

6. International Conventions and Treaties: Their Impact on Women's and Children's Rights in India

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6.1 Introduction:

International conventions and treaties serve as the cornerstone of global human rights governance, establishing minimum standards to protect vulnerable groups such as women and children. India's accession to key international instruments reflects its commitment to upholding these principles, which are intrinsically linked to its constitutional and statutory framework. The Constitution of India, through its guarantees of equality, non-discrimination, and fundamental rights, provides a robust foundation for integrating international treaty obligations. However, while international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) have driven progressive legal and policy reforms, their impact on ground realities remains a complex interplay of socio-cultural, institutional, and systemic factors.

This chapter critically examines the influence of international conventions and treaties on India's legal and policy framework for women and children. It explores legislative reforms, policy developments, and judicial interventions inspired by these treaties while addressing challenges and identifying pathways for effective implementation.

6.2 The Legal and Constitutional Basis for International Treaties in India:

6.2.1 India's Treaty Obligations:

India is a signatory to multiple human rights instruments that directly address women's and children's rights. These include:

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

Ratified in 1993, CEDAW obliges India to eliminate discrimination against women and ensure their equal participation in political, economic, social, and cultural life. However, India's reservations to provisions such as Article 5(a) (modification of cultural and customary practices) and Article 16 (equality in marriage) highlight the tension between international norms and domestic personal laws.¹

¹ CEDAW, Dec. 18, 1979, 1249 U.N.T.S. 13.

1. **Convention on the Rights of the Child (CRC):** Ratified in 1992, the CRC recognizes children as individuals with distinct rights, obliging states to ensure their survival, protection, development, and participation. India has further ratified two Optional Protocols: (1) on the involvement of children in armed conflict and (2) on the sale of children, child prostitution, and child pornography.²
2. **The International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social, and Cultural Rights (ICESCR):** India's ratification of these covenants underscores its commitment to universal human rights principles, particularly non-discrimination, education, and health rights.
3. **The Beijing Declaration and Platform for Action (1995):** Though non-binding, the Beijing Declaration influences India's policy commitments toward gender equality and the empowerment of women.

6.2.2 The Indian Constitution and International Obligations:

The Indian Constitution reflects a commitment to the principles of international law and treaties, integrating them into the domestic legal framework. This alignment ensures that international human rights obligations resonate with the constitutional vision of justice, equality, and dignity for all. Through specific articles and judicial interpretations, the Constitution establishes a legal framework to implement and enforce the country's international treaty commitments effectively.

1. Article 51(c): Promoting Respect for International Law:

Article 51(c) of the Indian Constitution falls under the Directive Principles of State Policy (Part IV), which, while non-justifiable, provide a guiding framework for governance. This article explicitly directs the State to foster respect for international law and treaty obligations.

Although Article 51(c) is not enforceable in a court of law, it demonstrates the framers' intention to harmonize domestic law with international standards. Courts have often invoked this principle to interpret domestic statutes and constitutional provisions in line with international obligations. For instance:

- In **Vishaka v. State of Rajasthan**, the Supreme Court emphasized that international conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), could guide the interpretation of fundamental rights, especially in areas where domestic law is inadequate or silent.
- Article 51(c) has also been referred to in cases involving environmental law, gender justice, and child rights, demonstrating its wide applicability.

² *CRC, Nov. 20, 1989, 1577 U.N.T.S. 3.*

2. Article 253: Legislative Power for Treaty Implementation

Article 253 empowers the Indian Parliament to enact laws necessary to implement international agreements, treaties, and conventions, regardless of the distribution of legislative powers between the Union and the States. This provision ensures that India can fulfill its international obligations without constitutional conflicts over legislative jurisdiction.

For example:

- **The Protection of Human Rights Act, 1993**, which established the National Human Rights Commission, was enacted to comply with international human rights norms, particularly the Paris Principles.
- The **Protection of Women from Domestic Violence Act, 2005** and the **Juvenile Justice (Care and Protection of Children) Act, 2015** were implemented to align with India's commitments under CEDAW and the Convention on the Rights of the Child (CRC), respectively.

Judicial interpretations of Article 253 confirm that treaty-based legislation is not constrained by the federal distribution of powers. This ensures that Parliament has the exclusive competence to fulfill international obligations, even if the subject matter falls within the State List under the Seventh Schedule.

3. Fundamental Rights: The Bedrock of Equality and Justice

Fundamental Rights under Part III of the Constitution form the cornerstone of India's human rights framework, providing enforceable guarantees of equality, non-discrimination, and the right to life and personal liberty. These rights often overlap with international human rights standards, enabling the judiciary to draw upon international treaties for their interpretation and application.

- **Article 14: Equality before the Law:** Enshrines the principle of equality before the law and equal protection of the laws, reflecting the core human rights tenet of non-discrimination as articulated in treaties like the International Covenant on Civil and Political Rights (ICCPR) and CEDAW.

Judicial example: In **National Legal Services Authority (NALSA) v. Union of India**, the Supreme Court relied on international human rights principles to uphold the rights of transgender persons, reinforcing equality and dignity under Article 14.

- **Article 15: Prohibition of Discrimination:** Prohibits discrimination on grounds such as religion, race, caste, sex, or place of birth. This aligns closely with CEDAW's emphasis on eliminating gender discrimination. In cases like **Anuj Garg v. Hotel Association of India**, the Court invalidated discriminatory laws that restricted women's access to certain professions, citing international commitments to gender equality.
- **Article 21: Right to Life and Personal Liberty:** Article 21 has been interpreted expansively to include rights to health, education, livelihood, and dignity, aligning with

the ICCPR and the Convention on the Rights of the Child (CRC). For instance, in **MC Mehta v. State of Tamil Nadu**, the Court addressed child labor in hazardous industries, linking the right to education under Article 21 with India's obligations under the CRC.

- **Article 22: Protection in Cases of Arrest and Detention:** Article 22 provides procedural safeguards for individuals under preventive detention or criminal investigation. In **People's Union for Civil Liberties (PUCL) v. Union of India**, the Supreme Court referred to the ICCPR to underscore procedural fairness in preventive detention case.

6.3 International Treaties and Legislative Reforms in India:

6.3.1 Women's Rights: Transformative Legal Developments:

India has enacted several laws that reflect its commitments under CEDAW:

1. The Protection of Women from Domestic Violence Act, 2005 (PWDVA):

- The PWDVA addresses CEDAW's mandate to eliminate violence against women in both public and private spheres. It recognizes various forms of domestic violence, including physical, emotional, and economic abuse, and provides victims with civil remedies such as protection orders and residence rights.
- Judicial enforcement remains a challenge, with cases like **Hiral P. Harsora v. Kusum Narottamdas Harsora** expanding the law's scope to include any female aggrieved party in a domestic setting. *Footnote: Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.*

2. The Criminal Law (Amendment) Act, 2013:

- Triggered by international criticism and national outrage after the Nirbhaya case, this Act strengthened provisions against sexual violence. It introduced the death penalty for certain categories of rape, recognized stalking and voyeurism as crimes, and expanded the definition of sexual assault.
Footnote: Criminal Law (Amendment) Act, No. 13 of 2013, India Code.

3. The Prohibition of Sexual Harassment at Workplace Act, 2013:

- Enacted pursuant to the Vishaka Guidelines, this law institutionalized mechanisms for addressing workplace harassment, reflecting CEDAW's focus on women's participation in public life.
Footnote: The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, No. 14 of 2013, India Code.

4. The Maternity Benefit (Amendment) Act, 2017:

- This Act extended maternity leave benefits, aligning with international labor standards, including those in CEDAW and the ILO Maternity Protection Convention.

6.3.2 Children's Rights: Progressive Legal Framework:

India has implemented comprehensive legislation reflecting CRC principles:

1. The Juvenile Justice (Care and Protection of Children) Act, 2015:

- Incorporating the CRC's principles of rehabilitation and reintegration, this law provides for care, protection, and adoption mechanisms while addressing the treatment of children in conflict with the law.
- In **Shilpa Mittal v. State (NCT of Delhi)**, the Supreme Court clarified ambiguities in the law regarding juveniles involved in heinous offenses. *Footnote: Shilpa Mittal v. State (NCT of Delhi), (2020) SCC Online SC 89.*

2. The Right of Children to Free and Compulsory Education Act, 2009 (RTE):

- Aligning with CRC Article 28, the RTE Act mandates free education for children aged 6 to 14. Judicial enforcement in cases like **Society for Un-aided Private Schools of Rajasthan v. Union of India** upheld its constitutionality. *Footnote: Society for Un-aided Private Schools of Rajasthan v. Union of India, (2012) 6 SCC 1.*

3. The Prohibition of Child Marriage Act, 2006:

- Repealing the Child Marriage Restraint Act, this legislation enhances CRC principles by addressing early marriages and their associated harms. However, enforcement remains weak in rural areas.

6.4 Policy Frameworks and International Norms:

6.4.1 Beti Bachao Beti Padhao (BBBP):

Launched in 2015, the BBBP scheme addresses declining child sex ratios and promotes gender equality in education, resonating with CEDAW's focus on eliminating gender disparities.

6.4.2 Integrated Child Protection Scheme (ICPS):

The ICPS provides financial and infrastructural support for shelter homes, adoption, and rehabilitation, reflecting the CRC's emphasis on child protection.

6.5 Challenges in Implementation:

Despite progressive laws, significant gaps persist:

6.5.1 Socio-Cultural Barriers:

- Patriarchal attitudes and entrenched stereotypes undermine the enforcement of gender equality laws. For example, resistance to laws like the PWDVA often stems from cultural norms that prioritize family cohesion over individual rights.

6.5.2 Institutional Weaknesses:

- The lack of trained personnel in child protection services and women's welfare programs hampers effective implementation.

6.5.3 Resource Constraints:

- Inadequate funding for initiatives like the ICPS limits their outreach, particularly in rural and marginalized communities.

6.6 Recommendations:

1. Strengthen Institutional Capacity:

- Train judiciary, law enforcement, and social workers to handle cases involving women's and children's rights with sensitivity.

2. Enhance Monitoring and Accountability:

- Establish independent oversight bodies to ensure effective implementation of treaty-based obligations.

3. Public Awareness Campaigns:

- Conduct awareness drives at the grassroots level to educate communities on women's and children's rights.

4. Increase Resource Allocation:

- Allocate more funds to programs aimed at child protection and women's welfare to ensure accessibility and effectiveness.

6.7 Conclusion:

India's ratification of key international treaties such as CEDAW and CRC has undeniably influenced its legal and policy frameworks. While these instruments have driven progressive reforms, their transformative potential remains hindered by systemic and cultural challenges. Strengthening enforcement mechanisms, addressing socio-cultural resistance, and allocating adequate resources are crucial steps toward realizing the rights of women and children as envisaged by these international conventions.