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## **9. Global Commitments, Local Realities: The Reflection of CEDAW, CRC and International Instruments on Women's and Children's Rights in India**

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### **9.1 Introduction:**

*“The day will come when nations will be judged  
Not by their military or economic strength,  
Nor by the splendor of their capital cities and public buildings,  
But by the well-being of their peoples;  
By their levels of health, nutrition and education;  
By their opportunities to earn a fair reward for their Labours;  
By their ability to participate in the decisions that affect their lives;  
By the respect that is shown for their civil and political liberties;  
By the provision that is made for those who are  
Vulnerable and disadvantaged;  
And by the protection that is afforded to the  
Growing minds and bodies of their children.”<sup>1</sup>*

~ Melinda F. Gates

Former Co-Chair, The Bill and Melinda Gates Foundation  
Philanthropist of the 21<sup>st</sup> Century)

The International Instruments for the protection and preservance of human rights, such as the Convention on the Elimination of Discrimination Against Women<sup>2</sup> (hereinafter referred

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<sup>1</sup> 1 JOSEPH A. GATHIA & SANJAY V. GATHIA, CHILDREN'S RIGHTS AND WELLBEING IN INDIA.

<sup>2</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979, OHCHR,  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

as CEDAW) and the Convention on the Rights of the Child<sup>3</sup> (hereinafter referred as CRC), have played a significant role in forming the legal, social, and political implications for the women's and children's rights throughout the globe. These Global frameworks reflect a collective urge by the international community to mitigate the challenges related to the discrimination and inequalities, protecting the human dignity of the individuals, and assuring the equal opportunities for each individual in each sphere of life.

Our Country, India, have ratified these conventions, has pledged to imbibe the principles, spirit and the objectives of these conventions into its legal structure named as the Constitution. Though India has made profound strides in the Constitution, in the legislations and vide judicial pronouncements to deal with the challenges related to the discrimination and inequality, yet the structural impediments persist to behave as it is. The Global commitments under CEDAW and CRC have ultimately influenced women's and children's rights in India, reflecting through the Constitutional provisions, legislative framework and judicial pronouncements.

## **9.2 International Measures:**

There are various measures carried out by United Nations for the protection and welfare of the women and children. The beginning can be traced from the Universal Declaration of Human Rights which adopted in the year 1948, providing equality and dignity for all, including women's. Later, at the end of the fourth world conference on women, United Nations adopted Beijing Declaration and platform for Action. This resolution promulgates the gender equality and women's empowerment. The number of ILO<sup>4</sup> (International Labour Organization) conventions viz. Equal Remuneration Convention (No. 100, 1951), Discrimination (Employment and Occupation) Convention (No. 111, 1958), Workers with Family Responsibilities Convention (No. 156, 1981), Maternity Protection Convention (No. 183, 2000) etc., adopted to protect labour rights of the women and to prohibit the child labour in the hazardous industries.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which are part of the UN Bill of Rights and envisage the principle of equal rights for men and women.<sup>5</sup>

The Convention on the Elimination of Discrimination Against Women (CEDAW) which adopted in 1979, famously known as the "Bill of Rights for Women".<sup>6</sup> It upholds the elimination of all forms of discrimination against women in all fields inclusive of social,

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<sup>3</sup> Convention on the Rights of the Child, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>4</sup> Gender equality | International Labour Organization, (2024), <https://www.ilo.org/gender-equality>.

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; *Id.*

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth, UN WOMEN – HEADQUARTERS (2013), <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth>.

economic and cultural. It provides provisions such as equal rights in education, employment, and health care. It extends legal protection against discrimination including mitigation measures to eliminate harmful gender stereotypes. Further, it provides the provision against the trafficking and exploitation.

Similar to CEDAW, international measure against the exploitation and for the protection of women, Convention on the Rights of the Child (CRC) provides the protection of children and recognizes as holders of rights. Adopted in 1989, it works for the survival and development rights of the children, including access to health care and education. It provides protection against exploitation and abuse, emphasizes participation rights as '*audi alteram partem*' in the decisions affecting them. Furthermore, the United Nations through the Universal Declaration of Human Rights declared that the child within its childhood is entitled of special care and protection.<sup>7</sup>

### **9.3 Reflection of International Measures into Indian Context:**

The Constitution of India shows direct reflection of the international measures in the provisions embedded therein. This reflection can be seen in the constitutional provisions, respective legislations and in the judicial pronouncements. The global commitments in the form of ratification are foundations for the implementations of women's and children's rights in India.

The several provisions of the Constitution are closely aligned with the principles of CEDAW and CRC. From the Part III (Fundamental Rights) to part IV (Directive Principles of State Policy) and Part IV A (Fundamental Duties) envisages the constitutional adaptation of the ratified principles of CEDAW and CRC. It protects women and children's equality and equal protection under the law allowing special provisions for women and children giving equal opportunity in matters of public employment.<sup>8</sup> It directs state to give equal pay for equal work, to protect children from exploitation and to provide humane working conditions along with maternity relief.<sup>9</sup> Moreover, it promotes fraud renunciation of practices derogatory to women and promoting the education facilities between the age group of six to fourteen years.<sup>10</sup>

The reflection of CEDAW and CRC is deeply rooted can be seen in the legislation pertaining to the women and children welfare.<sup>11</sup> The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 prohibiting gender discrimination with the sex-selection abortions, the Domestic Violence Act, 2005 providing protection against abuse to women's, the Prohibition of Child Marriage Act, 2006 (Child Marriage Restraint Act, 1929 addressing the child marriages in the early age and the Maternity Benefit (Amendment) Act, 2017 providing maternity leave to women upto weeks effectively

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<sup>7</sup> Convention on the Rights of the Child, *supra* note 3.

<sup>8</sup> The Constitution of India, 1950, art14, art 15 (3) and art 16.

<sup>9</sup> *Id*, art 39 and art 42.

<sup>10</sup> *Id*, art 51 A (e) and art 51 A (k).

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women, <https://www.un.org/womenwatch/daw/cedaw/>.

combat the difficulties faced by women during day to day life. In addition to this, according to Ministry of Education, there is no law proposed for the 'Menstrual Leave' in Educational Institutions.<sup>12</sup> But there present University Grants Commission's (UGC) 'Guidelines for Basic facilities and amenities for safe, secure environment for Women and Women Cell (for sensitization, policy implementation, monitoring and grievance redressal) in HEIs', which states that the "Higher Education Institutions (HEIs) should ensure easy access to basic sanitation and hygiene facilities for women such as clean, well-maintained and fully functioning separate restrooms equipped with 24-hour tap water supply, soap, covered dustbins, sanitary pad disposal bins and vending machines in all its buildings".<sup>13</sup> Adhering to this, Maharashtra National Law University Mumbai, Maharashtra National Law University Aurangabad, Maharashtra National Law University Nagpur and The National Law Institute University Bhopal have launched the Menstruation leave Policy.<sup>14</sup> This Introduction of Menstrual Leave Policy makes a progressive step in gender-specific needs in sensitizing and inclusivity aligning with the principles of CEDAW. This policy resonates with *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and *ILO Maternity Protection Convention (No. 183)* addressing the specific health related issues in the workplace (Article 12, ICESCR). It conforms to the *Beijing Declaration and Platform for Action* by breaking barriers with full participation in public life, focusing gender equality; facing the health challenges.

Another carving reflection of CEDAW, CRC, ICESCR and The Beijing Declaration and Platform for Action can be seen in the implementation of prohibition of "Devadasi" System, a deeply rooted traditional practice rooted in the States of Maharashtra, Tamil Nadu, Andhra Pradesh and Karnataka, involving offering of young girls to deities thinking that it will make deity happy.<sup>15</sup> A girl offered as 'Devadasi' marrying to God and considered as 'dasi' i.e. slave or servant of the God.

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<sup>12</sup> No law for menstrual leaves in educational institutions, but UGC guidelines for women's facilities: Edu ministry, INDIA TODAY (2023), <https://www.indiatoday.in/education-today/news/story/no-law-for-menstrual-leaves-in-educational-institutions-edu-ministry-2331616-2023-02-07>.

<sup>13</sup> *Id.*

<sup>14</sup> Bhumika Indulia, *MNLU Mumbai Introduces Menstrual Leave Policy for Students*, SCC TIMES (Apr. 22, 2024), <https://www.sconline.com/blog/post/2024/04/22/mnlu-mumbai-introduces-menstrual-leave-policy-for-students/>; Maharashtra National Law University et al., *National Law University, Nagpur*, NATIONAL LAW UNIVERSITY, NAGPUR, [https://www.nlunagpur.ac.in/abt\\_University\\_Policies.php](https://www.nlunagpur.ac.in/abt_University_Policies.php); Jelsyna Chacko, *NLIU Bhopal, MNLU Aurangabad Introduce Menstrual Leave Policy for Students*, BAR AND BENCH - INDIAN LEGAL NEWS (2024), <https://www.barandbench.com/apprentice-lawyer/nliu-bhopal-mnlu-aurangabad-introduce-menstrual-leave-policy-students>.

<sup>15</sup> NHRC notices to the Centre and State Governments of Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Telangana and Maharashtra over continued menace of Devadasi system despite laws banning it; gives six weeks to respond | National Human Rights Commission India, <https://nhrc.nic.in/media/press-release/nhrc-notices-centre-and-state-governments-karnataka-kerala-tamil-nadu-andhra>; T. Ramakrishnan, *Abolition of Tamil Nadu's Devadasi System: An Inspiring Saga*, THE HINDU, Sep. 14, 2023, <https://www.thehindu.com/news/national/tamil-nadu/abolition-of-tamil-nadus-devadasi-system-an-inspiring-saga/article67308852.ece>.

This harmful traditional practice abolished by States by their enactments prohibiting exploitation and abuse of the young girls ensuring that young girls are not subjected to abuse which is disguised as “*Cultural Tradition*”.<sup>16</sup>

Whilst, the children through the legislations viz. Right to Education (RTE) Act, 2009 providing free and compulsory education, the Juvenile Justice (Care and Protection of Children) Act, 2015 ensuring the care, protection and rehabilitation of the juvenile offenders and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, later amended in 2016 which prohibits the employment of children in hazardous industries; protects the vulnerable group of children from abuse and exploitation.

The Indian judiciary’s approach in interpreting and implementing the principles of CEDAW and CRC through its judgments shows the reflection of international measures in reality. Mohini Jain and Unnikrishnan’s case reaffirmed the right to education as a fundamental right under part III of the constitution of India.<sup>17</sup> Drawing from CEDAW, Vishakha’s case established guidelines to address sexual harassment in workplace stating that the international treaties ratified by India can be enforced unless they conflict with domestic laws.<sup>18</sup> Githa Hariharan’s case recognized the mother as a natural guardian, reflecting gender equality under CEDAW principles.<sup>19</sup> The Nergesh Meerza’s case mandated equal treatment in employment and prohibited discrimination based on the sex and marital status of the women closely aligns with the Article 11 of CEDAW.<sup>20</sup> The Article 2 of CEDAW, requiring states to combat all forms of violence against women, ensuring access to justice and compensation has emphasized by the Indian Court which recognized rape as a violation of fundamental rights under Article 21 of the Indian constitution, further granting interim compensation to rape survival during trial.<sup>21</sup> In another case, the Supreme Court awarded compensation to gang rape victim of foreign national addressing the State’s responsibility to protect women’s dignity and security.<sup>22</sup> This aligns with the UDHR and ICESCR highlighting the State’s obligation to prevent inhumane treatment.

Under the CRC principles, the judiciary prohibited sexual intercourse with a minor wife.<sup>23</sup> This Judiciary’s stance to imbibe the legislative and constitutional provisions through the interpretations in the judgments reflects the local realities from the global commitments. Right to Education held as integral as right to life and dignity under Article 21 of the Indian Constitution resonating with CRC mandating free and compulsory education for all children.<sup>24</sup> Free and compulsory education between the age 6 to 14 years and upholding it

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<sup>16</sup> Bombay Devadasi Protection Act, 1934; Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988; Karnataka Devadasi (Prohibition of Dedication) Act, 1982; Maharashtra Devadasi (Abolition of Dedication) Act, 2006; The Madras Devadasis (Prevention of Dedication) Act, 1947.

<sup>17</sup> Miss Mohini Jain vs State of Karnataka and Ors, AIR 1858 (1992); Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors., AIR 217 (1993)

<sup>18</sup> Vishaka & Ors vs State Of Rajasthan & Ors, AIR 3011 (1997).

<sup>19</sup> Ms. Githa Hariharan & Anr vs Reserve Bank Of India & Anr, AIR 1149 (1999).

<sup>20</sup> Air India vs Nergesh Meerza, AIR 1829 (1981).

<sup>21</sup> Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty, AIR 922 (1996).

<sup>22</sup> The Chairman, Railway Board & Ors vs Mrs. Chandrima Das & Ors, 2 SCC 465 (2000).

<sup>23</sup> Independent Thought vs Union Of India, AIR 4904 (2017).

<sup>24</sup> Miss Mohini Jain vs State Of Karnataka And Ors, *supra* note 17.

as a fundamental right resulting in the 86<sup>th</sup> Constitutional Amendment. This amendment's introduction of Article 21A of the Indian Constitution deeply aligns with the CRC's Article 4, which obligates states to ensure the children's rights through the legislative measures.<sup>25</sup> M. C. Mehta's case critically addressed the issue of the child labour in hazardous industries particularly in firework industry.<sup>26</sup> The Supreme Court constituted committee to overcome child labour and issued directions for protection, rehabilitation and education of the children. This crucial step resonates with CRC's Article 32, which seek obligations from states to protect children from economic exploitation and hazardous work. This Judgment actively reinforced the implementation of "*Child Labour (Prohibition and Regulation) Act, 1986*", which prohibits children's working in firework factories. This Act led to enactment of the "*Juvenile Justice (Care and Protection of Children) Act, 2000*", and "*The Child Labour (Prohibition and Regulation) Amendment Act, 2016*". Despite these full-fledged acts, we still find lot many children are begging on streets, railway stations and signals. Besides having law and guidelines of employing children they are still being employed. It shows the local reality of the global conventions; that there is up to certain extent the mechanism of regulation, rehabilitation and prevention works. Beyond that there is Local Reality which is silent and unseen, probably screaming to be seen.

#### 9.4 Analysis:

*"You can tell the condition of nation by looking at the status of its women"*

~ Pandit Jawaharlal Nehru

Pre-Independence period faced certain problems with respect to women and children. Women faced many hurdles including the limited access and exposure towards education, dependency on the family members (especially on the economic aspect), and exclusion in the property rights or minimal property rights. Later, the social reformers viz. Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar worked in order the get the system of sati abolished and promoting the widow remarriage.<sup>27</sup> Jyotiba Phule, another prominent Indian social reformer transgressed his thoughts in the actual work and challenged rigid caste system including women's education.<sup>28</sup> In 1931, Karachi Congress resolution addressed the

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<sup>25</sup> Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors., *supra* note 17; Convention on the Rights of the Child, *supra* note 3.

<sup>26</sup> M.C. Mehta vs State Of Tamil Nadu And Others, 6 SCC 756 (1996).

<sup>27</sup> Amrit Mahotsav, *Spanish Constitution Page on Raja Ram Mohan Roy*, AZADI KA AMRIT MAHOTSAV, MINISTRY OF CULTURE, GOVERNMENT OF INDIA, <https://cmsadmin.amritmahotsav.nic.in/district-repository-detail.htm?24864>; Amrit Mahotsav, *Birsingha, Birth Place of Iswar Chandra Vidyasagar*, AZADI KA AMRIT MAHOTSAV, MINISTRY OF CULTURE, GOVERNMENT OF INDIA, <http://amritmahotsav.nic.in/district-repository-detail.htm?3589>.

<sup>28</sup> Mahatma Jyotiba Phule: A matchless social reformer, champion of social justice | Raj Bhavan Haryana | India, <https://haryanarajbhavan.gov.in/publication/mahatma-jyotiba-phule-a-matchless-social-reformer-champion-of-social-justice/>.

gender equality, fundamental rights of the individual and social justice.<sup>29</sup> Post-Independence with the adoption of the Constitution and the provisions thereby, the stance of women and children became strong. From the Preamble of the Constitution of India assuring equality, justice till the fundamental rights and Directive Principles of State Policy guarantying and promoting gender equality the stance flourished.<sup>30</sup> The Hindu Succession Act, 1956 provides equal inheritance rights but Muslim personal laws implicated unequal divorce and inheritance rights to women.<sup>31</sup> Moreover, Uniform Civil Code (UCC) aspires to be gender neutral.<sup>32</sup> The POSH Act of 2013 signifies the reflection of Vishakha's guidelines and global commitment from CEDAW addressing the sexual harassment and discrimination at workplace. Despite these progression, numerous challenges persist like the deeply entrenched gender biases, gender-based violence across all religions and unequal access to education and lack of healthcare facilities in all spheres of women.<sup>33</sup>

Indian Constitution has the mechanisms for the children's rights, protection and welfare signifying the CRC and ILO convention. Despite the child protective laws viz. Juvenile Justice Act, 2015; Prohibition of Child Marriage Act, 2006; Right to Education Act, 2009; Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, the children's facing challenges such as malnutrition, child labour (Bonded and contract labour), inadequate education facilities.<sup>34</sup>

To overcome these challenges, NGO's helpful hand has been significant to shift the focus towards the women's nutrition, health, and upholding their rights. The grass root local initiatives like the '*Beti Bachao Beti Padhao*', promote the women empowerment and reflect the commitments towards CEDAW. Another noteworthy initiative by the Indian government as '*Integrated Child Development Services (ICDS)*', which reflects CRC principles through this welfare scheme by tackling malnutrition and focusing on health and nutrition in children below 6 years of age and pregnant and lactating mothers.<sup>35</sup>

Though India is taking initiatives, it is still lacking and facing barriers in the enforcement and effectiveness. The hurdle with the implementation of the Uniform Civil Code (UCC) is gender inequality perpetuated through the personal laws. The PCPNDT Act faces the challenge of weak enforcement and inadequate sensitization. Child labour, despite the

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<sup>29</sup> How the Congress's Karachi Session gave the blueprint of India's Constitution, <https://www.nationalheraldindia.com/archives/how-the-congresss-karachi-session-gave-the-blueprint-of-indias-constitution>.

<sup>30</sup> APARAJITA BARUAH, PREAMBLE OF THE CONSTITUTION OF INDIA, DEEP & DEEP PUBLICATION PVT. LTD., EDITION 2007.

<sup>31</sup> Vrinda Narain, *Muslim Women's Equality in India: Applying a Human Rights Framework*, 35 HUM. RIGHTS Q. 91 (2013).

<sup>32</sup> The Constitution of India, 1950, *supra* note 8.

<sup>33</sup> AARON KARP, SONAL MARWAH & RITA MANCHANDA, *Unheard and Uncounted: Violence against Women in India*, (2015), <https://www.jstor.org/stable/resrep10686>.

<sup>34</sup> O. P. Maurya, *Child Labour in India*, 36 INDIAN J. IND. RELAT. 492 (2001); Lee Tucker, *Child Slaves in Modern India: The Bonded Labor Problem*, 19 HUM. RIGHTS Q. 572 (1997).

<sup>35</sup> Introduction to Integrated Child Development Services | Department of Women and Child Development, <https://wcd.delhi.gov.in/wcd/introduction-integrated-child-development-services>; Tara Ali Baig, *A Child's Right to Be Human*, 13 INDIA INT. CENT. Q. 133 (1986).

legislation, lacks gaps of access to education and poverty. Lack of funding for this effective implementation and sensitization leading to the declining of the women and child welfare enforcement measures.

### **9.5 Conclusion:**

The principles of CEDAW and CRC are well entrenched in the legislations and constitutional provisions globally.<sup>36</sup> It can be seen deeply rooted in the Preamble of the Constitution of India which envisages the words ‘...to secure to all its citizens’, meaning it lawfully applies to the women and children of this nation ‘India’ by securing them.<sup>37</sup> This security is provided through the Justice, Liberty, Equality and fraternity. Here, Justice can be social, economically stable and can be political as well. The virtues of the Liberty and Equality are deeply rooted in the provisions of the women and children’s welfare reflected vide *ab initio* from CEDAW and CRC.

India, besides its technological advancements is lacking towards the enforcement mechanism. Indian societal mind set is of patriarchal in nature, even though women are worshipped one side as Goddess by equating them with Goddess Durga, Goddess Lakshmi, Goddess Parvati etc., on the other side some inhuman culprits in society are committing heinous crimes against women for e.g. Nirbhaya Incident, Bhanwari Devi Incident etc. To overcome this problem there should be proper and speedy justice delivery system which should result in creating deterrent effect.

Further, State should strive endeavors to sensitize to members of society to consider that body of Woman is as same as once Mother or Sister , this will definitely strengthen the dignity and status of Women in today's free India It is the State’s responsibility to ensure that there should not be violation of the Women's and where by interest of Women and children get protected.<sup>38</sup> The social change is necessary to prevent the violence against women in India.<sup>39</sup> Therefore, the effort for the sensitization towards the legal mechanisms along with implementation has to be made by the State. The efforts need to be intensified to curb the menace of gender discrimination, stereotypes and prejudices against women through the scrutiny of legislations and schemes providing relief from the stereotypes.<sup>40</sup>

*“We may not be able to prepare the future for our children, but we can at least prepare our children for the future.”*

~ Franklin D. Roosevelt

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<sup>36</sup> Heather Smith-Cannoy et al., *When Everyone Agrees: Human Rights Norms on Women and Children and Their Effects on Health*, 24 INT. J. HUM. RIGHTS 1537 (2020).

<sup>37</sup> V. Venkata Rao, *The Preamble*, 12 No. 2 INDIAN POLIT. SCI. ASSOC. 1.

<sup>38</sup> Rebecca J. Cook, *Women’s International Human Rights Law: The Way Forward*, 15 HUM. RIGHTS Q. 230 (1993).

<sup>39</sup> KARP, MARWAH, AND MANCHANDA, *supra* note 33.

<sup>40</sup> Swagata Raha & Shampa Sengupta, *Rights of Women with Disabilities under Indian Legislations*, 14 SOCIO-LEG. REV. 190 (2018).



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A child should be treated like a human and nothing else. This Global commitment requires the effective implementation and collective action from the state, Judiciary, social change in the civil society and the citizens of the country. It should not only be the commitments on the paper but serve as the catalyst in the nation's growth.