 14 guarantees equality before the law and equal protection of laws, while Article 15 prohibits discrimination on grounds including sex.These provisions ensure that women cannot be denied equal legal protection merely because of their gender.Article 15(3) permits the State to make

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special provisions for women and children. This is important because the Constitution recognises that treating everyone identically may not always achieve real equality . Article 16 further guarantees equality of opportunity in matters of public employment.The Constitution also protects the right to life and personal liberty under Article 21. The Supreme Court has interpreted Article 21 broadly to include dignity, privacy and personal autonomy. In Suchita Srivastava v. Chandigarh Administration, the Court recognised reproductive autonomy as an important aspect of personal liberty.Directive Principles also support gender justice. Article 39 directs the State to ensure equal livelihood opportunities and equal pay for men and women, while Article 42 requires the State to provide just and humane conditions of work and maternity relief.

4.2 Major Indian Laws Relating to Gender Justice

India has enacted several laws to protect women from discrimination and exploitation. These laws cover areas such as domestic violence, sexual harassment, dowry, child marriage and workplace discrimination.The Protection of Women from Domestic Violence Act , 2005 provides protection to women facing physical, sexual, verbal, emotional or economic abuse within domestic relationships . It also provides remedies such as protection orders, residence orders and monetary relief.The Sexual Harassment of Women at Workplace Act, 2013 was enacted to provide protection against sexual harassment at the workplace. The Act was influenced by the principles laid down by the Supreme Court in Vishaka v. State of Rajasthan.The Dowry Prohibition Act, 1961 also plays an important role in protecting women from dowry-related exploitation. Similarly, the Prohibition of Child Marriage act 2006 seeks to prevent marriages involving children and protect young women from the harmful consequences of early marriage.These laws demonstrate that Indian gender justice is supported not only by constitutional provisions but also by specific legislation addressing different forms of discrimination and violence.

Footnotes – 4.1

Constitution of India, arts. 14–15,(3)

Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1. Constitution of India, arts. 39(d) and 42.

4.3 Protection against Gender-Based Violence.

Gender-based violence is one of the major challenges to achieving gender justice in India. It

may take different forms, including domestic violence, sexual violence, harassment, dowry -

related violence and other forms of abuse.Indian criminal law provides punishment for several offences against women. The Bharatiya Nyaya Sanhita, 2023 contains provisions dealing with offences such as rape, sexual harassment, stalking, cruelty and dowry -related offences.These provisions aim to provide criminal protection against serious forms of gender -based

Footnotes

1. 4.1
2. Constitution of India, arts. 14·15,(3)
3. Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1. Constitution of India, arts. 39(d) and 42.

violence. The Protection of Women from Domestic Violence Act provides a broader civil protection framework. It recognises that violence is not limited to physical assault and may also include emotional, verbal and economic abuse.The Supreme Court has also p layed an important role in strengthening protection against violence. In Vishaka, the Court recognised sexual harassment at the workplace as a violation of women's fundamental rights and issued guidelines until Parliament enacted specific legislation.However, the existence of la ws alone does not guarantee protection. Effective investigation, speedy trials, victim support and proper implementation are equally important for achieving meaningful gender justice.

4.4 Government Departments and Institutions.

The Government of India has established various institutions and programmes to promote women's rights and gender equality. The Ministry of Women and Child Development plays an important role in developing policies and programmes concerning women and childr en.The government also operates different schemes dealing with women's safety, education, economic empowerment and welfare. These programmes are important because legal rights are meaningful only when women have practical access to support and services. The police, courts, legal services authorities and welfare institutions also have important responsibilities in implementing laws relating to women. The Legal Services Authorities Act, 1987 provides a framework for providing free legal services to eligible persons, including women. These institutions together form an important part of the implementation mechanism for gender justice in India. However, coordination between institutions and awareness among women remain important challenges.

4.5 Role of National and State Commissions for Women.

The National Commission for Women (NCW) was established under the National Commission

for Women Act, 1990. Its functions include reviewing constitutional and legal safeguards for women, investigating complaints relating to women's rights and recommending measures for improving the legal and social position of women.State Commissions for Women perform similar functions at the State level. They provide a mechanism through which women can raise complaints and seek institutional assistance in cases involving discrimination, harassment or violation of rights.

Footnotes

Protection of Women from Domestic Violence Act, 2005, ss. 17 –23,Vishaka v. State of Rajasthan, (1997) 6 SCC 241; Sexual Harassment of Women at Workplace Act, 2013.

The Commissions can also conduct studies, review laws and advise governments on issues affecting women. Although their recommendations are generally not equivalent to judicial orders, they can influence policy and law reform.These institutions therefore ac t as an additional support mechanism between women and the formal justice system.

4.6 Implementation of CEDAW in India.

Footnotes

1. Protection of Women from Domestic Violence Act, 2005, ss. 17·23,Vishaka v. State of Rajasthan, (1997) 6 SCC 241;

Sexual Harassment of Women at Workplace Act, 2013.

India became a party to CEDAW in 1993. By accepting the Convention, India undertook international obligations to work towards eliminating discrimination against women. However, implementation of international obligations depends upon their integration with domestic law and institutions.Indian courts have referred to CEDAW while interpreting constitutional rights. The most important example is Vishaka v. State of Rajasthan, where the Supreme Court relied upon CEDAW principles while dealing with sexual harassment of women at the workplace. The Court stated that international conventions consistent with fundamental rights could be used to interpret constitutional guarantees. CEDAW has therefore influenced Indian gender justice not only through legislation but also through judicial interpretation. Indian constitutional provisions, domestic legislation and international principles together create a framework for protecting women 's rights.However, challenges remain in implementation. Lack of awareness, social discrimination, delays in the justice system and inadequate institutional support can prevent women from fully enjoying their legal rights. Therefore, the effectiveness of CEDAW in India depends not only on formal acceptance but also on practical implementation.

Conclusion of Chapter IV.

India has developed a comprehensive legal and institutional framework for gender justice through constitutional provisions, legislation, courts and specialised institutions. The Constitution provides the foundation of equality and non -discrimination, while laws such as the Domestic Violence Act and the Workplace Sexual Harassment Act provide specific protection. The influence of CEDAW can also be seen in Indian judicial decisions, particularly Vishaka. However, the major challenge remains effective implementation. Legal reform must therefore be supported by institutional efficiency, public awareness and accessible justice mechanisms.

Footnotes

Convention on the Elimination of All Forms of Discrimination against Women, 1979; United Nations Treaty Collection, Status of Treaties.

Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

CHAPTER V

JUDICIAL APPROACH TOWARDS GENDER JUSTICE

Footnotes

1. Convention on the Elimination of All Forms of Discrimination against Women, 1979; United Nations Treaty

Collection, Status of Treaties.

2. Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

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5.1 Role of Courts in Promoting Gender Justice

Courts play an important role in protecting women's rights and promoting gender justice. Constitutional courts in India have interpreted fundamental rights broadly to protect equality, dignity, liberty and personal autonomy. Through judicial interpretation, courts have addressed situations where existing laws were inadequate to protect women.The Supreme Court has used Articles 14, 15 and 21 of the Constitution to challenge discriminatory practices and p rotect women's dignity. In Maneka Gandhi v. Union of India, the Court gave Article 21 a broad interpretation, strengthening the protection of personal liberty. This approach later influenced the development of rights relating to women.Courts have also recognised that equality does not

always mean identical treatment. Where women face historical or social disadvantages, appropriate protective measures may be justified. This approach supports the idea of substantive equality.Judicial interventi on has therefore been important in converting constitutional principles into practical protections for women.

5.2 Judicial Interpretation of Equality and Non-Discrimination.

The Supreme Court has consistently developed the principles of equality and non - discrimination under Articles 14 and 15. The Court has recognised that laws based on outdated stereotypes or arbitrary gender distinctions may violate constitutional equality.In Anuj Garg v. Hotel Association of India, the Supreme Court struck down a law that prevented women from working in establishments where liquor was served. The Court observed that protective laws should not be based on stereotypes suggesting that women are incapable of making their own choices. Similarly, in Joseph Shine v. Union of India, the Supreme Court invalidated the offence of adultery under the Indian Penal Code. The C ourt found that the law was based on patriarchal assumptions concerning women and treated women as subordinate to their husbands.These decisions demonstrate that constitutional equality requires more than simply removing obvious discrimination. Courts must also examine whether laws reinforce traditional stereotypes about women's roles.

5.3 International Cases under CEDAW

The CEDAW framework has also influenced the development of international approaches to gender justice. The CEDAW Committee examines reports submitted by States and provides observations and recommendations concerning discrimination against women.The Committee has emphasised that discrimination may occur through laws, policies, social practices and stereotypes. It has also recognised gender -based violence as a serious form of discrimination against women.

Footnotes

Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

Joseph Shine v. Union of India, (2019) 3 SCC 39.

Footnotes

1. Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.
2. Joseph Shine v. Union of India, (2019) 3 SCC 39.

The Committee's General Recommendations have helped explain the meaning of State obligations under CEDAW. General Recommendation No. 19 originally recognised violence

against women as a form of discrimination, while General Recommendation No. 35 later updated this approach.International decisions and views under the Optional Protocol have also demonstrated that States may be held responsible where they fail to provide adequate protection

or effective remedies in serious cases involving women's rights. These international developments are useful for understanding how CEDAW can operate beyond general statements of equality and provide guidance for dealing with real violations of women's rights.

5.4 Indian Judicial Decisions on Gender Justice.

Indian courts have decided several important cases that have strengthened women's constitutional and legal rights. These decisions have addressed issues such as workplace harassment, property rights, marriage, reproductive autonomy and personal dignity.In Vishaka v. State of Rajasthan, the Supreme Court addressed sexual harassment at the workplace and issued guidelines for protecting women in the absence of specific legislation. The Court relied upon constitutional rights and CEDAW principles.The decision eventually contributed to the enactment of the Sexual Harassment of Women at Workplace Act, 2013.In Vineeta Sharma v. Rakesh Sharma, the Supreme Court confirmed that daughters have equal coparcenary rights in Hindu joint family property.The judgment strengthened the principle that daughters cannot be treated differently from sons in matters of ancestral property merely because of their gender.In Suchita Srivastava v. Chandigarh Administration, the Court recognised reproductive autonomy as an important part of personal liberty under Article 21.[8] These decisions demonstrate how judicial interpretation has expanded the practical meaning of gender justice.

5.5 Role of the Supreme Court and High Courts

The Supreme Court and High Courts have a significant role in protecting constitutional rights. Their writ jurisdiction allows individuals to approach courts when fundamental rights are violated or when public authorities fail to perform their legal duties.

Footnotes – 5.3

CEDAW Committee, General Recommendation No. 35 on Gender -Based Violence against Women, 2017.

CEDAW Committee, General Recommendation No. 19 on Violence against Women, 1992; General Recommendation No. 35, 2017.

Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

Footnotes

1. 5.3

2. CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence against Women, 2017.

3. CEDAW Committee, General Recommendation No. 19 on Violence against Women, 1992; General Recommendation No. 35, 2017.

4. Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

The Supreme Court has also used Public Interest Litigation to address issues affecting groups that may face difficulties in approaching courts themselves. This approach has helped bring several gender-related concerns before the judiciary.High Courts also play an important role because they are accessible to individuals at the State level. They deal with cases involving domestic violence, sexual offences, employment discrimination, personal laws and other issues affecting women.Through their decisions, constitutional courts can identify discriminatory practices and provide remedies. However, judicial decisions alone cannot eliminate gender inequality. Effective implementation by governments and institutions remains equally important.

5.6 Influence of CEDAW on Indian Courts.

CEDAW has influenced Indian judicial reasoning, particularly in cases where domestic legislation was absent or unclear. Indian courts have recognised that international conventions may assist in interpreting fundamental rights when they are consistent with constitutional principles and do not conflict with domestic law.The clearest example is Vishaka v. State of Rajasthan. The Supreme Court relied on CEDAW to develop guidelines against workplace sexual harassment.The Court recognised that international standards could help fill a legal gap while protecting constitutional rights.The influence of CEDAW can also be seen in the broader constitutional understanding of equality, dignity and non -discrimination. Although international treaties do not automatically become domestic law in India, they can provide persuasive guidance to courts in interpreting constitutional rights.This relationship between international law and constitutional interpretation has strengthened India's gender justice framework. It demonstrates that international human rights standards can contribute to the development of domestic legal protections.

Conclusion of Chapter V

The Indian judiciary has played an important role in developing gender justice through constitutional interpretation and judicial remedies. Courts have challenged discriminatory

laws,

protected women's dignity and recognised substantive equality.Cases such as Vishaka, Anuj Garg, Vineeta Sharma and Joseph Shine demonstrate the changing judicial approach towards gender discrimination. The influence of CEDAW has further strengthened this development, particularly by providing international s tandards for interpreting women's rights.However, judicial decisions are only one part of gender justice. Their effectiveness ultimately depends upon proper implementation by governments, institutions and society. The next chapter will examine gender-based violence and the continuing debate surrounding marital rape in India.

Footnotes – 5.5

Constitution of India, arts. 32 and 226

Footnotes

1. 5.5
2. Constitution of India, arts. 32 and 226

CHAPTER VI

GENDER-BASED VIOLENCE AND MARITAL RAPE.

6.1 Gender-Based Violence as a Human Rights Issue.

Gender-based violence is one of the major obstacles to achieving genuine gender justice. It

includes violence directed against women because of their gender or violence that affects women disproportionately. Domestic violence, sexual assault, sexual harass ment, trafficking, dowry-related violence and other forms of abuse can seriously affect a woman's dignity, equality, liberty and security.International human rights law recognises that violence against women is not merely a private or family matter. It is also a human rights concern because violence can prevent women from enjoying their fundamental rights on an equal basis with men. The CEDAW Committee h as recognised gender -based violence as a form of discrimination against women.The right to live with dignity is also protected under the Indian Constitution. Article 21 guarantees the right to life and personal liberty, and the Supreme Court has interpreted this provision to include dignity and bodily autonomy.Violence against women therefore raises serious constitutional concerns in addition to criminal and civil liability.Gender-based violence can have long-term consequences. Victims may suffer physical injuries, emotional trauma, financial dependence and social stigma. In some situations, fear of

family or society may also prevent women from reporting the violence.Therefore, an effective gender justice system must focus not only on punishment but also on prevention, victim protection, access to legal remedies and rehabilitation.

6.2 Violence against Women under CEDAW.

CEDAW provides an important international framework for addressing violence against women. Although the original text of CEDAW does not contain a separate detailed article specifically titled “violence against women”, the CEDAW Committee has interpreted discrimination under the Convention to include gender -based violence.General Recommendation No. 19 explained that violence against women may amount to discrimination because it prevents women from enjoying rights and freedoms on an equal basis with men.General Recommendation No. 35 later updated this approach and emphasised that gender-based violence can constitute a violation of women’s human rights.CEDAW requires States to take appropriate measures to eliminate discrimination against women. This includ es adopting laws, providing effective remedies and addressing social and cultural practices that contribute to women’s unequal position.Therefore, States have responsibilities not only to punish violence after it occurs but also to take preventive m easures.Article 5 is particularly important because it requires States to address social and cultural patterns based on stereotyped ideas about the roles of men and women.Such stereotypes can contribute to the belief that men have authority over women or that violence within marriage should be

Footnotes – 6.1

Footnotes

1. 6.1

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CEDAW Committee, General Recommendation No. 35 on Gender -Based Violence against Women, 2017.

K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

treated as a private matter.CEDAW therefore supports a broader understanding of State responsibility. Governments must create effective legal systems, ensure access to justice and work towards changing social conditions that allow gender-based violence to continue.

6.3 Domestic Violence and Sexual Harassment.

Domestic violence is one of the most common forms of gender -based violence. It can occur within marriage, family relationships and other domestic relationships. The Protection of Women from Domestic Violence Act, 2005 provides protection against physical, sexual,

verbal,

emotional and economic abuse.The Act is significant because it recognises that violence is not limited to physical injury. A woman may also suffer through threats, humiliation, controlling behaviour, denial of financial resources or other forms of abuse. The law provides remedies including protection orders, residence orders, monetary relief and compensation. Sexual harassment is another major form of gender -based discrimination. Women may face harassment at workplaces through unwanted sexual conduct, sexually coloured remarks, demands for sexual favours or other unwelcome behaviour.In Vishaka v. State of Rajas than, the Supreme Court recognised that workplace sexual harassment violates women's fundamental rights to equality, dignity and the right to practise a profession.The Court relied upon constitutional provisions and CEDAW principles and issued guidelines for workplace protection.The Sexual Harassment of Women at Workplace Act, 2013 was later enacted to provide a statutory framework for prevention and redressal of workplace sexual harassment.It requires appropriate workplaces to establish mechanisms for dealing with complaints. These legal developments show that gender justice requires protection in both private and public spaces. Women should be able to live safely within their homes and work without fear of harassment or discrimination.

6.4 Marital Rape Debate in India.

Marital rape is one of the most debated issues in contemporary gender justice. The central question is whether sexual intercourse by a husband with his wife without her consent should be treated as rape under criminal law. The debate involves questions of consent, bodily autonomy, marriage, privacy, dignity and equality.Historically, Indian criminal law contained an exception relating to sexual intercourse by a man with his own wife, subject to the statutory conditions. This exception has been criticised because it creates a distinction between married and unmarried women in relation to sexual consent.The main argument against the marital rape exception is that marriage should not automatically imply permanent consent to sexual activity. Consent is an important part of bodily autonomy, and marriage does not remove an individual's right to make decisions concerning her own body.

Footnotes

CEDAW Committee, General Recommendation No. 19 on Violence against Women, 1992.
CEDAW Committee, General Recommendation No. 35 on Gender -Based Violence against Women, 2017.

CEDAW, art. 2, CEDAW, art. 5(a).

The constitutional principles of equality and dignity have strengthened the arguments for reconsidering the exception. Article 14 requires equality before law, while Article 21 protects life and personal liberty. The Supreme Court has recognised privacy an d bodily autonomy as important aspects of personal liberty.At the same time, the issue involves complex questions relating to criminal law, evidence, family relationships and the possibility of misuse of criminal provisions. The debate therefore requires careful consideration rather than a simple comparison between marriage and other relationships.The continuing marital rape debate demonstrates a larger issue in gender justice: whether legal systems should recognise women as independent individuals with equal rights within marriage rather than treating marriage as a relationship that reduces individual autonomy.

6.5 Arguments for and Against Criminalisation.

Supporters of criminalisation argue that sexual violence should not be treated differently merely because the offender is the victim's husband. They argue that marriage cannot be considered permanent consent and that every person should have control over their own body. Criminalisation may also strengthen the legal recognition of women's dignity and autonomy.Another argument is that the absence of a specific criminal remedy can leave women without adequate protection in serious cases. International human rights principles increasingly recognise sexual violence within intimate relationships as a serious form of gender -based violence.Supporters also argue that criminal law can act as a deterrent. Recognising non - consensual sexual intercourse within marriage as a serious offence could communicate that marriage does not give one spouse unlimited authority over the body of the other spouse.However, opponents of criminalisation raise concerns regarding false complaints, evidentiary difficulties and the possibility of misuse of criminal law in matrimonial disputes. They also argue that existing laws provide certain protections to women within marriage.These concerns should not be ignored. At the same time, concerns about misuse should generally be addressed through proper investigation, evidentiary safeguards and judicial scrutiny rather than by denying protection to genuine victims.The debate therefore involves balancing the protection of women from sexual violence with the need to ensure fair criminal procedures. Any legal reform should protect genuine victims while maintaining due process for accused persons.

6.6 Constitutional and Evidentiary Issues

The marital rape debate raises important constitutional questions. Article 14 requires laws to treat similarly situated persons equally and prohibits arbitrary discrimination. If the law

provides different protection to married and unmarried women against non-consensual sexual acts, the constitutional validity of such a distinction becomes an important issue.Article 21 is equally significant because it protects life and personal liberty. The Supreme Court has recognised privacy, dignity and bodily autonomy as important aspects of Article 21.A woman's right to make decisions concerning her body and sexual relationships is closely .

Footnote.

CEDAW Committee, General Recommendation No. 35 on Gender -Based Violence against Women, 2017.

Article 15 also prohibits discrimination on grounds of sex. A legal distinction based on marital status may therefore require careful constitutional examination, particularly where it results in reduced protection for women.Evidence is another major concern. Sexual offences frequently occur in private spaces, making independent evidence difficult to obtain. Courts must therefore carefully evaluate testimony, surrounding circumstances, medical evidence and other available material while ensuring that the victim is treated with dignity.A t the same time, criminal proceedings must respect the rights of the accused. The principle of presumption of innocence and the requirement of proof beyond reasonable doubt remain important safeguards in criminal law.The challenge is therefore to create a legal framework that protects women from sexual violence while maintaining fairness in criminal proceedings. A victim-centred approach should not mean abandoning due process; rather, it should ensure that genuine vict ims have meaningful access to justice.

Conclusion of Chapter VI

Gender-based violence continues to be a major barrier to gender justice. International law,

particularly CEDAW, recognises violence against women as a serious human rights issue and requires States to take effective measures to prevent discrimination and v iolence.India has developed important legal protections through the Domestic Violence Act, the workplace sexual harassment law and criminal legislation. Judicial decisions such as Vishaka have also strengthened women's rights through constitutional interpretation.The debate on marital rape highlights the continuing tension between traditional ideas of marriage and modern principles of consent, equality, dignity and bodily autonomy. Any future reform should protect women from sexual violence while als o maintaining fair procedures and safeguards for accused persons.Ultimately, gender justice requires more than criminalisation. It requires effective laws,

sensitive institutions, social awareness, accessible remedies and recognition of women as equal

individuals with full control over their dignity and personal choices.

CHAPTER VII

COMPARATIVE AND CRITICAL ANALYSIS

7.1 Gender Justice in the United Kingdom.

Footnotes

1. .

2. CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence against Women, 2017.

The United Kingdom has developed a detailed legal framework for promoting gender equality. One of the important developments is the Equality Act 2010, which brought together several earlier anti-discrimination laws and created a broader framework against discrimination based on protected characteristics, including sex.

Footnotes – 6.6

K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

Constitution of India, arts. 14, 15 and 21.

The Equality Act prohibits direct and indirect discrimination and also provides protection against harassment and victimisation. It applies to areas such as employment, education and the provision of services.This approach is important because discrimination is not always direct.

A rule may appear neutral but can still have a disproportionate effect on women.The United Kingdom has also introduced the concept of public sector equality duty, which requires public authorities to have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.This places a responsibility on public institutions to consider equality while making policies and exercising their functions.The UK framework therefore demonstrates the importance of combining anti -discrimination legislation with institutional duties. However, the existence of legislation does not completely eliminate gender inequality. Differences in employment, pay, representation and gender-based violence continue

to require attention.

7.2 Gender Justice in the United States

The United States approaches gender equality primarily through constitutional principles,

federal legislation and judicial decisions. The Fourteenth Amendment provides a constitutional foundation for equality and has been used by courts to challenge discriminatory classifications based on sex.An important development was the Supreme Court's decision in United States v. Virginia. The Court held that the exclusion of women from the Virginia Military Institute violated the Equal Protection Clause because the State failed to provide an adequate justification for treating women differently.The judgment rejected the idea that traditional assumptions about women's roles could by themselves justify discrimination.Federal legislation has also played a significant role. Title IX of the Education Amendments of 1972 prohibits sex discrimination in educational programmes receiving federal financial assistance.It

has been particularly influential in improving women's opportunities in education and sports.The Equal Pay Act 1963 also seeks to address wage discrimination based on sex.In addition, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sex.The American approach therefore demonstrates the importance of constitutional equality combined with specific statutory protections. At the same time, gender discrimination,

Footnotes

1. 6.6
2. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
3. Constitution of India, arts. 14, 15 and 21.

sexual harassment, reproductive rights and unequal economic opportunities remain areas of continuing legal and political debate.

Footnotes

U.S. Constitution, Fourteenth Amendment.

United States v. Virginia, 518 U.S. 515 (1996).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688.

Equal Pay Act of 1963, 29 U.S.C. § 206(d).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

7.3 Gender Justice in Canada.

Canada has developed a strong constitutional and statutory framework for gender equality. The Canadian Charter of Rights and Freedoms guarantees equality before and under the law and equal protection and benefit of the law without discrimination based on sex.Section 15 of the Charter is particularly important because it provides a constitutional basis for challenging

discriminatory laws and government action. The Canadian legal system also recognises that equality may require measures designed to improve the position of disadvantaged groups.The Canadian Human Rights Act provides protection against discrimination in areas falling under federal jurisdiction.It addresses discrimination in employment and the provision of services and provides mechanisms for complaints and remedies.Canada has also developed legal and policy measures dealing with violence against women, workplace equality and reproductive rights. C anadian courts have interpreted equality in a substantive manner, recognising that identical treatment does not always result in actual equality.The Canadian approach is therefore useful for India because it combines constitutional equality, human rights legislation and institutional mechanisms for addressing discrimination. It demonstrates the importance of providing both legal rights and practical remedies.

7.4 Comparative Analysis with India

India, the United Kingdom, the United States and Canada all recognise gender equality as an important legal principle, but their legal approaches are different. India relies heavily on constitutional provisions such as Articles 14, 15 and 21, together with specific legislation protecting women.The UK has developed a comprehensive statutory equality framework through the Equality Act 2010, while Canada provides constitutional equality protection through the Charter. The United States relies on constitutional equal protection and several federal stat utes.One important similarity is that all four legal systems recognise that

Footnotes

1. U.S. Constitution, Fourteenth Amendment.
2. United States v. Virginia, 518 U.S. 515 (1996).
3. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681·1688.
4. Equal Pay Act of 1963, 29 U.S.C. § 206(d).
5. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

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discrimination based on sex should not be permitted . However, the extent and method of protection differ. India expressly allows special provisions for women under Article 15(3), while other jurisdictions use different forms of affirmative action and equality measures.India has also demonstrated a strong j udicial role in developing gender justice. Decisions such as Vishaka, Anuj Garg, Vineeta Sharma and Joseph Shine show that Indian courts have challenged discriminatory practices and patriarchal assumptions.Another important difference concerns implementation. India has a large number of laws protecting women, but practical

enforcement remains a challenge. Delays in courts, lack of awareness, social stigma and limited institutional support can reduce the effectiveness of legal protections.The comparison therefore shows that strong legislation must be accompanied by effective institutions, accessible remedies and social awareness. Merely having laws on paper cannot guarantee substantive gender equality.

Footnotes

Canadian Charter of Rights and Freedoms, 1982, s. 15.

Canadian Human Rights Act, RSC 1985, c H-6.

7.5 Gap between Law and Implementation.

One of the major findings of the comparative study is the difference between legal rights and their actual implementation. India has constitutional provisions and numerous laws protecting women, but the existence of legislation does not automatically guarantee equality.Women may face difficulties in accessing justice because of financial limitations, lack of legal awareness, social pressure and fear of retaliation. In some cases, victims may hesitate to report violence because of family pressure or social stigma.Delay in investigation and judicial proceedings can also weaken confidence in the legal system. A woman may have a legal right to protection, but if the remedy is delayed for a long period, the practical value of that right may be reduced.Similar challenges exist in other countries as well. Even where anti -discrimination laws are strong, inequalities may continue through workplace practices, social attitudes and economic structures. Therefore, implementation remains a global challenge rather than a problem limited to developing countries.The real measure of gender justice should therefore be whether women can actually exercise their rights safely and equally, rather than simply whether protective laws exist.

7.6 Institutional and Practical Challenges.

Gender justice can be affected by several institutional and social challenges. One major difficulty is lack of awareness. Women may not know about their legal rights or the institutions available to provide assistance. This can prevent them from taking tim ely action.Another challenge is the accessibility of legal institutions. Courts, police stations and government offices may be difficult to approach, particularly for women who are economically dependent or living in socially disadvantaged circumstances.Social attitudes also have a major influence. Traditional ideas about women's roles may discourage women from working, participating in

Footnotes

1. Canadian Charter of Rights and Freedoms, 1982, s. 15.
2. Canadian Human Rights Act, RSC 1985, c H-6.

public life or making independent decisions. CEDAW specifically requires States to address social and cultural patterns based on stereotyped roles for men and women.Institutional sensitivity is equally important. Police officers, lawyers, judges, medical p rofessionals and welfare authorities require appropriate training to deal with gender -based complaints. A legal system can fail victims if its officials do not respond sensitively.Economic independence is another important factor . Women who depend completely on family members may find it difficult to leave abusive relationships or pursue legal remedies. Therefore, gender justice must also be connected with education, employment and economic empowerment.These challenges show that gender equality cannot be achieved through criminal law or court decisions alone. It requires coordinated action across legal, social, educational and economic institutions.

Footnotes

CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW, 2010.

CEDAW Committee, General Recommendation No. 35 on Gender -Based Violence against Women, 2017.

7.7 Lessons for India

The comparative study provides several useful lessons for strengthening gender justice in India. One important lesson is the need for stronger implementation mechanisms. The UK model demonstrates the value of placing equality duties on public authorities, while Canada demonstrates the importance of constitutional equality combined with accessible human rights institutions.The experience of the United States also shows the importance of judicial review in challenging discriminatory practices. Courts can play an important role in ensuring that gender-based distinctions have a legitimate and constitutionally acceptable justification.India can further strengthen its system by improving legal awareness and making remedies easier to access. Women should be able to obtain legal assistance, counselling and protection without facing unnecessary institutional barriers.Greater attention should als o be given to prevention. Legal systems should not focus only on punishment after violence occurs. Education, awareness programmes, workplace policies and community -level interventions can help prevent discrimination and violence before they occur.Another important lesson is the need to address gender stereotypes. Laws may provide equal rights, but social attitudes can continue to

restrict women’s choices. Therefore, implementation of CEDAW in India should include

measures aimed at changing discriminatory social practices.Finally, gender justice should be approached as a continuing process. India has made significant legal progress, but the objective should be to ensure that constitutional and international principles are reflected in the everyday lives of women.

Conclusion of Chapter VII

Footnotes

1. CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW, 2010.
2. CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence against Women, 2017.

The comparison between India and other legal systems shows that gender justice requires a combination of constitutional protection, legislation, judicial interpretation and effective institutions. The United Kingdom provides an example of a comprehensive statutory equality framework, the United States demonstrates the importance of constitutional review and specialised legislation, and Canada provides an example of const itutional equality supported by human rights legislation.India has a strong constitutional and legislative framework and its courts have played an important role in protecting women's rights. However, the major challenge remains implementation. Social attitudes, lack of awareness, economic dependence, institutional limitations and delays in justice can reduce the effectiveness of legal protection.The comparative analysis therefore suggests that India should focus not only on creating new laws but also on strengthening existing institutions, improving access to justice, promoting economic independence and addressing gender stereotypes. The final chapter will present the major findings of the study, answer the research questions, examine the hypothesis and provide recommendations for strengthening gender justice in India.

Footnotes – 7.7

CEDAW, arts. 2 and 5.

CEDAW Committee, General Recommendation No. 25 on Temporary Special Measures, 2004.

CHAPTER VIII

FINDINGS, SUGGESTIONS AND CONCLUSION.

8.1 Major Findings of the Study.

The present research study, titled “A Critical Analysis of Gender Justice under International Law with Reference to CEDAW,” examined the development of gender justice from an international human rights perspective and its relationship with the Indian legal system. The study mainly focused on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), its principles and obligations, the role of international institutions, the constitutional and statutory framework in India, judicial decisions, gender-based violence, marital rape, and the comparative approaches followed by the United Kingdom, United States and Canada.The study finds that gender justice has developed gradually from the general principle of equality into a more comprehensive human rights framework. Earlier international instruments mainly recognised equality in general terms. The adoption of the U niversal Declaration of Human Rights in 1948 was an important development because it recognised that all human beings are born free and equal in dignity and rights. Articles 1 and 2 established equality and non-discrimination as basic human rights principles.The study further finds that general equality provisions were not sufficient to address the specific forms of discrimination experienced by women. Women continued to face discrimination in education, employment, political participation, property rights, family relations and access to justice. This created the

Footnotes

1. 7.7
2. CEDAW, arts. 2 and 5.
3. CEDAW Committee, General Recommendation No. 25 on Temporary Special Measures, 2004.

need for a specific international legal instrument dealing comprehensively with discrimination against women. CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. One of the major findings is that CEDAW provides a broad understanding of discrimination against women. Article 1 defines discrimination in relation to distinctions, exclusions or restrictions based on sex that impair or nullify the recognition, enjoyment or exercise of human rights and fundamental freedoms by women.This approach makes CEDAW different from a narrow equality model because it requires States to address both direct and indirect forms of discrimination.The study finds that CEDAW places significant obligations upon States. Article 2 requires States Parties to condemn discrimination against women and to pursue appropriate policies for eliminating discrimination. States are expected to adopt legislative, admin istrative and other measures to

provide effective protection against discrimination.Therefore, gender justice cannot be achieved merely by declaring women and men equal. Effective implementation requires laws, institutions, remedies and social change.Another major finding is that CEDAW recognises the importance of substantive equality. Formal equality may treat everyone in the same manner, but substantive equality requires attention to existing social and structural disadvantages. Article 4 permits temporary special measures aimed at accelerating equality between men and women.Such measures demonstrate that treating everyone identically is not always sufficient to achieve genuine equality.

Footnotes.

The study also finds that gender stereotypes are an important obstacle to gender justice. CEDAW Article 5 requires States to modify social and cultural patterns that are based on stereotyped ideas concerning the roles of men and women.This is particularly important because discrimination often continues through social customs, family expectations and traditional assumptions even after discriminatory laws have been removed.The research establishes that India has a strong constitutional foundation for gender justice. Articles 14, 15,

16 and 21 of the Constitution provide important guarantees of equa lity, non-discrimination,

equal opportunity and protection of life and personal liberty. Article 15(3) specifically permits the State to make special provisions for women and children.The study finds that India has also enacted several important laws dealing with women's rights and gender-based discrimination. These include the Dowry Prohibition Act, 1961, the Protection of Women from Domestic Violence Act, 2005, the Prohibition of Child M arriage Act, 2006 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. These laws demonstrate India's commitment to protecting women through specific statutory mechanisms.The research further finds that Indian courts have played an important role in expanding gender justice. In Vishaka v. State of Rajasthan, the Supreme Court relied upon international principles, including CEDAW, while developing guidelines against sexual harassment at the workplace in the absence of specific legislation.The judgment demonstrates that international human rights standards can influence domestic judicial interpretation.The decision in Githa Hariharan v. Reserve Bank of India also demonstrates the importance of

Footnotes

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interpreting personal laws consistently with constitutional equality. The Supreme Court adopted an interpretation that recognised the role of mothers in guardianship and rejected an unnecessarily restrictive understanding of women's legal status.Similarly, Anuj Garg v. Hotel Association of India established that protective legislation should not be based on stereotypes that women are weak or incapable of making their own choices.The decision is significant because genuine gender justice requires protection without restricting women's autonomy.In Joseph Shine v. Union of India, the Supreme Court invalidated the adultery offence and strongly criticised legal rules based upon patriarchal assumptions concerning women and marriage.The judgment emphasised dignity, autonomy, equality and constitutional morality.The study also finds that Vineeta Sharma v. Rakesh Sharma strengthened women's property rights by recognising the equal coparcenary rights of daughters under the Hindu Succession Act.Such decisions demonstrate that gender justice involves not only protection from violence but also equal participation in family, property and economic life.The study identifies a continuing gap between law and implementation. India has numerous constitutional provisions, statutes, judicial decisions and institutions protecting women. However, legal protection does not automatically result in social equality. Lack of awareness, delayed justice, economic dependence, social stigma, fear of retaliat ion and inadequate institutional support continue to affect the effective enjoyment of rights.The research therefore finds that the principal challenge is not the complete absence of law but the gap between legal recognition and practical enforcement.

Gender justice requires effective implementation, accessible remedies, institutional accountability, legal awareness and transformation of discriminatory social attitudes.

8.2 Answers to the Research Questions.

Research Question 1: How has gender justice developed under international law?

Gender justice under international law has developed gradually through various international instruments. The UN Charter recognised the equal rights of men and women as a fundamental principle of the international system. The Universal Declaration of Human Rights further established equality and non -discrimination as universal human rights principles.The development continued through instruments such as the Convention on the Political Rights of Women, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. However, these instruments did not completely address the specific and structural discrimination faced by women.CEDAW represented a major development because it created a comprehensive international framework specifically directed towards eliminating discrimination against women. It covers political,

economic, social, cultural, educational, employment, health and family -related rights. Therefore, the study concludes that international gender justice has developed from a general concept of equality to a comprehensive system of substantive equality and protection against structural discrimination.

Research Question 2: What major principles and obligations does CEDAW establish?

CEDAW establishes several fundamental principles, including equality, non -discrimination, substantive equality, State responsibility, elimination of stereotypes, participation of women and protection of women's rights in public and private life.Article 1 provides the definition of discrimination against women. Article 2 requires States to adopt appropriate legal and policy measures to eliminate discrimination. Article 4 recognises temporary special measures for achieving substantive equality. Article 5 addresses discriminatory social and cultural patterns.CEDAW also contains specific provisions relating to political participation, education, employment, healthcare, rural women and family relations. Articles 10 to 16 demonstrate that gender justice extends beyond formal political rights and includes everyday social and economic conditions.The study therefore concludes that CEDAW places both negative and positive obligations upon States. States must not discriminate against women and must also take positive steps to remove existing discrimination.

Research Question 3: How has CEDAW influenced gender justice in India?

CEDAW has influenced Indian gender justice primarily through constitutional interpretation, judicial decisions, legislation and policy development.

Footnotes

Universal Declaration of Human Rights, 1948, arts. 1–2.

Convention on the Elimination of All Forms of Discrimination against Women, 1979, 1249 UNTS 13.

India became a party to CEDAW in 1993. Indian courts have subsequently referred to international human rights standards when interpreting constitutional rights, particularly where domestic law did not provide a sufficient legal framework. The most important example is Vishaka v. State of Rajasthan. The Supreme Court relied upon CEDAW and international principles to formulate guidelines concerning sexual harassment at the workplace.[18] These guidelines later contributed to the enactment of the Sexual Harassment of Women at Workplace

Act, 2013.CEDAW's influence can also be understood through broader constitutional principles such as dignity, equality, non-discrimination and personal liberty. Indian courts have increasingly rejected patriarchal interpretations that restrict women's autonomy.Thus, the

study finds that CEDAW has not operated merely as an international document. It has served as an interpretative source and guiding framework for the development of gender justice in India.

Footnotes

1. Universal Declaration of Human Rights, 1948, arts. 1·2.
2. Convention on the Elimination of All Forms of Discrimination against Women, 1979, 1249 UNTS 13.

Research Question 4: Are India's constitutional and statutory protections sufficient to achieve gender justice?

India possesses a strong constitutional and statutory framework for gender justice. Articles 14, 15, 16 and 21 provide broad constitutional protection, while several statutes deal specifically with violence, harassment, marriage, property and discrimination.However, the study concludes that these provisions cannot be considered completely sufficient in practical terms. The existence of legislation does not guarantee effective enforcement. Women may still face difficulties in accessing justice because of poverty, lack of awareness, social pressure, fear of stigma, family dependency, institutional delays and inadequate implementation. In some situations, victims may also be reluctant to repor t violations because of social and economic consequences.The Protection of Women from Domestic Violence Act, 2005, for example, provides civil and protective remedies against domestic violence. However, effective implementation depends upon accessible institutions, trained officials, protection officers, legal

assistance and timely judicial intervention.Therefore, India's legal framework is strong in principle but requires stronger implementation and institutional support.

Research Question 5: What role have Indian courts played in promoting gender justice?

Indian courts have played a highly significant role in developing gender justice. The judiciary has interpreted Articles 14, 15 and 21 broadly and has repeatedly recognised dignity, autonomy and equality as essential constitutional values.In Vishaka, the Supreme Court used international law to address a legislative gap concerning workplace sexual harassment.In Anuj Garg, the Court rejected stereotypes that treated women as incapable of making independent choices. The judgment emphasised that protective legislation should not become a means of restricting women's freedom.In Suchita Srivastava v. Chandigarh Admin istration, the Supreme Court recognised reproductive autonomy as an important aspect of personal liberty.In Joseph Shine, the Court rejected patriarchal assumptions concerning marriage and women's sexuality. In

Vineeta Sharma, the Court strengthened the equal property rights of daughters.

Footnotes

CEDAW, art. 2,4(1).

These judgments demonstrate that Indian courts have contributed significantly to transforming gender justice from a formal principle into a broader constitutional value involving equality, dignity, autonomy and freedom.

Research Question 6: What legal and social challenges concern gender -based violence and marital rape?

Gender-based violence remains one of the major challenges to gender justice. Violence may

occur within homes, workplaces, educational institutions, public spaces and other social

Footnotes

1. CEDAW, art. 2,4(1).

environments. CEDAW General Recommendation No. 35 recognises gender -based violence against women as a form of discrimination that affects women's ability to enjoy human rights and fundamental freedoms. Domestic violence demonstrates the importance of recognising violence within private relationships as a human rights concern. The Protection of Women from

Domestic Violence Act, 2005 provides protection against physical, sexual, verbal, emotional and economic abuse.Sexual harassment is another important concern. The Vishaka judgment and the subsequent 2013 legislation established a framework for preventing and addressing workplace sexual harassment. The issue of marital rape raises particularly difficult questions concerning consent, bodily autonomy, privacy, dignity, marriage and criminal law. The debate involves arguments concerning protection of women and recognition of sexual autonomy, while also raising questions concerning evidence, criminal procedure and the appropriate scope of criminalisation. The study concludes that gender justice requires the legal system to recognise that marriage does not eliminate a woman's dignity, bodily autonomy or constitutional rights. At the same time, any reform in this area must be carefully designed to protect victims while maintaining fair criminal procedures.

Research Question 7: What lessons can India learn from other countries?

The comparative study shows that different countries have adopted different approaches to gender justice.The United Kingdom provides an important example through the Equality Act 2010, which consolidates protections against discrimination and places an equality duty upon

public authorities.The United States demonstrates the importance of constitutional judicial review and anti -discrimination legislation. In United States v. Virginia, the Supreme Court applied heightened scrutiny to gender-based classification and rejected unjustified exclusion of

women from the Virginia Military Institute.Canada provides an important example through Section 15 of the Canadian Charter of Rights and Freedoms, which guarantees equality before and under the law and equal protection and benefit of the law without discrimination.India can learn from these systems by st rengthening institutional accountability, equality duties, anti -discrimination mechanisms, legal awareness, judicial training and effective remediesHowever, the study also finds that foreign legal models cannot simply be copied. They must be adapted to India's constitutional structure, social conditions and legal system.

Footnets.

CEDAW, art. 4(1),5(a).

Research Question 8: What legal and institutional reforms are required to strengthen gender justice in India?

The study identifies several areas requiring reform. The first requirement is stronger implementation of existing laws. New legislation alone cannot solve gender discrimination if existing laws are not effectively enforced.Second, legal awareness must be improved. Women, particularly those from economically and socially disadvantaged communities, should be informed about available remedies and institutions.Third, institutions dealing with women should receive adequate financial, human and technical resources. Police officers, judges, prosecutors, protection officers and other officials should receive regular gender -sensitivity training.Fourth, access to legal aid should be strengthened. Article 39A of the Constitution recognises the importance of equal justice and free legal aid. Effective legal assistance can help women who cannot afford private legal representation.Fifth , cases involving gender -based violence should be dealt with through victim -sensitive procedures that reduce unnecessary delay and secondary trauma.Finally, legal reform should be accompanied by social reform. CEDAW Article 5 recognises the importance of c hanging discriminatory social and cultural patterns.Thus, the study concludes that gender justice requires a combined legal, institutional, educational, economic and social approach.

8.3 Verification of the Hypothesis

The hypothesis of this study is that although international law, constitutional provisions and domestic legislation provide significant protection for gender equality and women's rights, a considerable gap continues to exist between legal recognition and a ctual implementation;

CEDAW has significantly influenced Indian gender justice, but further legal and institutional reforms are necessary to achieve effective equality.The findings of the research substantially support this hypothesis.The study has demonstrated that international law provides a strong foundation for gender justice. CEDAW establishes comprehensive obligations upon States to eliminate discrimination and promote equality. Its provisions cover both public and private spheres and recognise the importance of changing discriminatory social practices.The Indian Constitution also provides strong guarantees of equality and dignity. Articles 14, 15 and 21 form a powerful constitutional foundation for gender justice. Indian legislation further provides specific protections against domestic violence, workplace sexual harassment, dowry -related practices and child marriage.The judiciary has strengthened these protections through progressive constitutional interpretation. Cases such as Vishaka, Anuj Garg, Suchita Srivastava,

Joseph Shine and Vineeta Sharma demonstrate the important role of courts in advancing women's rights.However, the study also identifies continuing problems in implementation. Social stereotypes, economic dependency, lack of awareness, institutional weaknesses, delayed justice and difficu lties in accessing remedies can prevent women from fully enjoying their legally recognised rights.Therefore, the research confirms that the existence of law and the realisation of justice are two different stages of gender equality.

Footnotes

Constitution of India, arts. 14, 15, 15(3), 16 and 21.

The hypothesis is consequently verified. CEDAW has had an important influence on India's understanding of gender justice, but legal provisions must be supported by effective enforcement, institutional reform and social transformation.

Footnotes

1. Constitution of India, arts. 14, 15, 15(3), 16 and 21.

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8.4 Need for Legal and Institutional Reform

The research demonstrates that legal reform should focus not only on creating new offences or increasing punishments but also on improving the functioning of existing legal mechanisms.One important area is the effective enforcement of gender -protection legislation. Laws relating to domestic violence, sexual harassment, dowry, child marriage and other forms of gender discrimination must be implemented consistently.Institutiona l coordination should also be improved. Police authorities, courts, legal services institutions, women's commissions, protection officers, medical institutions and welfare departments should work together instead

of functioning in isolation.The research further identifies the need for greater gender sensitivity within legal institutions. Training should not be limited to technical legal provisions. Officials should understand the social realities faced by victims, including economic dependency, family pressure, stigma and fear.The National Commission for Women and State Commissions for Women should be provided adequate resources to investigate complaints, conduct awareness programmes and coordinate with other authorities.Legal aid institutions should also be strengthened so that economic disadvantage does not prevent women from obtaining justice. The principle of equal access to justice requires that legal protection should be available to women regardless of their financial position.Another important reform is the improvement of legal awareness. Awareness programmes should be conducted in schools, colleges, workplaces,

rural areas and communities. Information regarding domestic violence, sexual harassment, property rights, marriage rights and legal remedies should be provided in simple and accessible language.The study also recommends better collection of gender-related data. Reliable data can

help governments identify areas where laws are failing and develop evidence-based policies.

8.5 Recommendations for Effective Implementation

Strengthening Implementation of Existing Laws

The first recommendation is to focus on effective implementation rather than relying only on the introduction of new legislation. Government authorities should regularly evaluate whether existing laws are producing meaningful protection for women.Implement ation mechanisms should be monitored at the national, state and local levels. Authorities should identify delays, institutional weaknesses and barriers faced by victims.

FOOTNOTES

Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.

Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

Improving Legal Awareness

Legal awareness is essential for effective gender justice. Many women may not know where to

report discrimination or how to obtain legal protection.

Footnotes

1. Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

2. Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.

3. Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

Government departments, universities, legal services authorities and women's organisations should conduct regular awareness programmes. Information should be provided in regional languages and simple terms.

Strengthening Free Legal Aid

Free legal assistance should be easily accessible to women who cannot afford private advocates.

Legal aid should not merely mean providing a lawyer after a case reaches court. It should also include legal counselling, assistance with complaints, documentation and access to appropriate authorities.

Gender-Sensitive Training

Police officers, judges, prosecutors, protection officers and other officials should undergo regular gender-sensitivity training.

Training should cover CEDAW, constitutional equality, gender stereotypes, victim protection, domestic violence, sexual harassment and trauma-sensitive procedures.

Faster Justice

Delay in gender -related cases can discourage victims and reduce public confidence in the justice system. Courts should adopt effective case -management practices and avoid unnecessary procedural delays.

At the same time, speed should not compromise the accused person's right to a fair trial. Gender justice must operate within constitutional principles of due process and fairness.

Strengthening Victim Protection

Victims should be protected from intimidation, retaliation and unnecessary exposure.

Protection mechanisms should consider the victim's physical safety, emotional well-being and economic circumstances.

Better Institutional Coordination

Women's commissions, police departments, courts, legal services authorities, healthcare institutions and welfare departments should develop effective referral and coordination systems.

A victim should not be forced to repeatedly explain the same facts to multiple authorities where coordinated mechanisms can reduce unnecessary burden.

Addressing Gender Stereotypes

Legal reform alone cannot eliminate gender discrimination if social attitudes remain discriminatory. Schools and universities should include gender equality, constitutional values and respect for human dignity in educational programmes.

The State should also address stereotypes that women are naturally dependent, weak or responsible for maintaining traditional family roles. CEDAW Article 5 specifically recognises the importance of eliminating such stereotypes.

Promoting Women's Economic Independence

Economic independence is closely connected with effective access to justice. Women who depend entirely upon family members may face greater difficulty leaving abusive relationships or pursuing legal remedies.

Therefore, employment opportunities, education, skill development and financial inclusion should form part of broader gender-justice policies.

Strengthening Rural and Marginalised Women's Access to Justice

Special attention should be given to women living in rural and economically disadvantaged communities. CEDAW Article 14 specifically recognises the particular problems faced by rural women.

Legal services should therefore reach local communities rather than remaining concentrated only in major cities.

8.6 Victim-Centric Legal Mechanisms

A major conclusion of this research is that the justice system should become more victim - centric while continuing to protect the rights of all parties.A victim-centric approach does not mean ignoring due process. Instead, it means ensuring that victims are treated with dignity and are not subjected to unnecessary humiliation, delay or repeated trauma.Complaint procedures should be simple and accessible. Victims should receive clear information regarding their rights,

available remedies and the progress of their cases.Confidentiality should be protected wherever legally appropriate, particularly in matters involving sexual violence and sensitive personal information.Medical, psychological and legal support should be available where required. Victims should not be treated merely as sources of evidence but as individuals whose dignity and well-being are important.

Footnotes

Joseph Shine v. Union of India, (2019) 3 SCC 39.

Charter of the United Nations, 1945, Preamble; arts. 1(3), 55(c).

Footnotes

1. Joseph Shine v. Union of India, (2019) 3 SCC 39.

2. Charter of the United Nations, 1945, Preamble; arts. 1(3), 55(c).

Courts and investigating authorities should also be sensitive to the circumstances in which victims may delay reporting. Fear, family pressure, economic dependence and social stigma can influence a person's ability to immediately approach authorities.The justice system should therefore avoid assumptions based solely on stereotypes concerning how a "genuine" victim should behave.A victim-centric approach is consistent with the broader objectives of CEDAW, which require States to take effective measures to eliminate discrimination and protect women from violations of their rights.

8.7 Conclusion

Gender justice is not limited to providing equal treatment under the law. It requires the creation of social and legal conditions in which women can enjoy their rights with dignity, freedom and security.The development of international human rights law has played a major role in transforming gender equality from a general principle into a detailed legal obligation. CEDAW represents one of the most important developments in this process because it addresses discrimination against women in a comprehensive manner.The Convention r equires States to take positive measures to eliminate discrimination, modify discriminatory social practices, promote women's participation and provide effective legal protection. Its approach demonstrates that genuine equality cannot be achieved simply by removing discriminatory laws.

States must also address social, economic and institutional barriers.India has developed a strong constitutional and statutory framework for gender justice. Constitutional pr ovisions relating to equality, non-discrimination, dignity and personal liberty provide a solid foundation. Various laws provide specific protection against domestic violence, workplace sexual harassment, dowry and child marriage.The Indian judiciary has also played a major role. Decisions such as Vishaka, Anuj Garg, Suchita Srivastava, Joseph Shine and Vineeta Sharma demonstrate the constitutional commitment to women's equality and dignity. The judiciary has also shown that internati onal human rights standards can contribute to domestic legal development.However, the study establishes that the existence of legal rights does not automatically result in substantive equality. Women may continue to experience discrimination because of social stereotypes, economic dependence, lack of awareness, institutional weaknesses and delays in obtaini ng justice.The comparative study of the United Kingdom, United States and Canada further demonstrates that effective gender justice requires strong

legislation, constitutional protection, independent institutions, judicial oversight and effective remedies. At the same time, legal reforms must be adapted to India's own constitutional and social context.The central finding of this research is therefore that India does not lack a legal foundation for gender justice; the greater challenge lies in effective implementation and social transformation.Future reforms should focus on strengthening existing laws, improving access to justice, providing free legal aid, training legal and administrative authorities, protecting victims, improving institutional coordination and eliminating discriminatory stereotypes.Gender justice must also extend beyond courts. Education, employment, economic independence, political participation and social awareness are equally important. A woman cannot be considered genuinely empowered if her legal rights exist only on paper but cannot be exercised in everyday life.CEDAW provides an important international framework for achieving this objective. Its principles of equality, non-discrimination, substantive equality and elimination of stereotypes remain highly relevant to India's continuing development.Ultimately, the achievement of gender justice requires cooperation between international institutions, governments, legislatures, courts, legal professionals, educational institutions, civil society and individuals. Law can provide the foundation, but mean ingful gender justice requires the combined transformation of law, institutions and society.The future of gender justice in India therefore depends not merely upon creating more laws, but upon ensuring that existing rights are known, accessible, enforceable and actually enjoyed by women in their everyday lives.

Footnotes

CEDAW, art. 5(a).

CEDAW, art. 14.

CEDAW, arts. 2 and 5; CEDAW Committee, General Recommendation No. 35, 2017.

Footnotes

1. CEDAW, art. 5(a).
2. CEDAW, art. 14.
3. CEDAW, arts. 2 and 5; CEDAW Committee, General Recommendation No. 35, 2017.

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