

# *Implementing the Women's Convention*

*Values and Principles of CEDAW*

TULIKA SRIVASTAVA  
SOUTH ASIA WOMEN'S FUND, SRI LANKA  
IWRAW AP, MALASIA

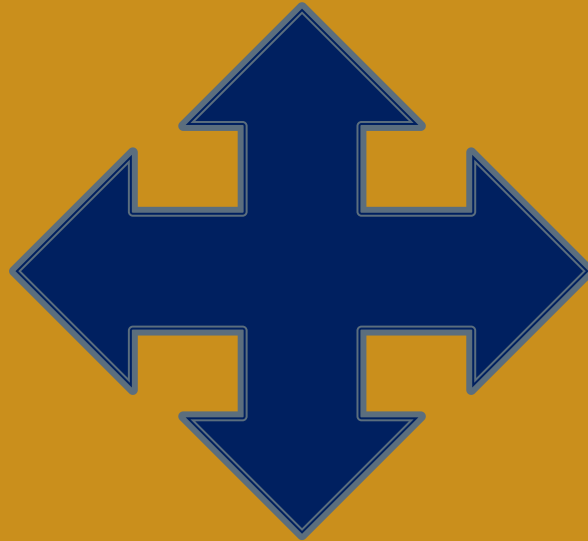
# OBJECTIVES

- To present CEDAW as a human rights' treaty body, located in the larger international human rights law framework
- To explain the use of CEDAW in domestic realities as a standard to assess and ensure the realization of women's human rights
- To provide an understanding on substantive equality, direct and indirect discrimination and on the principle of state obligation

# Why CEDAW?

Exclusion of women from the  
International Human Rights Discourse

Absence of an  
understanding on  
systemic and  
systematic violations  
of women's rights



Tensions between  
Civil-Political and  
Socio-Economic  
rights regimes

Absence of accountability of state for  
private actions

# Key features:

- builds an institutional understanding of women rights
- Provided a comprehensive bill of rights for women
- A "uniting" treaty, integrating economic, social and cultural rights with the civil and political rights; and ending the hierarchy of right;
- Ended the division between public and private sphere; obliging the states to ensure equality and non-discrimination everywhere.
- Established an accountability framework for women's human rights
- Provided a definition for equality and non-discrimination, and identified state obligation specifically; as the three fundamental principles which underpin the realization of women's human rights
- Enabled the civil society in understanding the framework of equality and non-discrimination in monitoring the states
- the absence of a state review process is not a barrier in understanding and adopting the standards of the Convention, locally and nationally

# Principles of CEDAW



# Defining equality and non-discrimination

The first part of the Convention (mainly Articles 1 to 5) that forms the foundation of the treaty, outlining its principles as well as the compliance issues for the states;

*Article 1 of the convention outlines the definition of non-discrimination*

*for the purposes of the present convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*

*Article 3 directs the states:*

*“to ensure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men*



*Article 4 makes it abundantly clear that*

*“Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention...”*

# *Defining Equality*

Equality is a notion which has been repeatedly forwarded by most legal documents.

However, the previous models of equality have failed to deliver on ensuring women's human rights, with their emphasis on either sameness or on difference. The Convention forward a model of "Substantive Equality"....

# Approaches to Equality

- The *sameness approach* expects women to be the same as men, and can be seen in policies such as retrenchment
- The *difference approach* is more dynamic. It recognizes that women are not same as men, but does not interpret this difference to their advantage.

# *Substantive equality*

recognizes that women are in an unequal position and may have to be treated differently in order to benefit equally. It ensures equality of RESULTS, without focusing on the approach; with a test of equality at every level.

- a) Equality of Opportunity
- b) Equality of Access to Opportunity, as well as
- c) Equality of Results

# State obligations

It is the first treaty to hold the state accountable for non-state action as well. Article 2 of the Convention is the longest article, bypassed only by Article 16; and it spells out in detail the steps states need to take in order to ensure compliance.

The state has the *de jure* obligation, or the obligations of means - so it must put in place requisite laws, policies and programmes; as well as the *de facto* obligation, or the obligation of results- so it must ensure that women actually benefit from the means put in place.

# Specific Obligations- Article 2

*The state is obligated to the following:*

- Prevent discrimination
- Prohibit discrimination
- Identify and redress discrimination
- Impose sanctions against discriminating acts
- Promote women's rights and equality through proactive measures
- Accelerate de facto equality

# State Accountability

- As per Article 18, submitting itself to the international scrutiny, through the state review process; and constructive dialogue with the Committee.
- The main value of the ratification of the treaty is of course, the fact that the citizens can seek accountability from their states, domestically for the promises made internationally.

# The Convention

- Reading the Convention is a comprehensive process.
- It is important to realize that it cannot be boxed. It is truly feminist.
- The issue has to be read through the Convention, and not found in the Convention.
- Recognizing its role in institutionalizing human rights of women.



# Rights based Approach

*Clarity of the rights based approach; CEDAW identifies the following:*

- Recognition of rights;
- Exercise and enjoyment of rights
- Seeking and ensuring justice for violations experienced
- Consistent advocacy for sustaining and expanding rights

# Institutionalizing Human Rights of Women

- The critical value of CEDAW is its principles and ways in which it is being expansively interpreted.;
- The Documentation of women's experiences of violations, and
- the precise responses and recommendations based on Universal standards to address them; and so
- CEDAW is a tool that provides a solid legal base to our claims for rights.

Thank you for your attention