

# Preventing and Responding to violence against women: From legislation to effective enforcement

International legal instruments and model framework on legislation to address violence against women

*Ms. Indira Jaising*

*Executive Director, Lawyers Collective Women's Rights Initiative  
Additional Solicitor General, Supreme Court of India  
CEDAW Committee Member*

# Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- Article 1:*** 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.
- ▶ As of May 2009, 186 states have ratified or acceded to the treaty, most recently Qatar on April 29, 2009

# Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- ▶ In *Articles 2 and 3*, there is an obligation cast on the state parties to legislate and take all appropriate measures to end violence against women and to ensure full development and advancement of women in all wake of life

# Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

## ***Article 5***

- ▶ Obligation on States Parties to take all appropriate measures to modify social and cultural patterns of conduct of men and women, with the objective to eliminate the prejudices and customary & all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

# General Recommendation 28

- ▶ “Appropriate means” to be adopted by state parties as mentioned in Article 2 should also address all aspects of their general obligation under CEDAW to respect, promote and fulfill women’s rights to non discrimination and to the enjoyment of equality with men
- ▶ In all circumstances the state party that ratified or acceded to CEDAW remains responsible for ensuring full implementation throughout territories under its jurisdiction
- ▶ Effective implementation means that a state party be accountable to its citizens and other members of its community at both national and international level

# General Recommendation 19

Asserted unequivocally that violence against women constitutes a form of gender-based discrimination and that discrimination is a major cause of such violence

# General Recommendation 19

- ▶ “Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”
- ▶ Such rights of women include:
  - “(a) The right to life;
  - (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
  - (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
  - (d) The right to liberty and security of person;
  - (e) The right to equal protection under the law;
  - (f) The right to equality in the family;
  - (g) The right to the highest standard attainable of physical and mental health;
  - (h) The right to just and favorable conditions of work”

# General Recommendation 19: Comments on specific articles of CEDAW

## Articles 2 and 3-

“Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16”.

# General Recommendation 19: Comments on specific articles of CEDAW

Articles 2(f), 5 and 10(c)

*Traditional attitudes* by which *women are regarded as subordinate to men* or as having *stereotyped roles* perpetuate *widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision*. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. *The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.*

# Post G.R. 19: Vienna conference and DEVAW

**World Conference on Human Rights in Vienna in 1993: The Vienna Declaration and Programme of Action** included affirmation of the universality of women's rights as human rights and a call for elimination of gender-based violence

**DEVAW** states that violence against women is “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”

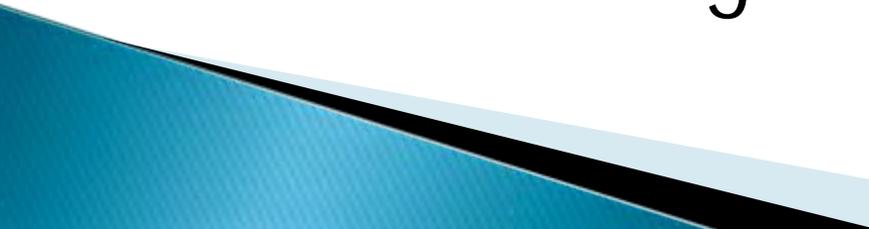
# Definitions of violence against women

- ▶ General Recommendation 19
  - ▶ DEVAW
  - ▶ General Assembly Resolution (58 / 147) on Elimination of Domestic Violence against Women
- 

# Violence against women: Human rights concern

First special Rapporteur (Radhika Coomaraswamy) on violence against women described the violence against women movement as *"perhaps the greatest success story of international mobilization around a specific human rights issue, leading to the articulation of international norms and standards and the formulation of international programmes and policies"*

# Violence against women: Human rights concern

- ▶ Clarifies the binding obligations on States to prevent, eradicate and punish such violence and their accountability if they fail to comply with these obligations
  - ▶ Obligations arise from the duty of States to take steps to respect, protect, promote and fulfill human rights
- 

# Role of national parliaments in implementation of CEDAW

At the forty-first session, the Committee adopted a standard paragraph on “Parliament” in its concluding observations in order to draw to the attention of State parties, the importance of involving its parliament in the reporting process under article 18 of the Convention and the implementation of all the provisions of the Convention

# Role of national parliaments in implementation of CEDAW

- ▶ Role of parliaments in the process of ratification of the convention and its optional protocol and withdrawal of reservations
  - ▶ Parliaments and the implementation of the convention
  - ▶ Role of parliaments and the drafting of reports and follow up to the concluding observations of the committee
  - ▶ Action of Inter Parliamentary Union and its relationship with the committee
- 

# Recommendations by the Committee

- ▶ State parties to ensure full participation of the Parliament and its members in reporting process and full implementation of CEDAW
- ▶ Parliamentarians should be aware of committee's work
- ▶ State parties should make all relevant information available to Parliamentarians
- ▶ Information received by Government should be shared with Parliamentarians
- ▶ Meetings between Parliamentarians and state party

# Recommendations by the Committee

- ▶ Mechanisms and linkages to be strengthened
  - ▶ Members of Parliament should be included in delegation while examining reports
  - ▶ Collaboration between national Parliamentarians and other Parliaments to be evaluated to exchange best practices
- 

# Best practices

- ▶ Women writing rights into the constitution
  - Canada, Colombia, India and South Africa are among the countries that have set up special commissions to monitor the implementation of the gender equality provisions of their Constitutions
  - Uganda passed a new Constitution in 1995, which guarantees gender equality and prohibits laws, customs and traditions that undermine women's empowerment.
    - In 2005, the Equal Opportunities Commission was established to monitor implementation
    - Ugandan National Assembly finally adopted a law criminalizing domestic violence and prohibiting female genital mutilation
    - draft bill on marriage and divorce is currently before Parliament, which would significantly reform Ugandan family law to prohibit polygamy, guarantee women's right to choose their spouse and the right to divorce on equal terms to men

# Best practices

- ▶ Turkish women's campaign for reform: By April 2000, a coalition government had prepared a draft civil code, integrating women's demands for full gender equality, but it was blocked by an alliance of conservative parliamentarians
  - women's movement responded by bringing together a broad coalition of more than 120 NGOs from all over the country
  - new code equalized the legal minimum age of marriage and gave the same inheritance rights to all children, whether born within or outside of marriage
  - Civil code passed in 2001
  - women's movement launched a bold campaign, which culminated in a new penal code in 2004, which included the criminalization of marital rape and sexual harassment in the workplace, the revision of all articles discriminating between single and married women and the strengthening of provisions on sexual abuse of children and banned courts from handing down lenient sentences for the perpetrators of so-called 'honour' killings or to rapists who marry their victims

# Best practices

- ▶ Tackling rape myths in Phillipines (*Vertido v The Philippines*)
  - The Committee found that the woman had been 're-victimized' through her treatment by the court and stressed that 'stereotyping affects women's rights to a fair and just trial'
  - the judiciary must take caution not to create inflexible standards of what women or girls should be, or what they should have done when confronted with a situation of rape, based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence'
  - Committee recommended that the Government award compensation and put in place appropriate training for judges, lawyers, law enforcement officers and medical personnel, to avoid re-victimizing women and 'to ensure that personal mores and values do not affect decision-making'

# Best practices

- ▶ Thuthuzela care centers in South Africa
  - goal of the one-stop shop Thuthuzela Care Centre (TCC) model is to address the medical and social needs of sexual assault survivors, reduce secondary victimization, improve conviction rates and reduce delays in cases
  - located in public hospitals and provide emergency medical care, counselling and court preparation in a joined-up and survivor-friendly manner
  - staffed by specialized medical staff, social workers and police, who are on call 24 hours a day
  - TCC model has been heralded as a best practice model internationally, with countries including Ethiopia and Chile learning from South Africa's experience and adopting similar models

# Best practices

- ▶ Women's police stations and special courts in Brazil
  - passing of the Maria da Penha Law on domestic and family violence in 2006, the women's special stations have been granted a leading role in initiating legal proceedings in cases of violence against women
    - Broader responsibilities for securing measures
    - Immediate assistance to survivors
    - inquiries
    - Steer cases through criminal justice system
  - The new Special Courts for Domestic and Family Violence against Women are supported by a multi-disciplinary staff, including social workers and psychologists.
  - mandated to work closely with police, as well as with other services and agencies, including shelters, health centres, training and employment facilities, and public defenders' offices

# The Indian scenario *(data from NCRB report 2009)*

Year	Total IPC crimes	Crimes Against Women	Percentage to total IPC crimes
2005	18,22,602	1,43,523	7.9
2006	18,78,293	1,54,158	8.2
2007	19,89,673	1,74,921	8.8
2008	20,93,379	1,86,617	8.9
2009	21,21,345	2,03,804	9.2

# Progress in India

- ▶ Rape laws- Evolution and amendments
  - The Mathura Judgment
  - Movement after Mathura judgment
    - Law Commission 172<sup>nd</sup> report on the review of rape laws, 2000
      - Shift focus from rape to sexual assault
      - Delete 155(4) of the IEA
      - Burden of proof of consent to be shifted to the accused
      - Sexual assault to be made gender neutral
      - Marital rape not considered
  - Criminal Law Amendment Bill 2010

# Progress in India

- Order of Delhi High Court 2009 (*Delhi Commission for Women v. Delhi Police*, W.P. (CRL) 696/2008)
  - recognized the need for a multi sectoral response to sexual assault
- ▶ The problem of dowry in India
  - Suggested amendments in law
- ▶ 'Torture' cases (Sec 498A IPC) in the country have increased by 10.1% over the previous year (81,344). 18.0% of these were reported from West Bengal (16,112). The highest rate of 22.8 was reported from Tripura as compared to the National rate at 7.7% (Data from NCRB report 2009)

# Progress in India

- ▶ Dowry deaths

- *These cases have increased by 2.6% over the previous year (8,172). 26.6% of the total such cases reported in the country were reported from Uttar Pradesh (2,232) alone followed by Bihar (1,295) (15.4%). The highest rate of crime (1.4) was reported from Bihar as compared to the National average of 0.7 (Data from NCRB report 2009)*

# Progress in India

- ▶ Protection of Women from Domestic Violence Act, 2005 (PWDVA)
  - Need for a civil law on domestic violence
  - Key features
    - Inclusive definition
    - Domestic relationship
    - Shared household and right to residence
    - Protection officers
    - Reliefs under the law
  - Constitutional validity of PWDVA

# Progress in India

- ▶ Sexual Harassment at Workplace
  - Vishakha Guidelines
- ▶ Honour killing
- ▶ Sex ration and Maternal mortality in India
  - Sex ratio 940 females per 1,000 males (Census 2011)
  - As per UNICEF Report of 2008, 78,000 mothers died in childbirth and from complications of pregnancy in India. Most of these deaths were reported in rural India showing women in rural India had largely been left behind by India's economic boom which had lifted millions of people out of poverty

# Progress in India

- As per a Reuter's Report of 2009, India's maternal mortality rate was 450 per 100,000 live births, against 540 in 1998-1999. The figures fall short of India's Millennium Development Goals which call for a reduction to 109 by 2015, according to UNICEF. By comparison, fellow Asian giant China's maternal mortality rate has dropped to below 50.
- As per a 2010 survey conducted by Save the Children organization, India is ranked at the 73<sup>rd</sup> position out of a total of 77 countries (in the category of middle income countries). Despite some reduction in maternal mortality rates India still ranks first among the 12 countries that account for 2/3<sup>rd</sup> of under five and maternal deaths in the world.

***Thank you***

