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BETWEEN CONVENTION AND CUSTOM: DOES INDIA'S OBLIGATION UNDER CEDAW REQUIRE REFORM OF CUSTOMARY PRACTICES, OR DOES CULTURAL PLURALISM PROTECT THEM?

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Abstract

India ratified the Convention on the Elismination of All Forms of Discrimination Against Women (CEDAW) in 1993 with reservations attached to Articles 5(a), 16(1) and 16(2) regarding non-interference in the personal affairs of any community. The reservation has led to an continuing debate. One side interprets CEDAW as instructing the elimination of discriminatory customary practices. Another side believes the cultural pluralism encompassed in the Constitution, articles 25 to 30, protects the community from interference. This paper presents the argument that the two positions are actually less opposed to each other. The doctrinal and comparative analysis of the Convention, the recommendations of the CEDAW Committee, and the decisions of the Supreme Court starting from the Vishaka v. State of Rajasthan is conducted. It is argued that CEDAW imposes an international obligation on India and influences its domestic interpretation and enforcement, that pluralism does not protect any particular norm of the community but allows the community to formulate and change its norms, and that important limitation on the reform process is institutional and not conceptual. The paper then compares India with the United States, which signed in 1980 but has never ratified, and with Saudi Arabia, which acceded in 2000 with a sweeping reservation. India emerges as a distinct middle case, bound to reform but obliged to pursue it through constitutional morality and community participation.

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1. Introduction

The United Nations General Assembly adopted CEDAW on 18 December 1979, and it came into force in September 1981.[3] India acceded to it in 1980 and ratified on 9 July 1993.[4] The United States signed it on July 17, 1980, but has yet to ratify it, decades later. These facts, taken directly from the record of the UN Treaty Collection, already show the range of ways a state can relate to the same treaty, full participation, qualified participation, and participation in name only at the signature stage.

For India, the relationship is complicated by the density of its personal and customary laws. Marriage, divorce, inheritance, guardianship and adoption are still largely regulated by religion-based or community-based norms, in addition to local customs that have never been written down.[5] Many of these rules do not treat women and men equally. Article 5(a) of CEDAW obliges states to change social and cultural patterns of conduct so as to eliminate prejudices and customary practices based on the idea of the inferiority or superiority of either sex. Article 16 obliges states to ensure equality in all matters relating to marriage and family relations. But India's own declarations are that it will observe those provisions in accordance with a policy of non-interference in the personal affairs of any community without its initiation and consent.[6]

This paper thus poses a pointed question. Does India's obligation under CEDAW require it to reform customary practices that disadvantage women or does the doctrine of cultural pluralism, which the Constitution protects, shelter those practices from such a demand? The answer is important outside the classroom. It prescribes how courts should interpret the Convention, how

[3] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
[4] United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women: Status', Chapter IV-8 <https://treaties.un.org> accessed 8 November 2026.
[5] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999).
[6] United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women: Declarations and Reservations (India)', Chapter IV-8 <https://treaties.un.org> accessed 8 November 2026.

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Parliament should deal with the long-delayed directive in Article 44[7] and how India should defend its record before the CEDAW Committee.

The paper is organized as follows. It reviews the literature, states the problem and explains the method. The main body then discusses the demands of CEDAW, how India qualified its consent, how the Constitution frames pluralism and what the Supreme Court has done with the Convention since Vishaka. It then compares India with United States and Saudi Arabia and closes with observations and conclusion.

2. Literature Review

- **Cook RJ, 'Reservations to the Convention on the Elimination of All Forms of Discrimination against Women' (1990) 30 Va J Intl L 643**

  Cook examines the reservations states entered to CEDAW. She argues that many of them, especially those on Articles 2 and 16, undermine the treaty's object and purpose. The article gave this paper its test for judging India's declarations. It supported reading them as functional reservations and asking whether they are compatible with Article 28(2) of CEDAW[8] and Article 19(c) of the Vienna Convention. It also shaped the comparison with Saudi Arabia's broad reservation.

- **Charlesworth H, Chinkin C and Wright S, 'Feminist Approaches to International Law' (1991) 85 AJIL 613**

  The authors argue that international law has treated the family as a private sphere and so left women's inequality outside its reach. They present CEDAW as a rare instrument that reaches into that sphere. This explained why CEDAW targets customs and family relations through Articles 2(f), 5(a) and 16,[9] and why the clash with India's personal laws is a real one. It supplied the paper's conceptual starting point.

- **Kymlicka W, Multicultural Citizenship: A Liberal Theory of Minority Rights (Clarendon Press 1995)**

[7] Constitution of India, art 44.
[8] CEDAW, art 28(2).
[9] CEDAW, arts 2(f), 5(a) and 16.

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According to Kymlicka, there is a difference between external protection,[10] upholding a minority from external intrusion and internal restriction, a group brings upon its members. He supports external protection but does not support internal restriction. He uses this distinction to give an explanation of the primary argument of the paper that pluralism ensures freedom to the community in defining and changing its norms rather than their permanence, which results in unjust norms for women.

- **Agnes F, Law and Gender Inequality: The Politics of Women's Rights in India (OUP 1999)**

  Agnes examines the events surrounding Shah Bano dispute and the 1986 law,[11] which changed the status of women in personal laws from subjects of the law to bargaining objects in communal politics. Her analysis shows that reforms in India are driven by both politics and doctrine. The book explains such refusal to enforce the personal laws and why Parliament does not implement Article 44.[12]

- **Shachar A, Multicultural Jurisdictions: Cultural Differences and Women's Rights (CUP 2001)**

  Despite being a religion-based societal model of women's rights, Shachar's idea of transformative accommodation suggests that the issue of women's rights can be approached from the point of view of the combination of power of the state and the community, as there is no necessity for women to choose between their group and

[10] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press 1995) 35–44.
[11] *Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556; Muslim Women (Protection of Rights on Divorce) Act 1986 (Act 25 of 1986).
[12] Constitution of India, art 44.

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rights. The model is consistent with India's declarations, which tie reform to community initiative and consent.[13]

3. Statement of Problem

India has given its approval to be bound by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), yet it has simultaneously stated that it will not intervene in the personal affairs of communities except when requested by the concerned community.[14] This leads to complications in three areas.

At the international level, it is unclear whether the declarations amount to reservations and, if they do, whether they are compatible with the object and purpose of the Convention, as Article 28(2) of CEDAW and Article 19(c) of the Vienna Convention on the Law of Treaties require.[15] Firstly, from a constitutional standpoint, the freedoms granted under Articles 25 and 26 may contradict the guarantees of equality under Articles 14 and 15 and the guarantee of dignity under Article 21,[16] while Article 51A(e) mandates that every citizen abstain from actions that can be detrimental to any woman's dignity. Secondly, from an institutional standpoint, it is unclear as to who should lead the reforms- the courts, Parliament, or the communities themselves. Thirdly, the paper will address the four crucial questions defined below. What is the requirement of CEDAW regarding customary practices? What are the implications of India's declarations? How has the Constitution defined cultural pluralism? How does India's situation compare to that of the USA and Saudi Arabia? The hypothesis here is that India's obligation will indeed necessitate reforms but pluralism will decide how these reforms will take place.

4. Methodology

[13] United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women: Declarations and Reservations (India)', Chapter IV-8 <https://treaties.un.org> accessed 8 November 2026.
[14] Ibid.
[15] CEDAW, art 28(2). Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art 19(c).
[16] Constitution of India, arts 14, 15 and 21.

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1. Doctrinal Research: Examines CEDAW, the general recommendations and concluding observations of the CEDAW Committee,[17] the Vienna Convention on the Law of Treaties, the Indian Constitution, relevant statutes and judicial decisions.
2. Comparative Analysis: Compares the approaches of India, the United States and Saudi Arabia towards CEDAW, focusing on their ratification status, reservations and implementation.
3. Judicial Analysis: Examines the role of the Indian Supreme Court, particularly in Vishaka v State of Rajasthan,[18] and compares it with relevant decisions of the United States Supreme Court.
4. Sources of Research: Relies on primary sources, including international treaties, legislation, judicial decisions and official UN documents, supplemented by secondary sources such as books and academic articles.

5. An Analysis of CEDAW

5.1 What CEDAW Asks of States

As stated in Article 1 discrimination against women is said to imply the existence of any restrictions or differences or exclusions on the grounds of sex which deprives women of their inherent rights and freedoms regardless of the marital status.[19]

Article 2 puts many obligations on states. According to point f all the necessary measures including legal ones must be taken in order to transform and eliminate the laws, customs and practices which cause the discrimination of women.[20] The term customs is purposely employed. The authors realized that even having formal equality means nothing if the religious customs prevail in the everyday practice.

[17] Committee on the Elimination of Discrimination against Women, 'Concluding Observations: India' (2 February 2007) CEDAW/C/IND/CO/3; Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India' (24 July 2014) CEDAW/C/IND/CO/4-5.
[18] *Vishaka v State of Rajasthan* (1997) 6 SCC 241.
[19] CEDAW, art 1.
[20] CEDAW, art 2(f).

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Article 5(a) goes further in addressing the social and cultural patterns of conduct themselves, calling for modification of prejudices and customary practices based on stereotyped roles.[21] Article 16 provides for equality in marriage and in family relations, the equal right to marriage freely entered into, equal rights and responsibilities during the marriage and at its dissolution, equal rights as parents, and under article 16(2) no legal effect for child marriage and a requirement of official registration. Because special measures allowed under Article 4(1) are temporary, reform can be gradual and targeted without being illegitimate.

The Committee has read these provisions with firmness. General Recommendation 21 (1994) states that the position of women in the family must be consistent with the Convention regardless of the national system and that religion, tradition or culture cannot be used as a justification for violations of Article 16.[22] 3. General Recommendation 28 (2010) identifies Articles 2 and 16 as key to the object and purpose of the treaty and declares that reservations to these articles are incompatible with the treaty.[23] General Recommendations 19 (1992) and 35 (2017) broaden the rationale to violence based on gender, including violence sustained by custom.

Two cautions are to be given. First, Article 2 requires states to pursue the elimination of discrimination by all appropriate means and without delay, leaving them a choice of methods but not of the end. Second, the Committee's general recommendations are authoritative interpretations, not binding decisions[24] . The obligation is thus imposed, but the translation of that obligation into domestic reform is left to the constitutional machinery of each state.

5.2 Ratification of Convention and Declarations by India

In the Constitution of India, it provides for declarations under Articles 5(a), 16(1) and (2) and makes a reservation in respect of Article 29. India declares under Articles 5(a) and 16(1) that its obligation is to respect and observe the provisions without interfering in the affairs of any

[21] CEDAW, art 5(a).
[22] Committee on the Elimination of Discrimination against Women, *General Recommendation No 21: Equality in Marriage and Family Relations* (1994) para 44.
[23] Committee on the Elimination of Discrimination against Women, *General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention* (2010) CEDAW/C/GC/28.
[24] *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (Merits) [2010] ICJ Rep 639, para 66.

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community.[25] Article 16(2) provides that though it accepts compulsory registration of marriages, it cannot be enforced in view of the diversities of customs and religions and literacy in the country.

That statement on the label should not be the end of it. A reservation is defined by its effect and not by its name under Article 2(1)(d) of the Vienna Convention.[26] Thus, any statement purporting to modify the legal effect of a provision of a treaty is a reservation, regardless of how it is called. The more interesting question is whether the declaration changes anything. India does not say it will not use Articles 5(a) and 16. It says that it will implement them in a particular way, which depends on two qualifiers: the initiative of the community and its consent.

That can be read in two ways. A strict reading converts the declaration into a community veto, hollows out Article 16 for every group whose leadership prefers the status quo, and would be difficult to reconcile with the object and purpose test. A generous reading sees it as a statement on method, a pledge that reform will not be delivered in ways that disregard community voices. The second reading keeps the declaration valid[27] and the obligation substantive. It is in consonance with the practice of India. The Committee has pressed India in successive reviews on the pace of personal law reform and on the declarations and India has not withdrawn them.[28]

In practice, the Article 16(2) declaration has been overtaken. The declaration said it was impractical to compulsorily register marriages of all persons irrespective of their religion. The Supreme Court in Seema v Ashwani Kumar[29] directed that marriages of all persons irrespective of their religion be compulsorily registered. That means the declarations were written for political reassurance in 1993, and have lost some of their force since.

[25] United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women: Declarations and Reservations (India)', Chapter IV-8 <https://treaties.un.org> accessed 8 November 2026.
[26] VCLT, art 2(1)(d).
[27] Ryan Goodman, 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96 AJIL 531.
[28] Committee on the Elimination of Discrimination against Women, 'Concluding Observations: India' (2 February 2007) CEDAW/C/IND/CO/3; Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India' (24 July 2014) CEDAW/C/IND/CO/4-5.
[29] *Seema v Ashwani Kumar* (2006) 2 SCC 578.

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India is dual. Article 253 read with Entry 14 of Union List[30] does not empower the enactment of a CEDAW Act and therefore treaty obligations do not become domestic law without legislation. The Convention thus makes its way into Indian law through the courts, which has shaped everything that follows.

5.3 Cultural Pluralism within the Constitutional Scheme

There are many provisions in the Constitution that preserves pluralism. For instance, Article 25(1) guarantees the freedom of conscience as well as the freedom to practice, profess, and propagate the religion but subject to public order and morality and the other provisions of Part III.[31] As per Article 25(2)(b), the State is permitted to make laws related to soical welfare and reform. In addition, Article 26 gives the right to the religious denominations to have control over their own religious affairs. Pluralism is also guaranteed through Articles 29 and 30 of the Constitution which protects the culture of minorities. Article 44 directs the state regarding uniform civil code while Article 15(3) allows making special provisions for women.

These stand alongside the promise of equality. Article 13(3)(a) is easy to overlook but it defines law to include any custom or usage having the force of law, which means that custom is not outside the reach of Part III. In Commissioner, Hindu Religious Endowments v Shirur Mutt the Court adopted the doctrine of protection only for practices that are essential to a religion and a series of later decisions have applied that doctrine as a filter.[32] The status of codified personal law is less clear. In State of Bombay v Narasu Appa Mali, the Bombay High Court held that personal laws are not laws in force within the meaning of Article 13[33] and this view has never been decisively overruled. This accounts for the split reasoning in the 2017 decision in Shayara Bano. Two judges held that fundamental rights apply to personal law and one judge took a narrower view while the Chief Justice and Justice Nazeer dissented holding that personal law is protected by Article 25.[34]

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[30] Constitution of India, art 253; Seventh Schedule, List I, entry 14.
[31] Constitution of India, art 25(1).
[32] *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282.
[33] *State of Bombay v Narasu Appa Mali* AIR 1952 Bom 84.
[34] *Shayara Bano v Union of India* (2017) 9 SCC 1.

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The constitutional picture is therefore not one in which pluralism is superior to equality or the other way round. Bhargava's principled distance[35] describes it better: the state maintains a respectful distance from religion but can step in if equal citizenship is under threat. In Indian Young Lawyers Association v. State of Kerala (the Sabarimala case), the majority held that it is constitutional morality (and not majoritarian or communal morality) that governs the interpretation of Article 25, and that exclusion of women from a place of worship on the basis of menstruation violated both Article 25 and Article 14.[36] The dissent called for deference to the religious community's own understanding. The issue was escalated to a larger bench in 2020, and it shows that the distinction between reform and deference remains a pertinent constitutional issue.

Properly understood, pluralism defends the right of communities to hold beliefs, to have institutions and to change their own practices. It doesn't guaranty that any particular norm will last forever, and it cannot mean that a custom that disadvantages half the members of the community is protected from inquiry by the Constitution that guaranties to those members equal citizenship.

5.4 The Judicial Record: Vishaka and After

Vishaka v State of Rajasthan was born out of the gang rape of Bhanwari Devi, a social worker involved in a government scheme and a petition by women groups about the absence of any law on sexual harassment at the workplace.[37]

The Court invoked Articles 14, 15, 19(1)(g) and 21 and then turned to CEDAW. It was based on Article 11 and on General Recommendation 19.[38] It reasoned from Articles 51(c) and 253 that international conventions compatible with fundamental rights can be read into the Constitution to expand the meaning of those rights, particularly in the absence of domestic legislation occupying the field. Under Articles 32 and 141, the Court laid down binding guidelines which were in force till the passing of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

[35] Rajeev Bhargava (ed), *Secularism and Its Critics* (OUP 1998).
[36] *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.
[37] *Vishaka v State of Rajasthan* (1997) 6 SCC 241.
[38] CEDAW, art 11. Committee on the Elimination of Discrimination against Women, *General Recommendation No 19: Violence against Women* (1992).

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Redressal) Act, 2013 by Parliament. This approach was confirmed in Apparel Export Promotion Council v A K Chopra.[39]

Vishaka is relevant for this paper because it shows the mechanism through which CEDAW operates in India. It does not confer directly enforceable rights. It serves as an interpretative resource for courts to fill in the content of constitutional guaranties. The effect is strongest when there is statutory silence creating a void. This is in consonance with the earlier line in Gramophone Company of India v Birendra Bahadur Pandey and People's Union for Civil Liberties v Union of India which states that rules of international law not inconsistent with domestic law may be read into it.[40]

The pattern is different in the cases on personal law and custom. In Githa Hariharan v Reserve Bank of India the Court read the word after in Hindu Minority and Guardianship Act as meaning in the absence of so that a mother could act as natural guardian during the father's lifetime and drew support from the Convention.[41] Mary Roy v. State of Kerala and, much later, Vineeta Sharma v Rakesh Sharma recognized the equal inheritance rights of Syrian Christian daughters and Hindu daughters respectively, in the latter case with reference to the amended Hindu Succession Act of 2005.[42] In contrast, Madhu Kishwar v State of Bihar upheld tribal customary law, which excluded daughters from succession, preferring to protect women through maintenance rights, while Ahmedabad Women Action Group v Union of India refused to hear challenges to personal laws, deferring the matter to Parliament. In the Mohd Ahmed Khan v. Shah Bano Begum case, the Court extended maintenance under the Code of Criminal Procedure in the Shah Bano line. The Parliament came up with the 1986 Act and Danial Latifi v. Union of India read that Act to secure a fair provision for divorced women.[43]

It's a recurring pattern. Courts are happy to cite CEDAW to fill in statutory gaps, to read down provisions and to give effect to equality when legislation is silent. They are loath to strike down

[39] *Apparel Export Promotion Council v A K Chopra* (1999) 1 SCC 759.
[40] *Gramophone Co of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534; *People's Union for Civil Liberties v Union of India* (1997) 3 SCC 433.
[41] *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228; Hindu Minority and Guardianship Act 1956, s 6(a).
[42] *Mary Roy v State of Kerala* (1986) 2 SCC 209; *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1; Hindu Succession (Amendment) Act 2005 (Act 39 of 2005).
[43] *Danial Latifi v Union of India* (2001) 7 SCC 740; Muslim Women (Protection of Rights on Divorce) Act 1986 (Act 25 of 1986).

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codified personal law or tribal custom directly, particularly if there is no legislative cue or movement within the community. That hesitation mirrors the logic of the declarations. The courts have not rejected CEDAW, but rather have, in effect, accepted that reform of family law is best done with the participation of the community and the imprimatur of the legislature.

5.5. United States

The United States signed CEDAW on July 17, 1980, but has never ratified it. Article II(2) of the Constitution requires the advice and consent of two-thirds of the Senate[44] for a treaty. The Senate Foreign Relations Committee has recommended ratification several times, most recently in 1994 and 2002, but the full Senate has never voted on the subject. The objections have focused on national sovereignty, federal control of family law, and fears, real or imagined, about the reproductive rights positions associated with the Committee.

Even a ratification would have a small domestic impact. In Medellin v Texas,[45] the Supreme Court stated that a treaty is not enforceable in domestic courts as federal law unless it is self-executing or implemented by Congress. The United States has generally included non-self-executing declarations when it ratifies human rights treaties, as it did with the ICCPR in 1992. Reid v Covert adds that no treaty can supersede the Constitution.[46] By signing, a state assumes only the obligation under article 18 of the Vienna Convention not to defeat the object and purpose of the treaty, a rule which the United States regards as reflecting customary law even if it is not a party to the Vienna Convention.

Domestically, the equality of American women is grounded in the Equal Protection Clause, Title VII, Title IX, and the Violence Against Women Act,[47] not any international instrument, and the Equal Rights Amendment has never been ratified by enough states. In 1998, San Francisco

[44] Constitution of the United States, art II, s 2, cl 2.
[45] *Medellin v Texas* 552 US 491 (2008).
[46] *Reid v Covert* 354 US 1 (1957).
[47] Constitution of the United States, amendment XIV, s 1; Civil Rights Act 1964, Title VII, 42 USC § 2000e et seq; Education Amendments 1972, Title IX, 20 USC § 1681 et seq; Violence Against Women Act 1994, Pub L No 103-322, tit IV.

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passed a CEDAW ordinance[48] and other cities and states have followed suit. This shows that the Convention can be used below the federal level even if it is not present above it.

The difference with India is instructive. The United States does not report to the Committee and can be criticized for the lack of such scrutiny, whereas India accepts the reporting process and the reputational cost of its declarations.[49] In America the debate about culture and equality is fought out in the language of free exercise and anti-discrimination doctrine rather than treaty obligation, while in India the treaty has entered the vocabulary of constitutional adjudication. Non-ratification protects the American system from international gender equality law, but at the cost of a diminished voice in the international conversation.

5.6 Saudi Arabia

Saudi Arabia ratified CEDAW on 7 September 2000.[50] It has the following main reservation: "In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms." It also made a reservation on Article 9(2) on the nationality of children and on Article 29(1). Several states parties have objected to the general reservation as being incompatible with the object and purpose of the Convention. The Committee has repeatedly called for its withdrawal.

You compare how broad the reservation is. It does not alter two articles. It makes the whole treaty dependent on a religious legal system, whose contents are defined by the state itself. In the absence of the treaty, the Basic Law of Governance does not contain a general guaranty of sex equality[51] that could import the aims of the Convention. Recent reforms, such as the royal decrees of 2019 that eased restrictions on women's travel and the Personal Status Law adopted in 2022, indicate progress, but the Personal Status Law preserves the guardianship structure in marriage, which is inconsistent with Article 16.[52]

[48] San Francisco Administrative Code, ch 12K.
[49] CEDAW, art 18.
[50] United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women: Declarations and Reservations (Saudi Arabia)', Chapter IV-8 <https://treaties.un.org> accessed 8 November 2026.
[51] Basic Law of Governance 1992 (Saudi Arabia).
[52] Personal Status Law, Royal Decree No M/73 (2022) (Saudi Arabia); CEDAW, art 16.

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India's position looks somewhat narrower when compared with Saudi Arabia. India has presented only two declarations, which are based on the standard of method and consent rather than on absolute adherence to religious law, within a constitution that guarantees the principle of equality and leads to the establishment of courts to ensure its application. One of the aspects that show that India is more pluralistic than Saudi Arabia is the fact that it addresses all communities rather than just the power of one religion.

6. Observations

The analysis yields a number of observations.

First, the obligation survives the declarations. Articles 2(f), 5(a) and 16 impose a duty[53] to amend customs which are discriminatory against women. The manner of discharge of the duty is qualified by India's declarations, not the duty itself, unless they are read in the strict veto sense that would risk invalidity under the Article 28(2)

Second, pluralism and reform aren't opposites. The Constitution protects the freedom of communities, but the same document expects reform of practices that disadvantage women, as is shown in Article 13(3)(a), Article 25(2)(b), Article 15 and Article 51A(e).[54] But pluralism, as Kymlicka puts it, backs external protections for communities, not internal restrictions on their members.

Third, the courts are the primary engine of incorporation, but the engine is unstable. The Parliament introduced a law and therefore Vishaka got into action. Judicial reform, without legislative backing, can lead to stagnation or an ad hoc approach, as evidenced by personal laws, as demonstrated by Shayara Bano and Sabarimala.[55]

Fourthly, three models can be distinguished on the basis of comparison. The USA does not support the treaty but relies on domestic equality laws. Saudi Arabia supports the treaty but makes it subordinate to religious laws. India accepts tentatively, leaves the rest to the judicial

[53] CEDAW, arts 2(f), 5(a) and 16.
[54] Constitution of India, arts 13(3)(a), 15, 25(2)(b) and 51A(e).
[55] *Shayara Bano v Union of India* (2017) 9 SCC 1. *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

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system and legislature. The Indian model gives itself the greatest leeway for gradual legitimate change, but also for procrastination.

Fifthly, some ways can be suggested. India could make it clear to the committee that its declarations contribute to the process and do not serve as exemptions. As seen in the declarations, it can carry out community-led reform through consultations. Codification of customary law could be used, in this way, to reveal discriminatory elements. And it could take up piecemeal statutory reform, the sort of thing we saw with the 2005 Hindu Succession amendment,[56] which improved equality without waiting for a uniform civil code.

7. Conclusion

The question that opened this paper posed a choice between obligation and pluralism. The analysis suggests that it is a false choice. India's obligation under CEDAW does require reform of discriminatory customary practices against women, as Articles 2(f), 5(a) and 16 expressly[57] provide, and as the Committee has consistently interpreted them.

Cultural pluralism does not negate that obligation. It informs the manner in which the obligation is fulfilled, by demanding that reform be sensitive to the communities it affects, grounded in constitutional morality rather than external imposition, and accord community voices a genuine place.

Vishaka[58]'s example in India highlights how the system functions. While courts can find interpretations of equality in the Convention, Parliament is able to convert these judicial decisions into laws and the society has to accept it willingly, if not always. The implementation of the framework presents the limitations of this approach, however. Because the legal framework is not followed, the process gets stuck in slow motion and the decisions are sometimes taking the form of obstacles instead of assistance.

The USA and Saudi Arabia serve as an additional proof of this. By not being a party to the Convention, the USA can avoid not only its obligations but also the control. At the same time, by

[56] Hindu Succession (Amendment) Act 2005 (Act 39 of 2005).
[57] CEDAW, arts 2(f), 5(a) and 16.
[58] *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

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subjecting the Convention to divine politics, Saudi Arabia may render its obligations meaningless. India, instead, decided to battle through this method with some qualifications. This can be justified only if these qualifications signify the commitment for a careful reform, rather than allow delays.

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