

9

Women's Human Rights

Societies across the world and throughout history have rarely, if ever, given women the same opportunities as men.

9.1 Introduction

Women face discrimination in a number of ways: women are paid less than men for the same amount of work; women frequently face violence; women and girls are discouraged from going to school; women and girls not given the same importance as men in history, traditions, and cultural activities. This chapter examines how societies discriminate against women, and presents the consequences of this discrimination. In order to understand discrimination this chapter first discusses the values given to gender. It then addresses how human rights are working to stop discrimination against women, mainly by looking at the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). Lastly, important concerns for women are examined in the areas of violence against women, rights in politics, and non-discrimination in the workplace including economic rights.

9.1.2 Brief History of Women's Rights

While the history of the women's rights movement tends to focus on two events, women's suffrage (or the right to vote) in Europe in the early 1900s, and the rise of feminism in the 1960s, there have been debates and movements for giving women more rights throughout history. In the ancient Chinese, Greek, Egyptian and Roman societies, women could play significant roles as leaders, Gods, heads of households, though they did not have equal rights to men. During the European enlightenment when an early version of human rights emerged, women's rights were discussed by prominent thinkers such as John Locke and Thomas Paine. One of the more famous women writers at this time was Mary Wollstonecraft, who as well as writing *Frankenstein*, authored the famous text, *A Vindication of the Rights of Women* (1792). By the end of the 19th century, the first women's rights organizations were in place in the major Western countries. Through the nineteenth and early twentieth century, women held national and international conferences and lobbied around issues of war, equality, the right to vote, and the prohibition of alcohol. The **Suffragettes**, who were advocating for women's right to vote, are probably the most well-known of the early movements. There were other lobbying successes in the areas of work and protection of women. In 1919 women's rights organizations succeeded in getting provisions in the *Covenant of the League of Nations* and the constitution of the International Labor Organization ensuring that women could hold positions in the new organizations. Moreover, the ILO endorsed the principle of equal pay for work of equal value in the preamble of the ILO's constitution. A provision on women holding positions is repeated in the *Charter of the United Nations* (1945). The prohibition of discrimination on the basis of sex is stated four times in the Charter. These successes show that women have been advocating for their rights at the international level for over a century.

The Suffragettes
Activists working on women's right to vote. Most commonly women in the early 19th century

There had also been a history of activism for women's rights in Southeast Asia. Highly restrictive traditions in relation to women can be found in recent history in Southeast Asia, for example the case of Raden Adjeng Kartini, a feminist pioneer in Indonesia. She was born in 1879 in the polygamous household of the regent of Jepara. Unusually, her father allowed her to go to a European primary school until the age of 12, at which time according to Javanese customs, she was to be kept secluded at home until marriage. She was forced to consent to a polygamous marriage with the Regent of Rembang, who had six children and three wives. However, even in her seclusion she wrote about her situation and the importance of education for girls, and these

letters became an inspiration to feminists and nationalists. Another Indonesian, Dewi Sartika advocated for the education for women in Indonesia, and founded one of the first schools for women in 1904. The Indonesian government acknowledged her as a National Hero in 1966.

There are many notable Filipino women advocating for rights such as education, voting, and welfare. Concepción Roque started one of the first women's organizations in the Philippines in 1905. She was also an active humanitarian, working on the well-being of mothers and their children, and advocating for prison and labor reform for women and children. After WWII in Singapore Che Zahara binte Noor Mohamed a Malay activist, worked towards women's and children's rights from the 1950s. She was one of the first Malay women in Singapore to advocate for modern women's rights, and was the founder of the first Muslim women's welfare organization in Singapore, the Malay Women's Welfare Association (MWWA). In 1961, she helped establish the Women's Charter of Singapore. Another Singaporean Linda Chen Mong Hock, founded the Singapore Women's Federation (SWF) in 1956. She was arrested and jailed in 1956 as a suspected communist in part because of her social work. By 1960s, there were numerous women's organizations calling for women's rights throughout the region.

The women's movement gained global momentum in the 1960s and 1970s. There was the broad social movement in the West which at the time was commonly called the '**women's liberation**' movement. Though not solely a human rights movement, it called for women to be liberated from the unfair structures of society such as marriage and unfair labour laws. Influential feminists at this time include Simone de Beauvoir, Gloria Steinman and Betty Friedan. These movements for women's equality were influential in the UN proclaiming 1975 as *International Women's Year*, and following that with an *International Decade for Women*. In this period, the UN adopted the text of CEDAW which came into force in 1979. As noted above, women's organizations were emerging in many Southeast Asian countries. Some were influenced by Women's Liberation from the west, others had their roots in religion, welfare or education. They have been influential in changing laws, attitudes, and opportunities to increase women's equality.

Women's Liberation

Social movement in the 1960s and 1970s advocating for women's equality and liberation from restrictive social values

9.2 Defining Discrimination

In order to understand discrimination, the concepts of 'sex' and 'gender' must be distinguished. In social practice there is a tendency to conflate, or mistake sex for gender, or vice versa. The result is the belief that inequality between men and women is a natural, biological fact, and not a social construct. By distinguishing these concepts, it can be seen that belief in the superiority of men is primarily a cultural belief, and not a biological fact.

9.2.1. Sex and Gender

Simply put, '**sex**' refers to the physical and biological features of men and women while '**gender**' refers to the social roles men or women play in society. Sex is biologically determined according to the physical characteristics and biological features of someone's body. However, as recent scientific studies have shown, a body is not always either male or female. While the majority of people have a clearly assigned sex, for many others their biological sex is unclear. There are cases of intersexuals (discussed in Chapter 11), people whose body may exhibit physical features of both sexes, or other biological conditions where chromosomes or hormones are closer to

Sex

Refers to the biological features which distinguish men from women.

Gender

The roles and values give to a male or female in society.

their opposite sex. Societies tend to accept that every human is either male or female, and thus forces people into one of these roles, even though biologically this is not true.

Gender is the expected role a male or female plays in society, and the values associated with that role. From birth and throughout their lifetime, males and females are assigned specific attributes, traits, roles and tasks in the society. These may be traditional values like men are expected to be strong, and women expected to be mothers. Gender is a deeply cultural view, and varies across cultures in the roles and values given to men and women. However, what is similar across cultures is that these roles are given according to the biological sex of the person, even though the roles and values have little to do with biology. Distinguishing sex from gender, and understanding the social construction of gender, shows that, firstly, if gender is socially constructed so to must be inequality. Secondly, if inequality is a social construct, it can be changed or eliminated through cultural changes. Finally, to understand the unequal treatment of women demands an understanding of how society and its institutions construct gender, for example how the gender role of women is enforced through traditions, religion, courts, schools, businesses, and so on.

Many languages combine the terms for sex and gender into one word, and English-speakers commonly treat the two words as meaning the same thing. The distinction between the two terms is fairly recent, and is the result of recent feminist theories. As can be seen in the languages of Southeast Asia in Table 9.1, this distinction is now appearing in language. The purpose of distinguishing these concepts is to show that all the inequalities faced by women are the result of social constructs. There is no biological reason to stop women being treated equally to men.

Table 9-1: Words for Sex and Gender in Southeast Asia

Language	Words for Gender and Sex
Bahasa (Malay language)	Kelamin (sex), jantina (gender)
Thai	Phed (for both sex and gender)
Burmese	Lein (sex), Kyar/Ma (gender)
Khmer	Phet (sex), Gender (gender)
Vietnamese	Giới tính (sex), Giới (gender)
Philippines	Kasarian (sex)

9.2.2 Linking Discrimination to ‘Sex’

A common assumption is that if you are born with one sex, then automatically you will also fit the gender roles and rules associated with that sex. This assumption is reinforced, or **normalized**, through social and cultural practices and institutional arrangements. People born of one sex are forced to play the gender roles associated with that sex. Many of the values, and beliefs of those gender roles are discriminatory to start with. The belief is that men are attributed with protective instincts, physical strength and rational thinking. They are expected to be the breadwinners in the family, the protector, the leader, and the decision-maker. Their primary domain is the public, in the world of work outside the home and in politics. On the other hand the belief is that women are attributed with motherly instincts and their roles centered on emotions, relationships, and care. For example, women are expected to be mothers who assume primarily the duties of child rearing and care for sick and elderly in the

Normalized

The process where a society re-enforces a norm, like a belief or behavior, in someone. Gender roles are normalized by education, the media, and social values. They can be forcibly normalized by physically punishing someone for not fitting in.

family because of they are regarded as more empathic, more sensitive and able to relate with the needs of others. These views are disempowering for women as they restrict women to the domestic sphere, and give men freedom and privilege.

The assumption for these gender roles is based on the physical differences between the bodies of men and women. That men are bigger and women bear children is used to explain the division of labor between men and women and the value assigned to the work they engage in. The claim is that different treatment between men and women is due to the reality of sex, that is, it is a biological difference and not a social one. Excuses are given such as for thousands of years of human life as hunter-gatherers men went out from the family household to hunt, while women gave birth and worked close to home, gathering food, preparing meals, and taking care of children. However, physical differences have very limited significance in modern societies. Physically, women can be very strong, for example female weight lifters at the Olympics can lift weights far in excess of most men. Men can nurture babies, shown by a recent trend of 'stay at home dads' in some countries. Women can be aggressive, decisive and ambitious. We now see women excelling in higher education while men are more likely to drop out along the way. In other words, people are led to believe that treating women differently is justified by nature, when really it comes from social values.

Societies invent a gender role for males and females to perform, as a contemporary feminist theorist Judith Butler explains. An example of **socially constructed** roles is clothing and appearance. Now days men wear pants, women wear dresses. Though these conventions are socially constructed. In Southeast Asia, for example, in Myanmar and Java men can wear longyis or sarongs. In most Southeast Asia countries gender differences in appearance were almost non-existent, unlike in Western societies where social construction of women's roles, appearance, and behaviors were strictly differentiated. In Western societies, women have always worn dresses, and women began to wear trousers, sometimes as a form of protest, around the 1920s. Before that, they were legally prohibited in many countries. However, in 19th century Siam (Thailand), women's clothing was identical to that of men. Foreigners visiting Siam at this time had trouble telling men and women apart. Both had short hair, both wore the same clothing, and both shared identical names. To the untrained eye, men and women looked and acted identically. This does not mean that men and women were treated equally, for women were identified when they spoke (in Thai language men and women use different pronouns). The point here is that how gender is assigned, whether it is through clothes, language, or other status, it is a cultural process, not a biological one.

CONCEPT

Socially Constructed Roles

If a role is socially constructed, it means that society has invented it, and it does not come from nature or biology. The role of the mother is often considered to be biological, because women give birth to babies. Yet, women who are not biological mothers can still play the role of mothers to their adopted babies. Different societies see motherhood differently, for example a good mother could be very strict to the children in some places, and very caring and kind in others. This shows that the role of motherhood is socially constructed.



The process of socially constructing gender should be confronted to eliminate discrimination. Institutions such as the family, schools, workplaces, religious institutions, government and the media play an important role in assigning what males and females should be good or bad at, how they should look, and so on. Through a system of rewards and punishments, institutions socialize and normalize a person into the roles of male and female. So for example, schools may teach different subjects to boys and girls. Parents may buy children different toys according to their sex. The media highlights what beauty and handsomeness looks like. It is important to note that institutions do pressure both men and women to follow gender conventions.

The objective of gender conventions is so men's and women's social behavior fits society's expectations. This process will produce someone is **gender normative**. There are negative impacts of gender normalization. In the worst cases women may be normalized to feel weaker, inferior, or more at risk than men, and men normalized not to show emotions and to act aggressively. Men and women who fail to conform to society's prescribed gender norms and practices may be subjected to various forms of discrimination, social pressure, shame, and abuse. For example, women who experience sexual violence may be blamed because of the clothes they wear or refusing to engage in sexual intercourse with their husbands or boyfriends. Boys are called weak if they cry. Within this process human rights violations can occur. The pressure or violence people face to perform their gender violates their safety and security. The objective of eliminating all forms of discrimination is to eliminate these violations.

Gender Normative

Society's view of what is 'normal' for a man or woman. Roles or views not fitting this norm may be criticized or punished.

9.3 CEDAW

The CEDAW convention is an important development in protecting women's human rights. Its key message is that women and men should have equal rights in all aspects of their lives. It defines what discrimination is and how States could combat such discrimination. It presents the different areas where governments should focus on their efforts to achieve equal rights for women. Countries who ratify CEDAW are committed to amend their national laws to guarantee women's equal rights, provide opportunities and remedies where gaps exist, as well as to submit a report every four years on its progress in implementing their treaty obligations. The treaty establishes the *Committee on the Elimination of Discrimination against Women* to monitor State compliance with the Convention. CEDAW is a historical achievement for women around the world because it became the main international standards to measure the treatment of women.

CEDAW, which came into force in 1979, is the fourth human rights convention. The Commission on the Status of Women (CSW), which had previously drafted a declaration in 1967, as well as conventions on political rights, nationality, and marriage, supported the treaty drafting process. It took 10 years of debates and negotiations among States at the UN before the convention was ready for adoption. Most opposition centered on rights which clashed with culture and religion, especially around the family, marriage, and citizenship. Nearly all countries did not give women equal rights in divorce or inheritance, and many did not give women rights to pass their citizenship on to children. Considering this, the language, context and assumptions of CEDAW at the time of its drafting and ratification reflect the power dynamics of State parties represented by men, and to a limited extent, of the women proponents of equality within the diplomatic, government and international organizations. The adoption of CEDAW was made possible through the collective efforts of women themselves who

pushed for women's issues in the agenda of the League of Nations, then later on the United Nations. Some women, particularly those who assumed leadership positions, had important roles in advancing women's rights. As previously noted, the 1960s was a time of increased activity around women's rights. There was a greater awareness of all the discrimination confronting women in many parts of the world and the notable rise of organizations committed to fighting the effects of discrimination.

In ratifying CEDAW, states have duties to:

1. Change laws or introduce new laws: Incorporate the principle of equality and non-discrimination of men and women, abolish all discriminatory laws and practices, and adopt appropriate measures to prevent discrimination against women (Art 2 & 15)
2. Ensure access to justice: To ensure the effective protection against discrimination through courts and similar institutions (Art 2)
3. Develop programs to accelerate equality: Implementing temporary special measures such as **affirmative action** to help achieve equality (Art 4)
4. Modify Culture: To change cultural and traditional practices and attitudes including stereotypical roles of women and men (Art 5)

Affirmative Action

Special allowances which increase access or benefits for a group of people, for example reserving seats in government for women

CEDAW creates obligations on States to work towards the equality of women. Through its strong wording it tells governments to have programs and initiatives to stop or prevent discrimination from occurring. The convention requires government to apply its principles in the private sector as well as the public sector. Discrimination by any "enterprise" is to be prohibited and specifically prohibited in relation to bank loans and other forms of financial credit. The convention identifies at least twelve areas of discrimination directly: Culture, law, trafficking, politics, international politics, nationality, education, Health, Economics, Rural women, marriage, and family. Further, the convention supports giving women information on family planning and supports equal pay for work. CEDAW was progressive at the time, but it was also a product of the time. The convention was drafted in the 1960s and 70s, and there has been much development in ideas around equality since this time. CEDAW is not a static document and there have been developments, enabled both by civil society and the CEDAW committee, to expand upon these rights. An example, returned to later in the chapter, is domestic violence.

CEDAW, like CRC, has near universal ratification. Currently, only six countries have not ratified the convention (Iran, Palau, Somalia, Sudan, Tonga, and the United States). All Southeast Asia countries are State Parties to the convention.

Table 9-2: CEDAW status

States Parties	Date of Ratification	Reservations
Brunei	24 May 2006	Art 9 (2) Art 29 (1)
Cambodia	15 October 1992	None
Indonesia	13 September 1984	Art 29 (1)
Lao PDR	14 August 1981	None
Malaysia	5 July 1995	Art 5 (a) Art 7 (b) Art 9 Art 16 1(a), 1 (c), 1(f) and 1 (g) Withdrawn reservations on Art 2(f), 9 (1), 16 (b), 16 (d), 16 (e) and 16 (h)
Myanmar	22 July 1997	Art 29 (1)
Philippines	5 August 1981	None
Singapore	5 October 1995	Art 2 Art 11 (1) Art 16, Art 29 (1)
Thailand	9 August 1985	Art 29 (1) Withdrawn reservations on: Art 7, 9 (2), 10, 11 (1), 15 (3), 16
Timor-Leste	16 April 2003	None
Viet Nam	17 February 1982	Art 29 (1)

As noted in Table 9.2 though CEDAW is one of the most widely ratified treaties. But States have attached more reservations to CEDAW than to any other convention. Reservations enable States to specify the parts of the convention that they will not be bound by. States were saying “yes - but” to women’s equality. As the table shows there are many reservations to Art 29.1 (about using the ICJ to resolve disputes about the treaty between two countries) and Art 16 (about equality in marriage). Thailand, Malaysia, Brunei, and Singapore, have all made reservations on giving equal rights in marriage and nationality. For Malaysia, Brunei, and Singapore, this was because they saw the rights as incompatible with cultural and religious beliefs (or Sharia Law for Malaysia). For Thailand, the reservation against equality in marriage was due to an unwillingness to change existing inequalities in the domestic law. Thai women did not have equality in divorce: for a woman to divorce she needed to prove infidelity of the husband, or for the husband to have been missing for two years. Males do not have the same requirements. Since ratifying the treaty some of these reservations have been withdrawn, including Thailand’s reservation on equality in marriage, but not Malaysia and Singapore’s reservations of articles protecting equality at work and in marriage. There are also reservations on the equal right to citizenship, with some countries only allowing citizen to descend from the father and not the mother. For example, a child born outside of Malaysia can only get citizenship through the father and not the mother. There are five States (all European: Austria, Norway, Netherlands and Germany) who have all made objections to Malaysia’s reservation, but they all note that “the objection shall not preclude the entry into force of the Convention.” It should also be noted that many countries have dropped reservations. Thailand originally made seven reservations, and now has only one.

9.3.1 Non Discrimination in CEDAW

CEDAW defines discrimination as

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 (Art 1)

Discrimination here is the basis of sex, though this can be extended to gender as well, in that most places mix sex and gender. The UDHR, ICCPR, and ICESCR, all written before 1966, also prohibit discrimination on the basis of sex. More recently the *ASEAN Declaration on Human Rights* (2010) prohibits discrimination on the basis of gender. Logically, given the pattern of usage, 'gender' can mean 'sex' and vice versa. So while the *ASEAN Declaration* may appear very contemporary in its usage, because society tends to understand sex and gender the same way, discrimination based on sex or gender is basically the same thing. Feminists, however, note that discrimination against women is caused by almost completely attitudes and values towards gender roles, not to sex, given that sex itself can only be confirmed by a physical examination of a person.

The definition of discrimination in CEDAW has three elements:

- ***A distinction, exclusion, or restriction.*** Examples may be laws terminating employment of women on the basis of marriage or pregnancy, unequal retirement age, unequal inheritance rights, or not letting girls go to school.
- ***A distinction is based on sex (or gender).*** The distinction must be made against women. If the distinction is made for everyone (say a uniform dress code for males and females), then such distinction is not based on sex.
- ***A result of a woman not having equal human rights to a man,*** or does not get human rights at all. Discrimination must result in women not getting access to, or equal human rights to men. For example, women do not have an equal right to a divorce because it is easier for men to divorce, or children cannot get their mother's citizenship, only their father's.

Discrimination can occur in two ways: as a product of laws (*de jure* discrimination) or discrimination in fact or reality (*de facto* discrimination). Laws that do not give women equal marriage rights to men, or restrict women from certain jobs are examples of *de jure* discrimination. *De facto* discrimination occurs where even though there are no laws discriminating against women, the reality is that women do not have equality. For example, even though there are no laws restricting girls from going to school or women from entering formal politics in Southeast Asia, in these countries there are fewer girls in school and fewer female politicians.

9.3.2. Concept of equality in CEDAW

To address discrimination effectively, the objective of eliminating discrimination should result in the equality between men and women. However, there are different views of what equality means. The **formal model of equality** is based on the argument that men and women are the same and therefore, they should be given the same treatment. For women to be equal to men, they must be allowed to do what men do. For example, if men are permitted to study, to work, to vote or run for public office, then women must also be allowed to do so as well. This view, however, fails to

Formal Model of Equality

This model of equality which assumes men and women should be treated exactly the same way.

take into account the biological and gender differences between men and women. For example, women may be allowed to study or work but remain burdened with household chores at home, or they do not get any special allowances for child care. The formal model of equality considers that if differences exist between women and men, then they should be treated differently, in cases such as maternity leave.

Protectionist Approach to Equality

A model of equality which assumes women need special protection because they are weaker

The **protectionist approach to equality** means that women are restricted from doing certain types of work or activities for their own interests. For example, women may be restricted from working in construction sites because of the belief that they may be too weak to do hard physical labor, or they cannot do male-oriented jobs such as being a soldier or sailor because they may be assaulted or harassed at the workplace where most workers are males. This approach recognizes difference between men and women but view such difference as a weakness or inferiority.

The **substantive model of equality** stresses the importance of equality in terms of opportunity and results. The focus is not only on the provision of resources, entitlements and benefits to women, and whether or not they are able to access these opportunities, but also on the positive results and changes to status of women. Equality of opportunity is achieved by creating the necessary laws, policies, and social practices. Equality of results is when the changes result in women gaining equality. For example, a policy that supports women getting into university may give an opportunity, but the real measurement of success is the substantive result of how many women graduate from university. The substantive model of equality recognizes that men and women may be treated differently in order to benefit them equally in accessing opportunities, results and benefits. CEDAW promotes the substantive model of equality in putting an end to all forms of discrimination against women.

Substantive Model of Equality

A model which assumes equality is only reached when the result of a law, policy, or action is that women have equality.

CEDAW uses a substantive equality approach based on both a *de jure* and *de facto* equality between women and men. It is not enough to ensure laws promote equality, but that the result of the laws, and the practice in society, ensures equality and non-discrimination. The Convention recognizes that despite legal rights granted to women in most States, women's rights continue to be challenged by social and customary practices based on the **stereotypical roles** of women and their perceived inferiority to men. CEDAW also recognizes that violations of women's human rights occur both at the public and private spheres and that States have an accountability to address both violations.

Stereotypical Roles

An assumption on what a group of people are like or do. Stereotypes are commonly negative, and they may simplify or exaggerate some feature of a group of people.

In ensuring substantive equality between women and men, CEDAW adopts corrective and transformative approaches. **Corrective approaches** are based on the premise that women are in unequal position because of experiences of discrimination, past or present, or that they face social, cultural and political restrictions that limit the exercise of their human rights. An example of the corrective approach is found in Art 5 which requires that socially constructed differences, such as traditional practices that perpetuate women's subordination and perceived inferiority to men, should be modified. This is one of the more debated articles, as it appears to say that human rights should change culture. The article does not say that culture should be eliminated, but rather that actions which treat women as inferior, say the belief that girls should not go to school, should be modified to allow girls to go to school. CEDAW also adopts a **transformative approach** on equality which argues that equality of results can be achieved by ensuring access to resources and benefits. This can be done through laws or policies which create the conditions enabling women to enjoy of their rights and by affirmative action or special temporary measures such as quota systems, where women's special needs are met.

Corrective Approach

To correct or modify existing behavior or beliefs to ensure women are treated equally

Transformative Approach

Policies and actions which eliminate inequality by ensuring access to resources or through affirmative action.

9.3.3 State Obligations in CEDAW

State parties to CEDAW are obligated to ensure their laws and activities relating to women result in the elimination of discrimination. Like all other human rights treaties, State parties have the duty to respect, protect and fulfill women's human rights. The obligation to *respect* refers to the obligation of the State party to ensure that it does not violate women's rights. The obligation to *protect* refers to the obligation to prevent violations by non-state actors (such as companies, schools, or husbands) and the duty to investigate, punish and redress violations when they do occur. The obligation to fulfill refers to the State obligation to create enabling conditions for all women to enjoy their human rights.

States can apply the wrong approach to a situation of inequality. As an example, in a review by the CEDAW Committee on China's compliance to the Convention, the Committee was concerned that China tried to increase equality by protecting women, especially by managing their reproductive rights through policies like the One Child Policy. The protective approach to equality does not empower women. The CEDAW Committee noted that the government bodies in China (such as, the National Working Committee on Women and Children), were perpetuating views which stop women being seen as equal in status with men by, for example, seeing women as the same as children. Likewise, in other sectors such as labor laws, there was little to empower women in the workplace as the laws emphasized the protection of women from abuse, as if women are weak and need protection by men.

9.3.4 CEDAW Challenges

No one denies that women have legitimate human rights and they should be treated equally, but in reality women are unequal in terms of employment, income, holding elected office, and laws. This contradiction underpins the ratification of the CEDAW convention. Though the convention is strong and innovative, and it is ratified by all Southeast Asian States, this has not resulted in equality for women. Through ratifying CEDAW governments are saying they support women's rights, though whether they do in practice is another matter. Partially this is historical. When CEDAW was ratified in the 1980s the Asian Values arguments had not yet emerged to challenge equal rights. Religious lobbies were not strong at the UN as the Roman Catholic Church was not directly active, and cooperation between the Catholic Church, Muslim States and Evangelical or Christians had yet come into being. Controversial issues like female genital mutilation and rape as a war crime were yet being discussed. Women's rights in these early days was a relatively safe topic.

Even though CEDAW is strong there are still gaps in the convention. One significant gap is that of violence against women (VAW). CEDAW eventually was able to address this through the CEDAW Committee General Recommendation No. 12 of 1989, the *Declaration on the Elimination of Violence against Women* in 1993 and the appointment of a Special Rapporteur on Violence against Women in 1994. Another gap is to 'diversity' issues, or women who suffer discrimination on the basis of sex and some additional factors such as race, sexual orientation, or disability. This is called **intersectionality**, where the two or more forms of discrimination in effect double the impact of the exclusions faced by a woman or girl. An example of this is a woman from an ethnic minority with a disability faces discrimination because of her gender, ethnicity, and disability.

Intersectionality

Where two or more categories of identity, such as gender, ethnicity, or caste, multiply the impact of discrimination

The empowerment of women is standard language at the UN, and prominent in advocating for women's rights, though the term itself is not found in CEDAW. The original language of CEDAW is concerned with the equality with men, as found in Art

3, though in practice CEDAW is not used primarily for this. By basing discrimination on the objective of having equality with men necessitates a comparison to men, defining equality in general as ‘being like a man.’ Limitations are revealed in cases where there is no significant male referent to speak of, for instance, there are few, if any, male migrant domestic workers to compare with the significant number of women migrant domestic workers. As a result, many women’s rights advocates do not use comparison or equivalence in rights as this simple equality fails to take into account the differentiated conditions of women.

9.4 Protection Mechanisms for Women’s Rights

The protection of women’s rights at the international level is found in the treaty bodies, with an Optional Protocol allowing for complaints and investigations. Further, the UN has established a number of bodies to protect women’s rights. There are also mechanisms at the regional level in ASEAN.

9.4.1 Treaty Body Protection Mechanisms: The Optional Protocol

An Optional Protocol to CEDAW (OP-CEDAW) was adopted in October 1999 and came into force just over a year later in December 2000. The Optional Protocol does not create new rights but is a procedure for people to claim their rights. It is the first gender specific complaints procedures adopted, and it improves the existing protection mechanisms for women’s human rights. Currently, it has 107 State Parties. In Southeast Asia, only four have ratified the OP-CEDAW, as seen in Table 9.3.

Table 9-3: CEDAW Optional Protocol Status

States Parties	Ratification Date
Brunei	-
Cambodia	13 Oct 2010
Indonesia	28 Feb 2000 (Signed only)
Lao PDR	-
Malaysia	-
Myanmar	-
Singapore	-
Thailand	14 June 2000
Timor-Leste	16 April 2003
Viet Nam	-
Philippines	12 November 2003

The OP-CEDAW establishes two procedures:

- A **communications procedure** through which the CEDAW Committee can review complaints filed by an individual or a group of individuals seeking redress for specific violations resulting from an act or omission by the State Party.
- An **inquiry procedure through** which the CEDAW Committee can issue comments and recommendations on grave or systematic violations of rights. A grave violation refers to violent or abusive violations. The term ‘systematic’ refers to the scale or prevalence of a violation, or to the existence of a scheme or policy causing the violations.

For the individual communications, as of mid-2016 there have been 67 cases received by the CEDAW committee, of which 15 have found the State in violation, though there are still 26 cases under review. This is a small number compared to ICCPR and CAT complaints procedures which both have over 1000 cases, though these mechanisms have been in force for much longer. The most common case is on violence against women, but also issues like asylum, gender stereotyping, and marriage have been discussed in multiple cases.



CASE STUDY

CEDAW Individual Complaint

In the case submitted to the CEDAW Committee under the individual communications procedure, Karen Vertido claimed that the Republic of the Philippines violated her rights when the courts found her rapist innocent of rape because she did not escape from him. In this case Karen Vertido filed rape charges in 1996 against Jose Bautista Custodio, but after several years in court, he was acquitted in 2005. The Court said that Karen Vertido “had the courage to resist the advances of the accused [and] does not appear to be a timid woman. This Court cannot understand why she did not escape when she appeared to have had so many opportunities to do so.” The court’s decision, which blamed the victim for not escaping rather than punishing the rapist for raping, is based on a stereotype found in many criminal courts where rape is the fault of victim. Karen Vertido’s rights to equal protection of the law and to an effective remedy were violated according to the Committee.

There have been two cases in the inquiry procedure. The first one examines the rape and killing of women in the Juarez area in Mexico (on the border with United States), where around 340 women were killed in recent decades, and the killing still continues today. The CEDAW committee found that the government did not protect women from this violence, which is suspected to occur because of high levels of organized crime, and an environment of impunity because police investigations were often badly done and police failed to protect women. The second case is violence against indigenous women in Canada, where there are high levels of VAW and many unsolved murders of indigenous women. Around half of the murders of indigenous women remain unsolved, though around 80% of murders of non-indigenous women get solved. The procedure is now considering other situations for investigation including the situation of reproductive health rights for women in the Philippines, and the access to abortion for women in Northern Ireland.

9.4.2 Women’s Organizations at the UN

Over time a number of programs, offices and agencies have been established within the UN system dealing with women’s issues. The best known was UNIFEM, the UN Development Fund for Women, which alongside at least 6 other offices or agencies specifically concerned with women’s issues. Though this kind of duplication or overlapping of functions was not unusual for the UN, there was criticism that there were too many offices with too little impact. Women lobbied for the creation of a single, overarching, umbrella organization, headed by a new Assistant Secretary-General, in order to give women’s issues more prominence, better organization, and higher levels of funding within the UN system. The lobbying resulted in the establishment of UN

Women in 2010. The first Executive Director of UN Women was Michelle Bachelet, who had served as the elected head of government in Chile from 2006-2010. Currently, the South African Phumzile Mlambo-Ngcuka serves as UN Women's Executive Director. Other activities at the UN level includes the sponsored world conferences of women in Mexico City (1975), Copenhagen (1980), Nairobi (1985), and Beijing (1995).

FOCUS ON

United Nations Women's Organizations

UN Women: founded in 2010 by UNGA and exclusively focuses in Gender Equality and the Women's Empowerment. UN Women connects four distinct parts of UN System: the Division for the Advancement of Women (DAW), the UN International Research and Training Institute for the Advancement of Women (INSTRAW), the Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women (OSAGI) and UNIFEM (which no longer exists).

Commission on the Status of Women (CSW): Founded in 1946 by ECOSOC, this body is the main intergovernmental body in promoting women's rights. As a commission, and comprised of States, it differs from UN Women which is a program of the UN.

CEDAW committee: This body manages States obligations to the CEDAW treaty. Founded in 1982 and composed of 23 experts on women's issues from around the world, it monitors the implementation of CEDAW.

UN Inter-Agency Network on Women and Gender Equality (IANWGE): A network of Gender Focal Points in UN offices consists of 60 members representing 25 entities of the UN system, playing a central role in promoting gender equality throughout the UN system.

UN Women currently gives priority to three issues: violence against women, women's political participation, and economic integration. Apart from these, women's issues have been incorporated into a number of programs and activities such as the *Millennium Development Goals* where two goals have direct implications for women (3. Gender Equality and 5. Maternal Health). The current Sustainable Development Goals has maintained gender equity as a goal. Other UN organs working on women include the UN Security Council which has produced a number of resolutions on women in conflict, starting with resolution 1325. There has been mainstreaming of gender issues into development programming, with most organizations, and development theory, incorporating views of gender and development and requiring gender equality in all stages of development.

As can be seen, over time women's organizations have been effectively lobbying at the UN and other inter-governmental organizations. While some of the basic goals of these women's organizations are broadly accepted in theory, progress has been slow towards reaching some goals of women's empowerment and gender equality such as giving priority to reproductive rights, which is still controversial at the UN as many States do not recognize women's control over their own fertility. Further, women are still commonly threatened by violence at home, at work, and in conflict situations.



Women are still under represented politically. Even the UN, which is now less of a male-dominated organization, is yet to have a female Secretary General, though there are female candidates for this position.

9.4.3 ASEAN Mechanisms

ASEAN held a Women Leaders' Conference in 1975 (the UN's Year of the Woman), and established what is now the ASEAN Committee on Women the following year. In 1988 the ASEAN Foreign Ministers approved the *Declaration on the Advancement of Women in ASEAN* and in 2002 approved the *Declaration on the Elimination of Violence against Women*. An ASEAN High Level Meeting on Gender Mainstreaming in 2006 adopted a *Joint Statement and Commitment to Implement Gender Mainstreaming*. An ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was formally established on the 7 April 2010, some time after the first call for its establishment in the 2004 Vientiane Action Program. It is an intergovernmental commission made up of 20 representatives nominated from the ten member states in ASEAN (2 representatives from each state, one in women's rights and another on children's rights). Each representative is voluntary and part-time, working for a three-year term. ACWC's primary purpose is promoting the human rights of women and children in ASEAN. It does not have the ability to receive or investigate human rights violations, it is predominantly a promotion, and not a protection, body.

9.5. Women's Human Rights Contemporary Concerns

As the chapter so far has highlighted, there are many areas of concern for women's rights. The remainder of this chapter will discuss four concerns: violence against women, women in politics, and women in work.

9.5.1 Violence Against Women.

Women face violence at home, at work, in public, at a much higher rate than men. It has only been in recent years that much of this violence has been considered a crime. Previously a husband beating a wife was considered a private matter and was socially acceptable in many cultures and communities. Similarly, there was no law against a husband raping a wife (or marital rape) in Southeast Asia. The response to these violations in law and social behavior has significantly changed. Though there were people and organizations in the late 1800s and early 1900s who provided shelters for 'battered women,' there was little action to increase the protection of women. With the coming into force of CEDAW there was greater recognition of the violations caused by **violence against women** (VAW), though this term was not used in the convention itself. Around this time the term **domestic violence** (DV) began to be used, which replace terms like battered women or wife abuse. More recently, **gender based violence** (GBV) is more commonly used. These three concepts will now be examined.



CONCEPTS

Violence Against Women, Domestic Violence, and Gender-Based Violence

Violence Against Women (VAW) covers any form of violence which is directed at women because they are women.

Domestic Violence is violence that happens at the home and can include GBV, VAW, and violence against children. Domestic violence is a term most commonly used in national laws.

Gender Based Violence (GBV) is defined as violence someone faces because of their gender, more commonly because they are not complying with gender normative roles. This violence is often based on an abuse of power between genders. While the major group of concern is women, anyone can be the victim of GBV, including men or boys who are not considered masculine enough.

VAW appears in the General Comments 12 and 19, and in the *UN Declaration on the Elimination of Violence Against Women* (1993) which defines VAW as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Art 1).

The basic element is that VAW is violence done to a woman, almost always by a man (but it may be by other women). As the preamble states, VAW is a result of

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, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared to men.

In this sense, VAW is not an act of violence alone, but also a mechanism of disempowering women. When communities and cultures tolerate VAW they are ensuring that women cannot gain equality in society. A complicity can also be found in governments, police, schools, and families who do nothing to stop the violence.

The definition of GBV from the CEDAW Committee refers to women only: “violence that is directed against a woman because she is a woman or that affects women disproportionately.” GBV is more commonly used now because it recognizes that the violence is socially constructed – it is based on gender and not sex. It is also used because it includes violence against men and boys, and not just women. Because some person is not complying with their gender role in society they may face GBV. The violence can be done to men who are not seen as masculine, or are homosexual. The violence can be done by women to other women as punishment for not conforming to gender values, such as mother in laws harming their daughter in laws because they do not look after their sons well enough.

Domestic violence may take many forms. While physical and sexual violence against wives and daughters is a significant form, it can also include economic and emotional abuse. Economic abuse is when a partner controls the financial resources resulting in one partner losing freedoms or being coerced into activities. The worst forms of domestic violence in Asia are honour killings (where a woman is killed for bringing dishonour to the family by acts such as having a boyfriend), dowry deaths (mainly in India where a wife is killed to get her dowry), and acid attacks (where acid is thrown over a victim's face to disfigure them, often because they have embarrassed or rejected a male's advances). All Southeast Asian countries except Brunei and Myanmar have specific domestic violence laws. Malaysia was first with its Domestic Violence Act of 1994 which protects both females and males, and covers either spouse, a former spouse, children and incapacitated adults, or any member of the family who is subject to violence in a domestic situation. The law provides the remedy of protection orders which can be issued by the courts to restrain violence and other actions such as entering the protected person's place of residence, school or other institution, and communicating with the protected person. Muslim wives who are in abusive marriages can also apply for divorce.

The Philippines' Anti-Violence Against Women and Their Children Act (R.A. 9262), which was passed in 2004, covers domestic violence and updates the criminal code for crimes where there is an intimate relationship. The legislation covers physical, sexual, psychological and economic abuse. The victims of violence include a wife, former wife, or a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or her child whether legitimate or illegitimate. Under the law, violence against women and their children is considered a public offense, which means that a complaint may be filed by any citizen who has personal knowledge of the circumstances involved in the commission of the crime. Indonesia enacted a *Domestic Violence Law* in 2004. The most recent laws are Thailand (2007) and Vietnam (2007).

Table 9-4: Domestic Violence Laws in Southeast Asia

	Relevant law on domestic violence
Brunei	Married Women Act, 1999 (not specific all about domestic violence, but sections 19-25 give some protections)
Cambodia	The Law on Prevention of Domestic Violence and The Protection of Victims, 2005
Indonesia	Elimination of Violence in Household, 2004
Lao PDR	There is a punishment under its penal code, but there is no separate law.
Malaysia	Domestic Violence Act, 1994.
Myanmar	There is a punishment under the penal code, but no separate law. Some laws are based on ethnicity.
Philippines	Republic Act No. 9262 Anti-Violence Against Women and Their Children Act of 2014
Thailand	Domestic Violence Victim Protection Act, 2007.
Timor-Leste	Law on Domestic Violence, 2010
Singapore	Women's Charter 1996 (part VII: Protection of the Family)
Viet Nam	Law on Domestic Violence Prevention and Control, 2007.

The weaknesses of domestic violence acts are that they often do not give full protection from the different forms of violence. Some only cover marriages, so girlfriends, ex-wives, or a gay person is not protected. The laws also vary in what kind of protection

they offer. While some Acts include providing shelters and counseling to victims, other laws do not address this need of the victim. The other major concern is the laws may be strong, but they are not strictly enforced. Many cultures and communities still see domestic violence as a private issue, best left to the family to resolve. A woman may go to the police for help, but they send her back to her husband to sort out the problem herself. The police may think it is not their business to solve domestic disputes, or they may consider protecting the wife will embarrass the husband and his family, or they do not consider the violence severe enough. Unfortunately all these responses are ill considered in both fact and practice. Most women who are murdered are not killed strangers but their husbands. While the rate does vary across the region, the fact is that homes can be more dangerous for women than public spaces.

9.5.2 Women’s Political Representation

One of the top priorities at UN Women has been on women’s political representation. In 2011 the UN General Assembly passed a resolution on women’s political participation which calls on all countries to increase the number of women at all levels of political decision-making, including monitoring progress, conducting trainings, and increasing media on the issue. The facts on women’s participation show their significant under representation: in 2012, women constituted about 19.5% of elected parliamentarians in countries around the world. Only 21 women are heads of state or government out of around 200 governments. Only 1 in 5 parliamentarians are women. Less than 10 % of peace negotiators are women.

Table 9-5: Ranking of Percentage of Women Parliamentarians in Southeast Asia*

	State	Number of women parliamentarians	Female heads of state
1	Timor-Leste	25 women of 65 = 38.5% (2012)	
2	Lao PDR	41 women 149 = 27.5% (2016)	
3	Philippines	79 women of 290 = 27.2% (2013)	Corazon Aquino 1986-1992 Gloria Macapagal Arroyo, 2001-2010
4	Viet Nam	121 women of 498 = 24.3% (2011)	
5	Singapore	24 women of 100 = 24% (2015)	
6	Cambodia	25 women of 123 = 20.3% (2013)	
7	Indonesia	95 women of 555 = 17.1% (2014)	Megawati Sukarnoputri, 2001-2004
8	Myanmar	55 women of 433 = 12.7% (2016)	
9	Malaysia	23 women of 222 = 10.4% (2013)	
10	Brunei	2 women of 31 = 6.5% (2016)	
11	Thailand	12 women of 197 = 6.1% (2014)	Yingluck Shinawatra, 2011-2014

*Based on World Bank data

Even though Southeast Asia has a low rate of women’s political representation, women are beginning to take on more roles in politics. In countries like Thailand it has been noted by social commentators that there is a change with more female District Chiefs or Provincial Governors. Regardless, there are additional challenges to women running to be elected across Southeast Asian countries. Electoral systems are often biased against women because men can raise more money, travel more freely, and are better connected to police, army, and industry than women. Access to funds is a significant challenge because male politicians are more likely than women

to have connections to senior (male) identities in business and finance. Further, male politicians can raise a political profile through new strategies such as ownership of sports teams. Again, this is not available for women. Further, in countries where the military plays a significant role such as Thailand and Myanmar, this automatically excludes women. Myanmar's military reserved seats are almost a *de facto* reservation for male politicians. Voter reluctance to elect women is on the decline, but still significant to impede the election of women.

FOCUS ON

Gender and Politics in Viet Nam

Article 11 on the Law on Gender Equality provides that one of the measures to promote gender equality in the field of politics is to ensure the appropriate proportion of National Assembly female members and People's Committee female members in accordance with national gender equality targets. Nevertheless, during the 2007 elections for the 12th National Assembly, women deputies made up 25% of the total of National Assembly deputies, which was a decline from the figures from 27% the previous year.

Still, even this fairly good number of over a quarter representation of women has its weaknesses. Critics observed that women were well represented in Committees that focus on 'soft' issues such as social affairs, culture, education, youth and ethnic minorities, and poorly represented in committees working on the budget, economics, defense and security. There are very few women in leadership positions.

In Southeast Asia, Indonesia and East Timor are the only countries with electoral quotas for women in the lower house. However, Thailand and Philippines have political parties which voluntarily implement quotas. In South Asia quotas are more common. A *Women's Reservation Bill* is proposed in India that would reserve 33% of the seats in the Lok Sabha (lower house) to women. There are reserved seats at other levels in India, and also Bangladesh, Afghanistan, and Pakistan all have reserved seats for women.

DISCUSSION AND DEBATE

Should women have reserved positions in government?

As Michelle Bachelet, the head of UN Women, has pointed out, UN Women is a strong proponent of temporary special measures, such as quotas, to achieve at least 30% of women in parliament, in line with international agreements. Is reserving positions for women good for equality?

Opponents say that political reservations for women are based neither on equality nor democracy. Also, reserved positions tend to be filled up with wives, sisters, and daughters of other politicians. Just because there are more women does not mean they will be better politicians, especially if they have an easier path to government.

Supporters point out that reservations are a necessary temporary measure to get women into government, and to fix prior imbalances and discrimination. Elections and politics are so inherently biased against women that only a quota or reservations can address the inequality. Finally, because women make up 50% of the population in all countries, they deserve to have more representation in government.

What do you think?

- is a reservation necessary to get more women into government in your country?
- will reservations change the culture in government to allow more female politicians?
- is it fair that it is easier for to be politicians if they have reserved seats?
- how vulnerable to corruption is the use of reserved seats?

9.5.3 Women at Work

Equality in economic rights for women is still a long way off. A list of some facts on Women's Economic Participation from UN Women include:

- Women in most countries earn on average only 60 to 75% of men's wages
- Women devote 1 to 3 hours more a day to housework than men
- Around 50% of the world's working women were in vulnerable employment
- In one study almost 90% of countries have at least one legal difference restricting women's economic opportunities
- Most countries restriction women's access to land, credit, or property for women
- 40% of women leave the workforce early, the majority of them for family reasons.
- Women are always under represented at senior levels in business. For example only 5% of CEOs and 6% of company board members are women in Indonesia.

These differences are mostly in fact and not in law. All Southeast Asian countries have laws against discrimination in the workplace, and equal pay for equal work is protected in law, yet there is still a significant economic disparity between men and women. The reasons given for women's inequality are similar in many countries. Pregnancy is grounds for terminating employment in many countries. They are "last to be hired, first to be fired". Women's livelihood and earning continue to be seen as merely supplementing their husband's income when in fact they suffer more from economic and financial crises.

Though women's labor participation has increased in the last decades, their responsibilities at home have not decreased. A majority of women continue to assume multiple burdens in doing household work, care work for the children, the sick and the elderly while at the same time earning a living for the family. In most instances they are also involved in community work, which are extensions of their household responsibilities. Another reason is that women often work in lower paying and insecure jobs, such as cleaners, hospitality, and service industries. For example, while many women may be serving in a convenience store, few women will be owners or managers of these stores. Compounding these problems are the other inequalities such as access to education, sexual harassment in the workplace, and men conducting business in male only venues (such as sports arenas and golf courses).



CASE STUDY

Discrimination against Women at the Workplace in Southeast Asia

Southeast Asia has recently seen some landmark rulings regarding women's rights.

1. In the Philippines 600 flight attendants filed a suit challenging the legality of a policy mandating that women flight attendants have to retire at the age of 55, whereas the male flight attendants retirement age was 60. In July 2010, the Philippine's trial court issued an injunction against the policy since it was discriminatory towards women.
2. In Malaysia, a teacher was prevented from applying for a teaching post because she was pregnant. She filed a suit that was heard High Court of Malaysia in July 2012. The High Court used CEDAW to judge for gender based discrimination. The court treated CEDAW as a binding law, and found that the restriction imposed on pregnant women was discriminatory and unjust.

Many countries offer maternity leave, but this is as low as 8 weeks in Malaysia, and only as high as 4 months in Vietnam. Further, with little help in childcare, women are often forced to leave work to look after their children.

Table 9-6: Maternity Leave standards in Southeast Asia

	Data on Maternity leave
Brunei	Length of maternity leaves is 105 days of paid leaves, maternity costs paid by government fully.
Cambodia	Female employees are entitled to at 90 days paid maternity leave on the birth of a child (labour code 1997, article 182-185)
Indonesia	Women are entitled to receive full wages during maternity leave, including 1.5 months before the birth and 1.5 months after the birth (MANPOWER ACT NO. 13 OF 2003, ARTS. 82-84)
Lao PDR	90 days with normal pay (article 39-40 of labor law 2006)
Malaysia	Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days with pay (part IX 'maternity protection of Malaysia Employment Act 1955)
Myanmar	Maternity leave is provided to women workers covered by the Social Security Act 1954 for six weeks before and after the expected date of childbirth on the condition of 26 weeks of contribution before the benefit.
Philippines	100 days with paid salary, and extend for 30 days with no pay
Thailand	A pregnant woman is entitled to 90 days maternity leave, including holidays. The employer must pay wages during the leave period, but not exceeding 45 days (Labor Protection Act 1998, maternity leave section)
Timor-Leste	The employee shall be entitled to a maternity leave with pay for a period of at least 12 weeks, 10 weeks of which must necessarily be taken after childbirth without loss of seniority rights and remuneration (article 59 of labor law 2012.
Singapore	8 weeks with pay (session IX 'maternity protection and benefits' of Singapore Employment Act 1981)
Viet Nam	Between 120 to 180 days with paid salary (article 114-115 of labor code 1994)

Women's economic inequality is not just in the workplace alone, as women can be locked out of other income generating resources such as land. The most common tradition with inheritance throughout Southeast Asia is that the eldest son gets the property or family business. Women have also been dissuaded to inherit property for fear that it will be lost to her husband's family. This can be seen in the Thai law (which has been struck) that a Thai woman marrying a foreign man cannot own land, though a Thai man with a foreign wife does not lose his right to property. While there may be cases where the daughter inherits the family business, this is not the norm.

CASE STUDY

Gender and Land Rights in Cambodia

Since the adoption of the Land Law in 2001, approximately 80,000 new land titles have been issued. Some 78% of these are in the names of both wife and husband. When land rights are vested solely in the name of the male head of household, the woman may lose her land rights if the couple separate or divorce, or if the husband dies. An assessment shows that land rights of women, especially for women-headed households, are often ignored, partly owing to women's lack of knowledge of land rights and of titling procedures. Land grabbing by powerful persons also results in a large number of serious human rights violation cases, in which women are evicted from their land and have no place to make a living. For example, in 2004, 307 families living on Koh Pich Island were evicted from their land because of a municipal development project. The majority of these victims were women. Frequent migration to the cities or to more developed towns from rural areas also results in difficulties in obtaining land titles.

(NGO Committee on CEDAW & Cambodian Committee of Women 2006)



Feminization of Labour

Structural changes in economy and production leading towards an increase in women in the labour force, mainly in factories.

Globalization has caused many changes to women's position in the labour force. The phenomenon of the **feminization of labour** is double edged: there are many more women in the labour force, but often in the lower paying jobs. The increase of migrant labour has meant there are more women travelling from work, especially from Philippines and Indonesia. These changes can mean women may have better access to economic resources, but if access to credit and control over assets is not equal women will still face economic challenges.

DISCUSSION AND DEBATE

Women in the Boardroom

Norway introduced a law in 2003 requiring private companies to have at least 40% of board members being women within five years. Norway now leads the world with women accounting for 35% of corporate directors and 18% of senior management. Sweden has set a goal of 50% board representatives. Presently 25% are women. France has set a goal of 40%. Korea is considering a law to set a quota of 30% in five years.



Questions:

- What are the advantages of having women in boardrooms?
- Will laws which force companies to put more women in boardrooms create more gender equality in a company? How?
- Is it fair to force these requirements on a private company?

9.6 Conclusion

This chapter examines the cultural and institutional reasons for discrimination against women. The CEDAW treaty is the main human rights treaty working against discrimination, and its ratification throughout Southeast Asia should infer that States are addressing the discrimination faced by women. However, discrimination is deeply entrenched in cultural and traditional values, and there is still much work that needs to be done before women are treated equally in Southeast Asia. While sectors of work, politics, and violence were discussed, there are many more areas of concern in women's rights including reproductive health, education, and religion.

A. Chapter Summary and Key Points

Introduction

Women are rarely, if ever, given the same opportunities as men. Women face discrimination in many areas including work, education, culture, and health. The history of the women's rights movement focuses on women's suffrage and the rise of feminism in the 1960s, but the struggle for women's equality has a longer history. Women were active from ancient society, through the European enlightenment, to contemporary times. In Southeast Asia, early activists worked on education, voting, and welfare. The modern women's liberation movement was influential in the UN's International Women's Year and with the adoption of CEDAW (1979).

Defining Discrimination

Discrimination conflates the concepts of sex (or a person's biology) and gender (or a person's social role and expectations as a male or female). Sex is biologically determined, though recently scientific studies have shown a body is not always either male or female. Gender is the attributes and traits, many linked to traditional values, that men and women are expected to adhere to. One assumption is that people of a sex will automatically play the gender role. This can be disempowering for women as they are expected to be mothers or housewives, and not active in politics or business. These roles are socially constructed, and supported by institutions such as the family, schools, workplaces, and religion. Men and women who fail to conform to these gender norms may be subjected to various forms of discrimination, social pressure, shame, and abuse.

CEDAW

The CEDAW defines discrimination and identifies where governments should focus on their efforts to achieve equal rights for women. Most opposition to CEDAW is about rights which clash with culture and religion, especially around the family and marriage. CEDAW asks States to modify laws to incorporate the principle of non-discrimination, ensure women access to justice, accelerate equality, and modify culture. Though CEDAW is widely ratified treaty, it has more reservations than any other convention. Reservations are on equal rights in marriage, equality in divorce and equality at work. Discrimination in CEDAW has three elements: some kind of distinction, exclusion, or restriction, which is based on sex, with the result that a woman does not get equal human rights to a man. Discrimination can occur in two ways: as a product of laws (*De Jure* discrimination) or discrimination in fact or reality (*De Facto* discrimination). State parties have to ensure that actions and laws result in the elimination of discrimination.

Concept of Equality in CEDAW

The formal model of equality is based on the argument that men and women are the same and therefore, they should be given the same treatment. The protectionist approach to equality means that women are restricted from doing certain types of work or activities for their own protection. The substantive model of equality, which is used by CEDAW, sees equality in terms of opportunity and results. CEDAW also has corrective approaches where States must correct practices that perpetuate women's subordination and inferiority. CEDAW could be stronger in violence against women, diversity issues, and promoting the empowerment of women

Protection Mechanisms on Women's Rights

The protection of women's rights at the international level is found in the Optional Protocol to CEDAW which has a communications procedure for individual complaints (with around 67 cases) and an inquiry procedure which has looked at cases in Mexico and Canada. A number of programs, offices and agencies have been established within the UN such as UN Women in 2010, the Commission on the Status of Women founded in 1946, and the UN Inter-Agency Network on Women and Gender Equality.

While some goals of these women's organizations are accepted, progress has been slow towards goals of women's empowerment, reproductive rights and violence. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children is a regional body promoting women's and children's rights.

Violence Against Women

Women faced violence at home, at work, in public, at a much higher rate than men. VAW covers all forms of violence, though more recently the term domestic violence is used to talk about violence by a partner, and now gender based violence includes any violence done because people are not complying with their gender roles. VAW is both an act of violence and a mechanism for disempowering women. When communities and cultures tolerate VAW they are ensuring that women cannot gain equality in society. Violence is socially constructed and can be done as punishment for not conforming to gender values. Domestic violence may take forms of physical, sexual, economic and emotional abuse. Nearly all Southeast Asian countries have Domestic Violence Laws but they can be weak when they do not give full protection from the different forms of violence, and they are not strictly enforced.

Women's Political Representation

Women's political representation is a UN Women priority. Women are significantly underrepresented in Southeast Asian governments. The challenges to women

getting elected are that men can raise more money, travel more freely, and are better connected to police, army, and industry than women. Some countries have electoral quotas for women, but there is still some debate on this.

Women at Work

Women do not have equality in economic rights. Women are paid less, work more, and do not get equal access to credit, income generating resources and inheritance. Women work more in lower paying and insecure jobs while also being unprotected from sexual harassment in the workplace. When women get pregnant, they may get sacked or have insufficient maternity leave. Labour has changed with globalization, with more women working and increased migration for work, which has both positive and negative consequences.

B. Typical exam or essay questions

- Do you think the physical differences between men and women justify some different treatment? Explain why or why not.
- Has your country made any reservations to CEDAW? What are they? Do you agree with them? Why or why not?
- Do laws on domestic violence in your country give women greater protection?
- Do women hold government or high-ranking positions in your country? What are the challenges for women to get elected to government?
- Do female university students face any forms of discrimination at your university? Do they get the same opportunities as male students?
- What are some difference in women's rights today compared to people of your grandmother's generation? When your grandmother was young, did she get the same opportunities as women today in terms of education, work, and social freedoms?
- What are examples of traditional cultural beliefs and practices which discriminate against women? How difficult is it to modify these practices and beliefs?
- Find an example of a court case based on discrimination against women. Outline the case, the discrimination, and discuss if the finding is justified.

C. Further Reading

There are many authors writing on feminism. Those writing more specifically on women's human rights include

- Charlotte Bunch
- Martha Nussbaum
- Niamh Reilly
- Julie Peters
- Rebecca Cook
- Vera Mackie
- Maila Stivens

International organizations with programs and research on women's human rights include:

- UN Women
- UN Women Watch
- Equality Now

Asian based organizations working on women's right include:

- Asia Pacific Forum on Women, Law and Development (APWLD)
- Asia Foundation: Empower Women
- Asian-Pacific Resource and Research Centre for Women
- Committee for Asian Women
- International Women's Rights Action Watch Asia Pacific (IWRAP, Asia Pacific)

Sites with specific focus:

- **Violence:** Stop Violence Against Women (STOPVAW), a project of The Advocates for Human Rights,
- **Economics:** EmpowerWomen.org, a global community advancing women's economic empowerment.
- **Politics:** International Knowledge Network of Women in Politics