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From Ratification to Integration: A Critical Analysis of the Domestic Incorporation of CEDAW in Sri Lanka

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Abstract

Sri Lanka, as a state party to CEDAW and its Optional Protocol, has undertaken the obligation to respect, protect, promote, and fulfil the treaty at the national level. This thesis examines the extent to which CEDAW has been integrated into the Sri Lankan legal system and addresses the inadequacies, obstacles and challenges that impede the treaty's full and effective domestic incorporation at the national level. Selecting 'Sri Lanka' as a case study offers valuable insights into the unique challenges faced by a multicultural, multi-ethnic country with a pluralistic legal system and a colonial history that strives to achieve substantive equality and non-discrimination for women, in line with CEDAW. The main objectives of this thesis are to identify the challenges and obstacles that prevent Sri Lanka from fully and effectively integrating CEDAW into its domestic legal system and to provide recommendations to address them. To achieve these objectives, the research utilises the socio-legal methodology to explore how socio-cultural factors affect the practical implementation of the CEDAW principles in Sri Lanka.

Keywords: CEDAW, Domestic Incorporation (of an International Treaty), Gender Equality, Non-discrimination, State Obligation, Sri Lanka

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The Kandyan Marriage and Divorce Act, No. 44 of 1952.

The Marriage Registration Ordinance, No.19 of 1907.

The Married Women's Property Ordinance, No. 18 of 1923.

The Matrimonial Rights and Inheritance Ordinance, No.15 of 1876.

The Penal Code of Sri Lanka, No. 2 of 1883.

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Preface

The motivation behind this thesis is rooted in my sense of responsibility, as a lawyer and lecturer, to examine gender inequalities affecting women in Sri Lanka and to propose recommendations to address them. With that, it is aimed to contribute to the broader effort to achieve gender equality and prevent discrimination against women. Furthermore, my research is inspired by my personal experiences as a Sri Lankan woman who has encountered various inequalities, challenges, and obstacles. This journey has compelled me to shed light on the status of Sri Lankan women in the national legal system, who often face multiple and intersecting forms of discrimination within the framework of legal pluralism and a patriarchal socio-cultural setting.

In this thesis, I primarily investigate the extent to which CEDAW has been integrated into Sri Lanka's domestic legal framework, considering Sri Lanka's status as a state party to both CEDAW and its Optional Protocol. I believe this research will enrich the ongoing academic discourse on women's rights, gender equality, and states' obligations under CEDAW, while also serving as a valuable resource for students, researchers, and practitioners who are interested in reading and conducting further research in this field.

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31 January 2026

Author's Declaration

I declare that, except where explicit reference is made to the contribution of others, this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Name: Gammanpila Imiyage Don Isankhya Udani

Signature:

Date: 31 January 2026

Abbreviations and Acronyms

| | |
|-----------|--|
| BCC | British Broadcasting Corporation |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CENWOR | Centre for Women’s Research |
| FR | Fundamental Rights |
| GBV | Gender-based Violence |
| JMRIO | Jaffna Matrimonial Rights and Inheritance Ordinance (of Sri Lanka) |
| LGBTQI | Lesbian, Gay, Bisexual, Transgender, Queer and Intersex |
| MMDA | Muslim Marriage and Divorce Act (of Sri Lanka) |
| MP | Member of the Parliament |
| NCPA | National Child Protection Authority (of Sri Lanka) |
| NCW | The National Commission on Women (of Sri Lanka) |
| NGO | Non-Governmental Organisation |
| OHCH | United Nations High Commissioner for Human Rights |
| SDGs | Sustainable Development Goals |
| SGBV | Sexual and Gender-Based Violence |
| Sri. L.R. | Sri Lankan Law Reports |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNFPA | United Nations Population Fund |
| UNIFEM | United Nations Development Fund for Women |
| VCLT | Vienna Convention on the Law of Treaties |

Glossary of Technical and Non-English Words and Terms

- *'Special Laws' or 'Personal Laws' of Sri Lanka*

For the purposes of this thesis, the special laws or personal laws of Sri Lanka include Kandyan Law, Muslim Law, and *Thesawalamai*.

- *Thesawalamai*

Thesawalamai, or Tesawalamai, is a special law of Sri Lanka that applies to the Tamil inhabitants of the Northern Province.

- *Kandyan Law*

Kandyan law is a special law of Sri Lanka that applies to the Kandyan Sinhalese. Kandyan Sinhalese are descendants of Sinhalese subjects of the Kandyan kings prior to the British occupation of the Kandyan kingdom of Sri Lanka in 1815.

- *Quazi*

Quazi is a male Muslim who holds judicial power and is appointed by the Judicial Service Commission of Sri Lanka to adjudicate on marriage, divorce, and related family disputes under the Muslim Marriage and Divorce Act, No.13 of 1951.

CHAPTER – 1

Introduction

1.1 Research Background

Ensuring equality and non-discrimination for women is not only a fundamental human right but also a significant component of the Sustainable Development Goals (SDGs).¹ Despite the recognition in international treaty law that ‘the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world’,² the unequal status of women in many legal systems has not yet been adequately and effectively addressed. The adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³ and its Optional Protocol,⁴ is considered the most significant milestone in the history of women’s rights.

Having been convinced that ‘for the full development of a country, and the welfare of the world requires the maximum participation of women on equal terms with men in all fields, CEDAW requires the adoption of the measures required for the elimination of such discrimination in all its forms and manifestations.’⁵ The domestic incorporation of CEDAW⁶ is of paramount importance for various reasons. On the one hand, it confers legal enforceability on the treaty in national jurisdictions, thereby guaranteeing legal protection against violations. On the other hand, domestic integration of the treaty reflects the state party's commitment to fulfilling its international obligations under CEDAW. In this context, this thesis examines “Sri Lanka as a case study” to evaluate the domestic incorporation of CEDAW and identify existing gaps, challenges and obstacles that impede its effectiveness, offering recommendations to address these issues.

¹ ‘Gender Equality and Empowering all Women and Girls is the fifth goal of the UN Sustainable Development Goals,’ See United Nations, ‘Transforming Our World: the 2030 Agenda for Sustainable Development’ (adopted on 25 September 2015). <<https://sdgs.un.org/2030agenda>> accessed 18 November 2024.

² The Universal Declaration of Human Rights (UDHR) (10 December 1948), UN General Assembly Resolution 217 A-III, Preamble.

³ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (adopted on 18 December 1979 and entered into force on 3 September 1981), UN General Assembly Resolution 34/180.

⁴ The Optional Protocol to CEDAW (adopted on 6 October 1999 and entered into force on 22 December 2000).

⁵ CEDAW, Preamble, paras. 12 and 15.

⁶ In this thesis, the author uses CEDAW, which refers to “the CEDAW.”

1.2 The Significance of the Study

From the historical-legal lens, the gender-neutral, symmetrical approach followed in major human rights treaties has proven its inadequacy in addressing the widespread issues of gender-based discrimination against women. Consequently, there was an urgent need to adopt an international treaty that employs an “asymmetric and gender-specific approach” to achieve practical realisations of equal rights for women and girls.⁷ To fill that vacuum, CEDAW was adopted in 1979 as a gender-specific international treaty to ensure equality between men and women. CEDAW emphasises the crucial obligation of the state parties⁸ to the treaty to eliminate discrimination against women in all its forms that exist in the political, economic, social, cultural, civil or any other field.⁹ CEDAW is the most significant milestone in the history of women’s rights.

A state party's genuine commitment to an international human rights treaty becomes evident not only through ratification but also through efforts to incorporate the treaty into its domestic legal system. For example, this process involves translating the treaty's provisions, principles and values into an enforceable national legal instrument that directly benefits the country's citizens and abolishing national laws, policies, and practices that contravene the treaty’s obligations. Notwithstanding that CEDAW has long been ratified by many countries, the “Commonwealth Secretariat” in its research publications has observed that ‘domestic legislative actions for the actualisation of the rights in the convention have yet to be consummated.’¹⁰ Sri Lanka undertook this treaty obligation by ratifying CEDAW in 1981 and its Optional Protocol in 2002, thereby demonstrating the country's voluntary consent to respect, protect, promote and fulfil its obligations under

⁷ Anne Hellum and Henriette Sinding Aasen, ‘Introduction’, in Anne Hellum and Henriette Sinding Aasen (eds.), *Women’s Human Rights: CEDAW in International, Regional, and National Law* (Cambridge 2013), 2, cited the work of A. Byrnes, ‘Article 1’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford 2012) 51-70, 52.

⁸ CEDAW (n3). arts 2 and 3.

⁹ CEDAW (n3), art.1

¹⁰ CC Nweze, ‘Domestication of CEDAW: Points to Consider for Customary Laws and Practices’, in Meena Shivdas and Sarah Coleman (eds.), *Without Prejudice: CEDAW and the Determination of Women’s Rights in a Legal and Cultural Context* (Commonwealth Secretariat 2010), 49-73, 73. Also, see Shanthi Dairiam, ‘Progress, Achievements, Constraints and Key Priorities’, *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005-2015* (Commonwealth Secretariat 2004), 8.

CEDAW at the national level. It should also be noted that Sri Lanka has not made any reservations to CEDAW, which indicates that the country accepts all provisions of the convention.

According to Article 24 of CEDAW, 'States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the Convention.' In addition, the CEDAW General Recommendation No. 28 on the Core Obligations of States Parties specifically stipulates that 'by ratifying the Convention or acceding to it, States Parties undertake to incorporate the Convention into their domestic legal systems or to give it otherwise appropriate legal effect within their domestic legal orders to secure the enforceability of its provisions at the national level.'¹¹ These provisions indicate that, although ratification of CEDAW is a country's voluntary decision, once the convention is in force, that pledge becomes a state obligation to ensure full compliance with the convention within its domestic jurisdiction. Moreover, the practical implementation of CEDAW at the national level has been connected to the UN SDGs through their shared vision and mutual commitments.¹²

Despite this obligation, many state parties, including Sri Lanka, have not yet fully incorporated the rights and principles enshrined in CEDAW into their national laws, resulting in a significant gap between ratification/accession to the treaty and the actual realisation of women's rights on the ground. This thesis will first explore the degree to which CEDAW has been integrated into the Sri Lankan legal system. Subsequently, it will be essential to identify the challenges and obstacles that hinder the effective incorporation of CEDAW into the country's domestic legal system. Finally, this research will provide recommendations to address the identified issues, considering the unique characteristics of the Sri Lankan legal system. In this way, this thesis will emphasise the significance of

¹¹ The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW (16 December 2010), CEDAW/C/GC/28, para. 31.

¹² UN SDGs (n1), The CEDAW not only aligned with 'the 5th goal' but is also associated with other SDGs such as 'no poverty' (1st goal), 'good health and well-being' (3rd goal), 'quality education' (4th goal), 'decent work' (8th goal), 'reduce inequalities' (10th goal) and 'peace, justice and strong institutions' (16th goal). Furthermore, in 2022, the CEDAW Committee issued guidance to state parties on preparing CEDAW country reports aligned with the SDGs. See, The CEDAW Committee, 'Guidance Note for States Parties for the Preparation of Reports under Article 18 of the CEDAW in the Context of the Sustainable Development Goals' CEDAW/C/74/3, Adopted by the Committee at its 74th session, (18 December 2019). [Emphasis added by the author]

the practical realisation of equal rights and opportunities for women in Sri Lanka through the full and effective implementation of CEDAW.¹³

1.3 Research Problem

As a state party to CEDAW and its Optional Protocol, even though Sri Lanka has demonstrated considerable progress in the domestic incorporation of the treaty in recent years, including the enactment of domestic implementing legislation by Parliament,¹⁴ this research noted that the country has not yet fully and effectively incorporated CEDAW into its national legal system.¹⁵ The research problem in this thesis examines the extent to which CEDAW has been integrated into the Sri Lankan legal system and how to address the gaps, inadequacies, and challenges that impede the treaty's effective domestic incorporation.

1.4 Research Objectives

The objectives of this research are

- to discuss the relevant theories, principles and approaches associated with the domestic incorporation of CEDAW.
- to examine the degree to which CEDAW has been incorporated into the legal system of Sri Lanka through various methods.
- to examine the gaps, challenges and obstacles that prevent Sri Lanka from fully and effectively incorporating CEDAW in its domestic legal system.
- to offer recommendations to eliminate the identified gaps, challenges and obstacles that Sri Lanka encounters in the domestic incorporation of CEDAW.

¹³ In this thesis, “implementation of CEDAW” refers to the implementation of CEDAW in light of the interpretations and recommendations provided in CEDAW General Recommendations.

¹⁴ The Women Empowerment Act, No. 37 of 2024 of Sri Lanka (Certified on 2nd of July 2024), sec. 2(b) and 45.

¹⁵ The CEDAW Committee, *The Concluding Observations on the ninth periodic report of Sri Lanka* (CEDAW/C/LKA/CO/9, 28 February 2025). Also see Chapters 3 and 4 of this thesis for a detailed analysis.

1.5 Research Questions

This thesis will examine four main questions.

- What theories, principles and approaches are linked to the state obligation concerning domestic incorporation of CEDAW?
- To what extent has CEDAW been incorporated into the Sri Lankan legal system, and what methods have been utilised for this purpose?
- What kind of challenges, gaps, and obstacles does Sri Lanka face in integrating CEDAW into its domestic legal framework?
- How can the identified gaps, challenges and obstacles be addressed effectively to ensure the domestic incorporation of CEDAW in Sri Lanka?

1.6 Research Limitations and the Choice of Case Study

1.6.1 Research Limitations

A thesis of this length cannot be comprehensive; however, it still has to maintain the necessary robustness of analysis, which is a challenge. Therefore, in this chapter, it is essential to clarify the limitations of this research. This research recognises that the definition of ‘gender equality’ and ‘non-discrimination’ has evolved to encompass more than the male-female binary. However, this thesis confines itself to “gender equality between men and women” as a research limitation but acknowledges that the state’s obligation under CEDAW encompasses protecting the rights of trans women and women with same-sex orientation, as well.¹⁶ This research discusses only selected case law and illustrations to substantiate the findings and arguments, due to the word limit.

¹⁶ The CEDAW Committee has acknowledged that its protection covers women who are ‘lesbian, bisexual, transgender or intersex, and these factors affect their lives.’ See the CEDAW Committee, General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 (adopted on 26 July 2017), para 12. Moreover, see *Rosanna Flamer-Caldera v. Sri Lanka*, Views adopted by the CEDAW Committee under Article 7(3) of the Optional Protocol, Communication No. 134/2018 (24 March 2022), CEDAW/C/81/D/134/2018, paras 9, 10 and 11.

It is important to note that the terms "women's rights" and "equality for women" used in this thesis extend beyond adult women to encompass the rights and freedoms of girls. Therefore, the term 'women' used in this thesis refers to females of all ages, including "trans women" where it is relevant. Given the scope and length of this thesis, it is realised that there is insufficient space in this thesis to dedicate an entire chapter solely to the literature review. Therefore, the relevant literature in this area is discussed throughout the thesis, rather than in a separate chapter. Furthermore, this research does not address all the challenges Sri Lanka faces in implementing CEDAW, nor does it provide a comprehensive discussion of all recommendations, due to the thesis's word limit.

1.6.2 The Choice of Jurisdiction For the Case Study

The legal system of Sri Lanka operates within the constitutional framework established by the Constitution of the Democratic Socialist Republic of Sri Lanka of 1978.¹⁷ The country adopts a dualist approach to the domestication of international treaties. Sri Lanka signed CEDAW on 17 July 1980 and ratified the Convention on 5 October 1981. Additionally, on 15 October 2002, Sri Lanka acceded to the Optional Protocol to CEDAW.¹⁸ Following the ratification of CEDAW, Sri Lanka adopted the Women's Charter of Sri Lanka in 1993 as the national policy on women's rights.¹⁹

In 2024, the enactment of the Women Empowerment Act²⁰ demonstrates Sri Lanka's intention and efforts to grant legal enforceability to the rights and principles outlined in CEDAW at the national level. In addition, the establishment of institutions dedicated to guaranteeing women's rights, safety and empowerment;²¹ the abolition of gender-

¹⁷ The Constitution of the Democratic Socialist Republic of Sri Lanka (31 August 1978).

¹⁸ The Office of the United Nations High Commissioner for Human Rights (OHCHR), UN Human Rights Treaty Bodies, View the Ratification Status by the Country, Ratification Status for Sri Lanka. <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN>accessed on 12 May 2025.

¹⁹ The Women's Charter of Sri Lanka, (Approved on 3 March 1993), Preamble.

²⁰ The Women Empowerment Act, No. 37 of 2024 of Sri Lanka (certified on 2 July 2024).

²¹ For example, the National Committee on Women in Sri Lanka was established on 8 March 1993 to implement the Women's Charter of Sri Lanka (1993). Also, the National Child Protection Authority (NCPA) was established under the NCPA Act, No. 50 of 1998. Also, the Bureau for the Investigation of Abuse of Children and Women has been established by the Police Department in Sri Lanka.

discriminatory laws and policies;²² providing gender-sensitive training for judicial and law enforcement officers; and raising awareness to promote gender equality are among the progressive steps towards ensuring the full and effective domestic integration of CEDAW in Sri Lanka.

Selecting Sri Lanka for the case study provides readers with valuable insights into the unique challenges faced by a multicultural, multi-ethnic nation with a pluralistic legal system and a colonial history,²³ as it seeks to incorporate CEDAW into its national legal framework. Due to the ethnic, religious, and cultural diversity, as well as the influence of European colonial rule for centuries, Sri Lanka has evolved into a pluralistic legal system with distinctive characteristics. The Sri Lankan legal system is enriched by various laws, including Roman-Dutch law, English law, Muslim law, Kandyan law,²⁴ and *Thesawalamai*.²⁵ According to Nadaraja, ‘anyone who undertakes a serious study of the legal system of Ceylon [Sri Lanka] soon finds that it cannot be properly understood without tracing several rules and institutions back to their origins in the past of a variety of countries: Ceylon, India, Arabia, Italy, the Netherlands and England.’²⁶

This research considers Sri Lanka as a pertinent case study, particularly given the challenges associated with the country's efforts to integrate CEDAW into its domestic legal framework. The various obstacles that impede progress in these efforts include the dualistic legal approach in adopting international treaties, the absence of post-enactment judicial review, the constitutional protection for gender-discriminatory laws enacted before 1978, the absence of political will to repeal gender discriminatory laws and the pervasive influence of patriarchal socio-cultural norms within society. Consequently, Sri Lanka is an appropriate case study for this thesis, given its distinctive social, cultural and legal environment, as well as the author's familiarity with the Sri Lankan law.

²² For example, the Land Development (Amendment) Act, No. 11 of 2022, sec.10, amended the Third Schedule of the principal enactment to abolish the male-preference rule concerning state lands inheritance in Sri Lanka.

²³ Sri Lanka was colonised by three European powers: the Portuguese (1505–1658), the Dutch (1658–1796), and the British (1796–1948).

²⁴ “*Kandyan law*” is a special law of Sri Lanka that applies to the *Kandyan Sinhalese*. *Kandyan Sinhalese* are descendants of Sinhalese subjects of the Kandyan kings prior to the British occupation of the Kandyan kingdom in 1815.

²⁵ “*Thesawalamai*” is a special law in Sri Lanka that applies to the Tamil inhabitants of the Northern province of the country.

²⁶ T. Nadaraja, *The Legal System of Ceylon in Its Historical Setting* (E.J. BRILL 1972), 1.

1.7 Research Methodology

This research employs a socio-legal methodology to illuminate the key obstacles and inadequacies hindering the full and effective domestic incorporation of CEDAW in Sri Lanka and to recommend measures to overcome these legal, social, political, and cultural barriers. The jurisprudential foundation of this research is grounded in ‘Third-world feminist theory’, which critically examines the distinct experiences and challenges faced by women in developing countries stemming from a combination of sexism, patriarchy, racial oppression, colonial history, and poverty. According to Hunter, ‘there is a strong affinity between feminist scholarship and socio-legal scholarship to the extent that both are concerned with the social experience and effects of law, and both reject the ‘separation thesis’ that is, the notion that law operates according to its own internal logic, autonomously from society.’²⁷ The socio-legal approach adopted in this research emphasises the need to recognise how domestic legal systems confront the lived experiences of individuals and groups, as well as the practical challenges when implementing international legal principles on women’s rights at the national level.

This research will employ a range of primary and secondary sources to support its analysis. The primary sources encompass constitutional provisions, relevant statutes, international treaties, and judicial decisions. In this research, the focus will be on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the pivotal international treaty in the thesis's research area. In terms of secondary sources, this thesis will utilise scholarly writing that provides critical insights into this research area, as well as commentaries on judicial decisions and on CEDAW. Furthermore, archival research conducted at the Sri Lanka National Archives is utilised as a data collection method, which will entail an investigation of the legislative history of the selected statutes and draft bills.

Furthermore, as described in “justification of the choice of jurisdiction” under section 1.6.2 of Chapter 1 of this thesis, Sri Lanka is selected for the country-based legal analysis. The case-study analysis method utilised in this thesis involves a critical examination of relevant legal authorities to assess the adequacy of Sri Lanka's existing legal framework regarding

²⁷ Rosemary Hunter, ‘Feminist Approaches to Social-Legal Studies’ in Naomi Creutzfeldt, Marc Mason and Kirsten McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2020), 260.

women's equal rights, as well as the direct and indirect consequences of gender-discriminatory laws against women. However, pertinent examples from other countries, such as India, and the CEDAW Committee's decisions under the CEDAW individual communication procedure concerning state parties will be discussed in relevant sections of the thesis to further substantiate the research findings and arguments.

1.8 The Outline of the Thesis

This thesis is structured into six chapters.

- **Chapter 1** will provide an overview of the research background, highlighting the study's significance, outlining the research problem, and defining the research objectives and questions. It will also detail the research methodology, discuss limitations, justify the choice of jurisdiction and present the thesis outline.
- **Chapter 2** of this thesis will describe the significance of the domestic incorporation of CEDAW, outlining the scope and objectives of the CEDAW principles of 'state obligation', 'gender equality', and 'non-discrimination'.
- **Chapter 3** will examine the extent to which CEDAW has been incorporated into the Sri Lankan legal system, examining the relevant constitutional provisions, domestic legislation, and judicial decisions.
- **Chapter 4** will examine the challenges, gaps and obstacles that hinder the effective and full incorporation of CEDAW in the legal system of Sri Lanka.
- In **Chapter 5**, the thesis aims to provide recommendations to address the identified gaps, challenges and obstacles encountered by Sri Lanka.
- **Chapter 6** provides a summary of key findings of the thesis, a reflection on theoretical implications and concluding remarks.

Within this thesis framework, this research seeks to investigate the opportunities available to Sri Lanka to overcome the obstacles and challenges that impede the full and effective incorporation of CEDAW at the national level.

CHAPTER - 02

State Obligation under CEDAW: Principles, Theories and Approaches

2.1 Introduction

A state party cannot effectively integrate CEDAW into its legal framework without a comprehensive understanding of the convention's expectations regarding the safeguard of equality and non-discrimination for women. Thus, this research must first explore the nature and scope of the principles and standards embedded in the treaty before turning to the case study of Sri Lanka. With that objective in mind, this chapter describes the key theories, principles, and approaches relevant to states' obligations under CEDAW to incorporate the treaty into their domestic legal systems.

First, this chapter examines the multifaceted nature of the principle of state obligation, with particular reference to CEDAW. Second, it examines the interplay between domestic law and international treaty law, emphasising the challenges and opportunities that state parties face in incorporating international treaties into national law, drawing on examples from Sri Lanka and India.²⁸ Through this theoretical exploration, this chapter emphasises that the state's efforts to integrate CEDAW into its national legal system should align with the core, interrelated principles of CEDAW: substantive equality, non-discrimination, and the obligation to respect, protect, promote, and fulfil the treaty.

2.2 The State Obligation Arising from the Ratification of /Accession to an International Human Rights Treaty: With a Focus on CEDAW

2.2.1 The Nature of the 'State Obligation' under International Treaty Law

The 'state obligation' in international treaty law holds that, upon a state's ratification or accession to a treaty, that undertaking thereby creates obligations for the state parties to comply with. Under international treaty law, the principle "*Pacta sunt servanda*"

²⁸ Chapters 3, 4, 5, and 6 provide an analysis of Sri Lanka, which is the case study of this thesis. In addition, Chapter 2 includes examples from Sri Lanka and India to support its arguments and findings.

(agreements must be kept) imposes an obligation on state parties to honour their treaty commitments. The International Law Commission in its Commentaries describes that ‘the *motif of good faith* applies throughout international relations, but it has a particular importance in the law of treaties.’²⁹ This principle is enshrined in Article 26 of the “Vienna Convention on the Law of Treaties” (VCLT), and it stipulates that ‘every treaty in force is binding upon the parties to it and must be performed by them in good faith.’³⁰ The phrase “binding upon the parties” in Article 26 of the VCLT indicates that the principle of *pacta sunt servanda* creates a legal obligation for state parties upon ratification/accession to an international treaty.

In addition, Article 27 of the VCLT states that ‘a [state] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.’³¹ In particular, Article 27 aims to prevent state parties to international treaties from invoking their national laws to evade compliance with their treaty obligations. In analysing Article 27, this research posits that a state party to CEDAW is expected to fulfil its treaty obligations in good faith, irrespective of any challenges or limitations posed by its domestic legal system, such as the pluralistic nature of the domestic legal system, deep-rooted cultural norms and practices that discriminate against women, or the dualistic approach to incorporating international treaties into national law.

The moral obligation of state parties to comply with an international treaty derives from a country’s agreement to ratify or accede to the treaty. It is accepted that such “voluntary consent” not only reflects an intention to engage with the norms and responsibilities outlined in the treaty but also embodies a deeper ethical duty to honour those pledges in the spirit of cooperation among nations. According to Lefkowitz, ‘states have a moral duty to obey international law that is grounded in the principle of fairness.’³² Thus, this

²⁹ The International Law Commission, The Draft Articles on the Law of Treaties with Commentaries at its 18th session (1966-II), UNYB, 211.

³⁰ United Nations, Vienna Convention on the Law of Treaties (VCLT), (adopted on 23 March 1969, entered into force on 27 January 1980), art 26.

³¹ *ibid.* VCLT, art 27.

³² David Lefkowitz, ‘The Principle of Fairness and States’ Duty to Obey International Law’ (2011), Philosophy Faculty Publications, 1, 34.

<<https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1059&context=philosophy-faculty-publications>> accessed 16 May 2025.

research argues that, even in the absence of legal repercussions for state parties for breaching their treaty obligations, the deep moral responsibility arising from the ‘voluntary consent’ given in becoming a state party should remain a compelling reason to respect, protect, and fulfil their treaty commitments. Thus, state parties to CEDAW have legal and moral obligations to comply with and integrate the treaty in their domestic legal systems.

2.2.2 The Viewpoint of the CEDAW Committee³³ Concerning the ‘State Obligation’

The CEDAW Committee asserts that state parties assume a legal obligation upon ratification or accession to the CEDAW.³⁴ The committee’s viewpoint is evident in the CEDAW General Recommendation No.25, which emphasises that ‘states parties to CEDAW are under a legal obligation to respect, protect, promote and fulfil the right to non-discrimination for women and to improve their position to one of *de jure* as well as *de facto* equality with men.’³⁵ Similarly, the CEDAW General Recommendation No.28 affirms that ‘a state party has a general legal obligation to implement CEDAW.’³⁶ The General Recommendation No.38 also stipulates that ‘States parties bear a legal obligation to respect and ensure the rights set out in the Convention to anyone within their power or effective control...’³⁷ The CEDAW Committee asserts that CEDAW is a legally binding instrument that imposes obligations on the parties to the Convention.

On the other hand, a significant number of scholarly works also support the CEDAW Committee's position. For example, the Inter-Parliamentary Union handbook on CEDAW affirms that ‘a state becomes party to the convention by ratifying or acceding to it, thereby

³³ The CEDAW Committee is the body of independent experts that monitors the implementation of CEDAW. In addition to handling communication and inquiry procedures, the committee’s mandate includes two significant tasks: monitoring state compliance with CEDAW requirements by reviewing their periodic country reports and providing interpretative guidance on the treaty's provisions in the form of CEDAW General Recommendations. See, CEDAW (n3), Arts. 17, 18, 19, 20, 21 and 22.

³⁴ Even though this thesis uses the word “ratification” alone, it refers to the term “ratification of or accession to an international treaty” as per the relevant context.

³⁵ The CEDAW Committee, General Recommendation No. 25 on Article 4, Paragraph 1 of the CEDAW on Temporary Special Measures, UN Doc. HRI/GEN/1/Rev.7 (2004) para. 4.

³⁶ The CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW, CEDAW/C/GC/28, (2010) paras 6, 9 and 24.

³⁷ The CEDAW Committee, General Recommendation No. 38 on Trafficking in Women and Girls in the Context of Global Migration, CEDAW/C/GC/38, (2020) para.17.

indicating to the international community its commitment to undertake “the legal obligation” to take all measures to eliminate discrimination against women.’³⁸ Having agreed with this viewpoint, Sindiso Ngaba states that ‘a state that has ratified the convention is “legally bound to” carry out the terms of the convention.’³⁹ According to Acar, ‘CEDAW is the only “legally binding” international instrument to set forth the human rights standards for women and girls in the full range of civil, political, economic, social and cultural areas of both public and private life.’⁴⁰ According to Deepika Udagama, ‘the national implementation of legal obligations by states parties is monitored by the CEDAW Committee’.⁴¹ In light of these findings, this research argues that ratifying CEDAW imposes not only a legal obligation on state parties but also engenders profound moral responsibility to comply with the treaty.

2.2.3 State Obligation under CEDAW and the Monist-Dualist Dichotomy

Regarding the domestic incorporation of international treaties, countries with a monist system typically have constitutional provisions that automatically incorporate treaties upon ratification or accession, thereby facilitating the general transformation of international human rights treaties into national law.⁴² Monism holds that both international and domestic law constitute a single legal order.⁴³ On the other hand, countries that follow the dualistic approach usually state in their national constitutions that international treaties are not legally enforceable at the domestic level unless the national

³⁸ Inter-Parliamentary Union, *The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: Handbook for Parliamentarians* (United Nations 2003) 31.

³⁹ Sindiso Ngaba, ‘CEDAW: Eliminating Discrimination against Women’ (1995) *27 Agenda: Empowering Women for Gender Equity* 81, 81.

⁴⁰ Feride Acar, ‘Recent Key Trends and Issues in the Implementation of CEDAW’, *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005-2015* (Commonwealth Secretariat 2004) 16.

⁴¹ Deepika Udagama, ‘Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study’ (2012-2015) *24 Sri Lanka Journal of International Law*, 53, 54.

⁴² For example, The Spanish Constitution (1978), sec 96(1) stipulates that ‘once officially published in Spain, shall be part of the internal legal system.’ ‘Their provisions may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law.’

⁴³ Dejo Olowu, *International Law: A Textbook for the South Pacific* (CDPublishing 2010), 108. Also, see Malcolm N. Shaw, *International Law* (6th ed., Cambridge 2008), 51.

legislature enacts implementing legislation.⁴⁴ The Dualist approach holds that international law and domestic law constitute distinct legal systems.⁴⁵

Therefore, the dualist approach requires that an international treaty be explicitly incorporated into a country's national legal system through domestic implementing legislation or constitutional provisions. For example, Deepika Udagama argues that 'although obligated under international law to implement CEDAW at the national level, at first glance Sri Lanka is constrained both by its dualist legal system, which does not recognise international law as part of the national legal system.'⁴⁶ In 2024, Sri Lanka enacted the 'Women Empowerment Act' as domestic implementing legislation of CEDAW.⁴⁷ Consequently, the dualist approach presents a major challenge to the effective domestic integration of international treaties.

This research finds that even in the absence of domestic implementing legislation to provide legal effect to international treaties, in some dualist countries such as India, the judiciary has greatly contributed to incorporating human rights treaties into the domestic law, particularly by citing the treaties for judicial reasoning⁴⁸ and/or adopting national guidelines based on the treaties to fill the vacuum of national legislation. For example, in *Vishaka and Others v. State of Rajasthan and Others*, to comply with CEDAW standards, the Indian Supreme Court adopted guidelines to protect women from sexual harassment in the workplace, in the absence of national legislation.⁴⁹ Some scholars argue that fundamental human rights treaties are part of customary international law and therefore have direct legal effect in the domestic law of dualist countries, without requiring the

⁴⁴ For example, The Constitution of India (1949), art 253 states that 'Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for implementing any treaty or convention with any other country or countries or any decision made at any international conference.'

⁴⁵ Shaw, 131 (n43). Olowu, 108. (n43)

⁴⁶ Deepika Udagama, 'Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study', (2012-2015) 24 Sri Lanka Journal of International Law, 54.

⁴⁷ The Women Empowerment Act, No. 37 of 2024 of Sri Lanka (n14), Sec. 2.

⁴⁸ For example, in *Shayara Bano v. Union of India*, the Supreme Court of India held that 'in the cases involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.' *Shayara Bano v. Union of India*, AIR 2017 9 SCC 1 (SC) [emphasis added]

⁴⁹ *Vishaka and Others v. State of Rajasthan and Others* (1997) 6 SCC 241. In 2013, the Indian Parliament passed the statute, "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 to address the issue by following the judicial recommendations.

adoption of explicit domestic legislation.⁵⁰ Therefore, this research argues that even in the absence of domestic implementing legislation, the constitutional mandate of a dualist country to ‘respect international treaties’ imposes a crucial obligation on the state to comply with those treaties.

2.2.4 The Proactive Judicial Approach and State Obligation under CEDAW

In recent years, legal scholars and judges have given considerable attention to whether national courts in dualist countries can incorporate human rights treaties into domestic legal systems through case law.⁵¹ For example, Chief Justice Verma, in *Vishaka and Others v. State of Rajasthan*, held that ‘it is now an accepted rule of judicial construction that international conventions and norms must be regarded when construing domestic law, provided there is no inconsistency between them.’⁵² A Sri Lankan scholar, Sornarajah, argues that ‘one way of accomplishing the task of incorporating international law in the domestic legal systems of dualistic structure is for the courts to announce clearly through a binding judgment that they will adopt international law, particularly in the human rights field, as part of domestic law.’⁵³

A former member of the CEDAW Committee, Savitri Goonesekera, states that ‘integrating CEDAW standards nationally and implementing them, creating effective enforcement mechanisms and resourcing the implementation of women’s human rights are always common problems for the state parties.’⁵⁴ To overcome this difficulty, national

⁵⁰ For example, Cheryl Saunders, ‘Constitutions and International Law’, Constitution Brief (The International Institute for Democracy and Electoral Assistance 2020), 4.

Also see Hurst Hannum, ‘The UDHR in National and International Law’ (1998), (3)2, Health and Human Rights, 145 <<https://www.jstor.org/stable/4065305>> accessed 18 June 2025.

⁵¹ For example, M. Sornarajah, ‘The Reception of International Law in The Domestic Law of Sri Lanka in the Context of The Global Experience’ (2016-2017) 25, Sri Lanka Journal of International Law, 3-42, 32.

Also, see Melissa A. Waters, ‘Creeping Monism: The Judicial Trend toward Interpretive Incorporation of Human Rights Treaties’ (2007) 107(3), Columbia Law Review, 628, 635-636; Lord Jonathan Mance, ‘International Law in the UK Supreme Court’ (King’s College, 13 Feb 2017) 1.

⁵² *Vishaka and Others v. State of Rajasthan* (n49), para 24.

⁵³ Sornarajah, (n51), 32-33. Additionally, refer to the Bangalore Principles on the Judicial Application of International Human Rights Norms, adopted at the Bangalore Colloquium, India (1988), Principles 4 and 5.

⁵⁴ Savitri Goonesekera, ‘CEDAW and the Committee: Personal Reflections’ in Meena Shivdas and Sarah Coleman (eds), *Without Prejudice: CEDAW and the Determination of Women’s Rights in a Legal and Cultural Context* (Commonwealth Secretariat 2010) 192.

courts can transcend the traditional monist-dualist dichotomy to protect women's rights enshrined in CEDAW.⁵⁵ In countries such as Sri Lanka and India, the judiciary has taken significant steps to integrate the articles and principles of CEDAW into their domestic legal systems through case law, particularly in the absence of domestic implementing legislation.⁵⁶ This development reflects a proactive approach by the national courts to promote gender equality in their respective countries.

2.3 Is Domestic Incorporation of CEDAW a Part of the 'State Obligation'?

State parties should make robust efforts to incorporate treaty standards into their national laws; thus, it is crucial to ensure the domestic incorporation of international treaties to guarantee they become integral parts of the country's legal system.⁵⁷ In this research, "the domestic incorporation of an international treaty" refers to the integration of an international treaty into the national legal system of a state party, thereby ensuring that the treaty forms part of domestic law. In relation to CEDAW, even though there is no direct provision in the convention that obligates state parties to incorporate the convention into their domestic legal systems, in the CEDAW General Recommendation No. 28 on the Core Obligations of States Parties, it is emphasised that it is crucial to the full implementation of the Convention by the States parties.⁵⁸

The CEDAW Committee, in its Concluding Observations, has recommended that state parties fully incorporate the Convention into their domestic legal order. For example, in 2011 and 2017, the CEDAW Committee urged Sri Lanka to 'fully incorporate the

⁵⁵ See Christine Chinkin and Marsha A. Freeman, *The Oxford Commentary on CEDAW* (2012), (n7).

Also, see Victoria Falls Declaration of Principles for Promoting the Human Rights of Women as agreed by Senior Judges at the African Regional Judicial Colloquium (Zimbabwe, 19-20 August 1994), Principle 11.

⁵⁶ For example, in Sri Lanka, *Manohari Pelaketiya v. Secretary, the Ministry of Education* (SC/FR/No. 76/2012), *P. R. S. E. Corea v. Sri Lankan Airlines Limited* (S.C. Appeal No. 91/2017) and *Udari L. Abeyasinghe v. W. M. Thilakaratne* (S.C.F.R. Application No. 81/2021, 08 May 2026). Likewise, in India, the judiciary upheld the state's obligation under CEDAW in the decisions of *Masilamani Mudaliar and Others v. Idol of Sri Swaminathaswami Thirukoil and Others* (1996) 8 SCC 525, *Vishaka and Others v. State of Rajasthan and Others* (1997) 6 SCC 241.

⁵⁷ See, Julie Fraser, *Social Institutions and International Human Rights Law Implementation: Every Organ of Society* (Cambridge University 2020) 71. Also, see 'The Relationship Between International and Regional Human Rights Norms and Domestic Law', *Developing Human Rights Jurisprudence* (Commonwealth Secretariat 1993) in Rosalyn Higgins, *Themes and Theories: Selected Essays, Speeches and Writings in International Law, Vol. I* (Oxford 2009), 554.

⁵⁸ CEDAW General Recommendation No. 28 (2010) (n11), para 6.

Convention into its domestic legal system without further delay to give central importance to the Convention.’⁵⁹ A former member of the CEDAW Committee, Dairiam also agrees with the position that ‘States must take steps to incorporate CEDAW into domestic law so that it is directly applicable in the courts.’⁶⁰ In light of these findings, this research argues that the domestic incorporation of CEDAW is an obligation of the State Parties. It not only demonstrates the state's commitment to the international treaty but also converts the rights, principles and standards established by CEDAW into legally enforceable provisions at the national level. By ensuring domestic incorporation, the treaty's justiciability is guaranteed under national law.

2.4 Nature and the Scope of the Core Principles Enshrined in CEDAW

2.4.1 Understanding the Core Principles of CEDAW

Having explored the state obligation concerning the domestic incorporation of CEDAW, particularly emphasising the main approaches that states employ to integrate international human rights treaties into their national legal frameworks in the previous section, this discussion now shifts to examine the interrelated foundational principles of CEDAW, which are crucial for achieving effective domestic implementation of the convention. These principles include substantive equality between men and women, non-discrimination, and state obligation.⁶¹ This section also traces the expansion and

⁵⁹ The CEDAW Committee, Concluding Observations considering the combined fifth to seventh periodic reports concerning Sri Lanka, CEDAW/C/LKA/CO/7 (2011), para 13. The CEDAW Committee, Concluding observations on the eighth periodic report of Sri Lanka, CEDAW/C/LKA/CO/8 (9 March 2017), para 9.

⁶⁰ Shanthi Dairiam, ‘Progress, Achievements, Constraints and Key Priorities’, Tina Johnson (ed.), *Gender and Human Rights in the Commonwealth: Some Critical Issues for Action in the Decade 2005–2015* (Commonwealth Secretariat 2004), 14. Also, see Shanthi Dairiam, “Impact of the Convention at the Domestic Level,” CEDAW at 25: Are We Moving Forward? (New York, 13 October 2004), 3 and 5.

<<https://www.un.org/womenwatch/daw/cedaw/cedaw25anniversary/cedaw25-SD.pdf>> accessed on 7 Sep. 2025.

⁶¹ Susan Harris Rimmer, ‘Raising Women Up: Analysing Australian Advocacy for Women’s Rights under International and Domestic Law’, in Margaret Thornton (ed.), *Sex Discrimination in Uncertain Times* (ANU Press 2010) 295. Also, see UN Women, CEDAW-based Legal Review: Brief Guide (2019) 7.

However, the CEDAW General Recommendation No.40 refers to a two-fold obligation; ‘The principles of non-discrimination and substantive equality are affirmed in articles 1 to 4 of CEDAW. Non-discrimination is defined in Article 1, while the obligations of legislative and other measures to achieve non-discrimination and substantive equality in all areas are enshrined in Articles 2 and 3.’

For more details, see CEDAW Committee, General Recommendation No. 40 on the equal and inclusive representation of women in decision-making systems (25 October 2024), CEDAW/C/GC/40, para 24.

gradual evolution of these core principles over time, as reflected in CEDAW General Recommendations and jurisprudence under the CEDAW Optional Protocol.⁶² The significance of examining these core principles lies in understanding CEDAW's transformative expectations over time, which extend beyond symbolic ratification to ensure that women's rights are realised in practice.

2.4.2 The Principle of State Obligation to Respect, Protect, Promote and Fulfil CEDAW

First, it is essential to understand the core elements of the principle of state obligation. CEDAW imposes four essential duties on States parties: the obligation to “respect, protect, promote, and fulfil” CEDAW. This four-fold obligation aims to ensure non-discrimination and facilitate women's enjoyment of substantive equality with men, thereby supporting women's empowerment and development.⁶³ The state's obligations under CEDAW are primarily articulated in Article 2 of the Convention. As interpreted by the CEDAW General Recommendation No. 28 concerning the state obligation, the first pillar of the principle; “the obligation to respect” requires that ‘States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.’⁶⁴ To illustrate further, Article 2(d) of CEDAW requires ‘State Parties to refrain from engaging in any act or practice of discrimination against women.’ This highlights the importance of raising awareness and training for public officials, as such measures are vital to preventing direct and indirect actions that infringe on CEDAW obligations.

The second pillar of the principle of state obligation is that a state party is “obligated to protect” its citizens from human rights violations committed by third parties or private actors. In particular, “the obligation to protect” in CEDAW requires that States parties to take ‘positive actions’ to protect women and girls from discrimination by private actors. This includes taking steps directly aimed at eliminating customary and all other

⁶² The Optional Protocol to CEDAW (adopted on 6 October 1999, came into effect on 22 December 2000).

⁶³ CEDAW General Recommendation No.28 (n11), para.37 and the General Recommendation No. 25 (n35), para.4

⁶⁴ CEDAW General Recommendation No.28, (n11), sec 9.

practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes and stereotyped roles for men and women.’⁶⁵ The obligation to protect is embedded in Article 2(e) of CEDAW, which emphasises taking all appropriate measures to eliminate discrimination against women by any person, organisation, or enterprise.’⁶⁶

Likewise, Article 2(f) and Article 5(a) of CEDAW align with the obligation to protect, which requires State Parties to take all appropriate measures to eliminate prejudices, customs, and practices based on female inferiority.⁶⁷ The elimination of prejudices, practices, and customs that discriminate against women is a challenging task; however, this requirement demonstrates the extent to which CEDAW requires states to go for the elimination of all forms of inequalities against women.

The third element of the principle, “the obligation to fulfil,” requires that ‘States parties take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures.’⁶⁸ In particular, Article 4(1) of CEDAW, together with CEDAW General Recommendation No. 25, advocates the adoption of temporary special measures to achieve substantive equality for women.⁶⁹ It should be noted that Article 4(1) of CEDAW declares that ‘the adoption of temporary special measures aimed at accelerating *de facto* equality between men and women by the state parties shall not be considered as a form of discrimination.’

Under the element of ‘obligation to promote’, the CEDAW Committee recommends that ‘the state parties should foster wide knowledge about the obligations under CEDAW and promote equality of women through the formulation and implementation

⁶⁵ CEDAW General Recommendation No.28 (n11), sec 9.

⁶⁶ CEDAW (n3), art 2(e).

⁶⁷ *ibid.* CEDAW, Art. 2(f) states that ‘States Parties undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.’ Moreover, Article 5(a) of CEDAW declares that ‘States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.’

⁶⁸ CEDAW General Recommendation No.28 (n11), sec 9.

⁶⁹ CEDAW General Recommendation No.25 (n35).

of national plans of action and other relevant policies and programmes in line with international standards and allocating adequate human and financial resources to achieve the purpose.’⁷⁰ In summary, the obligation to respect, protect, promote, and fulfil the treaty obligations is crucial to the domestic incorporation of CEDAW.

2.4.3 The Principle of Equality in CEDAW

2.4.3.1 Moving Towards ‘Transformative Equality’ and ‘Substantive Equality’

The right to equality is a fundamental human right that guarantees justice, empowerment, economic prosperity, social well-being and the enjoyment of all other rights. According to Article 3 of CEDAW, States Parties are obliged to ‘take in all fields, all appropriate measures, including legislation, to ensure the full development and advancement of women to guarantee them the exercise and enjoyment of human rights on a basis of equality with men.’ Article 3 emphasises the need to guarantee ‘transformative equality’ for women, requiring all measures to advance women’s lives.⁷¹

It is meaningful to read these Articles together to recognise that Articles 1, 2, and 3 complement one another, imposing a comprehensive obligation on the state parties to undertake the necessary measures for structural and institutional transformations and to reshape power dynamics to achieve gender equality for women in practice.⁷² Many scholars have recognised that this gender-specific transformative approach in CEDAW is more effective than including a few provisions for women’s rights in the gender-neutral general human rights treaties.⁷³ Thus, CEDAW requires the achievement of transformative equality.

⁷⁰ CEDAW General Recommendation No.28 (n11), para. 37(c), para. 38(a), and paras. 20-21.

⁷¹ Christine Chinkin, ‘Article 3’, in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (n7), 114.

⁷² CEDAW, Art. 5 requires ‘to modify the social cultural patterns of conduct of men and women which are based on gender inferiority or superiority.’ Article 7 of CEDAW, which guarantees equal rights for women in political participation, decision-making and public life, also contributes to achieving the transformative gender equality. Also, see the CEDAW General Recommendation No. 40 (2024) on the Equal and Inclusive Representation of Women in Decision-making Systems (n61), para 20.

⁷³ Anne Hellum and Henriette Sinding Aasen, ‘Introduction’ in Anne Hellum and Henriette Sinding Aasen (eds), *Women’s Human Rights: CEDAW in International, Regional and National Law* (Cambridge University 2013) 4. Also, see Frances Raday, ‘Gender and democratic citizenship: the impact of CEDAW’ (2012) 10(2), *International Journal of Constitutional Law*, 512, 514.

In another classification, there are two distinct approaches to defining equality. Even though both approaches aim to ascertain equality, ‘formal equality’ focuses on equality in treatment, and ‘substantive equality’ targets equality in outcomes by employing contextual and needs-based interventions.⁷⁴ Hellum and Aasen recognise that ‘achieving substantive equality for women is one of CEDAW’s objectives.’⁷⁵ The substantive equality approach emerged from the realisation that treating men and women equally by law does not necessarily guarantee equality of outcomes for women, due to systemic and structural barriers that are deeply rooted in culture and society in many countries and spanning generations.⁷⁶

Therefore, taking affirmative actions to rectify gender disparities, while addressing the root causes of the structural inequalities associated with female subordination,⁷⁷ This discussion stresses that CEDAW requires state parties to uphold substantive equality for women in the domestic implementation of the convention. It is also essential to assess the extent to which CEDAW has incorporated the principle of substantive equality into the treaty. For this purpose, this research applies Fredman’s “Multi-dimensional approach to substantive equality” to assess the content of CEDAW. Fredman’s approach addresses the multifaceted nature of equality across four dimensions: redistribution, recognition, participation, and accommodation.⁷⁸

⁷⁴ Titia Loenen, *The Conceptualization of Equality and Non-discrimination as Legal Standards* (Nijhoff Law Specials, Brill 2024), vol. III <<https://brill.com/display/book/9789004538368/BP000012.xml>> Accessed 18 May 2025.

Also see, Catharine A. MacKinnon, ‘Substantive Equality: A Perspective’ (2011) *Minnesota Law Review*.

⁷⁵ Anne Hellum and Henriette Sinding Aasen, ‘Introduction’ in Anne Hellum and Henriette Sinding Aasen (eds), *Women’s Human Rights: CEDAW in International, Regional and National Law* (Cambridge University 2013) 4.

⁷⁶ The Committee on Economic, Social and Cultural Rights, the General Comment No.16 of the Committee on Economic, Social and Cultural Rights, Concerning Article 3: The equal right of men and women to the enjoyment of all economic, social and cultural rights (34th session, 2005), U.N. Doc. E/C.12/2005/3, para 7.

⁷⁷ The Preamble to CEDAW acknowledges that they are aware that ‘a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.’ Additionally, refer to Article 5(a) of CEDAW, which requires state parties to “modify the social and cultural patterns of conduct of men and women which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

⁷⁸ Sandra Fredman, ‘Redistribution and Recognition: Reconciling Inequalities’ (2007), 23(2), *South African Journal on Human Rights*, 214-234.

Also see Sandra Fredman, ‘Substantive Equality Revisited’ (2016), 14(3), *International Journal of Constitutional Law*, 712-738.

2.4.3.2 Unfolding ‘Substantive Equality’ in CEDAW

2.4.3.2.1 Redistribution: Equal Access to Resources and Opportunities for Women

Within the CEDAW framework, it is evident that ‘redistribution’ is addressed by eliminating the male-dominant status hierarchy, redressing disadvantages, and correcting injustices by providing women with equal access to resources. For example, Article 4(1) of CEDAW requires ‘the adoption of temporary special measures aimed at accelerating *de facto* equality between men and women.’⁷⁹ Implementing temporary special measures is essential in countries where historical, structural, and cultural discrimination against women has obstructed women from enjoying equal rights and equal opportunities. Several provisions in CEDAW demonstrate the concept of redistribution, specifically by guaranteeing women equal access to resources. To illustrate further, Article 14 of CEDAW states that ‘state parties shall ensure the rights of the rural women to receive benefits from the social security programmes, to have access to agricultural loans and marketing facilities and to receive equal economic opportunities.’⁸⁰

2.4.3.2.2 Recognition: Intersectional Discrimination and Marginalised Women

Women’s status within their families and society is shaped by the complex interplay among their lived experiences, social, cultural, ethnic, and economic backgrounds, and cognitive skills and abilities. Addressing these variations, uniqueness, and intersectionality⁸¹ is central to eliminating discrimination against women. In the context of substantive equality, the second element, ‘recognition’, refers to the acknowledgement of the diverse female experiences and intersectional identities of women, including those who are culturally and racially marginalised, tribal women, and politically underrepresented women. The provisions, such as the elimination of prejudices and

⁷⁹ CEDAW, art 4(1).

⁸⁰ CEDAW, arts 14(2)(c), 14(2)(e) and 14(2)(g).

⁸¹ The Council of Europe defines “Intersectional discrimination happens when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination.” <<https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination>> accessed 31 May 2025; Also, see Meghan Campbell, ‘CEDAW and Women’s Intersecting Identities: A Pioneering Approach to Intersectional Discrimination’ (2016), 2(3), Oxford University Working Paper.

customary practices against women, rural women, and married women, prove that CEDAW has recognised intersectionality and marginalised female groups.⁸²

To address the unique issues faced by marginalised women, the CEDAW Committee adopted several recommendations, including General Recommendation No. 39 on the ‘Rights of Indigenous Women and Girls’ and General Recommendation No. 34 on the ‘Rights of Rural Women.’⁸³ Following the holistic approach in reading CEDAW together with its General Recommendations shows that the treaty expressly recognises ‘the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.’⁸⁴ Moreover, the CEDAW Committee in General Recommendation No. 28 emphasises that ‘the States parties must legally recognise such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.’⁸⁵

The CEDAW Committee addressed the issue of intersectional discrimination against women in the communication of *Cecilia Kell v. Canada*, where an Aboriginal woman from the Rae-Edzo communities in the Northwest Territories of Canada has experienced discrimination based on her sex, marital status, and cultural heritage when she applied for a government housing scheme.⁸⁶ The CEDAW Committee in this Communication has reaffirmed that the state obligation is extended to protect women and girls from intersectional discrimination.⁸⁷ These findings lead to the conclusion that CEDAW

⁸² See, CEDAW, art. 14 on ‘guaranteeing equal rights of rural women.’ Also, CEDAW, arts. 1, 11(2)(a) and 16(1)(d) on ‘preventing discrimination against married women.’

⁸³ CEDAW Committee, General Recommendation No. 34 on the Rights of Rural Women, (CEDAW/C/GC/34) adopted 7 March 2016.

⁸⁴ For example, reading Article 2 of CEDAW together with paragraph 18 of the CEDAW General Recommendation No. 28 (n11). Also, when reading Article 14 of CEDAW with General Recommendation No. 34 on the Rights of Rural Women (n83). Reading Article 5 of CEDAW in conjunction with the CEDAW Committee, CEDAW General Recommendation No. 14 concerning Female Circumcision (Document A/45/38), 1990.

⁸⁵ General Recommendation 28 (n11), para 18.

⁸⁶ *Cecilia Kell v. Canada* (Communication No. 19/2008) CEDAW Committee, the decision adopted 28 February 2012, sections 2.1 and 2.2.

⁸⁷ *ibid.* *Cecilia Kell v. Canada*, sec. 10. In this communication, the CEDAW Committee had expanded the scope of Article 2 of CEDAW by declaring ‘intersectionality is a basic concept for understanding the scope of the general obligation of States parties contained in Article 2.’ In this communication to the CEDAW Committee, a Canadian Aboriginal woman claimed that the state had discriminated against her on the basis of her sex, marital status, and cultural heritage, and it failed to provide equal treatment to women applicants for housing.

acknowledged the element of ‘recognition’ in substantive equality as an obligation of the state parties.

2.4.3.2.3 Participation: Women in the Decision-making and Public Life

The third dimension of substantive equality is ‘participation’, which aims to ensure social inclusivity and political voice.⁸⁸ From a gender perspective, this includes equal and effective ‘participation’ for women across all fields, including public life, politics, education, employment, and decision-making. It is essential to include women’s perspectives at all levels of government and to take affirmative action to remedy underrepresentation and historical injustices.⁸⁹ The provisions of CEDAW and its General Recommendations provide a strong foundation for promoting and enhancing women's rights to participation. For example, the General Recommendation No.25 states that ‘States parties should aim to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field.’⁹⁰

Moreover, Articles 7 and 8 of the Convention and the General Recommendation No. 40 on the ‘Equal and inclusive representation of women in decision-making systems’ require state parties to ensure the equal participation of women in political decision-making and public life at the national level, and to provide equal opportunities for women to represent their governments at international forums.⁹¹ Overall, these findings align with CEDAW's position that ‘an inclusive participation approach’ is necessary to achieve substantive equality for marginalised or underrepresented women.

⁸⁸ Sandra Fredman, ‘Substantive Equality Revisited’ (n77), 731- 732.

⁸⁹ For example, introducing a mandatory quota system by the constitution or electoral laws of a country as an affirmative action to increase female participation in the government and decision-making at the national level. In Sri Lanka, the Local Authorities Election (Amendment) Act No. 16 of 2017 mandates a 25% quota for women to ensure their representation in local government, as a remedy for female underrepresentation.

The Local Authorities Election (Amendment) Act, No. 16 of 2017, Sri Lanka, [Certified 31st of August 2017].

⁹⁰ CEDAW General Recommendation No.25 (n35), para 18.

⁹¹ Article 7 of CEDAW guarantees equal rights for women to vote in elections, to represent the government, to participate in the formulation of government policies, to be appointed to public offices, and to participate in non-governmental organisations concerning the public and political life of the country. In addition, Article 8 of CEDAW requires state parties to provide women with opportunities on an equal basis with men to represent their governments at the international level and to participate in the work of international organisations.

Also see the CEDAW General Recommendation No. 40 on the ‘Equal and inclusive representation of women in decision-making systems’ (2024) (n61).

2.4.3.2.4 Accommodation: Removing Obstructions while Respecting the Differences

Accommodation in the context of substantive equality refers to respecting and accommodating difference, removing the detriment but not the diversity itself.⁹² For example, Article 5(a) of CEDAW requires ‘state parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.’⁹³

Acknowledging the distinct challenges experienced by women in different social, cultural and ethnic settings, the CEDAW General Recommendation No. 14 on “Female Circumcision” calls for global attention on ‘the continuation of the practice of female circumcision and other traditional practices harmful to the health of women.’⁹⁴ The CEDAW state obligation to achieve substantive equality for women requires responsiveness to harmful social and cultural realities across diverse settings.

2.4.3.3 *De Jure* Equality, *De Facto* Equality, and Temporary Special Measures

To achieve substantive equality for women, it is essential to ensure women can enjoy both *de jure* and *de facto* equality.⁹⁵ *De jure* equality refers to the recognition of equal rights by enshrining equality in constitutions, laws and regulations. For example, Articles 2 and 3 of the Convention require state parties to incorporate the principle of equality between men and women into their national constitutions and other legislation.⁹⁶ However, guaranteeing equality through the law alone can leave deep-rooted gender disparities untouched, thereby failing to ensure the practical realisation of equality for women or gender equality in outcomes. On the other hand, *de facto* equality extends beyond the legal recognition of equality.⁹⁷ This target requires structural transformations

⁹² Sandra Fredman, ‘Substantive Equality Revisited’ (n77), 733.

⁹³ CEDAW (n3), art 5(a).

⁹⁴ CEDAW General Recommendation No. 14 on Female Circumcision (n84).

⁹⁵ The CEDAW General Recommendation No.25 (n35), sec 4.

⁹⁶ CEDAW, Articles 2(a), 2(b), 2(f), and 3.

⁹⁷ Article 4(1) of CEDAW mentions accelerating *de facto* equality through temporary special measures.

to root out systemic discrimination against women and takes necessary special measures to ensure the practical realisation of equality for women.⁹⁸

For example, Articles 2(f), 3, 5(a), 10(c) and 24 of CEDAW require state parties to abolish gender-discriminatory practices and customs against women. Article 4(1) of the Convention requires ‘states parties to take temporary special measures aimed at accelerating *de facto* equality between men and women.’ The General Recommendation No.25 describes the nature and objectives of temporary special measures as a part of a necessary strategy directed towards the achievement of *de facto* or substantive equality for women.⁹⁹ The CEDAW General Recommendation No.28 declares that ‘the obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures.’¹⁰⁰ Thus, effective domestic integration of CEDAW requires achieving both *de jure* and *de facto* equality for women.

2.4.4 Principle of Non-discrimination in CEDAW

2.4.4.1 Defining ‘Sex-based Discrimination’ and ‘Gender-based Discrimination’

To incorporate CEDAW effectively into the national legal systems, it is essential for state parties to eliminate structural and legal barriers and challenge discriminatory socio-cultural practices and perceptions that are associated with gender inequalities. Discrimination against women refers to an unjust, unequal, and prejudicial treatment against women, which violates their rights, obstructs their opportunities to enjoy the rights and forms destructive disparities in the law and society.

⁹⁸ CEDAW aims at the practical realisation of the rights set forth by the Convention. For example, Article 24 of CEDAW requires that ‘States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention.’ Moreover, Article 2(a) of CEDAW requires state parties to undertake legislative measures and other appropriate means for the practical realisation of the principle of the equality between men and women.’

⁹⁹ The CEDAW General Recommendation No.25 (n35), sections 12, 14, 18 and 23.

¹⁰⁰ The CEDAW General Recommendation No.28 (n11), at paragraphs 9 and 16. Also see, CEDAW General Recommendation No. 25 (n35), at paragraphs 7, 8, 9, 11, 14 and 18.

The term ‘discrimination against women’ is defined by Article 1 of CEDAW, 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.’¹⁰¹

When following the holistic approach to interpreting CEDAW, it becomes clear that the convention’s scope extends beyond sex-based discrimination to encompass gender-based discrimination against women.¹⁰² Although Article 1 of the convention appears to refer only to ‘sex-based’ discrimination, the CEDAW committee broadly interprets Article 1 in conjunction with Articles 2(f) and 5(a), suggesting that the Convention encompasses ‘gender-based’ discrimination against women.’¹⁰³

2.4.4.2 Eliminating Direct (*de jure*) and Indirect (*de facto*) Discrimination

Ensuring non-discrimination for women requires eliminating both *de jure* (direct) and *de facto* (indirect) discrimination. As defined by the CEDAW Committee, ‘direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences.’¹⁰⁴ Direct discrimination against women occurs when laws, regulations, or government policies explicitly treat women and men unequally. With an emphasis on eliminating *de jure* or direct discrimination, Article 2(f) of CEDAW obliges state parties to ‘take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices

¹⁰¹ CEDAW, art 1.

¹⁰² The CEDAW Committee interprets that ‘The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences, resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.’ See The General Recommendation No. 28 (n11), paras 5 and 3.

Also see Andrew Byrnes, ‘Article 1’, The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary’ (n7), 64.

¹⁰³ CEDAW General Recommendations No. 28 (n11), at para 5. Also see CEDAW, arts 2(f) and 5(a), which require state parties to abolish or modify discriminatory social and cultural patterns that affect women.

¹⁰⁴ CEDAW General Recommendations No. 28 (n11), para 16.

Also see Andrew Byrnes, ‘Article 1’, The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary (n7), 65.

which constitute discrimination against women.’ Moreover, Article 2(g) requires ‘to repeal all penal provisions which constitute discrimination against women in the domestic legal systems.’

Indirect or *de facto* discrimination occurs when a law, policy or programme appears to be neutral on the surface, but constitutes a discriminatory effect on women because of pre-existing inequalities.¹⁰⁵ Article 2(f) of CEDAW goes beyond direct discrimination and condemns customs and traditions that perpetuate indirect discrimination against women. Article 5(a) of CEDAW requires that ‘States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.’ The eradication of *de facto* discrimination requires state parties to implement measures that raise public awareness and foster individuals' sense of responsibility to support the state's efforts to ensure gender equality. In addition, it requires measures to ensure women's equal participation in decision-making, the abolition of gender-biased customs and practices, the introduction of structural changes within institutions, and the fostering of cultural-ideological transformation to reject gender stereotyping.

2.5 Due Diligence Obligation: Preventing Private Actors from Violating CEDAW

Gender-based discrimination against women is not solely a matter of the state violating women's rights but also occurs through the acts of private actors within private spheres. On the other hand, the state's obligation to intervene against private acts that commit discrimination against women is critical to ensuring safety for women in particular and to protecting them from violence and abuse. This shows that CEDAW imposes a ‘due diligence obligation’ on states parties, requiring them to take proactive actions to prevent discrimination against women by private actors.¹⁰⁶ In particular, Article 2(e) of CEDAW

¹⁰⁵ *ibid.* CEDAW General Recommendations No. 28, para. 16. Also see Andrew Byrnes, ‘Article 1’, 65.

¹⁰⁶ CEDAW General Recommendations No.28 (n11), para 13. Also, read CEDAW Article 1 together with Article 2(e). Also see Andrew Byrnes, ‘Article 2’, ‘*The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*’ (n7), 87-88.

emphasises the state obligation ‘to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.’

For example, the CEDAW General Recommendation No. 19 explicitly recommends that ‘States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.’¹⁰⁷ Without state intervention to implement legal responses in place to address discrimination by non-state actors, it is not possible to regulate private acts, resulting in the continuation of cycles of inequality and oppression against women.¹⁰⁸ Therefore, by instituting ‘due diligence obligations’ on state parties to implement proactive measures, CEDAW aims to establish a framework that promotes comprehensive societal transformation across various spheres of life.

2.6 The State Obligation to Submit Periodic (Country) Reports

The submission of periodic reports to the CEDAW Committee is another key obligation of the state parties to the Convention. According to Article 18(1) of CEDAW, ‘States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of CEDAW and on the progress made in this respect (a) Within one year after the entry into force for the State concerned and (b) Thereafter at least every four years and further whenever the

¹⁰⁷ CEDAW Committee, General Recommendation No. 19 on Violence against Women, (adopted at the 11th session, 1992), (U.N. Doc. A/47/38)1 (1993), para 24(a).

¹⁰⁸ For example, see The CEDAW Committee in *Fatma Yildirim (deceased) v. Austria* (Communication No. 6/2005), 2007, para 12.1.2. In this communication, the CEDAW Committee found that ‘in order for the individual woman victim of domestic violence to enjoy the practical realisation of the principle of equality of men and women and her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party’s due diligence obligations.’

Also, the CEDAW Committee in *A.T. v Hungary* (Communication No. 2/2003) (2005) para II(b) recommends that the state parties to ‘assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women.’

Also, in the CEDAW individual communication of *Goekce v. Austria*, (Communication No. 5/2005), (2007), para 7.3, the Committee noted that, ‘in communications denouncing domestic violence, a state party must exercise due diligence to protect; investigate the crime, punish the perpetrator, and provide compensation as set out in General Recommendation 19 of the Committee.’

Committee so requests.’¹⁰⁹ Until the adoption of the CEDAW Optional Protocol, submitting the periodic reports by the state parties to the CEDAW Committee was the only procedure available to assess the domestic incorporation of CEDAW.¹¹⁰ Reports may also indicate factors and difficulties affecting the degree of fulfilment of obligations under the convention by the state parties.’¹¹¹

In 1994, the CEDAW Committee decided to issue Concluding Observations on the country reports, a set of recommendations to States Parties on how to improve their compliance with the Convention and to highlight progress and existing challenges in the domestic incorporation of CEDAW.¹¹² The CEDAW Committee also accepts shadow reports or alternative reports submitted by civil society organisations or non-governmental organisations alongside country reports. These shadow reports provide essential insights alongside the government-submitted country reports, contributing to a more comprehensive understanding of the status of women's rights in the country.

2.7 The CEDAW Optional Protocol (1999) as an Enforcement Mechanism

In this discussion, it is also imperative to discuss the role of the CEDAW Optional Protocol, which serves as the treaty's enforcement mechanism. The Optional Protocol establishes two key procedures to reinforce the enforcement of women's rights as guaranteed by CEDAW: the communications procedure and the inquiry procedure.¹¹³ In particular, the CEDAW Committee's recommendations under the communication procedure have contributed to the development of international jurisprudence by broadening states' obligations under the convention.¹¹⁴ By ratifying the Optional Protocol, a state party recognises the competence of the CEDAW Committee to receive

¹⁰⁹ CEDAW, art 18(1). Moreover, refer to the CEDAW Committee's General Recommendations, No. 1 on Reporting by States Parties (adopted at the fifth session, 1986) and CEDAW General Recommendations, No. 2 on Reporting by States Parties (adopted at the sixth session, 1987).

¹¹⁰ Ineke Boerefijn, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (n7), 489.

¹¹¹ CEDAW, art 18(2).

¹¹² Ineke Boerefijn, 'Article 18', *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (n7), 503.

¹¹³ *The Optional Protocol to CEDAW* (adopted on 6 October 1999, came into effect on 22 December 2000).

¹¹⁴ Mary Jane N. Real, *CEDAW Casebook: An Analysis of Case Law in Southeast Asia* (UN Women 2016)

and consider complaints from individuals or groups within its jurisdiction.¹¹⁵ If a country is a state party to both the CEDAW and its Optional Protocol, ‘the communications may be submitted by or on behalf of individuals or groups of individuals,¹¹⁶ claiming to be victims of a violation of any of the rights set forth in CEDAW by that State Party.’¹¹⁷

The inquiry procedure allows the CEDAW committee to initiate inquiries about the situations where there is reliable information indicating that a state party has committed or is committing grave or systematic violations of women's rights.¹¹⁸ For the inquiry, where warranted and with the consent of the State Party, the inquiry may include a visit to the State's territory.¹¹⁹ In summary, these two mechanisms enable individuals or groups affected by violations committed at the national level to pursue justice through the CEDAW Committee, thereby making CEDAW actionable by holding state parties accountable for their actions or omissions.

2.8 Conclusion

This chapter examines the theories, approaches, and principles governing the state obligation to incorporate CEDAW into national legal systems, focusing on how effective integration must align with the treaty's core principles: substantive equality, non-discrimination, and state obligation. In addition, the theoretical framework presented in this chapter offers valuable insights into the nature and scope of state obligation, the due diligence obligation of the state parties to prevent private actors from violating CEDAW, the obligation to submit country reports by the state parties, and the role of the CEDAW

¹¹⁵ CEDAW Optional Protocol (n113), Arts 1 and 3.

¹¹⁶ *ibid.* CEDAW Optional Protocol, Art. 2 specifies that, however, ‘where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.’

¹¹⁷ CEDAW Optional Protocol, Art 2.

¹¹⁸ CEDAW Optional Protocol, Art. 8

¹¹⁹ CEDAW Optional Protocol, Art. 8(2). For example, in the CEDAW inquiry concerning grave or systematic violations of women's rights in the State of Chihuahua, Mexico, the expert members of the CEDAW Committee visited the territory between 18 and 26 October 2003, with the consent of the Mexican government. Refer to the full report for more details, ‘The Report on Mexico produced by the CEDAW Committee under article 8 of the Optional Protocol to the Convention and reply from the Government of Mexico.’ CEDAW/C/2005/OP.8/MEXICO) 27 January 2005.

Optional Protocol as an enforcement mechanism that holds state parties liable for violations.

This chapter contributes to this research by clarifying the meaning and scope of the domestic integration of CEDAW in light of its foundational principles. The findings of this chapter advance the argument that ‘without realising the CEDAW expectations set out in its principles, provisions, and standards, the treaty cannot be effectively incorporated into a national legal system. This chapter paves the way for the case study of Sri Lanka in the subsequent chapters.

CHAPTER - 03

Domestic Incorporation of CEDAW in Sri Lanka: Evaluating Constitutional, Statutory, and Judicial Incorporation

3.1 Introduction

As outlined in Chapter 2, domestic incorporation of CEDAW by state parties is essential to ensuring the legal enforceability of the treaty's provisions at the national level. Chapter 2 also elaborated on the expectations grounded in the principles and standards set forth by CEDAW. Transitioning to Chapter 3, this research utilises Sri Lanka as a case study to analyse how CEDAW has been integrated into the country's national legal system, evaluating the effectiveness of the methods employed and the challenges the country has confronted. Therefore, Chapter 3 has two objectives. First, it seeks to analyse the extent to which CEDAW has been incorporated into the Sri Lankan legal system through three methods: constitutional integration, domestic implementing legislation, and decisions of national courts. Second, this chapter aims to recognise the obstacles and challenges associated with these techniques/methods.

Accordingly, this chapter presents a balanced perspective, highlighting both existing gaps and challenges, as well as progress and achievements, from a historical-legal perspective regarding the domestic incorporation of CEDAW in Sri Lanka. This research argues that one of the most significant steps toward the full and effective incorporation of CEDAW at the national level is the state's genuine will to incorporate the treaty into the national legal system. Having highlighted this point, this chapter evaluates the legal recognition accorded to CEDAW in the Sri Lankan legal system through three distinct methods and assesses the effectiveness of each method in ascertaining CEDAW rights, principles, and standards at the national level. This examination helps determine whether granting the treaty legal recognition at the national level is sufficient, or whether such legal recognition should be accompanied by additional measures to ensure the full and effective domestic integration of CEDAW in Sri Lanka.

3.2 The Domestic Incorporation of CEDAW: A Case Study of Sri Lanka

3.2.1 The Incorporation of CEDAW through Constitutional Provisions

3.2.1.1 The Constitution of Sri Lanka and Women's Rights

The role of the national constitutions in upholding equality for women is recognised by Article 2(a) of CEDAW, which stipulates that 'state parties undertake to embody the principle of the equality of men and women in their national constitutions.'¹²⁰ From a scholarly viewpoint, Forster and Beavers also find that 'a constitution provides in most cases the strongest legal means of protecting and promoting gender equality, including through entrenching the fundamental rights (also referred to as FR) and freedoms of women.'¹²¹ Therefore, incorporating the rights and principles of CEDAW into the constitution constitutes a clear demonstration of a country's commitment to the treaty at the national level. The Constitution of Sri Lanka was adopted in 1978, prior to the country's accession to CEDAW.¹²² Nevertheless, it is noteworthy that the guarantee of equality and non-discrimination is embedded in Article 12 of the Sri Lankan constitution,¹²³ which ensures equal rights for women, including a provision for affirmative measures to advance women's welfare under Article 12(4).¹²⁴

The Sri Lankan constitution lacks a dedicated provision addressing women's rights, creating a gap in constitutional protection and potentially limiting the advancement of women's rights. This discussion examines three dimensions of the Sri Lankan Constitution that support the domestic integration of CEDAW. The analysis includes a critique of (i) the constitutional guarantee of equality and non-discrimination for women, (ii) the directive principles of state policy, and (iii) the restrictions upon the constitutional remedies for the violation of women's right to equality. This section also

¹²⁰ CEDAW General Recommendation No.28 (2010) (n11), para. 31.

¹²¹ Christine Forster and Suki Beavers, *Global Good Practices in Advancing Gender Equality and Women's Empowerment in Constitutions* (UNDP 2016), 2.

¹²² The Constitution of the Democratic Socialist Republic of Sri Lanka was adopted on 31 August 1978.

¹²³ Articles 12(1) and 12(2) of the Constitution of Sri Lanka. For more details, see section 3.2.1.2 of this thesis.

¹²⁴ *ibid.* Article 12(4) of the Constitution. For more details, see section 3.2.1.2 of this thesis.

analyses the constitutional barriers that impede the realisation of women's equal rights and non-discrimination in Sri Lanka.

3.2.1.2 Analysing Article 12: The Guarantee for Equality and Non-discrimination

Article 12 of the Sri Lankan Constitution provides a safeguard against discrimination, ensuring equal rights for women. As it stands, Article 12 (1) guarantees that ‘All persons are equal before the law and are entitled to the equal protection of the law.’ Article 12 (2) stipulates that ‘No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any of such grounds.’ Concerning these provisions, the Supreme Court of Sri Lanka in *Manohari Pelaketiya v. Ministry of Education* held that ‘these constitutional provisions articulate the constitutional imperative of giving due recognition to women resulting in equality and non-discrimination between the sexes.’¹²⁵

However, in a literal sense, Article 12 of the Sri Lankan Constitution protects against ‘sex-based discrimination’ rather than ‘gender-based discrimination’. There are two viewpoints on this. For instance, Sri Lanka mentioned in CEDAW periodic reports submitted to the CEDAW Committee that ‘gender equality is guaranteed through Article 12¹²⁶ of the Constitution. On the contrary, in the Supreme Court Determination of the “Gender Equality Bill of 2024”, the court upheld that ‘Article 12 recognises sex as a ground for discrimination but does not recognise a concept called gender or gender identity.’¹²⁷ This research argues that providing a restrictive and literal interpretation of Article 12(2) hinders achieving substantive equality for women, as this kind of narrow

¹²⁵ *Manohari Pelaketiya v. Ministry of Education and Others* (SC, 28 September 2016) (n56), 15-16.

In this case, the petitioner alleged that she was subjected to sexual harassment by the principal and another teacher. When the authorities disregarded her complaints, she revealed the incident in a television interview. Following the interview, the authorities suspended her service. Then, she filed a fundamental rights case for violation of her right to equality [Article 12(1)] and her right to freedom of speech and expression [Article 14(1)(a)] under the Constitution. The Supreme Court held that workplace sexual harassment is a violation of fundamental rights under Article 12. The Court awarded the petitioner (the victim) compensation.

¹²⁶ For example, the CEDAW Committee, the Ninth periodic report submitted by Sri Lanka (2025) (n15), para. 2; Also, see the CEDAW Committee, the Eighth periodic report submitted by Sri Lanka (2017) (n59), para. 36.

¹²⁷ *All Ceylon Buddhist Congress v Attorney General* [The Supreme Court Determination on the Gender Equality Bill of 2024] (SC, 7 June 2024), SC-SD 54/2024 and SC SD 55/2024, 17. In this determination, the Supreme Court further held that ‘to substitute the term ‘sex’ with the term ‘sex and gender’ in Article 12(2) can only be achieved by enacting an ‘Amendment to the Constitution.’

interpretation fails to consider disparities that arise from *de jure* and *de facto* discrimination against women.¹²⁸

Furthermore, Article 12(4) stipulates that ‘Nothing in this Article 12 shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.’¹²⁹ This constitutional provision is in line with Article 4(1) of CEDAW, which articulates that ‘temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination.’¹³⁰ The significance of this provision was emphasised by the Sri Lankan government in their periodic reports to the CEDAW Committee, as ‘Article 12(4) enables special provisions to be made by law, subordinate legislation or executive action for the advancement of women.’¹³¹ It is worth noting that this constitutional endorsement of affirmative action for women aligns with CEDAW’s obligations to promote substantive equality.¹³²

3.2.1.3 ‘The Directive Principles of State Policy’ and CEDAW State Obligation

Despite not being able to enforce before the court of law due to the constitutional restriction,¹³³ ‘The Directive Principles of State Policy’, enshrined in Article 27 of the Constitution, are fundamental in guiding the government in enacting laws.¹³⁴ The Supreme Court of Sri Lanka has emphasised that ‘the directive principles of state policy are not wasted ink in the pages of the Constitution, but a living set of guidelines which

¹²⁸ For the discussion, sex-based discrimination and gender-based discrimination, see sec. 2.4.4.1 of this thesis.

¹²⁹ The Constitution of Sri Lanka, Art. 12(4).

¹³⁰ CEDAW, Art. 4(1). Also, see the CEDAW Committee, The General Recommendation No. 25 on Article 4, paragraph 1, of the CEDAW on Temporary Special Measures, UN Doc. HRI/GEN/1/Rev.7 at 282 (2004).

¹³¹ The CEDAW Committee, the ninth periodic report submitted by Sri Lanka under Article 18 of the Convention (28 February 2025), sec 2.

¹³² The State obligation of the state parties to CEDAW to achieve substantive equality for women with a special focus on temporary special measures was discussed in Chapter 2 of this thesis.

¹³³ Article 29 of the Constitution of Sri Lanka proclaims that ‘The directive principles of state policy do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal.’

¹³⁴ Article 27 (1) of the Constitution of Sri Lanka states that ‘The Directive Principles of State Policy herein contained shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society.’

the state and its agencies should give effect to.’¹³⁵ Importantly, Article 27(15) of the Constitution affirms Sri Lanka's state obligation to respect its international treaty obligations.¹³⁶

As articulated in Article 27(15), ‘the state shall promote international peace, security and cooperation, and shall endeavour to foster respect for international law and treaty obligations in dealings among nations.’ Although Article 27(15) is not justiciable,¹³⁷ the Sri Lankan Supreme Court has used this Article to uphold the state's obligations under human rights treaties at the national level.¹³⁸ This provision emphasises that Sri Lanka shall endeavour to cultivate a steadfast respect for its treaty obligations, ensuring that its diplomatic interactions reflect this commitment.

3.2.2 A Critique of the Constitutional Protection for Equality: Challenges and Gaps

3.2.2.1 Articles 17 and 126(2): The Practical Difficulties in Seeking Justice

In Sri Lanka, the Supreme Court has the jurisdiction to hear petitions alleging infringement of fundamental rights. According to Article 17, ‘every person shall be entitled to apply to the Supreme Court,¹³⁹ as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled.’¹⁴⁰ Article 126(2) states that ‘where any person alleges that any such fundamental right has been infringed or is about to be infringed by executive or administrative action, he may himself or by an Attorney-at-Law on his behalf, within one month thereof apply to the Supreme

¹³⁵ *Ravindra Gunewardena Kariyawasam v. Central Environmental Authority and Others* (SC, 2015), FR Application No. 141/2015, 50. Also, see *Watte Gedera Wijebanda v. Conservator General of Forests and Others* (2009) 1 Sri. LR 337, 356.

¹³⁶ The Constitution of Sri Lanka, Art. 27(15).

¹³⁷ The Constitution of Sri Lanka, Art. 29.

¹³⁸ For example, in *Weerawansa v The Attorney General and Others*, 2000 (1) Sri. L.R. 387, 409, Justice Fernando, in this fundamental rights case, held that ‘Article 27(15) implies that Sri Lanka must respect international law and treaty obligations in its dealings with its citizens, particularly when their liberty is involved.’ ‘The State must afford to them the benefit of the safeguards which international law recognises.’

¹³⁹ Article 126 (1) of the Constitution of Sri Lanka states that ‘the Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement of fundamental rights.’

¹⁴⁰ The Constitution of Sri Lanka, Art. 17

Court.’¹⁴¹ These limitations, as prescribed by Articles 17 and 126(2) of the Constitution, significantly hinder the attainment of justice.

As stipulated in Article 126(2) of the Constitution, the one-month time limit for litigants to file a fundamental rights petition before the Supreme Court imposes a significant burden on petitioners, requiring them to complete the entire petition process within such a short period. When analysing this limitation from a gender perspective, several legal, social, and economic factors emerge as major barriers to women's access to justice.

These barriers encompass the physical and mental well-being of victims in the aftermath of violations, the geographical distance from the homes of litigants to the Supreme Court, which is situated in Colombo, the lack of legal awareness, as well as societal and cultural barriers against women who want to pursue justice against the state under the fundamental rights jurisdiction. Samararatne reveals that ‘for the determination of a fundamental rights petition in Sri Lanka, it can take two years or more, which also has a huge impact on access to justice for women, especially in the context of insufficient legal aid.’¹⁴²

3.2.2.2 Articles 17 and 126 (2): No Protection for Violations by Private Actors

Under Sri Lankan law, the constitutional barrier to holding private actors accountable for violations of fundamental rights committed in their personal capacity significantly undermines the rights to equality and non-discrimination. Articles 17 and 126(2) of the Constitution provide that the constitutional remedy is available ‘in respect of the infringement of fundamental rights by executive or administrative action.’¹⁴³ Scholars such as Williams and Udagama have critically examined this constitutional constraint in their works, highlighting that ‘women

¹⁴¹ The Constitution of Sri Lanka, Art. 126(2)

¹⁴² Dinesha Samararatne, ‘Reframing Feminist Imperatives in Adjudication through a Reading of Sri Lankan Jurisprudence’, in Melissa Crouch (ed), *Women and the Judiciary in the Asia-Pacific*, (Cambridge 2021) 66, 80.

¹⁴³ Articles 17 and 126(2) of the Constitution of Sri Lanka.

require protection from discrimination not only by the government but also by schools, employers, and businesses in the private sector.¹⁴⁴

In 1999, Sri Lanka, in its periodic reports to the CEDAW Committee, acknowledged that this limitation undermines the constitutional guarantee of equality for women, particularly in employment, as many fundamental rights violations occur in the private sector.¹⁴⁵ Moreover, the CEDAW Committee, in its concluding observations on the periodic reports submitted by Sri Lanka, has repeatedly expressed concern about the failure to impose accountability for fundamental rights violations committed by private individuals, which is inconsistent with the obligation under Article 2(e) of CEDAW.¹⁴⁶ Several scholars have also pointed out that women often endure various forms of violence and discrimination perpetrated by private actors and individuals, yet are unable to seek constitutional remedies due to existing restrictions in the Sri Lankan law.¹⁴⁷ Therefore, broadening the constitutional obligation to hold private actors accountable will help ensure that women's equal rights in Sri Lanka are upheld across all sectors and levels.

3.2.2.3 A Critique of Article 16: A Contradiction with CEDAW State Obligations

Analysing Article 16(1) of the Constitution through the lens of gender equality facilitates a critical evaluation of the state obligation of Sri Lanka, particularly in

¹⁴⁴ See, Susan H. Williams, 'Gender Equality in Constitutional Design: An Overview for Sri Lankan Drafters', in Asanga Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives 2012) 830. Also see, Deepika Udagama, 'Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study' (2012-2015) 24 Sri Lanka JIL,53, 63.

¹⁴⁵ The CEDAW Committee, the 3rd and 4th Periodic Report Submitted by Sri Lanka to CEDAW under Article 18 of the CEDAW (CEDAW/C/LKA/3-4, 18 October 1999) para. 11.

¹⁴⁶ For example, the CEDAW Committee, the Concluding Observations on the ninth periodic report of Sri Lanka (2025) (n15), paras. 11 and 12; The CEDAW Concluding Observations on the combined fifth to seventh periodic reports submitted by Sri Lanka (2011) (nn59), paras. 14 and 15.

¹⁴⁷ For example, the Centre for Women's Research (CENWOR), CEDAW Indicators for South Asia: An Initiative (CENWOR, supported by UNIFEM South Asia Regional Office, 2004) 15.

Deepika Udagama, 'Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study' (2012-2015) 24 Sri Lanka JIL,53, 63; Deepika Udagama, *Right to Equality: The New Frontier of Judicial Activism, Human Rights, Human Values, and the Rule of Law: Essays in Honour of Deshamanya H.L. De. Silva, P.C.* (Legal Aid Foundation 2003) 297, 328; Susan H. Williams, 'Gender Equality in Constitutional Design: An Overview for Sri Lankan Drafters', in Asanga Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice* (Centre for Policy Alternatives 2012) 830.

relation to Articles 2(a), 2(c), 2(f), 2(g) and Article 3 of CEDAW.¹⁴⁸ Article 16(1) of the Sri Lankan Constitution states that ‘All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of the fundamental rights chapter.’¹⁴⁹ It is essential to understand the legal implications of the continued existence of Article 16(1), as this constitutional provision affords immunity from judicial review to gender-discriminatory laws enacted against women before the Constitution’s adoption, despite the guarantees of equality and non-discrimination enshrined in Article 12. This shows that Article 16 of the Constitution legitimises laws that discriminate against women until Parliament takes the necessary steps to repeal them.

According to Article 80(3), the Constitution also prohibits post-enactment judicial review of legislation.¹⁵⁰ Therefore, the continued application of discriminatory legislation that undermines women's equal rights has been the subject of CEDAW's critique in several Concluding Observations concerning Sri Lanka.¹⁵¹ In 2025, the Committee expressed its concern regarding Article 16(1) of the Constitution, which states that ‘this provision prevents the judicial review of discriminatory laws enacted before its adoption, including colonial-era and customary laws that continue to discriminate against women and girls.’¹⁵² Accordingly, this research strongly recommends repealing Article 16(1) through a constitutional amendment.

¹⁴⁸ See Chapter 2 of the thesis for the theoretical foundation of state obligation under the provisions of CEDAW.

¹⁴⁹ The Constitution of Sri Lanka, Art. 16(1).

¹⁵⁰ Article 80(3) of the Constitution of Sri Lanka provides that ‘Where a Bill becomes law upon the certificate of the President or the Speaker, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever.’

¹⁵¹ For example, the CEDAW Concluding Observations on the Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka (2011) (n59), para 16. Also see the CEDAW Concluding Observations on the Eighth Periodic Report of Sri Lanka (2017) (n59), para 11(d).

¹⁵² The CEDAW Concluding Observations on the ninth periodic report of Sri Lanka (2025), (n15), paras. 11(c) and 12(c)

3.2.3 Domestic Integration of CEDAW through Legislation in Sri Lanka

3.2.3.1 The Significance of the CEDAW Domestic Implementing Legislation

According to Nweze, ‘notwithstanding that CEDAW has long been ratified in most jurisdictions, domestic legislative action for the actualisation of the rights of the convention is yet to be consummated.’¹⁵³ In dualist countries, the enactment of domestic implementing legislation on CEDAW provides a crucial foundation for achieving gender equality and aligns international treaty obligations with domestic law. This position has been echoed in the words of the “Inter-Parliamentary Union” as they commented, ‘national legislation sets the principles, objectives, and priorities for national action to combat discrimination against women and creates the machinery for carrying out that action; therefore, it is crucial that, once the State has become party to the Convention, Parliament adopts national legislation that corresponds to the Convention.’¹⁵⁴

The Women Empowerment Act, No. 37 of 2024, of Sri Lanka aims to establish mechanisms to give effect to CEDAW at the national level and is therefore considered the domestic implementing legislation for CEDAW.¹⁵⁵ The enactment of domestic implementation legislation is important for two key reasons. First, this statute is designed to incorporate CEDAW standards into domestic law; however, there remains room for the national legislature to add specific provisions to address the unique challenges faced by women in that country. Second, enacting a dedicated national statute for CEDAW is essential to reinforce the judiciary's role in safeguarding equality and non-discrimination at the national level. Thus, this statute would empower the courts to uphold women's rights, rectify injustices, and foster an environment in which gender equality is respected and realised.

¹⁵³ CC Nweze, ‘Domestication of CEDAW: Points to Consider for Customary Laws and Practices’ in Meena Shivdas and Sarah Coleman (eds), *Without Prejudice: CEDAW and the Determination of Women’s Rights in a Legal and Cultural Context* (Commonwealth Secretariat 2010) 73.

¹⁵⁴ Inter-parliamentary Union, *Handbook for Parliamentarians on CEDAW and Its Optional Protocol* (United Nations 2003), 56. Also see Inter-Parliamentary Union, *Handbook for Parliamentarians No. 36 on CEDAW and its Optional Protocol* (Inter-Parliamentary Union and OHCHR 2023) 20, 116, and 118.

¹⁵⁵ See, Human Rights Commission of Sri Lanka, *The Parallel Report to the Committee on the Elimination of Discrimination against Women* (the 90th Session of the CEDAW Committee, 6 January 2025) sec 8.

3.2.3.2 The Legislative Attempts in Sri Lanka: Understanding the Challenges

In the post-independence era, the Sri Lankan legislature has made several attempts to enact legislation to uphold women's rights and gender equality; however, these attempts were unsuccessful despite the time and effort invested in legislative drafting until the enactment of the "Women Empowerment Act" in 2024.¹⁵⁶ As noted, one of the key challenges Sri Lanka faced in passing legislation was securing the support of the majority of its parliamentarians. In some cases, fostering collaboration among civil organisations, particularly in the context of the country's multiculturalism, led to unsuccessful legislative efforts. Udagama has highlighted this challenge as 'although obligated under international law to implement CEDAW at the national level, Sri Lanka is constrained both by its dualist legal system and socio-cultural orthodoxies.'¹⁵⁷

In 1999, a legislative initiative to uphold equality and non-discrimination was launched by presenting the draft "Equal Opportunities Bill" to Parliament; however, that effort was unsuccessful, leading to the bill's withdrawal from the order paper.¹⁵⁸ It is reported that this decision was made primarily because of the large number of petitions filed by civil organisations before the Supreme Court, challenging the constitutionality of the draft bill.¹⁵⁹ This bill focused on eliminating discrimination based on various grounds such as 'gender, ethnicity, religious or political opinion, language, caste, age, or disability.'¹⁶⁰ This example demonstrates the influence of public opinion on legislative initiatives in Sri Lanka's multiethnic, multicultural social setting.

¹⁵⁶ To gather information for writing this section on historical-legal analysis, the researcher has consulted some of the Sri Lankan legal experts in the area: (i) Dr Deepthika Kulasena, the former Deputy Legal Draftsman of the Legal Draftsman Department of Sri Lanka, (ii) Ms Kumudu Perera, the Legal Officer of the Ministry of Women and Child Development, (iii) Prof. Sharya Scharenguivel, Emeritus Professor of the University of Colombo and (iv) Prof Rose Wijesekere of the Faculty of Law, University of Colombo.

¹⁵⁷ Deepika Udagama, 'Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study' (2012-2015) 24 Sri. JIL, 53, 54.

¹⁵⁸ Sumudu Atapattu, 'The Editor's Note on Equal Opportunity Law' (1999)10, LST Review, (ii).

¹⁵⁹ The CEDAW Committee, Reports provided by specialized agencies of the United Nations on the implementation of the Convention in areas falling within the scope of their activities, The Report by the International Labour Organisation Concerning Sri Lanka (CEDAW/C/2002/I/3/Add.4, 19 December 2001) p.10; Also, see Ambika Satkunanathan, 'The Controversy Over the Equal Opportunity Bill', Sri Lanka: State of Human Rights (2000), Law and Society Trust, 191, 191-192; Deepika Udagama, Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study (n157), 63.

¹⁶⁰ The Equal Opportunities Bill of 1999, Sri Lanka, sections 2(a) and 2(b).

Between 2002 and 2003, the Sri Lankan Parliament attempted to introduce the “Women’s Rights Bill”.¹⁶¹ Having considered ‘the draft bill did not meet the constitutional standards on equality and CEDAW rights, in 2004, a special committee was appointed by the Parliament to prepare a new draft.’¹⁶² Despite numerous attempts, this draft bill also failed to become an Act of Parliament. In the CEDAW Shadow Report submitted by “the Women and Media Collective” concerning Sri Lanka (2010), ‘the final draft of the bill was subjected to the criticisms of civil society organisations since the salient features which were incorporated in the draft as agreed by the government with women’s group and legal experts to guarantee equal rights for women had been altered in the final draft by the government.’¹⁶³ Due to disagreements among the parties involved in the drafting process, this legislative attempt could not proceed.

In 2022, the Sri Lankan government began drafting two Bills: the “Gender Equality Bill” and the “Empowerment of Women Bill.” The Gender Equality Bill went beyond the ground of ‘sex’ and addressed systemic and structural causes of gender-based discrimination, including multiple and intersectional forms of discrimination.’¹⁶⁴ In 2024, the constitutionality of the bill was questioned before the Supreme Court. The Supreme Court held that the “Gender Equality Bill” as a whole was inconsistent with Articles 3, 4(d), 9 and 10 of the Constitution and some of the main provisions of the Bill were inconsistent with Articles 12 and 14 of the Constitution,¹⁶⁵ following several petitions and intervening petitions submitted by individuals and civil society organisations for and against the bill.¹⁶⁶ Therefore, the Supreme Court ruled that the bill as a whole cannot be enacted as legislation, unless it follows the procedure, which requires approval by a special majority of Parliament (not less than 2/3 of the total

¹⁶¹ The Women and Media Collective, *Sri Lanka Shadow Report submitted to CEDAW* (2010) 8-9

¹⁶² *ibid.*, 8.

¹⁶³ *ibid.*, 8-9.

¹⁶⁴ The Gender Equality Bill of 2024, Sri Lanka, Published in the Gazette on 17 April 2024, Clause 2(c).

¹⁶⁵ The Constitution of Sri Lanka (1978), Article 120 states that ‘The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution.’

¹⁶⁶ *All Ceylon Buddhist Congress v Attorney General* [The Supreme Court Determination on the Gender Equality Bill of 2024] (SC, 7 June 2024), SC-SD 54/2024 and SC SD 55/2024.

number of the members of Parliament), and the approval by the people at a referendum.¹⁶⁷ The Women's Empowerment Act was enacted by the Parliament of Sri Lanka in 2024.

3.2.3.3 An Analysis of the 'Women Empowerment Act of 2024' and CEDAW

The Women Empowerment Act, No. 37 of 2024, establishes a comprehensive framework to empower women and safeguard their rights. According to section 2(b) of the Act, 'one of the objectives of the Act is to introduce mechanisms to give effect to the obligations undertaken by the Government of Sri Lanka in relation to women in terms of CEDAW.'¹⁶⁸ Moreover, section 45 of the Act interprets 'women's rights' as 'the rights of women to equality and non-discrimination as enumerated in Article 12 of the Constitution and the goals in CEDAW, including promoting equal opportunities for women in access to education and employment and ensuring freedom from sexual harassment and all forms of violence against women, enabling them to live in dignity.'¹⁶⁹

Consequently, this research recognises the Women Empowerment Act as the domestic implementing legislation for CEDAW, which is primarily aimed at enhancing women's empowerment, protecting women's rights, and eradicating violence against women. In 2025, the CEDAW Committee acknowledged that the Women Empowerment Act represents a progressive step toward implementing the Convention in Sri Lanka.¹⁷⁰ Moreover, the Human Rights Commission of Sri Lanka affirmed in its report to the CEDAW Committee that the Women Empowerment Act recognises CEDAW as part of the Sri Lankan legal system.¹⁷¹ One of the significant features of the Act is the framework for establishing "the National Commission on Women" (hereinafter referred to as "NCW") to 'inquire into and investigate the infringement or imminent infringement of women's rights and receive complaints.'¹⁷²

¹⁶⁷ *ibid.* *All Ceylon Buddhist Congress v Attorney General*, 41,45, and 46. For the constitutional procedure, see Articles 83 and 84 read with Article 80 of the Constitution of Sri Lanka.

¹⁶⁸ The Women Empowerment Act, No. 37 of 2024 (n14), Sec 2(b).

¹⁶⁹ *ibid.* The Women Empowerment Act, Sec. 45.

¹⁷⁰ The CEDAW Concluding Observations on the Ninth Periodic Report of Sri Lanka (2025) (n15) para. 4(a).

¹⁷¹ The Human Rights Commission of Sri Lanka, The Parallel Report to the CEDAW Committee (n155), para. 8.

¹⁷² The Women Empowerment Act, No. 37 of 2024, Sec. 6.

In addition, this research observed that the drafters of the Act have attempted to adhere to the standards enshrined in CEDAW and its General Recommendations in formulating its provisions. To illustrate, section 2(g) of the statute states that one of the objectives of the Act is ‘to promote the realisation of, and ensure equality and justice for women’, which is in line with Articles 2(a) and 24 of CEDAW.¹⁷³ The realisation of women's rights is a fundamental pillar for achieving substantive equality. Moreover, the Act has recognised the importance of addressing “intersectional discrimination against women” in several sections, including Section 6(q) and Section 37(2)(e).¹⁷⁴ In addition, section 2(e) proclaims that one of the objectives of the Act is to ‘take steps to prevent sexual harassment and violence against women and to strengthen the measures for the prosecution and punishment of acts or omissions’, and this objective is in line with the CEDAW General Recommendations No.19 and No.35.¹⁷⁵

Moreover, section 2(d) of the Act states that ‘one of the objectives of the Act is to ‘protect women from all forms of discrimination based on gender and sexual orientation.’¹⁷⁶ This objective can be considered as an attempt to address the legal vacuum in Article 12(2) of the Constitution, which does not recognise gender or ‘sexual orientation’ as grounds for discrimination. In 2025, the NCW of Sri Lanka was established under the Women Empowerment Act. However, it has been reported that the first chairperson of the commission, Dr Ramani Jayasundere, resigned in January 2026, within a few months of her appointment, due to operational challenges and resource constraints.¹⁷⁷ This example

¹⁷³ CEDAW, Article 2(a) stipulates that ‘To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.’ Also, Article 24 of CEDAW requires that ‘States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.’

¹⁷⁴ The Women Empowerment Act (2024) (n14), Sec 6(q) states that one of the powers, duties and functions of the “National Commission on Women” is to ‘take steps to ensure equality and protection to women of different categories and status identified by regulations.’ Moreover, section 37(2) (e) of the Act states the minister shall, in consultation with the commission, make regulations that ‘identify women of different categories and status and to prescribe measures to be adopted to ensure equality and protection to respective category or status.’

¹⁷⁵ The CEDAW Committee, The General Recommendation No. 19 (n107) and General Recommendation No. 35 (n16). Also, see sections 6(p), 31(1), 31(3), 37(h) of the Women Empowerment Act (2024) (n14).

¹⁷⁶ The Women Empowerment Act, Sec. 2(d).

¹⁷⁷ Methmalie Dissanayake, “NWC: Delays persist despite member appointments”, *The Morning Colombo*, 18 Jan 2026 <<https://www.themorning.lk/articles/ghGCd0ZaZSoF6QWg561X>> accessed on 23 January 2026. Also, see Buddhika Samaraweera, National Women’s Commission, rendered non-functional? *The Morning* (Colombo, 29 January 2026 <<https://www.themorning.lk/articles/T2bxzYryfzXkK1Mgyhmr>> accessed on 30 January 2026.

provides evidence that, to ensure effective implementation of the institutional frameworks outlined in the Act, the necessary financial and human resources, infrastructure, and freedom from external interference should be guaranteed.

3.2.4 Domestic Integration of CEDAW in Sri Lanka through Judicial Pronouncements

3.2.4.1 The Role of the Judiciary in the Domestic Integration of CEDAW

Integrating CEDAW into the national legal systems can be realised not only through constitutional incorporation and domestic implementing legislation but also through judicial incorporation. The judiciary, as the guardian of people's rights, plays a pivotal role not only by highlighting the importance of women's rights but also by underscoring the state's obligation to effectively incorporate these international standards into the national legal framework. Having emphasised the role of the judiciary in upholding CEDAW, “the Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women” (1994) declares that ‘the judicial officers in Commonwealth jurisdictions should be guided by CEDAW when interpreting and applying the provisions of the national constitutions and laws, including the common law and customary law, when making decisions.’¹⁷⁸

Concerning the right to access to justice for women, Article 2(c) of CEDAW stipulates that ‘State parties undertake the obligation to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.’¹⁷⁹ Moreover, the CEDAW General Recommendation No. 28 relating to the state obligations provides that ‘States parties must ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under the Convention.’¹⁸⁰ On the one hand, national courts have an obligation to uphold

¹⁷⁸ The Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, as agreed by Senior Judges at the African Regional Judicial Colloquium (Zimbabwe, 1994), sec. 11.

¹⁷⁹ CEDAW, Article 2(c).

¹⁸⁰ The CEDAW General Recommendation No. 28 (n11), Para 33.

CEDAW rights and values domestically. On the other hand, the judicial incorporation of CEDAW is a valuable means of integrating the convention into domestic law, particularly in the absence of national legislation in dualist countries.

The UN Women, in its report on the judicial practices in Southeast Asia, explains that ‘CEDAW principles or Articles are cited by the judiciary, primarily as persuasive authority, rather than a direct source of rights and duties.’¹⁸¹ Since the 2000s, the judiciary of Sri Lanka has increasingly relied on international treaties as persuasive authority in fundamental rights and environmental protection cases.¹⁸² In a case study of Sri Lanka, Deepika Udagama mentioned that ‘even though according to principles of dualism such reception is limited by the necessity for incorporating legislation, the Sri Lankan Supreme Court has in practice progressively used international human rights and environmental treaties and also soft law as interpretive guides.’¹⁸³

However, this research noted that the Sri Lankan judiciary has been slow to integrate CEDAW principles into its pronouncements, for reasons that remain unclear. This judicial reluctance to cite CEDAW in case law has resulted in a significant disconnect between the international standards set forth by CEDAW and the prevailing gender inequalities against women in Sri Lanka, until recent significant judgments.¹⁸⁴

¹⁸¹ UN Women, *CEDAW Casebook: An Analysis of Case Law in Southeast Asia* (1st edn, UN Women 2016) 11.

¹⁸² For example, *Weerawansa v. The Attorney General and Others*, (2000) 1 Sri. L.R. 387.

Bulankulama v. Secretary, Ministry of Industrial Development (the Eppawala Case), (2000) 3 Sri L.R. 243.

Ajith Perera v. Attorney General and Others, SC FR Application No. 273/2018 (S.C., Sri Lanka, 18 April 2019).

Ravindra Gunawardena Kariyawasam v. Central Environment Authority and Others (Chunnakam Power Station Case), SCFR Application No. 141/2015 (S.C., Sri Lanka, 04 April 2019).

Hewa Maddumage Karunapala v. Jayantha Prema Kumara Siriwardhana, Case No. SC/FR/97/2017 (S.C., Sri Lanka, 12 February 2021), *P. R. S. E. Corea v. Sri Lankan Airlines Limited*, S.C. Appeal No. 91/2017 (S.C., Sri Lanka, 2 February 2024) and *Udari L. Abeyasinghe v. W. M. Thilakaratne* (S.C.F.R. Application No. 81/2021, 08 May 2026).

¹⁸³ Deepika Udagama, ‘The Politics of Domestic Implementation of International Human Rights Law: A Case Study of Sri Lanka’, (2015) 16, *Asia-Pacific Journal on Human Rights and The Law*, 104-149, 131.

¹⁸⁴ The recent Sri Lankan case law that cited CEDAW is discussed in section 3.2.4.2 of this thesis.

3.2.4.2 The Judicial Incorporation of CEDAW: Analysing Selected Case Law

3.2.4.2.1 A Turning Point: *Manohari Pelaketiya v. Ministry of Education (2016)*

The Supreme Court decision in *Manohari Pelaketiya v. Secretary, Ministry of Education and Others*¹⁸⁵ can be considered a turning point in the history of gender equality for Sri Lankan women, as the Supreme Court, for the first time in its judicial history, acknowledged Sri Lanka's state obligations under CEDAW. The petitioner (victim) of this FR case was a female music teacher at a government school who experienced sexual harassment from a fellow staff member and the principal. When the petitioner reported workplace sexual harassment to the educational authorities, no action was taken. Then, the petitioner disclosed this incident on a television programme without first obtaining prior approval from the government, as a government employee, to make a media statement.¹⁸⁶ As a result of this interview, she was suspended from teaching by the Ministry of Education.¹⁸⁷

Following this incident, the victim filed a fundamental rights case before the Supreme Court. The court held that the petitioner's right to equality, which is guaranteed by Article 12(1) and the freedom of speech and expression guaranteed by Article 14 (1)(a) of the Constitution were violated. The Supreme Court emphasised in this case that 'Sri Lanka boasts of both constitutional and international obligations to ensure equity and gender-neutral equality, which this Court cannot simply ignore.'¹⁸⁸ Importantly, the court made a special reference to state obligations under CEDAW and remarked that 'Sri Lanka has undertaken international obligations to eliminate all forms of discrimination against women by acceding to CEDAW.'¹⁸⁹

¹⁸⁵ *Manohari Pelaketiya v. Ministry of Education and Others* (n56).

¹⁸⁶ *ibid.*, 5.

¹⁸⁷ *ibid.* As reported in the case, "education authorities were of the opinion that the petitioner, as a government servant, by giving an interview to the media and airing her views of an official inquiry, acted contrary to Sections 6:5 and 6:1:4 of Chapter XL VII of the Establishment Code of Sri Lanka." *ibid.*, 9 and 17.

¹⁸⁸ *ibid.* *Manohari Pelaketiya v. Ministry of Education and Others*, 15.

¹⁸⁹ *ibid.*, 16.

However, in this case, the Supreme Court did not cite the relevant Articles of CEDAW to uphold the rights guaranteed by the treaty against sexual harassment and gender-based discrimination. In that sense, this case can be viewed as a missed opportunity for the judiciary to uphold the CEDAW rights at the national level. However, the Manohari case laid the groundwork for domestic integration of CEDAW in Sri Lanka through judicial interpretation, setting a precedent for future rulings on women's rights and safety. Thus, this decision can be considered a turning point.

3.2.4.2.2 The Landmark Ruling: *P. R. S. E. Corea v Sri Lankan Airlines Limited (2024)*

Corea v. Sri Lankan Airlines Limited is an appeal regarding the unfair termination of employment of a former senior flight steward of Sri Lankan Airlines by the employer.¹⁹⁰ The termination was a result of a disciplinary inquiry into allegations of workplace sexual harassment made against him by a female flight stewardess.¹⁹¹ In this appeal, the applicant prayed for reinstatement with back wages. In the decision, the Supreme Court cited Article 11(1) of CEDAW,¹⁹² emphasising that as a state party, Sri Lanka is required to 'take all appropriate measures to eliminate discrimination against women in the field of employment.'¹⁹³ The Supreme Court has cited the "CEDAW General Recommendation No. 19 on Violence Against Women" in this case, by emphasising that 'equality in employment may be severely compromised when women are subjected to gender-specific violence, such as sexual harassment in the workplace.'¹⁹⁴ Finally, the court determined that the termination of the applicant's services by his employer is just and equitable.

This Supreme Court ruling is a milestone in Sri Lankan jurisprudence for several reasons: it sends a clear zero-tolerance message against workplace sexual harassment against women, reinforces institutional obligations to protect victims, and incorporates

¹⁹⁰ *P. R. S. E. Corea v. Sri Lankan Airlines Limited*, S.C. Appeal No. 91/2017 (Supreme Court of Sri Lanka, 2 February 2024) 3.

¹⁹¹ *ibid.*

¹⁹² CEDAW, Article 11(1) states that 'States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women'

¹⁹³ *P. R. S. E. Corea v. Sri Lankan Airlines Limited* (n190), 11.

¹⁹⁴ *ibid.*

CEDAW into the Sri Lankan legal system through judicial interpretation. In 2025, the CEDAW Committee, in its summary record concerning Sri Lanka, appreciated this judgement as ‘CEDAW and CEDAW Committee’s jurisprudence had been invoked by the Supreme Court in the *Corea* judgment.’¹⁹⁵ The central takeaway from this case is that the judiciary has the capacity to effectively translate the principles outlined in CEDAW into enforceable judicial outcomes, thereby delivering justice for women at the national level. This transformative judicial approach not only reinforces the fundamental rights of women but also sets a precedent for future legal interpretations, ensuring that international standards for gender equality are upheld and prioritised within domestic legal frameworks.

3.3 Summarising the Findings and the Concluding Remarks

Considering the length of this chapter, it is beneficial to read a summary of the findings of this chapter before the concluding remarks. This chapter analyses the initiatives and measures Sri Lanka has undertaken to incorporate CEDAW into its legal system through three main methods: constitutional incorporation, domestic implementing legislation, and judicial interpretation. While examining these methods, this chapter also highlights Sri Lanka's progress in advancing women's rights in line with CEDAW. While the Sri Lankan Constitution enshrines equality and non-discrimination in Articles 12(1) and 12(2), and permits affirmative measures to advance women's status in Article 12(4), it notably lacks a dedicated provision explicitly addressing gender-based discrimination.

Furthermore, the one-month timeframe for filing fundamental rights petitions in the Supreme Court, coupled with the absence of remedies for violations perpetrated by private entities, considerably obstructs women's access to justice. Additionally, Article 16(1) of the Constitution presents a significant obstacle by granting immunity from judicial review to discriminatory laws enacted before 1978, thereby endorsing their continued application. In light of these issues, this research suggests that the constitutional protections intended to ensure equal rights for women in Sri Lanka fall short of the standards set out in CEDAW, thereby necessitating comprehensive constitutional reforms.

¹⁹⁵ The CEDAW Committee, Summary record of the 2134th meeting at the 90th session to consider the Ninth periodic report of Sri Lanka, CEDAW/C/SR.2134, (13 February 2025), para 11.

Second, enacting domestic implementing legislation is a crucial means of incorporating CEDAW into national legal systems. This chapter traces historical-legal efforts to enact national implementing legislation in Sri Lanka and analyses the enactment of the Women Empowerment Act, No. 37 of 2024, which marks significant progress. Third, this chapter emphasises that the judiciary also has a pivotal role in upholding international human rights treaties through case law. This chapter provided several examples demonstrating that, while the dualist approach limits the direct application of human rights treaties, the Supreme Court of Sri Lanka has progressively utilised CEDAW in the judicial construction of women's rights. Through this analysis, the chapter emphasises both the achievements and challenges in integrating CEDAW into the Sri Lankan legal system.

In conclusion, this chapter illustrates that, despite facing various legal, political, social, and cultural challenges as a dualist country, Sri Lanka has made considerable progress in integrating CEDAW into its national legal framework in recent years. An analysis of the research findings of this chapter reveals two key observations. First, regardless of the methods used to incorporate CEDAW, each approach reveals shortcomings inherent in its method. Second, while Sri Lanka has achieved notable progress, the full and effective incorporation of the treaty within the domestic legal system remains out of reach. The subsequent chapter of this thesis will explore the gaps, challenges, and obstacles that hinder the full and effective integration of CEDAW in Sri Lanka.

CHAPTER – 4

Barriers to the Domestic Incorporation of CEDAW in Sri Lanka: Challenges, Inadequacies and Obstacles

4.1 Introduction

Achieving gender equality and eliminating discrimination against women in Sri Lanka requires a comprehensive understanding of the depth of complex and pervasive issues. As noted in Chapter 3, several factors have impeded the full and effective domestic integration of CEDAW in Sri Lanka, a matter that requires careful investigation in Chapter 4. Following that, this Chapter examines these factors, with illustrations, and organises them into three categories. The first category comprises challenges and inadequacies in the legal and policy frameworks, including insufficient constitutional protection for gender equality, gender inequalities in special laws, the absence of post-enactment judicial review of statutes, difficulties within the justice system, and a lack of political will for law reform.

The second category is associated with social and cultural barriers which prevented women from enjoying equal rights. The third category addresses institutional and structural barriers, including poor coordination among institutions, insufficient resource allocation, inadequate gender-sensitive training, and a lack of accountability. This research argues that Sri Lanka will continue to face significant issues in realising CEDAW unless targeted, specific measures are implemented to address the identified legal and non-legal barriers. By detailing the complexities of the Sri Lankan social-legal landscape, this chapter also aims to highlight areas for reform, which will be discussed in Chapter 5.

4.2 Challenges and Inadequacies in the Legal and Policy Frameworks

4.2.1 The Insufficient Protection for Gender Equality under the Constitution¹⁹⁶

The CEDAW Committee remains concerned that the existing constitutional safeguards in Sri Lanka are insufficient to ensure the full exercise of the women's rights enshrined

¹⁹⁶ Since this topic has been discussed in detail in section 3.2.1 of this thesis, Section 4.2.1 provides a summary.

in the Convention.¹⁹⁷ To justify, the Committee pointed out that ‘although Article 12(2) guarantees equality for women, that provision does not prohibit direct and indirect discrimination against women, as required by Article 1 of CEDAW, mainly due to three reasons; (i) the continuous existence of gender-discriminatory laws against women (ii) the absence of post-legislative judicial review to question the discriminatory legislation and (iii) the failure to address intersecting discrimination against women within the constitutional framework.’¹⁹⁸

Moreover, recent judicial scrutiny of Article 12(2) has denied recognition of “gender” or “gender identity” as grounds for discrimination under this provision.¹⁹⁹ This narrow interpretation significantly hampers the acknowledgement of the more subtle and systemic barriers that women encounter, which extend well beyond the binary concept of biological sex. The shortcomings in the constitutional protections significantly undermine substantive and transformative equality for women.

4.2.2 The Existence of Gender-Discriminatory Laws in the Context of Legal Pluralism²⁰⁰

The pluralistic nature of the Sri Lankan legal system poses considerable challenges to achieving gender equality for women. This complexity is exacerbated by gender-discriminatory laws, which are immune to judicial scrutiny under Article 16(1) of the Constitution.²⁰¹ As a result, these gender-discriminatory legal provisions in special laws (personal laws) and some of the British colonial legislation have not been reformed to comply with the standards set by CEDAW. For example, the Penal Code of Sri Lanka, enacted in 1883 during British colonial rule, is largely based on English law.

According to Section 363 (a) of the Penal Code of Sri Lanka, ‘a man is said to commit ‘rape’ that he has sexual intercourse with a woman without her consent, even where such woman is his wife, and she is judicially separated from the man.’²⁰² Therefore, in Sri

¹⁹⁷ The CEDAW Concluding Observations on the Eighth Periodic Report of Sri Lanka, (n59), para 8.

¹⁹⁸ *ibid.* Para 10.

¹⁹⁹ *All Ceylon Buddhist Congress v Attorney General* (2024) (n127).

²⁰⁰ Due to the word limit, this research has discussed only a few selected examples from the Sri Lankan law.

²⁰¹ See section 3.2.2.3 of this thesis.

²⁰² The Penal Code, No. 2 of 1883, Sri Lanka (as amended by the Penal Code Act, No. 22 of 1995), Sec. 363(a).

Lanka, marital rape is criminalised only in the event of judicial separation, and this legal provision is a reflection of the ‘doctrine of coverture’ in early English law.²⁰³ Having criticised this, Goonesekere recommends that ‘the definition of rape should be broadened to include marital rape, and should penalise marital rape in *de facto* separation, as well.’²⁰⁴

It is also crucial to provide a few illustrations from special laws to demonstrate the gender inequalities experienced by women governed by Kandyan law, Muslim law, and *Thesawalamai*. For instance, the Kandyan Marriage and Divorce Act, No. 44 of 1952, presents a gender-discriminatory law that violates women’s right to equality concerning divorce. According to section 32(a) of the Act, ‘the dissolution of a Kandyan marriage shall be granted to the husband on the ground of adultery by his wife after marriage.’ However, section 32(b) of the Act requires a wife to prove “adultery by the husband, coupled with incest or gross cruelty” to dissolve the marriage.²⁰⁵

This legal provision imposes a greater burden of proof on the wife compared to the husband in divorce litigation that violates Article 16(1)(c) of CEDAW.²⁰⁶ Consequently, this legal provision not only reinforces the societal perception that women's moral failings within the marriage are punished more harshly than men's but also reflects the influence of early English marriage law on Kandyan marriage law.²⁰⁷

In Sri Lanka, the minimum legal age for marriage for both men and women is 18 years.²⁰⁸ However, there is no minimum age of marriage stipulated in the Muslim Marriage and

²⁰³ See William Blackstone's *Commentaries on the Laws of England* (Clarendon Press 1765–1769), (2: 441).

²⁰⁴ Savitri Goonesekere, *Compendium on Law, Gender Based Violence and Reproductive Rights* (UNFPA Sri Lanka 2017) 48.

²⁰⁵ The Kandyan Marriage and Divorce Act, No. 44 of 1952, Sri Lanka, Sections 32(a) and 32(b).

²⁰⁶ CEDAW, Article 16(1)(c) requires ‘state parties shall ensure on a basis of equality of men and women the same rights and responsibilities during marriage and at its dissolution.’

²⁰⁷ The double standard in early English divorce law. For example, the Matrimonial Causes Act 1857 of England (28 August 1857), section XXVII. [emphasis added]

²⁰⁸ The Marriage Registration Ordinance, No.19 of 1907 of Sri Lanka (as amended by the Act, No. 18 of 1995) Section 15 stipulates that ‘No marriage contracted after the coming into force of this section shall be valid unless both parties to the marriage have completed eighteen years of age.’

Divorce Act. However, with the approval of the Quazi,²⁰⁹ the marriage of a Muslim girl under twelve years of age can be registered according to section 23 of the Muslim Marriage and Divorce Act, No.13 of 1951.²¹⁰ The Report of the Advisory Committee appointed to propose reforms on Muslim personal laws in Sri Lanka (2021) recommends that the age of marriage be 18 for both male and female, and that the consent of the bride for the marriage must be mandatory.²¹¹ The Human Rights Commission of Sri Lanka, in its recommendations concerning reforming the Muslim Marriage and Divorce Law (2025), also recommended that ‘the minimum age of marriage of persons marrying under the Muslim Marriage and Divorce Act be stipulated as 18 years old.’²¹² Despite these recommendations put forth by several committees, the abolition of gender-discriminatory provisions affecting women under Muslim law in Sri Lanka has yet to be realised.

Under the general law of Sri Lanka, husband and wife both have equal rights to dispose of and deal with immovable property.²¹³ However, in the law of *Thesawalamai*, section 6 of the Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1 of 1911 (hereinafter referred to as JMRIO) stipulates that ‘a married woman cannot dispose of her immovable property without the written consent of her husband.’ Nevertheless, section 7 of the JMRIO provides the husband with absolute rights to dispose of his immovable

²⁰⁹ “Quazi” is a Muslim who has a judicial power appointed by the Judicial Service Commission of Sri Lanka to adjudicate on marriage, divorce, and related family disputes under the Muslim Marriage and Divorce Act, No.13 of 1951. Section 12 of the Act requires that ‘Quazi must be a male Muslim with good character and position.’

²¹⁰ The Muslim Marriage and Divorce Act, No. 13 of 1951, Section 23 provides that “a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act unless the Quazi for the area in which the girl resides has, after such inquiry as he may Quazi's deem necessary, authorized the registration permission of the marriage.’

²¹¹ The Report of the Advisory Committee Appointed to Propose Reforms on Muslim Personal Laws in Sri Lanka (2021), The Committee was chaired by Shabry Haleemdeen (16 June 2021), 16 and 20.

<<https://www.mmdasrilanka.org/wp-content/uploads/2023/07/muslim-MarriageDevorce.pdf>> accessed on 10 January 2026.

²¹² The Human Rights Commission of Sri Lanka, ‘The Statement on Reforming the Muslim Marriage and Divorce Act and on Related Matters’, (HRC/PS/i/E/25/08/25, 25 August 2025) 7. <<https://www.hrcsl.lk/wp-content/uploads/2025/08/HRCSL-Statement-on-Reforming-the-Muslim-Marriage-and-Divorce-Act-and-on-Related-Matters.pdf>>accessed on 25 August 2025.

²¹³ The Matrimonial Rights and Inheritance Ordinance, No.15 of 1876 of Sri Lanka (as amended by the Married Women's Property Ordinance, No. 18 of 1923). The gender-discriminatory provisions against women, contained in sections 4 to 19 (both inclusive) of the Matrimonial Rights and Inheritance Ordinance, were subsequently abolished by Section 4 of the Married Women's Property Ordinance in 1923.

property.²¹⁴ Reading together, the unequal treatment in sections 6 and 7 demonstrates *de jure* discrimination against married women in *Thesawalamai* in terms of their rights to command over separate property. According to Kamala Nagendra, ‘Roman-Dutch Law, as the common law of Sri Lanka, also influenced *Thesawalamai*, regarding the husband’s marital power over the wife’s property rights.’²¹⁵

Additionally, section 8 of the JMARIO states that ‘if a husband’s consent is required for the valid disposition of or dealings with any property by his wife, and if such consent is unreasonably withheld, the wife may apply to the District Court for an order authorising her to dispose of or deal with the property without her husband’s consent.’ In *Ponnupillai (Widow of Kathiragamar) v. Kuramaravetpillai*, Viscount Radcliffe held that ‘section 8 of the JMARIO does not confer on a district court jurisdiction to grant a married woman general permission to deal, without the consent of her husband, with all her immovable property as she might think best and under that section, the court can give consent only to a particular transaction actually proposed at the time of the order.’²¹⁶ It seems such permission is granted on a case-by-case basis by the court.

In this regard, seeking a court order to obtain permission for disposing of a wife’s property places an additional and unfair burden on married women. This process can lead to unforeseen consequences in their personal lives, such as the breakdown of marriages, increased risk of domestic violence, and economic vulnerability due to the high costs associated with litigation. Furthermore, research by “the Centre for Policy Alternatives” indicates that ‘women may be reluctant to assert their rights or seek redress due to social or cultural pressures, as well as fears of social stigma associated with making disputes

²¹⁴ The Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1 of 1911, Sections 6, 7 and 8. According to section 6 of the Act, a married woman requires the written consent of her husband to dispose of and deal with her immovable property.’ However, section 7 provides that ‘a husband has full power of disposing and dealing with his property.’ If the consent of the husband is unreasonably withheld, section 8 of the Act provides that ‘the wife can submit a petition to the district court to obtain an order of authorisation to dispose of or deal with her property.’

²¹⁵ Nagendra argues that ‘the words in Section 4, Clause 1 of the *Thesawalamai* Code are identical to the idea of the Dutch jurist, Simon Van Leeuwen, on the husband’s marital power over the wife’s property.’ Kamala Nagendra, *Matrimonial Property and Gender Inequality: A Study of Thesawalamai* (Stamford Lake 2008), 280-281.

²¹⁶ *Ponnupillai (Widow of Kathiragamar) v. Kuramaravetpillai* (1963) 65 NLR 241, 241.

public.²¹⁷ Therefore, this research concludes that, despite its apparent intent, Section 8 of JMPIO fails to provide meaningful relief for women in practice and requires them to obtain a court order in such situations, thereby constituting a form of discrimination.

The CEDAW Committee, in its Concluding Observations, has raised significant concerns regarding “the intersectional discrimination” faced by Sri Lankan women, who are governed by personal laws.²¹⁸ These concerns underscore the gender inequalities that women subjected to special laws in Sri Lanka experience, resulting in discrimination not only based on their gender but also due to the personal laws that apply to them. Consequently, these women face systemic barriers that hinder their ability to assert their rights and participate fully in society, in contrast to women who are governed by the general laws of Sri Lanka. This distinct legal characteristic presents a substantial challenge to the domestic integration of CEDAW through legislative reforms.

In addition, this research argues that legalising “gender biases against women” through legislation not only entrenches gender inequalities within a country's legal framework but also normalises and legitimises the concept of “female subordination”, influencing societal attitudes and beliefs. As discussed in this section, some gender-discriminatory provisions in special laws appear to have been influenced by early English and Roman-Dutch legal principles; however, indigenous communities in Sri Lanka have, over time, absorbed these legal principles as their own. Therefore, it is imperative to break this “*generational cycle of gender inequalities*” by repealing or amending the laws, policies, traditions and practices that constitute gender-based discrimination against women.²¹⁹

²¹⁷ The Centre for Policy Alternatives, *Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni* (Commissioned by LIFT project, CARE International Sri Lanka, Colombo, 2005) 21.

²¹⁸ The CEDAW Concluding Observation on the Ninth Report submitted by Sri Lanka (2025), (n15), sec.12(b). Also, see Concluding Observation Concerning the Eighth Report submitted by Sri Lanka (2017) (n59), sections 12, 13(b) and 44.

²¹⁹ The concept of the “*Generational Cycle of Gender Inequalities*” highlights a significant challenge in the effort to eliminate gender-discriminatory laws and practices within a country. This proposed concept suggests that enduring gender disparities experienced by women, deeply embedded in socio-cultural-religious beliefs in a country, can eventually become institutionalised within that nation's legal system. Otherwise, colonial powers may have introduced gender-discriminatory laws in their occupied territories, which have since been perpetuated through generations due to the reluctance of the legislative bodies of that country to repeal them. Consequently, these laws influence the ideological thinking of individuals and communities in that nation, leading them to rationalise the legal subordination of women as normal and part of their culture. Over time, such discrimination becomes normalised and accepted within society, with individuals viewing these gender-discriminatory laws as integral to their culture and heritage, ultimately resisting their abolition, despite their state's obligations under international law. [This concept was developed by the author of this thesis through the findings of this research.]

4.2.3 Lack of Political Will and Legislative Ignorance Causing Delay in Law Reforms

As this research finds, one of the key reasons for the discrepancy between international treaty commitments and their implementation in national legal systems is insufficient “political will” to undertake the necessary legal reforms to ensure gender equality and eliminate discriminatory laws against women.²²⁰ In a broader context, “political will” to guarantee gender equality for women encompasses several elements. This may include the state's commitments for the allocation of adequate human and financial resources, the enactment of legislation and policies that ensure gender equality, the abolition of discriminatory laws against women, the establishment of enforcement mechanisms, taking political leadership to challenge socio-cultural barriers that perpetuate discrimination, and the state's engagement in public dialogue that underlines the importance of gender equality.

In this research, “legislative ignorance” among lawmakers refers to a lack of gender sensitivity and a failure to prioritise legislative initiatives on women’s rights, resulting in delays in necessary legal reforms. Syahirah emphasises that lack of “political will” due to the absence of gender-sensitive governmental structure, judicial, and policies is a factor that influences the failure in state obligation in implementing CEDAW domestically.²²¹ Syhirah’s observation highlights how a lack of political will leads to systemic failures to fulfil the state's obligations to prioritise and integrate gender-focused initiatives within the governance framework. Noting with concern the delay in legislative initiatives to reform the laws, the CEDAW Committee emphasised the crucial role of Sri Lanka's legislative power in ensuring the full implementation of the Convention.²²²

²²⁰ Malsirini de Silva and Avishka Jayaweera, *Gender Discrimination in Sri Lanka: Law, Policy and Practice* (United Nations Population Fund 2025) 49. Also, see Andrea Spehar, “The pursuit of political will: decision makers’ incentives and gender policy implementation in the Western Balkans”, (2018) 20(2), *International Feminist Journal of Politics*, 236, 238-239.

²²¹ Sharifah Syahirah, ‘Regional-Global Governance Network on Women’s Rights: CEDAW and its implementation in ASEAN countries’, (2015) 172, *Procedia - Social and Behavioural Sciences*, 519-524, 522. <https://www.sciencedirect.com/science/article/pii/S1877042815004346?ref=pdf_download&fr=RR-2&rr=7dbbb830be7eb309> accessed 23rd June 2023.

²²² The CEDAW Committee, *Concluding Observations on the eighth periodic reports of Sri Lanka* (2017) (n59), para.7.

Also, see the CEDAW *Concluding Observations on Sri Lanka's ninth periodic report* (2025) (n15), para. 8.

This research finds that several factors have contributed to the lack of political will to eliminate gender inequalities in Sri Lanka's statutory laws. These factors include fear of social and cultural backlash against the government for attempting to reform personal laws; lack of support for such reform from political parties with ethnic-religious representation in the Sri Lankan legislature; and lawmakers' reluctance to challenge male dominance in areas such as family law, property rights, and political representation.

For example, as it was reported in the Parliamentary Debates of the second reading of the “Penal Code Amendment Bill of 1995” concerning criminalising marital rape, some parliamentarians were in the position that ‘in a country like Sri Lanka, categorising marital rape as a criminal offence could only be justified in cases of judicial separation due to the social-cultural reasons.’²²³ Missing this opportunity, marital rape remains a non-criminal offence in Sri Lanka.²²⁴

Furthermore, Sri Lanka has been unable to initiate legislative reforms to amend the gender discriminatory aspects in the personal laws of the country. For example, despite the recommendations made by the committees appointed by the governments to amend the Muslim family law of Sri Lanka, such as “the Experts Committee Appointed to consider amendments to the Muslim Marriage and Divorce Act, in 2017, and “the Advisory Committee on Muslim Law Reforms in 2021,”²²⁵ the legal provisions that discriminate against women in Muslim law still prevail.

²²³ The Official Reports of the Parliamentary Debates, second time reading of the Penal Code Amendment Bill, Vol. 1 (19th September 1995). For more details, see the statements of ACS Hameed, MP, at 91 and G.L. Peiris, Minister of Justice and Constitutional Affairs, at 130.

²²⁴ Penal Code of Sri Lanka, No. 2 of 1883, sec. 363(a)

²²⁵ The Report of the Committee Appointed to Consider Amendments to the Muslim Marriage and Divorce Act, dated 20th December 2017. The Committee was appointed by the Former Minister of Justice and Law Reform, Milinda Moragoda and chaired by Hon. Justice Saleem Marsoof PC, 53-155.

<<https://groundviews.org/wp-content/uploads/2018/05/MMDA-Report-Redacted.pdf>> accessed on 23 October 2025.

Also, see The Report of the Advisory Committee Appointed to Propose Reforms on Muslim Personal Laws in Sri Lanka (2021). This committee was appointed by the former Minister of Justice, Hon. MUM Ali Sabry. The Committee was chaired by Shabry Haleemdeen (16 June 2021), 16 and 20.

<<https://www.mmdasrilanka.org/wp-content/uploads/2023/07/muslim-MarriageDevorce.pdf>> accessed on 10 January 2026.

Moreover, see Shamila Dawood, ‘Islamic Law and Gender Equality: Challenges and Reforms in Sri Lanka's Muslim Marriage and Divorce Act’ (2024) 5(2) Journal of Islamic Law, 288, 290-293.

On the other hand, the pursuit of gender parity in political representation within legislative bodies stands out as a pressing and critical issue in Sri Lanka. Despite the historical landmark that Mrs Sirimavo Bandaranaike of Sri Lanka was the world's first female prime minister,²²⁶ the underrepresentation of women in politics highlights a significant gap in the country's democratic governance. At the national level, the percentage of female MPs in the current (tenth) Sri Lankan Parliament is approximately 10%; in the previous (ninth) parliament (2020), there were only 12 female MPs, representing 5.3% of the total elected MPs.²²⁷

An analysis of these statistics reveals that the underrepresentation of women in Sri Lankan politics cannot be attributed solely to voter preferences. Instead, this research argues that it reflects systemic barriers that hinder women's electoral participation, stemming from socio-cultural perceptions that politics is predominantly a male domain. In light of this, it is recommended that a specific gender quota, or another appropriate affirmative action, be introduced to increase the representation of women in Provincial Councils and Parliament.

However, there are some progressive steps concerning female leadership in legislative initiatives. To illustrate, the establishment of “*the Sectoral Oversight Committee on Women and Gender of the Parliament*” and “*the Women Parliamentarians Caucus*” in Sri Lanka facilitates collaboration among public and private stakeholders and enables these bodies to report to the Parliament on issues affecting women.²²⁸ This research argues that without addressing the root causes of legislative reluctance to reform gender inequalities, the CEDAW principles ‘guaranteeing substantive gender equality for women’ and ‘eliminating *de jure* discrimination against women’ cannot be realised.²²⁹

²²⁶ Maureen Seneviratne, *Sirimavo Bandaranaike, the World's First Woman Prime Minister: A Biography* (Hansa Publishers 1975). Also see, BBC, ‘The World's First Woman Premier’ (17 November 2020), <https://www.bbc.com/audio/play/w3cszmqc> accessed on 30 January 2026.

²²⁷ The Department of Census and Statistics of Sri Lanka. <https://www.statistics.gov.lk/GenderStatistics/StaticInformation/WomenEmpowerment#gsc.tab=0> accessed on 25 October 2025.

²²⁸ For more information, see the Women Parliamentarians Caucus in the Parliament, Website of the Parliament. <https://www.parliament.lk/en/component/committees/committee/showCommittee?id=77> accessed on 23 October 2025, and the Sectoral Oversight Committee on Women and Gender, Website of the Parliament. <https://www.parliament.lk/en/component/committees/committee/showCommittee?id=171&type=committee&Itemid=106> accessed 23 October 2025.

²²⁹ These CEDAW principles have been discussed in Chapter 2 of this thesis.

This research also recommends empowering civil organisations to participate in dialogues on legislative initiatives, providing gender-sensitive training for lawmakers, promoting research and data collection in areas requiring legal reform, and raising public awareness to pressure the legislature to abolish gender inequalities. One recent example of civil society pressure on legislative reforms comes from “the Suriya Women's Development Centre”, which submitted the “*Women’s Declaration: Family Law and Practices in Sri Lanka- 2025.*”²³⁰ This report calls for legal reforms aimed at eliminating gender-based discrimination and violence against women within family law. The submission was presented to both the Minister of Women’s Affairs and the Minister of Justice of Sri Lanka during the “National Feminist Dialogue on Gender-Just Family Law” held in September 2025.²³¹ To practically realise gender equality, therefore, it is imperative to foster an ideological transformation that extends from legislative bodies to civil society.

4.2.4 Challenges and Obstacles in the Administration of the Justice System

The judicial system plays a vital role in promoting gender equality for women; however, various challenges within this system hinder women from enjoying equal rights. The CEDAW General Recommendation No.33 on “Women’s Access to Justice” highlights that ‘women should be able to rely on a justice system, free of myths and stereotypes, and on a judiciary whose impartiality is not compromised by biased assumptions and therefore, eliminating stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors.’²³² In that sense, it is essential for the judiciary to adopt a gender-centric and gender-sensitive approach in adjudication, ensuring that the rights and principles outlined in CEDAW are effectively implemented within the justice system. This engagement can lead to a transformative impact on the status and treatment of women in both legal and societal contexts.

²³⁰ The Suriya Women's Development Centre, “Women’s Declaration: Family Law and Practices in Sri Lanka” (2025), <<https://polity.lk/suriya-womens-development-centre-family-law-and-practice-in-sri-lanka-womens-declaration/>> accessed 12 January 2026.

²³¹ Mirudhula Thambiah, “From Silence to Strength: Women Demand Family Law Reforms” (Daily Mirror, 30 September 2025). <<https://www.dailymirror.lk/news-features/From-silence-to-strength-Women-demand-family-law-reforms/131-320892>> accessed on 25 October 2025.

²³² CEDAW General Recommendation No. 33 on Women’s Access to Justice, CEDAW/C/GC/33, (3 August 2015), sec. 28.

Another key issue in this area is the judicial reluctance to cite CEDAW in national courts. For example, the Supreme Court of Sri Lanka has rarely utilised the opportunities to incorporate CEDAW into domestic law. Concerning this point, “the Centre for Women’s Research” of Sri Lanka reported in its Shadow Report to the CEDAW Committee (2011) that ‘there has also not been a single case in which the Supreme Court of Sri Lanka has cited or used CEDAW.’²³³ On some occasions, Sri Lankan courts have cited CEDAW in their judgments. Still, when they do, it's usually peripheral or symbolic rather than a strong legal basis for the authoritative enforcement of women’s rights.²³⁴ This practice does not align with the Recommendation No. 28 of the CEDAW Committee, which advocates that ‘State parties should adopt other appropriate measures of implementation, such as ensuring that “reports of court decisions” applying the provisions of the Convention on the equality and non-discrimination principles are widely distributed.’²³⁵

Having noted that this research posits that the judicial hesitance to recognise CEDAW in judgments rendered by Sri Lankan courts has two significant implications. First, it signifies a failure to uphold the highest international standards of gender equality for women within national justice systems. Second, judicial reluctance has failed to incentivise legislators and other relevant authorities to fully integrate CEDAW into the domestic legal order. These findings show that the lack of gender-sensitive training for judges, lawyers, and law enforcement officers is a significant inadequacy in the administration of the justice system in Sri Lanka. Gender-sensitive training helps judges and legal practitioners identify unconscious gender biases in decision-making, protect the rights of female litigants, and recognise the barriers women face within the justice system.²³⁶

Sri Lanka faces another challenge, which hinders compliance with CEDAW standards: that is, the exclusion of Muslim women from serving as *Quazis*. Under the Muslim Marriage and Divorce Act No. 13 of 1951 (hereinafter referred to as MMDA), only male Muslims

²³³ The Centre for Women’s Research (CENWOR) of Sri Lanka, The Shadow Report to CEDAW Committee Responding to the Concluding Observations of the CEDAW Committee, Sri Lanka (2011) 8.

²³⁴ For example, *Manohari Pelaketiya v. Ministry of Education and Others*, SC/FR/No.76/2012, (SC, Decided on 28 September 2016).

²³⁵ The CEDAW Committee, The CEDAW General Recommendation No. 28 (n11), para.38 (c).

²³⁶ The CEDAW Concluding Observations on the eighth periodic reports of Sri Lanka (2017), (n59), para.15(a). Also see the CEDAW Concluding Observations on Sri Lanka's ninth periodic report (2025) (n15), para. 15(c).

may be appointed as *Quazis*, judicial officers responsible for deciding matters relating to Muslim marriage, divorce, and family disputes under the MMDA.²³⁷ This exclusion undermines CEDAW's principles of gender equality and the elimination of “intersectional discrimination” against women.²³⁸ It also perpetuates a patriarchal legal structure that restricts women's participation in the justice system.

4.3 Social-Cultural Obstructions that Prevent Domestication of CEDAW in Sri Lanka

The deeply rooted patriarchal structures and gender stereotypes that negatively impact women present significant challenges to the domestic integration of CEDAW.²³⁹ The incorporation of CEDAW into the Sri Lankan law faces profound social and cultural barriers that impede the practical realisation of the treaty at the national level. Concerning Sri Lanka, the CEDAW Committee has expressed its concerns that ‘gender role stereotyping in the country perpetuates discrimination against women and girls in many areas, such as employment, decision-making, land ownership, education, including sexual and reproductive education, sexual harassment and other forms of violence against women, including violence in family relations.’²⁴⁰ One of the significant social barriers is the entrenched patriarchal attitudes and beliefs that attribute traditional gender roles to men and women. For example, the criminal law of Sri Lanka does not recognise “marital rape” as a criminal offence under section 363 of the Penal Code, except that the wife is judicially separated from the man, and this indicates the influence of the “doctrine of coverture.”²⁴¹

²³⁷ Muslim Marriage and Divorce Act No. 13 of 1951, sec. 12(1) provides that ‘the Judicial Service Commission may appoint any male Muslim of good character and position and of suitable attainments to be a *Quazi*.’

²³⁸ CEDAW requirement on eliminating intersectional discrimination against women is discussed in section 2.4.3.2.2 of Chapter 2 of this thesis.

²³⁹ See the state obligations in CEDAW, Article 5(a).

²⁴⁰ The CEDAW Committee, Concluding Observations on the combined third and fourth periodic reports of Sri Lanka (2002) (n145), para. 288. The CEDAW Committee, Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011) (n59), para. 22. The CEDAW Committee, the Concluding Observations on Sri Lanka's ninth periodic report (2025) (n15), paras 25-26.

²⁴¹ The Penal Code of Sri Lanka, No.2 of 1883, Section 363. Section 363 stipulates that ‘A man is said to commit "rape" who has sexual intercourse with a woman (a) without her consent, even where such woman is his wife, and she is judicially separated from the man.’ ... (e) with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man. The exception in Section 363 (e) addresses the marriages under Muslim law in Sri Lanka, which permits child marriages. The Penal Code of Sri Lanka, which is a British colonial statute, is based on English law, and the statutory incorporation of the marital rape exception demonstrates the impact of “the doctrine of coverture.” [emphasis added].

An essential aspect to emphasise in this discussion is the connection between intersectional discrimination faced by women and prevailing socio-cultural perceptions. For example, in *Rosanna Flamer-Caldera v. Sri Lanka*, the CEDAW Committee found that women with same-sex orientations (women in the LGBTQI community) face prejudice and stereotypes, putting them at constant risk of violence and discrimination in Sri Lanka.²⁴² With respect to section 365A of the Penal Code, the CEDAW Committee recommended to Sri Lanka to “decriminalise consensual same-sex sexual conduct between women having passed the age of consent.”²⁴³ However, in 2024, the Supreme Court of Sri Lanka in “the Determination on the Gender Equality Bill” held that ‘the decriminalisation of homosexual relationships and recognition of same-sex marriages would have significant cultural and moral implications for the present moral fabric of Sri Lankan society.’²⁴⁴ This judicial position highlights ongoing debates over gender equality within the country's unique social, religious, and cultural landscape.

On the other hand, deeply rooted social and cultural stigmas that support the ‘victims-blaming culture’ in Sri Lanka create an atmosphere of fear and shame that often dissuades female victims from seeking justice for incidents such as sexual and gender-based violence.²⁴⁵ As a result, many women face the anxiety of potential retaliation, both from their perpetrators and their communities. Moreover, traditional norms and expectations regarding women’s character in Sri Lanka can lead to harsh social judgments against victims of sex crimes, resulting in cultural rebuke and social isolation, which prevent women from seeking justice. As Sally Merry correctly points out, ‘diminishing violence against women requires cultural transformation’.²⁴⁶ Such cultural transformation, aimed at changing attitudes and practices, necessitates confronting injustices without any bias and accepting that women's rights take precedence over gender-biased traditional customs. Such a transformation empowers individuals to select women’s rights over gender inequalities in laws, customs and practices.

²⁴² *Rosanna Flamer-Caldera v. Sri Lanka*, CEDAW Communication No. 134/2018, CEDAW/C/81/D/134/2018, 21 February 2022, paras 9.2 and 9.4.

²⁴³ *ibid.* para.11(b)(i).

²⁴⁴ The Supreme Court Determination of “Gender Equality Bill - 2024” of Sri Lanka, (n127), 31.

²⁴⁵ CEDAW Concluding Observations on the eighth periodic reports of Sri Lanka (2017) (n59), para. 22.

²⁴⁶ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago, 2009) 25.

4.4 Institutional and Enforcement Challenges: Selected Examples

Inadequate interagency coordination and collaboration among government agencies, non-governmental organisations, and civil society are among the most critical issues in the domestic incorporation of CEDAW. For example, insufficient collaboration among government institutions, including limited communication and data sharing, and the lack of networking between national-level institutions and local governments are significant factors contributing to this systemic failure. To overcome this challenge, this research recommends establishing a central institution to oversee networking and data sharing, monitor and evaluate the performance of provincial-level institutions, and consult civil organisations and legal experts in decision-making.

The delay in fulfilling Sri Lanka's reporting commitment under CEDAW is another significant issue.²⁴⁷ In particular, the CEDAW Committee expresses concern about the absence of a participatory process for preparing CEDAW periodic reports, which do not involve national civil society organisations in Sri Lanka.²⁴⁸ Therefore, this research underscores the importance of involving diverse stakeholders to ensure that the CEDAW periodic reports accurately reflect the current state of women's rights and gender equality in Sri Lanka. Moreover, the CEDAW Committee has repeatedly noted Sri Lanka's delay in submitting periodic reports.²⁴⁹ These delays raise concerns about the country's commitment to upholding its obligations under the Convention and may hinder the effective assessment of state progress and the implementation of necessary reforms.

On the other hand, the collection of reliable, comprehensive data on gender-related issues remains an area in which Sri Lanka should pay greater attention. For example, the CEDAW Committee has observed that in Sri Lanka, there is a lack of systematic data collection on investigation, prosecution and sentencing concerning “Gender-based Violence against women” (GBV), access for women to victim assistance and protection, and the number of

²⁴⁷ CEDAW, Article 18(1). For more details, see section 2.6 in Chapter 2 of this thesis.

²⁴⁸ The CEDAW Committee, Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011) (n59), para.4.

²⁴⁹ *ibid.*, para.4.

shelters in Sri Lanka for the victims.’²⁵⁰ To illustrate further, the CEDAW Shadow Report submitted by the “Women and Media Collective” (2019) reported that ‘there is limited sex disaggregated data available on persons with disabilities.’²⁵¹ The collection of data is crucial for understanding the extent, various forms, and patterns of violence faced by women, as well as for implementing survivor-centred approaches and ensuring effective responses to these issues. Therefore, institutional and enforcement challenges should be seriously addressed in parallel with legislative and socio-cultural challenges.

4.5 An Analysis from the Lens of Feminist Legal Theory

This research uses Sri Lanka as a case study to demonstrate that countries face distinctive challenges when integrating CEDAW into their national legal systems. These challenges are influenced by the specific nature of each country's legal system, its political and institutional structures, and prevailing socio-cultural beliefs and practices. For instance, in Sri Lanka, these inequalities are closely linked to the country’s legal pluralism, various intersecting forms of discrimination, deeply rooted patriarchal beliefs, and socio-political resistance to abolishing discriminatory elements in personal laws, as well as the preservation of the colonial statutes that perpetuate gender inequalities against women.

According to Jayawardena, ‘the women’s movements in many countries in Asia achieved political and legal equality with men at the juridical level but failed to make any impression on women’s subordination within the patriarchal structures of family and society.’²⁵² This argument is equally applicable to Sri Lanka. Gender inequalities faced by women in Sri Lanka are not solely rooted in "sex" but are also influenced by factors such as ethnicity, marital status, and the personal laws that govern them. As such, this research argues that the experiences of Sri Lankan women resonate with the concerns of Third World Feminist

²⁵⁰ The CEDAW Committee, Concluding Observations on the eighth periodic reports of Sri Lanka (2017) (n59), para. 22(c). The Concluding Observations on Sri Lanka's ninth periodic report (2025) (n15), paras. 63 and 64.

²⁵¹ Women and Media Collective, NGO Parallel Report to the CEDAW Committee: Progress Across the Twelve Critical Areas of Concern (Colombo, 2019), 17.

²⁵² Kumari Jayawardena, *Feminism and Nationalism in the Third World* (Zed Books Ltd. 1986) 24.

Theory.²⁵³ This emphasises the need to understand discrimination against women through the lens of multiple, intersecting identities and structural inequalities.

In general, Third-world feminist theory presents a compelling perspective that highlights how women's oppression is deeply influenced by various interconnected factors, not only by their “sex” but also by other factors such as race, class, culture, religion, nationality, and the lasting effects of imperialism, colonialism, and capitalism. Having pointed out that Third-world feminists are in the position that, regardless of these differences and vulnerabilities and of how they are socially constructed across various societies, everyone is equally worthy of human rights and dignity.²⁵⁴ Thus, Third-world feminists advocate for a holistic understanding of women's experiences, recognising that these intersecting identities shape their realities in unique ways and that gender inequalities against women must be addressed. This theoretical analysis argues that providing legal enforcement capacity for CEDAW in Sri Lanka alone does not ensure its full and effective domestic integration.

4.6 Conclusion

Achieving gender equality and eliminating discrimination against women in Sri Lanka requires a comprehensive understanding of the complex and pervasive issues involved. This chapter addresses the critical challenges, gaps, and obstacles that hinder the effective domestic implementation of CEDAW in Sri Lanka. The research suggests that achieving substantive equality and non-discrimination for women requires “a multifaceted-holistic approach”. This approach should include legal reforms, institutional strengthening, the removal of socio-cultural barriers, appropriate resource allocation, educational initiatives, gender-sensitive training, the transformation of societal attitudes, and the pursuit of gender equality within the judicial system, among other things. The next chapter will propose recommendations to address these identified issues, inadequacies, and challenges.

²⁵³ Ranjoo Herr states that ‘Third world feminism emerged in opposition to mainstream second-wave feminism, which subscribed to the idea that all women everywhere face exactly the same oppression merely by virtue of their sex/gender.’ See, Ranjoo Seodu Herr, ‘Reclaiming Third World Feminism: or Why Transnational Feminism Needs Third World Feminism’ (2014), 12(1) *Meridians*, 1, 1-2.

²⁵⁴ Brooke A. Ackerly, ‘Third World Feminist Social Criticism as Feminism’ in *Political Theory and Feminist Social Criticism*. (Cambridge University 2009) 198.

CHAPTER – 5

Recommendations for Identified Challenges and Inadequacies

5.1 Introduction

The issues at hand necessitate solutions, or at least attempts to tackle them. Having identified the challenges and obstacles to integrating CEDAW into the Sri Lankan legal system, the next step of this research is to provide recommendations essential to bridging the gap between international treaty commitments and the practical realities of the national legal system; therefore, this chapter makes a significant contribution to this thesis. The main objective of this chapter is to present recommendations to address the challenges, obstacles, and inadequacies identified in Chapter 4 regarding the integration of CEDAW into the Sri Lankan legal system. This chapter discusses recommendations under several categories: constitutional and legislative reforms; strengthening the judiciary; addressing social and cultural barriers; addressing institutional challenges; and strengthening women's access to justice. However, it should be emphasised that this chapter does not provide an exhaustive analysis of all the recommendations necessary for the full and effective domestic integration of CEDAW in Sri Lanka, due to the word limit of the thesis.

5.2 Recommendations for Constitutional and Legislative Reforms²⁵⁵

5.2.1 Reforming the Constitution to Guarantee Substantive Equality for Women

The Constitution of Sri Lanka vests sovereignty in the people and serves as the guardian of their rights and the foundation of a fair, just and democratic society.²⁵⁶ Embodying 'the principle of the equality of men and women in their national constitutions' is a state obligation under Article 2(a) of CEDAW. As already discussed in Chapter 3, although Articles 12(1) and 12(2) of the Sri Lankan Constitution affirm the right to equality and

²⁵⁵ This section should be read together with sections 3.2.1, 3.2.2, 3.2.3 and 3.2.4 of this thesis.

²⁵⁶ The Constitution of Sri Lanka (1978), Art.3 stipulates that 'In the Republic of Sri Lanka, sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise.'

prohibit discrimination based on sex, the CEDAW Committee pointed out that Article 12 falls short of its expectations in relation to the standard in Article 2(a) of CEDAW, which requires “the practical realisation of non-discrimination for women.”²⁵⁷ Thus, it is recommended that the legislature consider amending Article 12(1) to include ‘substantive equality’ and amending Article 12(2) to prohibit ‘discrimination based on gender.’²⁵⁸ Concerning Articles 126(2) and 17 of the Constitution, the CEDAW Committee has also recommended that ‘Sri Lanka to hold private actors accountable for the violation of the women’s right to equality, to comply with the requirement stipulated by Article 2(e) of CEDAW.’²⁵⁹ Therefore, this research proposes amending Articles 126(2) and 17 to hold private actors liable for violations of rights.

Another reason is the mandate of Article 16(1) of the Constitution, which precludes judicial review of gender-discriminatory laws enacted before the Constitution's adoption in 1978.²⁶⁰ Consequently, Article 16(1) is incompatible with CEDAW and supersedes the constitutional guarantee for fundamental rights. Having noted that the CEDAW Committee has consistently urged, in its Concluding Observations on Sri Lanka, that this constitutional provision be repealed.²⁶¹ In “The Report on Public Representations on Constitutional Reforms,” which was submitted to the Public Representations Committee on Constitutional Reform (2016),²⁶² and in the Human Rights Commission’s report, it has been recommended to repeal Article 16(1) of the Constitution.²⁶³ In this context, this

²⁵⁷ Article 2(a) of CEDAW states that ‘state parties ... agree to ... embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle.’

²⁵⁸ For more details, see the discussion in section 3.2.1.2 of Chapter 3 of this thesis.

²⁵⁹ For example, the CEDAW Committee, Concluding Observations on the combined third and fourth periodic reports of Sri Lanka (2002), para. 274. The Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011), para. 15.

²⁶⁰ For more details, see Section 3.2.2.3 of Chapter 3 of this thesis.

²⁶¹ CEDAW Concluding Observations on the combined third and fourth periodic reports of Sri Lanka (2002), para. 274; CEDAW Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011), para. 16; CEDAW Concluding Observations on the eighth periodic reports of Sri Lanka (2017), para. 10(b); CEDAW Concluding Observations on the ninth periodic report of Sri Lanka (2025), para. 11(c).

²⁶² The Public Representations Committee on the Constitutional Reform of Sri Lanka, ‘*The Report on Public Representations on Constitutional Reforms*’ (Colombo 2016), 95.

²⁶³ For example, the Human Rights Commission of Sri Lanka, Human Rights Committee 137th session – Review of the 6th Periodic Report HRC/SL opening statement (6th March 2023), 3 and The HRC/SL’s Report relating to Civil and Political Rights within the Country for the review of Sri Lanka (6th Periodic Report) by the Human Rights Committee during its 137th Session (25 January 2023), 3.

research strongly recommends repealing Article 16(1) to permit judicial review of all statutes, regardless of the date of enactment.

5.2.2 The Effective Implementation of the Women Empowerment Act (2024)

After several unsuccessful legislative attempts spanning three decades, Sri Lanka enacted the Women Empowerment Act of 2024, marking a significant milestone in the history of women's rights.²⁶⁴ This statute serves as the domestic implementing legislation for CEDAW, integrating the Convention into the Sri Lankan legal system.²⁶⁵ A significant aspect of the Women Empowerment Act of 2024 is the establishment of the enforcement mechanism, “the National Commission on Women” (NCW), with the power to ‘inquire into and investigate the infringement or imminent infringement of women’s rights and receive complaints.’²⁶⁶ This research emphasises that the effective implementation of this statute relies on the NCW maintaining its independence and functioning free from political influence or sociocultural interference.²⁶⁷

To make impartial recommendations and decisions and to exercise the commission's powers and functions effectively, this research recommends providing gender-sensitive training and awareness programmes for staff of the NCW and other related institutions to ensure the successful implementation of the Women Empowerment Act. On the other hand, the lack of adequate human, financial and technical resources allocated to the operation of the NCW is another crucial issue. De Silva and Jayaweera noted that the Sri Lankan government's 2025 budget did not include sufficient funding to operationalise

²⁶⁴ For a detailed discussion on the legislative attempts in Sri Lanka to pass domestic legislation on women’s rights, and a discussion on the Women Empowerment Act No. 37 of 2024, see section 3.2.3 of this thesis.

²⁶⁵ The Women Empowerment Act No. 37 of 2024, section 2(b) and section 45. Also, see The Human Rights Commission of Sri Lanka, The Parallel Report to the CEDAW Committee, (n155), para. 8.

²⁶⁶ The Women Empowerment Act No. 37 of 2024, Sec. 6(a). See sections 6 and 7 in Part I of the Act for the powers, duties and functions, and Part 2 of the Act for the Powers of Inquiry and Investigation of the Commission.

²⁶⁷ *ibid.* According to Article 37 of the Act, “The Minister shall, in consultation with the Commission, make regulations in respect of matters required by this Act. For example, as per section 37 (2)(a) - prescribing the manner in which the Commission shall appoint the Committee, 37 (2)(c) - prescribing the procedure to be followed by the Committee in relation to an inquiry or investigation being conducted, and 37 (2)(d) - identifying the mechanisms or processes to be adopted in relation to complaints and grievances received by the Commission.’

the NCW.²⁶⁸ Amid those criticisms, in January 2026, it was reported that the inaugural Chairperson of the NCW had resigned less than four months after her appointment.²⁶⁹ Hence, it is crucial to ensure that adequate human, financial, and technical resources are allocated to strengthen the NCW's functions and achieve its objectives.

5.2.3 Abolishing Discriminatory Laws and Enacting Laws to Uphold Gender Equality

As discussed in Chapter 4, women face significant challenges due to discriminatory laws, policies and practices that perpetuate the notion of female inferiority, which are often rooted in colonial statutes and special laws and practices. According to the CEDAW Committee, these issues predominantly relate to the legal age of marriage for females, the grounds and procedures for divorce, matrimonial property rights, inheritance rights, the property rights of married women, child custody, marital rape and violence against women.²⁷⁰ In Sri Lanka, the gender-discriminatory legal provisions against women, incorporated into Kandyan law, Muslim law and *Thesawalamai*, have not yet been reformed to align with the country's constitutional guarantees of equality and non-discrimination and with state obligations under Articles 1, 2(a), 2(e), 2(f), 2(g), 3, 5(a), 15(2) and 16 of CEDAW.²⁷¹ This research strongly recommends abolishing discriminatory laws in the Sri Lankan legal system.

The CEDAW Committee has on several occasions emphasised that legal reforms to personal laws (special laws) in multi-ethnic, multi-religious and multicultural countries must be undertaken with due regard for and sensitivity to deeply rooted ethnic beliefs.²⁷² Specifically, the CEDAW Committee also advises that countries with plural legal

²⁶⁸ Malsirini de Silva and Avishka Jayaweera, *Gender Discrimination in Sri Lanka: Law, Policy and Practice* (United Nations Population Fund 2025) 48.

²⁶⁹ Gagani Weerakoon, 'In major setback to women's rights watchdog: NWC Chair Tenders Resignation to President', *Ceylon Today* (Colombo, 28 January 2026), <<https://ceylontoday.lk/2026/01/28/in-major-setback-to-womens-rights-watchdog-nwc-chair-tenders-resignation-to-president/>> accessed on 28 January 2026.

²⁷⁰ Oxford Commentary on CEDAW, (n7), 90 and 91. Also, see CEDAW Concluding Observation on the combined fifth to seventh periodic reports of Sri Lanka (2011), sections 16, 17, 22, 38, 39, and 44, The CEDAW Concluding Observations on the eighth periodic report of Sri Lanka (2017), sections 12, 22, 23, 40, 44, and 45 and CEDAW Concluding Observation on the Ninth Periodic Report of Sri Lanka (2025), sections 9, 11(b), 12(b), 15 (a), and 16(a).

²⁷¹ See Chapter 2 of this thesis for the detailed analysis.

²⁷² The CEDAW Concluding Observations on the combined third and fourth periodic reports of Sri Lanka (n145), para. 265.

systems, when undertaking reforms to special laws, should do so through cultural sensitisation, public dialogue, and collaboration with religious groups, community members, and civil society organisations, including women's non-governmental organisations.²⁷³ Furthermore, governments should establish law reform commissions or advisory boards that include legal experts with diverse ethnic, religious, and gender backgrounds to propose reforms to abolish gender-discriminatory laws and policies.²⁷⁴ Likewise, by fostering understanding of the repercussions of gender inequalities, governments can garner public and political support for legislative reforms that adopt a more democratic approach within legal pluralism.

On the other hand, the enactment of new legislation, national policies and action plans to ensure equality for women is of considerable importance. As required by Articles 2(a), 2(b), 2(c) and 2(e) of CEDAW, a state party's commitment to gender equality through legislative initiatives is a crucial step toward creating a fair and just society for all.²⁷⁵ These laws should not only seek to dismantle barriers to gender equality but also to establish institutional mechanisms to promote equal opportunities for women. To illustrate, the Local Authorities Elections (Amendment) Act, No. 16 of 2017, introduced a mandatory 25% electoral quota to increase female political representation at the local government level.²⁷⁶ This statutory quota system to increase female political representation in local governments is considered a progressive step towards addressing *de facto* discrimination against women in Sri Lankan society and political culture.

²⁷³ The CEDAW Committee, Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011), para. 17(c).

²⁷⁴ The Centre for Women's Research (CENWOR) – Sri Lanka, *CEDAW Indicators for South Asia: An Initiative*, (CENWOR, Supported by UNIFEM South Asia Regional Office 2004) 23-24.

²⁷⁵ CEDAW, Article 2(a) stipulates that 'state parties undertake to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle. Article 2(b) requires state parties to adopt appropriate legislative and other measures, including sanctions where appropriate, to prohibit all discrimination against women. Article 2(c) stipulates that to establish legal protection of the rights of women on an equal basis with men and to ensure, through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination.

Article 2(e) states that state parties shall take all appropriate measures to eliminate discrimination against women by any person, organisation, or enterprise, and this includes enacting necessary laws.

²⁷⁶ The Local Authorities Elections (Amendment) Act, No. 16 of 2017 of Sri Lanka, Sections 7, 8 and 25.

However, there is no legislative initiative or constitutional reform to increase women’s participation in decision-making at the Provincial Councils and the Parliament of Sri Lanka. To consider the statistics, following the 2024 parliamentary election, 22 female Members of Parliament (MPs) were appointed to the current parliament. However, the total number of MPs in Parliament is 225, indicating significant gender parity between men and women in political representation at the national level.²⁷⁷ By enforcing measures that protect against discrimination and enhance women's representation in decision-making processes, such initiatives foster a more inclusive society where women can thrive and contribute fully to their communities. Moreover, when the government considers abolishing existing laws or introducing new ones, it is essential to raise awareness and educate the public about the harmful consequences of gender inequality that these proposed initiatives aim to address to avoid unjustified public opposition to the reforms.

5.3 Strengthening the Judiciary in Protecting and Promoting Women’s Rights

To strengthen the Sri Lankan judiciary for domestic incorporation of CEDAW through case law, it is essential to conduct workshops, gender-sensitivity training and capacity-building programs explicitly tailored for judicial officers and legal practitioners, with a focus on women's rights and on addressing the practical realities women face in the national justice system.²⁷⁸ In recent years, positive responses have been noted to the CEDAW recommendation to train Sri Lankan judicial officers in women’s rights and gender equality.²⁷⁹ The CEDAW Committee recommended that ‘Sri Lanka provide systematic capacity-building to judges, prosecutors and lawyers on the CEDAW, the Committee’s

²⁷⁷ Parliament of Sri Lanka, Women in the Tenth Parliament of Sri Lanka (2024 – to date), <<https://www.parliament.lk/en/learn/women-in-parliament/list>> accessed on 30 January 2026.

²⁷⁸ The CEDAW General Recommendation No. 33 on Women’s Access to Justice (n232), sections 13 and 14.

²⁷⁹ For example, the International Commission of Jurists, in partnership with the Sri Lanka Judges’ Institute, has conducted a training for judges on “The Judicial Dialogue on Access to Justice for Women” on 10th and 11th April 2023 in Colombo. <<https://www.icj.org/sri-lanka-judges-affirm-their-role-in-addressing-discrimination-based-on-gender-stereotypes/>> accessed 12 July 2025.

Also, the UNDP conducted “Regional Knowledge Exchange on Judicial Interventions to Enhance Access to Justice for Victim-survivors of SGBV” workshop for the judges under the project, ‘Ensuring Justice for Victim-Survivors of Sexual and Gender Based Violence in Sri Lanka’ in Negombo (22-24 Nov. 2024) <<https://www.undp.org/srilanka/press-releases/sri-lanka-hosts-regional-knowledge-exchange-judicial-interventions-enhance-access-justice-victim-survivors-sgbv>> accessed 16 Oct 2025.

General Recommendations and its jurisprudence under the Optional Protocol to ensure that the judiciary is independent, impartial, professional and gender-sensitive as a means of safeguarding women's rights.'²⁸⁰

This research also suggests that the judiciary of Sri Lanka should take an active role in developing a body of gender-sensitive jurisprudence aligned with CEDAW principles. While the judiciary lacks legislative power, judges can significantly influence law reform through their rulings.²⁸¹ By identifying inconsistencies between domestic laws and CEDAW obligations, they can encourage lawmakers to pursue essential legal reforms.²⁸²

5.4 Addressing Social-Cultural Barriers through Awareness Raising and Training

Socio-cultural barriers, including traditional gender roles and stereotypes, continue to restrict women's rights and opportunities based on gender. It should be borne in mind that Sri Lanka is obliged not only to reform laws, but also to modify/eliminate discriminatory practices and stereotypes against women, in conformity with Articles 2(f) and 5(a) of CEDAW.²⁸³ To address these challenges, this research recommends raising awareness and providing gender-sensitive training for government officials, teachers, journalists, lawmakers, judges, and law enforcement personnel. The CEDAW Committee has recommended building the capacity of public officials and media professionals in Sri Lanka to use gender-responsive language, combat the objectification of women, and promote positive media portrayals of women as active agents of change.²⁸⁴

²⁸⁰ The CEDAW Concluding Observations concerning Sri Lanka (2017), sec. 15(a), CEDAW Concluding Observations concerning Sri Lanka (2011), sec. 25. In addition, refer to the CEDAW General Recommendation No. 33 on Women's Access to Justice, Sec. 29(f), and CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2, Section 38 (d).

²⁸¹ Article 4(d) of the Constitution of Sri Lanka (1978) states that 'the fundamental rights which are by the Constitution declared and recognised shall be respected, secured and advanced by all the organs of government.' Therefore, this research argues that, as an organ of the government, the judiciary is expected to advance fundamental rights, including the rights to equality and non-discrimination.

²⁸² For example, the Supreme Court of India in *Vishaka and Others v. State of Rajasthan and Others* (1997) 6 SCC 241 prescribed guidelines to protect women from "workplace sexual harassment" in the absence of legislative measures. The Supreme Court of India further justified that "In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need."

²⁸³ CEDAW Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011), para. 23(a).

²⁸⁴ CEDAW Concluding Observations on the ninth periodic report, Sri Lanka (2025), para.26 (b).

Integrating CEDAW into the Sri Lankan legal system also requires a fundamental shift in mindsets, as well as confronting stereotypes deeply rooted in cultural norms and biases concerning the roles of women and men. For instance, the Ministry of Women, Child Affairs and Social Empowerment in its “*Multi-Sectoral National Action Plan to Address SGBV in Sri Lanka (2024-2028)*” has recognised that ‘the key reason for the lower female participation in the labour force than men in Sri Lanka is sociocultural perceptions and attitudes that impact a woman's decisions to enter the labour force.’²⁸⁵ According to the 2024 Annual Labour Force Survey in Sri Lanka, the male labour force participation rate was 67.4%, while the female participation rate was 29.8%. In 2023, the male participation rate was 68.6%, while the female participation rate was 31.3%, indicating a substantial gender gap.²⁸⁶ In light of these findings, this research argues that raising public awareness through formal and informal educational initiatives helps create an environment in which individuals recognise their gender biases, which is a crucial step in cultural transformation.

Regarding formal educational initiatives, it is crucial to incorporate modules/subjects on women’s rights, CEDAW, gender equality, and women’s empowerment into school and university curricula to enhance students’ understanding of the effects of gender-based discrimination. For example, “*the National Policy on Gender Equality and Women Empowerment*” published by the Ministry of Women and Child Affairs of Sri Lanka (2023) revealed that ‘perpetuation of gendered norms and stereotypes ingrained in educational curricula, teaching methods, and teachers negatively impacts women’s access to opportunities, as well as leads to reinforcing negative gender attitudes, perceptions and practices in society.’²⁸⁷

²⁸⁵ The Ministry of Women, Child Affairs and Social Empowerment, ‘Multi-Sectoral National Action Plan to Address SGBV in Sri Lanka’ (2024-2028), 127.

²⁸⁶ Department of Census and Statistics, Sri Lanka Labour Force Survey Annual Report, (2024), 4. <<https://www.statistics.gov.lk/LabourForce/StatisticalInformation/AnnualReports/2024>> accessed 12 Jan 2026.

²⁸⁷ Ministry of Women and Child Affairs, National Policy on Gender Equality and Women Empowerment (2023), 26. <<https://www.childwomenmin.gov.lk/uploads/common/sri-lanka-national-policy-gewe-english-compressed.pdf>> accessed 12 December 2025

The CEDAW Committee has also recommended both formal and informal education initiatives to promote positive, non-stereotypical representations of women.²⁸⁸ For example, “the Centre for Gender Equity and Equality”, established under the University Grants Commission of Sri Lanka, has introduced a course for state universities titled “*Learning to Live with Diversity*” to raise awareness, which is a progressive step.²⁸⁹ To enhance public awareness and confront socio-cultural barriers to the realisation of CEDAW rights in Sri Lanka, organising campaigns, workshops and training for community leaders can effectively highlight both recognised and overlooked inequalities faced by women. Such educational initiatives empower individuals to challenge and reject detrimental attitudes and practices that undermine women’s rights. By assuming leadership roles, trained individuals can address these issues in their communities, thereby helping protect women’s rights at the grassroots level.

It is also crucial to implement a comprehensive national strategy to combat prejudice, violence, and discrimination against lesbian, bisexual, transgender and intersex women in Sri Lanka.²⁹⁰ On the other hand, media and digital platforms should be carefully regulated, as they play a crucial role in raising public awareness of women’s rights, shaping public opinion, and encouraging social change. The Beijing Declaration and Platform for Action (1995) emphasised that ‘the media have a great potential to promote the advancement of women and equality, by portraying women and men in a non-stereotypical, diverse and balanced manner, and by respecting the dignity and worth of the human person.’²⁹¹

5.5 Recommendations: Institutional Collaboration / Data Collection and Analysis

Fostering effective collaboration and coordination among government entities, semi-governmental organisations, international agencies, and non-governmental organisations is crucial to the successful implementation of gender equality initiatives for women. This

²⁸⁸ The CEDAW Concluding Observations on the combined third and fourth periodic reports of Sri Lanka (2002), para. 289. The CEDAW Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011), para. 23(b). The CEDAW Concluding Observations on the eighth periodic reports of Sri Lanka (2017), para. 23(e).

²⁸⁹ The Centre for Gender Equity and Equality, University Grants Commission of Sri Lanka, <<https://eugc.ugc.ac.lk/cgee/milestones.html>> accessed 1 January 2026.

²⁹⁰ CEDAW Concluding Observations on Sri Lanka's ninth periodic report (2025), para.54 (b).

²⁹¹ UN, Report of the Fourth World Conference on Women (Beijing, 4-15 September 1995), sec.33.

collaboration should also actively engage experts from various relevant fields. In addition, engaging in regular networking, sharing data and resources among organisations, fostering collaborative decision-making, submitting collaborative reports to the CEDAW Committee and conducting progress reviews can serve as best practices. These efforts enable Sri Lanka to manage the available resources effectively, monitor progress and adapt strategies to meet the evolving needs of women across various sectors.

Likewise, it is recommended that reliable gender-disaggregated data be collected, databases be updated, and the data be analysed by trained specialists, which is essential for uncovering gender inequalities, SGBV against women, and their trends in the country. By ensuring that this data is comprehensive and accurately captures the experiences of all individuals, policymakers can make targeted, evidence-based interventions that effectively address these inequalities, including intersectional discrimination and subtle forms of violence against women. The CEDAW Committee has called upon Sri Lanka to enhance the collection of comprehensive, sex-disaggregated data and the use of measurable indicators to assess trends in the situation of women and progress towards the realisation of substantive equality for women.²⁹²

The Committee also draws attention to the CEDAW General Recommendation No. 9, which recommends ‘state parties to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender.’²⁹³ Moreover, comprehensive data enable monitoring of progress on implemented measures, ensuring that the required resources are allocated efficiently to areas where they are most needed. This research also recommends that, when reporting data, gender-sensitive, gender-inclusive and appropriate language be used, and that, when publishing, reports be provided in English, Sinhalese and Tamil to ensure public accessibility.

²⁹² The CEDAW Concluding Observations on the combined fifth to seventh periodic reports of Sri Lanka (2011), para. 47. The CEDAW Concluding Observations on the eighth periodic reports of Sri Lanka (2017), para. 46.

²⁹³ The CEDAW General Recommendation No. 9 on Statistical data concerning the situation of women (1989), U.N. Doc. A/44/38, 73 (1990), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 234 (2003).

5.6 Strengthening Women's Access to Justice

The CEDAW General Recommendation No. 33 on Women's Access to Justice (2015) requires 'ensuring the availability of legal aid services for women to enable them to claim their rights within the various "plural justice systems" by engaging qualified local support staff to provide that assistance.'²⁹⁴ In light of this, this research highlights the inadequacy of free legal aid for women in Sri Lanka, which limits their access to necessary legal assistance. This research emphasises the state's obligation under Article 2 (C) of CEDAW to ensure access to a competent court or tribunal for women seeking justice.²⁹⁵ Hence, the laws that restrict women's access to justice must be repealed. For example, the Penal Code should be amended to recognise marital rape as a criminal offence in Sri Lanka. In line with this, enhancing women's legal literacy and fostering awareness of available legal support for women are recommended to ensure the pursuit of justice. Lack of awareness perpetuates cycles of injustices and re-victimisation, as women who are unaware of their rights are left without the means to challenge the discrimination that they experience.

On the other hand, laws governing the protection of the rights of victims and witnesses must be gender-responsive and gender-specific. However, in Sri Lankan law, the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023, has not adequately addressed the specific needs and protections required of female victims. Importantly, eliminating the victim-blaming culture for creating an environment that prioritises the safety, dignity and privacy of women is also an essential component of this discussion. This can be achieved by increasing awareness, changing attitudes through gender-sensitive training and implementing regulations for media reporting. Ultimately, these proactive measures will contribute to a societal and cultural transformation that not only protects victims but also empowers them to seek justice without fear of social stigma.

²⁹⁴ The CEDAW General Recommendation No. 33 on Women's Access to Justice, (n232), Sec. 64(e).

²⁹⁵ CEDAW, Article 2(C) states that 'state parties undertake to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.'

Also, see CEDAW General Recommendation No. 33 on Women's Access to Justice, paras. 17(a), 17(f) and 20.

5.7 Conclusion

This chapter offers recommendations to address the challenges, obstacles, and shortcomings in integrating CEDAW into the Sri Lankan legal framework. It categorises these recommendations into the following areas: constitutional and legislative reforms; strengthening the judiciary; addressing social and cultural barriers; overcoming institutional challenges; and enhancing women's access to justice. However, this chapter does not provide a comprehensive analysis of all the recommendations required for the full and effective domestic implementation of CEDAW in Sri Lanka due to the word limit of the thesis. The findings of this chapter demonstrate that making CEDAW legally enforceable in Sri Lanka alone does not guarantee the realisation of rights and principles enshrined in the treaty. Therefore, the domestic integration of CEDAW extends beyond mere incorporation of the treaty to address broader issues and challenges deeply rooted in a country's legal, social, and cultural frameworks. In light of that, the next chapter, or the final chapter, will analyse this position in detail.

CHAPTER – 6

Conclusion

6.1 Introduction

In recent years, Sri Lanka has made considerable progress in integrating CEDAW into its domestic legal system; however, as this research demonstrates, the treaty has not yet been fully and effectively incorporated into the Sri Lankan legal system. Having examined Sri Lanka as a case study, this thesis not only highlights gender-discriminatory laws and policies that obstruct the rights and principles enshrined in CEDAW but also explores various socio-cultural and political factors, as well as institutional and structural challenges that impede the treaty's domestic integration within the country's unique social, cultural and legal landscape. This final chapter has two primary objectives. First, it aims to summarise the key findings of this research to address the thesis's research problem. Second, it seeks to provide reflective insights into the research's theoretical implications and to offer concluding remarks that encourage future scholarly exploration of this topic.

6.2 Summarising (Key) Research Findings

This section intends to reflect upon the contributions made by each chapter of the thesis. With an emphasis on the significance of the research, Chapter 1 presented the research design and methodology. Chapter 2 examined various theories, approaches, and principles related to the state's obligation to incorporate CEDAW domestically, with a focus on how effective integration must align with the treaty's foundational principles of substantive equality, non-discrimination and state obligation. This second chapter also explored the relationship between domestic law and international treaty obligations, focusing on the challenges that arise as states incorporate international human rights treaties into their domestic legal frameworks. One of the significant arguments highlighted in Chapter 2 is that state parties must fulfil these obligations in good faith, irrespective of legal challenges, constitutional restrictions, or socio-cultural-political obstacles embedded in their domestic legal frameworks.

The main objective of Chapter 3 is to examine how Sri Lanka has utilised the three methods: constitutional incorporation, domestic implementing legislation, and judicial interpretation to integrate CEDAW into the domestic legal system of the country. As emphasised in Chapter 3, the Sri Lankan constitutional limitations, combined with its plural legal system, pose complex obstacles to the full realisation of CEDAW at the national level. For example, one of the main obstacles is Article 16(1) of the Constitution, which preserves gender-discriminatory provisions in special and colonial-era laws, thereby hindering women's equality and non-discrimination. Furthermore, Chapter 3 highlighted that the constitutional remedy for fundamental rights violations applies only to infringements by executive or administrative action, thereby failing to hold private actors accountable.

Chapter 3 emphasised progress and achievements in Sri Lanka, such as the enactment of the Women Empowerment Act of 2024, which incorporated CEDAW into the Sri Lankan legal framework and established new enforcement mechanisms to uphold the rights and principles set out in the Convention. Furthermore, Chapter 3 discussed that the Sri Lankan judiciary has shown a progressive trend toward incorporating CEDAW in its judgments. In recent years, it has become evident that the Supreme Court of Sri Lanka is utilising CEDAW and its General Recommendations in significant rulings, such as *Manohari Pelaketiya v. Ministry of Education*²⁹⁶ *Corea v Sri Lankan Airlines Limited*²⁹⁷ and *Udari L. Abeyasinghe v. W. M. Thilakaratne*.²⁹⁸ Therefore, this research emphasises that providing gender-sensitive training and capacity-building for judges, lawyers, and law enforcement officers is significant for the incorporation of CEDAW into domestic legal systems through judicial decisions.

Chapter 4 examined the challenges, inadequacies and obstacles to integrating CEDAW into the Sri Lankan legal system across three categories: legal-political, institutional-structural and socio-cultural. Chapter 4 highlighted legislative reluctance and a lack of political will to abolish gender-discriminatory provisions in personal laws and colonial statutes. It is therefore recommended that the need for eliminating deeply-rooted patriarchal attitudes and social and cultural patterns, which stem from the belief in female inferiority. Chapter 4 also highlighted

²⁹⁶ *Manohari Pelaketiya v. Ministry of Education and Others*, SC of Sri Lanka (2016), (n56).

²⁹⁷ *P. R. S. E. Corea v. Sri Lankan Airlines Limited*, SC of Sri Lanka (2024), (n56)

²⁹⁸ *Udari L. Abeyasinghe v. W. M. Thilakaratne*, S.C. of Sri Lanka (2026), (n56).

that institutional obstacles, such as insufficient resources, inadequate gender-sensitive training and a lack of accountability, further hinder the domestic application of CEDAW.

Chapter 5 provided recommendations to address obstacles and challenges identified in Chapter 4, including persistent *de jure* and *de facto* discrimination against women, constitutional barriers that hinder the realisation of equality and non-discrimination, widespread socio-cultural norms that perpetuate female subordination and a lack of political will to pursue comprehensive legal and institutional reforms across all sectors. Furthermore, Chapter 5 stressed that existing legal and institutional mechanisms established for achieving gender equality and women's rights should be implemented effectively and impartially. For example, the institutional mechanisms established by the Women Empowerment Act of 2024 should be adequately resourced and remain independent of political interference. Chapter 6 of the thesis summarises the key findings and offers concluding remarks.

6.3 Addressing the Research Problem in Chapters 3,4 and 5.

The research problem of this thesis is tested in Chapter 3, which analyses the extent to which CEDAW has been integrated into the Sri Lankan legal system through various methods. Chapter 4 examined the issues and challenges associated with the domestic incorporation of CEDAW. This analysis culminated in Chapter 5, which presented recommendations to address the gaps, obstacles, and challenges hindering the effective domestic implementation of CEDAW. Having reflected on all these findings, this research concludes that full and effective domestic incorporation of CEDAW in Sri Lanka requires “a holistic approach” encompassing actions and measures such as legal and policy reforms, establishing institutional mechanisms, raising awareness, training, capacity-building, and eliminating socio-cultural barriers that obstruct the path to achieving this goal.

6.4 Reflections on the Theoretical Implications²⁹⁹

The theoretical implications of this thesis, drawn from the findings in Chapter 2, are evident in discussions of state obligation, the dualistic approach and the key principles of CEDAW. Drawing on the Sri Lankan case, this research argues that strict adherence to the dualist

²⁹⁹ See Chapter 2 for the discussion of the theories and section 4.5 for the analysis of Feminist Legal Theory.

approach poses a significant challenge to the effective domestic integration of human rights treaties. In Sri Lanka, the history of unsuccessful legislative attempts, such as ‘The Equal Opportunity Bill’ and ‘The Gender Equality Bill’,³⁰⁰ demonstrates the legal-political complexities of the legislative process and the socio-cultural pressures that lead to long delays in the practical realisation of women's rights. Therefore, this research argued that, particularly in the absence of domestic implementing legislation, national courts in dualist countries must play an active role in incorporating human rights treaties into domestic law.

As discussed in Chapter 2, the principle of *pacta sunt servanda* in international treaty law asserts that state parties to an international treaty are obligated to honour their commitments and ensure compliance with the treaty's provisions within their domestic legal frameworks. CEDAW is an international treaty characterised by a gender-specific approach. However, realising substantive equality and non-discrimination for women in Sri Lanka is constantly challenged by deeply rooted patriarchal structures, gender role stereotyping and discriminatory laws and policies within the plural legal system.

From a jurisprudential perspective, the specific challenges Sri Lanka faces align with concerns articulated in Third World Feminist Theory.³⁰¹ To elaborate further, the complex, intersecting oppressions faced by women in developing countries, along with the various forms of resistance within national contexts, are central to this theory.³⁰² It is argued that this issue can be addressed through a multifaceted approach encompassing legal and policy reforms, awareness-raising and socio-cultural and ideological transformation. The complex experiences of women's struggle in the Global South are intertwined with multiculturalism, legal pluralism, poverty, patriarchy, and colonial history in a unique way.³⁰³ By situating the analysis in this realisation, this thesis highlights the need for context-specific approaches to address the unique experiences of women in the Global South, thereby justifying the main recommendation of this research: to follow a holistic approach to the domestic integration of CEDAW in Sri Lanka.

³⁰⁰ The Equal Opportunity Bill of Sri Lanka (1999) and The Gender Equality Bill of Sri Lanka (2024). See section 3.2.3.2 of this thesis.

³⁰¹ For the discussion on the feminist legal theory, see Chapter 4.5 of this thesis.

³⁰² Ranjoo Seodu Herr, ‘Reclaiming Third World Feminism: or Why Transnational Feminism Needs Third World Feminism’ (2014) 12(1), *Meridians*, 1, 2.

³⁰³ See Section 4.5 of this thesis for the discussion on Third-World Feminist Theory.

6.5 Concluding Remarks

In conclusion, this research posits that the inadequate domestic integration of CEDAW has resulted in a notable disparity between CEDAW ratification and the practical realisation of women's rights in Sri Lanka. Fulfilling the state obligations under CEDAW requires more than law reforms. This thesis concludes that the full and effective incorporation of CEDAW into the Sri Lankan legal system requires more than the introduction of domestic implementing legislation. It also necessitates a comprehensive, multifaceted approach that includes constitutional reforms, the abolition of discriminatory laws, the removal of deeply rooted social and cultural barriers, enhanced institutional collaboration, gender-sensitive training, education and awareness-raising.

According to Shanthi Dairiam, ‘the CEDAW demands the practical realisation of rights and hence compels States Parties to eliminate all forms of discrimination, intended or unintended, through law, policy, practice or custom and by state or non-state institutions or private persons, even if they are family members and to approach the problem holistically and collectively.’³⁰⁴ The position of Dairiam aligns with the conclusion of this research, which emphasises the importance of addressing the issues encountered in CEDAW domestic integration holistically and collectively, ensuring that all dimensions of discrimination are confronted simultaneously to foster substantive equality, non-discrimination and women's empowerment. This collective responsibility extends beyond the government to non-state institutions, civil organisations and individuals. Therefore, the path toward effective domestic incorporation of CEDAW requires a “multifaceted strategy” or a “holistic approach” to address the critical gap between a state's commitment to the convention and the practical realisation of women's rights in Sri Lanka.

³⁰⁴ Shanthi Dairiam, *Impact of the Convention at the Domestic Level*, The speech at the CEDAW at 25: Are We Moving Forward? Twenty-fifth anniversary of the adoption of CEDAW by the General Assembly of the United Nations (United Nations Headquarters, New York, 13 October 2004), 2.

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