

POLITICS OF INTERNATIONAL HUMAN RIGHTS TREATY IMPLEMENTATION:

The Case of CEDAW in Pakistan

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Supervisor: Dr. Francesco Ragazzi

Second Reader: Prof. Ingrid van Biezen

Student: Sana Ejaz

Student Number: s1734547

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Leiden University, Faculty of Social and Behavioral Sciences

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ABSTRACT

After the nonbinding Universal Declaration of human rights many international human rights treaties have been concluded. Some of them have had substantial impact but others have failed to significantly improve respect for human rights. This article attempts to find out some of the reasons behind this difference in the level of efficacy of treaties. To do this, it specifically looks at the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and seeks to uncover some of the main reasons for why it has failed to achieve its objectives in the case of Pakistan. It is hoped that this case will provide some insights into ways that can be useful in enhancing success of international human rights treaties in general. The article analyzes four main potential factors that could have impeded CEDAW in being effective in Pakistan, namely the presence of conservative or religious elements, lack of civil society strength, inability of the state to comply, and problems in the design of CEDAW. The findings suggest that two reasons out of these are largely responsible for why CEDAW has been unable to significantly improve the situation of women and reduce gender discrimination in Pakistan. First of these are the religious and conservative political parties and groups in the country which have constantly opposed pro-women laws and labelled them western ideas that are not welcome in the country. The second is the inability of the state to take actions in order to comply by the treaty due to lack of resources, as well as limited budgeting for organizations and bodies responsible for its implementation.

INTRODUCTION

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was the first ever legally binding document for enforcement of women rights around the world, and till date is the most important one in this regard. It was adopted in 1970 by the United Nations General Assembly and as of 2016, 189 states have ratified it (“UNTC”). CEDAW is therefore thought to be a treaty which has a potential to improve the situation of women in the world due to its scope and sole focus on women rights (Zwingel 2006, 401). Yet, why has CEDAW not been able to make a real change in the world in its more than four decades of existence? Is it true that international treaties are just not the right instruments to improve human rights situation in the world? Or does the problem lie within the particular context of the

countries themselves? To find answers to these questions, this article explores the case of CEDAW in Pakistan to uncover where the problems lie with the implementation of CEDAW in Pakistan and why has it failed to improve the conditions of women in Pakistan. It is hoped that the case of CEDAW in Pakistan would provide guidelines for improvement of human rights treaties and their implementation in other countries as well.

This article aims to explore four possible reasons for the ineffectiveness of CEDAW in Pakistan, namely, the presence of conservative elements and religious elements, lack of civil society strength, state's inability to comply, and problems in the design of the treaty itself. The objective is to find out which of these factors have actually hindered CEDAW's ability to improve women's rights in Pakistan and thereby, contribute to the debate of why some international human rights treaties fail while others succeed in achieving their objectives. In doing so, the article analyzes the politics of treaty implementation at the international, national and the local level. Furthermore, it suggests ways in which the factors that have hindered its success in Pakistan can be overcome. It is hoped that learning from the experience of Pakistan, the article can shed light on some ways in which implementation of CEDAW and other international human rights treaties in general can be improved in countries which are faced with similar problems.

This article starts with a literature review outlining the main arguments surrounding the reasons for the ineffectiveness of CEDAW in Pakistan. It then spells out the theoretical frameworks that are used in this article to analyze the factors that have hindered the enforcement of CEDAW. The next section briefly describes the main concepts employed in the analysis and how they are measured. This is followed by a short background about Pakistan before I analyze the four main possible factors that could have obscured enforcement of the Convention in the case of Pakistan, and highlight the factors that are actually the most problematic for realization of gender non-discrimination and equality in the country. Finally, the conclusion points out that religious groups and parties as well as lack of resources at Pakistan's disposal have in fact been the most important reasons why CEDAW has not been able to change the landscape for women in Pakistan.

LITERATURE REVIEW

Regarding the effectiveness of CEDAW, there seems to be a general consensus amongst scholars that the convention has largely failed to achieve its objectives in Pakistan. Anita Weiss (2003) carried out an in-depth research about the implications of the ratification of CEDAW in the case of Pakistan, stating that CEDAW has not had a major impact on gender discrimination in Pakistan and women are still marginalized in all spheres of society including the political, economic and social spheres (2003, 588). Similarly, Sanchita Bhattacharya (2014) asserts that treaties like the CEDAW have not actually been implemented in Pakistan, most of these laws remain on paper while women continue to suffer in the country on various levels (2014, 186). Mentioning various forms of discriminatory practices prevalent in the society, such as forced marriages, honor killings, acid attacks, Bhattacharya contends that elements of patriarchy are still deep rooted within the Pakistani system which disregard women and their rights in the society (2014, 186). Likewise, Noreen (2013) writes that despite the early ratification of CEDAW by Pakistan, little has been done as a consequence of it. She points out that Pakistan did not submit a single report to the CEDAW Committee until 2004 (2013, 122). Moreover, Sudduth (2009) has explored the effects of CEDAW on women's education in Pakistan, concluding that, "Over a decade later, the realization has now set in that very little, if anything, changed for the benefit of women... when Pakistan acceded to CEDAW" (2009, 563).

Many scholars have tried to determine the causes of the failure of different international human rights regimes in several countries. A few have specifically analyzed the case of CEDAW in Pakistan and have come up with reasons for why it has failed as an international treaty to improve the situation of women in Pakistan. According to one of these groups of scholars, the principal reason for the failure of CEDAW in Pakistan is the presence of conservative/religious elements in the country that have deprived it of the conditions suitable for implementation of the Convention. Ali and Rehman (2003), for example, argue that in Pakistan equality among the sexes is seen as absolutely opposed to the right to practice one's religion (2003, 404). The Islamic identity of the country plays a major role in shaping its politics, and religious elements within the system have hindered the adoption of any human rights document originating from a so-called un-Islamic forum such as the United Nations (Ali and Rehman 2003, 420). Similarly, Bhattacharya (2014) contends that in Pakistan, "Unfortunately, the radicalization of the State has divested the country of an environment which is required for the actual implementation of these various legislations and, in turn, to protect the female population" (2014, 186). She points out

that the society remains committed to religious and political ideals that deny women equal rights, thus any legal advancements for the improvement of women rights such as CEDAW essentially remains on paper (2014, 186). However, these experts have failed to mention exactly which conservative actors, political parties, organizations or groups have hindered CEDAW in Pakistan and in what ways.

Another line of argument proposed by Neumayer (2005) links the success of any international human rights treaty to the level of democracy and civil society strength in the country (2005, 925). For him, autocratic regimes that have a weak civil society might even witness greater rights violation as a result of treaty ratification (2005, 925). Although he does not consider CEDAW in his quantitative assessment, his theory is nonetheless important in the analysis since it highlights some potential reasons for the failure of human rights treaties. Although a few scholars have explored the role played by NGOs in the implementation of CEDAW in Pakistan (Anita 2003, Jones and Wachala 2005, Afsharipour 1999), they have overlooked the process through which the strength of different civil society groups in Pakistan might have supported or hindered the achievement of CEDAW's objectives.

Another approach to explain the ineffectiveness of international treaties is provided by Chayes and Chayes (1993), who analyze some of the possible causes of non-compliance by states to international treaties that they have ratified. Their 'managerial approach' assumes that states usually intend to comply by the treaties they have ratified, but reasons outside their control often lead to non-compliance, including the ambiguity of treaties (1993, 188), lack of capability of states to comply (1993, 194), and the time lag between undertaking and performance (1993, 195). There has not been any major analysis of CEDAW in Pakistan in terms of the managerial school, however Farzana Bari (2000) has briefly looked into the issue mentioning that the Ministry of Women Development (MWD) in Pakistan implements CEDAW through implementation of the National Plan of Action (NPA). She points out that follow-up units were set up with external assistance to implement the NPA and CEDAW, but the setup ended in 1999 and the MWD does not have sufficient resources to replace this institutional support (2000, 22) implying that there is a lack of resources for its implementation.

While the above mentioned arguments analyze the problems in implementation of CEDAW which are intrinsic to Pakistan, there is another group of scholars which suggests that the ineffectiveness of CEDAW, is linked to internal faults in the design and implementation

mechanisms of the Convention itself. According to Jones and Wachala (2005) for example, three properties of CEDAW are problematic. First, the Convention allows state parties to ratify it with reservations resulting in states having ratified the convention with a large number of reservations on provisions which conflict with their internal laws and hinder its integrity (2005, 129). Second, CEDAW does not provide for an individual petition mechanism which would allow individuals to persuade state parties to adhere to the provisions of the convention (2005, 130). This however is not true anymore with the addition of the Optional Protocol which will be explained later. Third, there are serious delays in hearing the reports that are submitted to the CEDAW Committee by the state parties because of a backlog of overdue reports and since the committee is only given a two-week period to meet annually which makes the only mechanism of enforcement of the convention less effective (Jones and Wachala 2005, 131). Likewise, analyzing the role of CEDAW in Bangladesh, Afsharipour (1999) holds the view that the fact that CEDAW's requirements are not judicially enforceable means that women in most countries continue to face discrimination despite ratification of CEDAW (1991, 129).

Since the case of CEDAW in Pakistan is particularly understudied and there has not yet been a systematic study to analyze all of the likely reasons for this failure in the case of Pakistan, this article seeks to do an in-depth analysis of the hindrances that CEDAW has faced in Pakistan, and in the process highlight some general problems that are faced by international human rights treaties in achieving their objectives.

THEORETICAL FRAMEWORK

To solve the puzzle of why CEDAW has not succeeded in making any major improvements in women rights in Pakistan, I will analyze four main possible reasons namely, presence of conservative and religious elements, state's inability to comply, lack of civil society strength, and treaty design problems. These four variables will be analyzed in light of different theoretical frameworks as mentioned below.

Conservative/Religious Elements

The factor of hindrance by conservative elements will be analyzed using the theoretical framework of Breuning (2013), who believes that the adoption of international norms depends on the support of domestic actors in key gatekeeping positions and political resistance might prevent

the domestic adoption of certain international norms (2013, 307). For this article, this means that CEDAW is largely seen as a Western construct promoting foreign liberal ideals of gender equality. Furthermore, Breuning suggests that international norms are more likely to be adopted by a state when decision makers in key gatekeeping positions are able to present the international norms in a way that resonates with the already present norms in the country. In this way it will be able to gain greater public support and increase the likelihood that the norm will be domestically adopted (2013, 322). This would mean that in Pakistan these ideals have not resonated with deeply held conservative beliefs in the society. Moreover, by conservative or religious elements, I mean any national or local actors who, on the basis of religion or cultural tradition, have resisted any changes in laws or any actions being taken as a result of CEDAW. These actors range from religious political parties to tribal judicial systems which decide matters for their local communities based on cultural norms. Furthermore, the fact that Pakistan has made a reservation to CEDAW in order to subject it to the Constitution of Pakistan which is based on Islamic law, will also be analyzed a potential religious factor hindering its implementation in the country.

Weak Civil Society

The second factor that I consider is the lack of civil society strength in the country and for that I will use the theoretical framework proposed by Neumayer (2005). His findings suggest that treaty ratification often does not have unconditional effect on human rights in a state, rather, treaties are more likely to improve respect for human rights the more democratic a country is and the more its citizens participate in non-governmental organizations (2005, 950). However, I will only be using the variable of civil society strength for the purposes of feasibility and also because in Pakistan the most relevant aspect of democracy to the implementation of CEDAW is civil society strength, since NGOs play an important role in this regard by designing and implementing pro-women programs and diffusing gender equality norms into local society and culture. In order to evaluate whether or not it is the weakness of the civil society in Pakistan that has prevented CEDAW from being effective, I measure the factor of civil society strength using two dimensions, namely, the number of NGOs working to implement the provisions of CEDAW and whether or not they are constrained by lack of resources at their disposal.

Inability of State to Comply

Turning to the third factor, namely, the inability of the state to comply by the treaty, I will use the managerial approach put forward by Chayes and Chayes (1993). Their background assumption is that states have a propensity to comply by the treaties they have ratified and rather than being intentional deviations that require sanctions and other enforcement mechanisms, these are endemic problems requiring managerial assistance (193, 204), thus they attribute lack of compliance to international treaties on part of the states to factors outside their control. Moreover, they use the dimensions of ambiguity of treaty language, limitations on the capacity of parties to carry out their undertakings, and the temporal dimension of the social and economic changes contemplated by regulatory treaties, as possible causes for non-compliance on the part of the states (1993, 188). However, I focus mainly on the resources at state's disposal and analyze the amount of Pakistan's financial, scientific, technical, and bureaucratic resources. Thus, I investigate whether there is a lack of these resources that has restricted the state's ability to comply by the convention. Furthermore, I look at the specific amount of budget allocation for women rights developments and initiatives.

Treaty Design Problems

The final factor that I will consider in my analysis is the internal faults in the design of CEDAW, and for this I will be employing the theoretical framework proposed by Goodman and Jinks (2004). Their argument is that regime design choices highly affect the capacity of international institutions to promote respect for human rights (2004, 622). Their theoretical framework includes the three processes whereby institutions influence the behavior of states, namely, coercion, persuasion and acculturation. They link all three of these mechanisms to specific regime design characteristics namely, precision of obligations, enforcement methods and conditional membership (2004, 622), and explore what changes in regime design can lead to better implementation of human rights by which states' behavior is influenced. In analyzing whether there are problems in the design of the CEDAW which render it less effective, I will look at two dimensions of regime design pointed out by Goodman and Jinks (2004), specifically the extent of precision of CEDAW's obligations and whether or not it employs sufficient enforcement mechanisms.

METHODS OF DATA GENERATION AND DATA ANALYSIS

The sources and data generation for the article include semi-structured interviews with members of the CEDAW Committee, the Ministry of Human Rights in Pakistan, provincial Women Development Departments (WDDs), and local women's NGOs in Pakistan. Besides semi-structured interviews, I use written documents such as reports, articles and websites. The country progress reports that state parties are required to submit to the Committee every four years, and CEDAW Committee's response report to these are useful in this regard. This is because they are the core documents which concern the implementation of CEDAW, and give insights of officials from Pakistan and the CEDAW committee on the progress made and the hurdles faced by the country. Furthermore, I also use reports published by the UN, since it is the primary body concerned with CEDAW.

By interviewing with the people in the government and local NGOs, I was able to investigate whether any of their actions to implement CEDAW were resisted by conservative or religious groups and/or individuals and how. Also, I was able to uncover whether the fact that CEDAW is subject to the Constitution of Pakistan which is based on Islamic Law has hindered change. This enabled me to answer the question of whether the presence of conservative groups and religious norms in Pakistani society are an obstacle to CEDAW or not. To analyze civil society strength, I review the measures carried out by women's NGOs in order to implement gender equality laws in Pakistan and their effectiveness. Additionally, by carrying out interviews with officials from leading women's NGOs in Pakistan I explore if they believe that they are empowered enough to carry out actions to implement CEDAW.

Furthermore, to get an idea of state's capacity to implement CEDAW, I examine the amount of state resources reflected by its gross domestic product (GDP). I also look at the budget which has been allocated to ministries and departments working for CEDAW implementation, and analyze whether the state has allocated enough budget to these bodies, compared to what it has at its disposal. This enabled me to shed light on the extent to which the ineffectiveness of CEDAW can be attributed to state's inability versus the degree to which it is a result of state's unwillingness to comply by CEDAW provisions. Interviewing people from organizations working for execution of CEDAW gave me important insights in to these matters.

With regards to treaty design problems, in order to analyze precision of obligations I look at the language of CEDAW, the specificity of its provisions and the clarity of their meaning.

Furthermore, interviewing with relevant actors gave me insights into their perception of the level of clarity of CEDAW's provisions, and whether any of its provisions has been disputed over its meaning. Concerning the second characteristic, that is, the enforcement methods, I look at the enforcement mechanisms employed by the Convention and analyze whether they are appropriate and stringent enough to compel states to comply. Conducting interviews also enabled me to find out whether these actors believe that the Convention employs appropriate enforcement mechanisms or not.

BACKGROUND

Pakistan became an independent state as a result of the partition of the former British India in 1947. It is a federal state with four provinces which have considerable autonomy to run their internal affairs. It is an ethnically, linguistically and religiously diverse country with all the provinces having their own languages and different cultures and histories (Critelli 2010, 237). With regards to women rights there was a general improvement after independence in Pakistan, including emergence of number of women rights organizations and pro-women constitutional changes (Naz et al. 2013, 23-24), however things started to deteriorate after the period of military rule of General Zia ul Haq that witnessed his Islamization program in 1979. Under his Islamization program he introduced a new penal code which made it easier for a woman to be charged with and arrested for adultery, since it blurred the distinction between adultery and rape (Weiss 2007, 98). The state also promoted a particular type of image of an ideal woman, specifically, that they should cover up, and stay inside the four walls of the house (Weiss 2007, 99). Zia's regime also promoted the establishment of religious schools and advocated an intolerant version of Islam that specifically hurt women (Weiss 2007, 101). Basically, this period marked a reversal in the rights of women in Pakistan.

No major legislation was passed which affected women rights after Zia's military regime ended, until Pakistan ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1996, under the regime of Benazir Bhutto, the first ever female president of a Muslim country, which marked the most important step towards women rights in Pakistan. CEDAW was ratified largely as a result of pressure for women rights activists (Naz et al 2013, 25). Since then a few improvements have been made in the status of women in Pakistan, however, the country still ranks 146th out of 187 countries on the gender inequality index. It has

one of the lowest female literacy levels in the world, one of the highest maternal mortality rates, meagre access of women to economic opportunities and a weak enforcement of pro-women laws and policies (“Gender Analysis”). The World Economic Forum ranks Pakistan as the least gender equitable country in the Asia and Pacific region (“The Global Gender” 2012, 27-28). Consequently, Pakistan needs to go a long way before women are granted the same rights and status as men and can realize their full potential as citizens of the country.

ANALYSIS OF THE POSSIBLE FACTORS HINDERING IMPLEMENTATION OF CEDAW IN PAKISTAN

Conservative/Religious elements

As mentioned earlier, with regards to conservative and/or religious factors, I look specifically into two main issues. The first is the fact that Pakistan has ratified CEDAW with a reservation that all its provisions are subject to the Constitution of Pakistan which is based on Islamic Law and whether this has reduced CEDAW’s effectiveness. The second is resistance by conservative or religious parties or groups which might have obstructed the realization of women rights as a result of CEDAW ratification in Pakistan. I look at both of these separately.

Constitution based on Islamic law

My findings suggest that subjecting CEDAW’s provisions to the Constitution of Pakistan, which is based on Islamic Law, has not hampered its implementation in Pakistan. Pakistan ratified CEDAW with a declaration stating that, “The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.” (CEDAW Report 2005, 8). In its first report submitted to the CEDAW Committee, Pakistan states that the declaration facilitated Pakistan’s accession to the Convention and its purpose is not to go against the main objective of the Convention but to ease the concerns of a number of actors in the country and obtain their support. The report also mentions that the authors of the Constitution of Pakistan adopted in 1973 were aware of all important international human rights treaties and laws and the present Constitution reflects those ideals (CEDAW Report 2005, 8). It argues that the declaration did not have a negative effect on CEDAW and the government has not taken any legislative, policy or

administrative steps as a result of the declaration which hindered the effectiveness of CEDAW in any way (CEDAW Report 2005, 8). Although, this might not be the actual situation, evidence from other sources suggest similar findings.

The Constitution of Pakistan indeed has a significant human rights content and does take into account the value of equality and fairness. One example is Article 25 of the Constitution of Pakistan that demands that all human beings should be equal before the law and there should be no discrimination on the basis of sex alone. Other articles specifically provide for equal access to public places, employment opportunities, prohibit human trafficking, women's political representation, protection of mother and child, maternity benefits (Article 25, Chapter 1). This shows that the Convention takes the equal rights of women into account.

Additionally, when asked if she believed that the fact that the Convention is subject to the Constitution of Pakistan which is based on Islamic law has hindered the realization of women rights, an official from the Women Development Department of Sindh province stated that, "I do not think this is a problem because Constitution is very pro-women, and gives women all the rights". The director general of the Ministry of Human Rights, also believes that CEDAW is not anti-Islamic and that Islamic law and CEDAW are very much compatible. This is not surprising given that the government officials are generally biased towards the laws and policies that exist in a country. However, two officials from a leading women rights NGO-the Aurat Foundation had similar views too and stated that the Constitution is not discriminatory for women and so subjecting CEDAW to it has not hindered women rights in any way. Furthermore, a CEDAW Committee expert answered that "If the state has political will, Sharia would not be an impediment as there are other Islamic countries which have a similar reservation to CEDAW but have substantially improved gender equality".

Rathore writes that it is indeed true that there were a few discriminatory laws against women in Pakistan, but they have largely been amended or repealed such as the Women Protection Bill of 2006, which attempted to reverse the highly discriminatory laws passed by the Zia regime (2015, 14). The greatest amendment was the repeal of rape laws whereby four male witnesses were no longer needed to prove rape charge and marital rape was recognized as offence (Rathore 2015, 14). Similarly, according to the chairperson of the Punjab Commission on the Status of Women there were some discriminatory laws in the constitution of Pakistan, but they have largely been amended, such as the law of evidence which initially granted a woman's

witness half the weight of that of a man. Although it is not clear whether these changes are a result of the ratification of CEDAW by Pakistan, the Advocacy Director of the Aurat Foundation believes that CEDAW had limited role to play in these improvements. Nonetheless, it is clear that the fact that CEDAW is subject to the Constitution of Pakistan which is based on Islamic law has not played a significant role in obstructing the realization of women rights and empowerment in Pakistan.

Resistance by religious/conservative parties and groups

One factor that has indeed been a major hindrance towards implementation of CEDAW in Pakistan is the religious and conservative groups and political parties. This article shows that they have played a significant role in pushing CEDAW and other women rights initiatives to the peripheries. While discussing the effects on women rights with the election into office of the Muttahida Majlis-i-Amal (MMA) in 2002, an Islamic political party in the province of North-West Frontier Province (now known as Khyber Pakhtunkhwa), Weiss (2007) asserts that the Islamic party has proposed a number of laws that directly challenge the rights of women. This political party is a coalition of six Islamic parties (Weiss 2007, 106) and it passed a provincial law called the Shariah Law in June 2003 stating that all issues would be decided according to Sharia (Islamic) law, and at the same time it promoted an extremely conservative version of Islam (Weiss 2007, 107). She furthermore writes that the MMA actively resisted the work of women rights NGOs such as shutting down the crisis center of the Aurat Foundation, one of the leading women rights organizations for CEDAW implementation, in 2003. The MMA claimed that the Aurat Foundation is an advocacy NGO and is attempting to make Pakistani women western (Weiss 2007, 112). The political party also heavily promoted gender segregation in educational institutions (Weiss 2007, 112), which directly goes against CEDAW recommendation of promoting co-education in educational institutions (CEDAW, Article 10).

Another episode of resistance by conservative political organizations to women rights movements has come with the recent passing of the Protection of Women Against Violence Bill in Punjab which criminalizes domestic violence against women. It particularly faced resistance from Jamiat Ulema-e-Islam, a religious party which declared it un-Islamic stating that the bill will inevitably increase divorce rates in the country. Many leaders of the Jamaat-e-Islami party, which is another hardline conservative group also resisted it, making similar remarks (Khan

2016). According to a newspaper article, the Bill caused outcry from religious sections of the society and the chief of Jamait-Ulema-e-Islam declared that the bill was unconstitutional and against Islamic teachings. He warned the government of declaring a protest against the bill if it was not withdrawn (Fareed 2016). This shows the extent to which these political parties can be, and in fact are a hindrance towards actions taken to promote women rights in the country.

During the interviews I asked my respondents whether they believed that women rights movement in Pakistan faced resistance from conservative groups and political parties, although I received mixed views on the issue, most agreed that there was intense resistance on the part of these groups and parties. According to one member of the Aurat Foundation, “There was large scale resistance against the Honor Killing Amendment 2014, which penalizes killing women in the name of “honour” in Pakistan. The senate unanimously passed the bill in 2014 but the national assembly did not timely address it and the bill was lapsed. It was then reintroduced and was deferred again”. The Bill has still not been passed into law by the National Assembly, although it has been approved by the Senate and the main hindrance to this bill has been the conservative parties (Haider 2015).

Similarly, according to another member of the same organization, “The government of KP province has decided that all laws which are to be introduced must go through the Council of Islamic Ideology in Pakistan, although is not a mandatory body. According to her, the council is a major hurdle since they have many times simply rejected pro-women laws such as the Child Marriage Bill, which attempted to increase the minimum legal age of marriage of a girl child”. Moreover, the chairperson of the Punjab Commission on the Status of Women also stated that there was intense resistance on the part of religious political parties pointing to the case of the Punjab Domestic Violence Bill.

Thus, if we look at the overall situation the religious groups and councils have played a major role in resisting many pro-women laws, and have used the most conservative version of Islam to resist against laws and policies which benefit women, in many cases labelling them “western ideas” which they claim are polluting their cultural values. This validates the theoretical framework presented by Breuning who states that political resistance sometimes prevents the domestic adoption of international norms and actors in key gate keeping positions can successfully support or block these norms (2013, 307).

Weak Civil Society

Pakistan seems to have a powerful network of women's NGOs, and rather than being weak, this study finds that they have usually been able to carry out their plans quite forcefully. According to an article published by Pakistan Times (Azlan 2011), there is a large number of NGOs that are working for women rights in Pakistan, on the national as well as local level. A few of them have risen to international prominence in recent years and have played an important role in promoting women rights (Azlan 2011). Furthermore, the results of a study conducted by students at the University of Karachi in Pakistan show that as of 2004, there were 101 registered NGOs working for women rights in Pakistan focused on different women rights issues. Of these 22 were large scale NGOs working in all four provinces of the country, 17 were medium scale working in at least 3 provinces, and 62 were small scale NGOs working at the city level (Farman 2004, 45-46). This shows that in terms of numbers, there are enough NGOs in Pakistan that are working specifically towards improvement of women's rights in the country.

The Deputy Secretary of the Women Development Department of Sindh believes that women's NGOs in Pakistan have enough resources and funding. The Director General of Ministry of Human Rights said that the NGOs in Pakistan are vast, and the country has a very vibrant civil society. According to the chairperson of the Punjab Commission on the Status of Women, Pakistan has one of the most powerful women rights NGOs in the world with considerable international presence. An official from the National Commission on the Status of Women also writes that Pakistan has a strong civil society and there are enough NGOs present whose services can be used to implement CEDAW. According to her, "They [NGOs] translate key documents into local languages and disseminate these as widely as possible to raise awareness about the Convention. They also use CEDAW Committee's Concluding Observations as an important advocacy tool – to urge their governments to concentrate on the critical measures highlighted by the Committee that need to be taken to move forward on implementation".

Not only the officials from the government, but officials who are part of the civil society also believe that they have enough resources and power to achieve their goals. An official from one of the leading women's NGOs-the Aurat Foundation, said that although their funding comes mainly from external donors they have not faced a lack of resources and they continue to work for women's rights. An official another women's NGO, who is also a co-author of an NGO shadow report on CEDAW reported that many NGOs are working for CEDAW's

implementation and trying to hold the state accountable regarding women's rights. Although there are downsides, such as the fact that NGOs rely on external aid which can be inconsistent, the civil society has always been strong in Pakistan and still is. She believes that her organization has never faced serious lack of funding, and lack of funds is not a major issue for women's NGOs in Pakistan.

This shows that despite a few problems such as reliance on external funding to carry out their programs, women's NGOs have been strong in Pakistan and have enough resources at their disposal as well as the freedom to work towards their agenda. The ineffectiveness of CEDAW in reducing the plight of women in Pakistan is not because of a lack of civil society strength in Pakistan. Thus, the theory presented by Neumayer is disproved by the case of CEDAW in Pakistan, where despite the presence of a strong civil society, the ratification of an international human rights treaty did not lead to improvement in human rights, in contrast to his theory that positively links the success of a human rights treaty to the strength of civil society in a country (Neumayer 2005, 925).

Inability of the State

Chayes and Chayes (1993) hold that while analyzing compliance by a state to international treaties that it has ratified, one should not ignore the factor of state's ability. In order to comply by a treaty, a state not only needs the willingness to comply by it, but also the resources to implement its principles and obligations. This means that some states might be highly willing to comply by a treaty they have ratified, but might not have the financial, technical or managerial resources to implement it. It is thus important to analyze the amount of resources, especially financial resources at Pakistan's disposal, and the proportion of those resources that goes specifically for development towards women rights, in order to assess whether a lack of resources and/or willingness on part of the state is a reason why Pakistan has failed to enforce the principles of CEDAW.

Resources at State's disposal

With regards to the resources at Pakistan's disposal, it is important to realize that there is likely to be at least some financial, managerial and technical constraints on the part of the state, since it is a developing country. My research points out that it indeed is a major hindrance

towards realization of CEDAW and women rights in Pakistan. To explore the amount of resources that Pakistan has, I believe that the best measure would be to look at its annual revenue using the value of Gross Domestic Product (GDP) and comparing this figure to other countries in the world. Also, since the resources that it needs to spend on international treaties depend on its population, I take into account its population size and therefore use the value of GDP per capita. The average world GDP per capita as of 2013 is 13,100 US dollars (“Index Mundi”), while the average GDP per capita of Pakistan in the same year is only 1,275 US dollars. The highest amount of GDP per capita as of 2013 is that of Luxembourg with a figure as high as 113,726 US dollars (“World Bank”). Thus Pakistan falls well below average on the amount of revenue that it can utilize to improve the situation of women in the country. This shows that it does in fact lack the resources to implement the provisions of CEDAW, since implementation of human rights treaties do require resources and funds. These include expenses such as establishment of treaty implementation cells as well as the women development departments at the provincial as well as the federal level. As pointed out by many respondents, such organizations which are responsible for CEDAW implementation require people which work specifically for this objective, and they need to be given training to perform their duties effectively. Also, gender sensitive data collection and report compilation requires resources since data from all of the four provinces needs to be compiled together to generate the country reports for the Committee. Other basic measures for improving the general conditions of women in the country such as improved education and health system requires finances and other women rights programs and initiatives require resources and Pakistan is clearly hampered in that respect.

Not only does Pakistan have limited resources, the country is heavily indebted in terms of finances. As of May 2016, the national debt of Pakistan was almost 60 billion, which is around 53 percent of its GDP (“National Debt Clocks”). According to a news article, “In 2013, a \$6.6 billion loan from the International Monetary Fund (IMF) was used to make payments [by Pakistan] for previous outstanding loans and avoid a Greece-like crisis... 77 percent of the budget is already allocated for loan repayments this year [2016]” (“Will Pakistan’s Economy Survive”). Thus, Pakistan is clearly lacking the financial resources which has hampered its ability to take actions and initiatives favoring women amongst other actions.

When asked about whether they thought that Pakistan’s government is limited by a lack of resources to implement CEDAW, the Director General of the Ministry of Human Rights in

Pakistan indicated that ‘Pakistan has a financial capacity constraint because it is a developing country, but this still does not stop the government from working to implement CEDAW because CEDAW requires legal reforms which can be done with limited resources as well’. It must be noted however, that legal reforms are only a part of the many obligations under the Convention, and these legislative measures need to be complemented by many other initiatives that require large amounts of resources such as investment in health, education, special measures for rural women, infrastructure and services for women. Furthermore, the government needs resources for awareness building of rights and services of women as well as for training of specialists to improve women’s conditions throughout the country. The chairperson of the Punjab Commission on the Status of Women mentioned that implementation of CEDAW requires financial resources and Pakistan is highly restrained in this respect. An official from the National Commission on the Status of Women also listed a lack of resources at the state’s disposal as a reason for failure to implement CEDAW. Thus, a lack of resources is indeed a major hurdle for Pakistan.

Resources allocated to organizations working for women rights

Not only is there a lack of resources at state’s disposal, my findings indicate that there is also lack of resource allocation specifically for women’s development and empowerment showing insufficient willingness on the part of the state as well. Diane Elson writes that, “Irrespective of how human rights obligations are interpreted in detail, the State requires a budget to carry them out” (2006, 17). Thus, the proportion of the budget allocated for women’s programs and initiatives has considerable implications for their situation in the country. Therefore, states need to make sure that enough resources are allocated to the cause of gender equality and budgetary constraints are minimized in areas related to women’s support and empowerment such as health and education. Although the provisions of CEDAW do not specifically mention state’s obligations regarding budgetary allocations to women’s rights programs, the Committee has at least on one occasion asked a state party to conduct a gender analysis of its budget and report back on the results (Elson 2006, 35), showing that it expects state parties to allocate the necessary amount of resources for implementation of CEDAW. Also, CEDAW binds state parties to take all appropriate measures to eliminate discrimination against women and according to Elson this implies that a state has failed to comply by CEDAW if it does not allocate enough resources for advancement women’s rights (Elson 2006, 13).

Considering Elson's argument, it is important that first, there should be gender sensitized data on budget allocation, and second, there should be sufficient proportion of budget allocated for women's development programs. Unfortunately, Pakistan has failed to do both. According to a news article, "Despite efforts for gender responsive budgeting in the past, the government has failed to produce segregated data on budget spending for women's welfare and rights". In Punjab, the biggest province in the country, organizations working for women empowerment believe that the allocation of budget for women's development and human rights is insufficient (Imran 2015).

One area where Pakistan has considerably been lacking, and especially women have been considerably behind men is that of education. Pakistan has one of the lowest levels of literacy rates in the world, and the female literacy rate has been significantly lower than that for males ("UNICEF"). Pakistan needs to spend 4 percent of its GDP on education to achieve the goals of improving education facilities and programs in Pakistan, but in its latest budget, it announced a reduction in educational budget to a mere 2.5 percent. It should be noted that most countries including its neighbors spend a substantially higher percentage on education ("Data"). Thus, the education system in Pakistan, which is one of the most essential elements of women's rights suffers from lack of budget allocations and funds.

Additionally, the interviews that I conducted show that there is a general understanding among different actors involved in implementation of CEDAW in Pakistan that there is a dearth of resource allotment towards women development initiatives and programs. The Director of the Women Development Department of Balochistan Province believes that her organization is lacking funds and financial resources to implement CEDAW. She said that they have 32 districts in the province and improving women's condition in such a big area requires a lot of administrative, well-versed people as well as technical experts. They requested the provincial government to provide them with a separate head for implementation of international conventions such as CEDAW, but they still have not been provided with one. She believes that her organization also needs more consultants, lawyers and advocates but they cannot afford to hire them.

Furthermore, an official from the Women Development Department in Sindh explained that the treaty implementation cell at the federal level is based in the Ministry of Commerce which is responsible for data collection for CEDAW, but the Ministry does not have the

technical capacity or understanding to implement CEDAW. She pointed out that another body is the Ministry of Human Rights which is involved with CEDAW implementation but it is also a very under-resourced department in Pakistan. Hence, there is a dearth of budgetary allocations for women rights programs and initiatives showing that not only does the state lack the resources, it also lacks the willingness to take on this task vigorously.

To summarize, Pakistan is in fact restrained in its power to implement the provisions of CEDAW due to lack of resources. This substantiates the managerial approach by Chayes and Chayes who believe that lack of state capacity has a major role to play in noncompliance with international treaties. However, there is even lesser resource allocation for programs and initiatives specifically for improvement of women's rights, showing a lack of willingness on part of the state as well. Paradoxically, this goes against the viewpoint of Chayes and Chayes that states are usually willing to comply by treaties they have ratified (1993, 177).

Treaty Design Problems

This section attempts to explore whether the ineffectiveness of CEDAW in improving women rights in Pakistan can be attributed to some faults in the design and implementation mechanism of the treaty. For this purpose, I will look at two characteristics of the treaty, namely the precision of its obligations and its enforcement mechanisms, which according to Goodman and Jinks are important regime design characteristics and influence the capacity of legal institutions to promote respect for human rights (2004, 622). My findings suggest that there is not a problematic level of imprecision in the obligations of CEDAW, and the enforcement mechanism that the Convention employs are suitable as well. Therefore, there are no major problems in the design of the treaty itself that caused it to be ineffective in Pakistan. Both of these factors are explored below.

Imprecision of obligations

The precision and clarity of the articles of CEDAW is important, as Chayes and Chayes mention that sometimes the failure of states to comply by a treaty is because there is ambiguity and confusion about the meaning of its provisions (1993, 188). States might be completely willing to comply, but they might not be sure about what is required of them. The text of CEDAW, however, lays out in fair amount of detail all the requirements on the part of State

parties and is quite straightforward and direct in its obligations. Furthermore, the committee, after reviewing each report submitted by a state party, gives very specific recommendations on how to achieve the objectives of CEDAW in that particular country and what steps need to be taken by state parties to implement the provisions of the Convention. This means that any confusion in the meaning of the text of CEDAW is accounted for. Thus, the text itself shows that precision of obligations is not a major problem, coupled with Committee meetings which provide a platform for state parties to clarify any misunderstandings and confusions with regards to their responsibilities under CEDAW.

Moreover, when interviewing people who are concerned with the enforcement of CEDAW in Pakistan, all of them shared the view that the Convention is clear in its requirements and there is no confusion regarding the meaning of its provisions. The Deputy Secretary of Women Development Department Sindh, and the Director General of Ministry of Human Rights said that all CEDAW's provisions are absolutely clear. Similarly, a former member of the CEDAW Committee believes that "With regard to the provisions of CEDAW, I think there is no ambiguity in its provisions and the various general recommendations that have been adopted over the years have brought more clarity".

Nonetheless, Elson writes that, "Often human rights conventions are intentionally drafted at a level of generality that excludes specific mention of myriad governmental functions...the Committee on the Elimination of Discrimination Against Women has indicated that CEDAW is a dynamic document requiring ongoing efforts to clarify and understand the implications of its provisions" (Elson 2006, 13). Likewise, according to an author of an NGO shadow report on CEDAW, like any convention, CEDAW has to allow for some room and flexibility for interpretation of its obligations in the specific context of every culture. Nonetheless, the core principles of CEDAW such as those of non-discrimination, equality and state obligations etcetera are very clear and are to be applied no matter what the circumstances. Hence, ambiguity of CEDAW's provisions is not a hindrance with regards to its implementation.

Enforcement mechanisms

CEDAW has two main enforcement mechanisms. The first is the reporting process under Article 18 of the Convention, whereby state parties are required to submit a report within a year of ratification and subsequently after every four years, pointing out to measures that have been

taken to implement CEDAW. The Committee then discusses these reports with government representatives of state parties and makes recommendations for future actions. (Sokhi-Bulley 2006, 144). The second enforcement mechanism arises under Article 29, under which two or more states can pass matters regarding which there is dispute over interpretation or implementation of CEDAW to arbitration and if the issue is still not resolved, it can be referred to the International Court of Justice. This method has been rarely used since most countries have made reservations to this article of the Convention (Sokhi-Bulley 2006, 144) including Pakistan (CEDAW Report 2005, 8).

In 2000, an Optional Protocol was added to CEDAW as an enforcement mechanism (Sokhi-Bulley 2006, 143). Under the Optional Protocol there are two enforcement procedures—the ‘communications procedure’ which allows the Committee to receive complaints on the part of individuals or groups which claim to be victims of violations of the convention by state parties; and the ‘inquiry procedure’ which allows the Committee to conduct inquiries into matters concerning grave or systematic violations of women’s rights under the Convention (Sokhi-Bulley 2006, 144). Thus the protocol empowers individuals or groups to directly complaint to the CEDAW Committee in case their rights have been violated. It also enables the Committee sole jurisdiction to review these contentions and issue recommendations (Bhattacharya 2009, 472). However, as Sokhi-Bulley points out, the effectiveness of the Optional Protocol is reduced by the fact that state parties are allowed to opt out of the Protocol on ratification (Sokhi-Bulley 2006, 145) and many have not yet signed or ratified the Optional Protocol including Pakistan (“OHCHR Dashboard”).

Zwingel contends that a large number of states fail to submit the reports every four years to the Committee, and as of 2003 there were only 27 percent of CEDAW member states that had never been late I submitting their reports. This according to her, this is a major obstacle to monitoring the implementation of the Treaty in member countries. However, Zwingel goes on to say that in cases where the Committee has received reports, it has almost always seen improvement and the delegates which meet the Committee to discuss the reports are mostly better prepared than before, which shows improvement (Zwingel 2006, 407).

Regarding this matter, one official from the Women Development Department Balochistan and one from the Ministry of Human Rights said that they believe that reporting is a sufficient mechanism and steps are already being taken for the implementation of the treaty.

Another member of the Aurat Foundation maintained that the CEDAW Committee is taking reports very seriously. Therefore, the only feasible way to compel state parties to act according to the provisions of CEDAW is to have states report regularly and it can be hoped that over time they will be shamed into doing the right thing.

Furthermore, the European Union ties economic incentives with the level of compliance by state parties to international human rights treaties such as CEDAW which can be an effective enforcement mechanism. One such program is the Generalized Scheme of Preferences (GSP+) whereby developing countries like Pakistan are allowed to pay less or no duties on their exports to the European Union (“Generalized Scheme of Preferences”), and it is contingent on these countries satisfying its obligations under international treaties such as CEDAW. The Chairperson of the Punjab Commission on Status of Women pointed out that reporting alone is never a sufficient enforcement mechanism but the way the international community is structured, there cannot be punishments or sanctions against countries because otherwise most of them would not ratify these treaties. According to her, by putting greater pressure on the state and timing it with incentives can compel a country to comply by a treaty. Another member of the Aurat Foundation said that the Generalized of Preferences which links human rights records with aid is a positive step in incentivizing countries to abide by the provisions of treaties that they have ratified.

Subsequently, I believe that there are no major drawbacks in the way CEDAW is designed, the level of clarity and precision of the articles under it are fair, and the enforcement mechanisms that it utilizes are feasible and effective to achieve its objectives.

CONCLUSION

This article attempted to find out the most likely reasons for the ineffectiveness of CEDAW in reducing gender discrimination in Pakistan. The findings suggest that the constitution and the laws in Pakistan provide most kinds of protection to women and give them equal rights as men. The real issue is that pro-women laws exist on paper but they have not been enforced, and thus the complication comes with the implementation of these laws. Likewise, Pakistan has ratified CEDAW but has not been able to implement its principles which has hindered its ability to do service to the women of Pakistan. Thus, subjecting the Convention to the Islamic Constitution of Pakistan has not hampered its results as such because laws in

Pakistan do not go against women, and many have been amended over the past few years to become more women-friendly. Additionally, we see that Pakistan indeed has a strong civil society and there are hundreds of NGOs working for women rights in Pakistan which have the resources as well as the autonomy to carry out their activities and are not the reason why CEDAW has been ineffective in Pakistan. My findings also suggest that there are no major flaws in the design of the Convention, the obligations under CEDAW are fairly clear and precise, and any ambiguity in its provisions is intentional so that the treaty can be interpreted to suit different cultures and contexts. The enforcement mechanisms used by CEDAW are also quite sufficient as mentioned by my respondents that the reporting mechanism can be quite effective, although countries could be compelled to ratify the optional protocol to ensure greater compliance.

One of the most important factors that seem to have greatly hampered the realization of women rights in Pakistan, despite ratification of CEDAW, is the presence of religious groups and political parties which are very strong in Pakistan and have actively resisted laws for the benefit of women. At several occasions they have hindered the passing of bills that were introduced for the protection of women, making it really hard to pass any new bill or laws that favor women since these groups are quite strong and hold substantial power in national as well as provincial assemblies. Another key reason for lack of enforcement of CEDAW in Pakistan is the fact that the state is unable to take on the steps required for its enforcement because it is a developing country and lacks the amount of resources to implement it. On top of this, the proportion of state budget that goes for women development and empowerment is also meagre, showing a lack of willingness on part of the state as well. This has greatly hampered the ability of institutions that are concerned with implementation of CEDAW in the country.

Hence, my results imply that it is important for international institutions like the United Nations to first of all provide countries with financial, technical or managerial assistance so that they are able to implement international human rights treaties like CEDAW, especially developing countries that lack such resources. Merely obliging these countries and pushing them to comply by the provisions of treaties that they have ratified is not sufficient, rather they need to be empowered to be able to fulfill the promises that they have made. Additionally, it is imperative that the CEDAW Committee obliges State Parties to collect information on gender responsive budgeting and allocate a certain proportion of its budget for women development programs. Lastly, there does not seem to be an easy solution to overcome the resistance faced

from religious groups and political parties, but the Pakistani government should find ways to reduce the influence of these groups in the political arena so that improvement can be made with regards to gender equality in the country.

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