

measure for the functioning of society.⁸⁸ Gurpreet Mahajan also posits that the public area was the area of collective activity, where the public good is determined and where international norms could be applied and freedoms exercised so that all who had legitimacy could participate, contribute and benefit.⁸⁹ The State had an obligation not to interfere in this sphere to ensure political and civil rights so every individual could be free to take action for himself. Mahajan states that in the private sphere however, there was no individualizing of rights, which results in that not everyone has equal autonomy and freedom. Authority was given to the male as master, justified by the particularities of culture, tradition or religion legitimizing a hierarchical relationship detrimental to women. Therefore it was not recognized or seen as useful that the private sphere could be regulated by universal standards or that this sphere could be even regulated at all by law in some aspects.

The law itself creates a disconnection between the public and private spheres. The law operates in the public sphere to regulate work, political representation and other forms of public life but chooses not to regulate power relations within the family, purportedly to protect the right to privacy of the family. It sees no connection between the two spheres. The effect of this lack of State interference or neutrality is that women are left vulnerable to sexual and physical abuse in the private sphere of the family which gives men power over women.⁹⁰ The point is that the public and private spheres cannot be dichotomized. Male power over women in the private sphere also serves to diminish women's capacities to play significant roles in the public sphere. They cannot make choices freely about their public life. The significance of this is that women are excluded from the public world of business and politics. This phenomenon of relegating women to the private sphere of home, hearth and family is easily explained as a matter of nature, convenience or individual choice denying its real significance.⁹¹

The law builds on the sexual division of labour that has been culturally and socially imposed, entrenching men as income earners, leaders and decision makers. It does this by not providing positive measures such as affirmative action that would break the entrenched male preference in high ranking and high income earning positions in the work place or in political decision making bodies or by not ensuring adequate provisions through the law to facilitate the function of child upbringing. The absence of these positive measures reduces women's equality in the public sphere and maintains their economic and social dependence on men in the private sphere of the family.⁹² Hence the sexual division of labour is not only descriptive of who does what but is also normative as it reinforces women's subordination on all fronts.⁹³

Because of this, the CEDAW Committee has declared that any reservations to Article 16 of the CEDAW Convention which requires equality in marriage and family relations are in conflict with the very object and purpose of CEDAW.⁹⁴

The stereotyping of women as care givers and homemakers and its social compulsion has not only reduced women's options for formal work but has also made their economic contribution to the care of the family

88. Charlesworth, H., 'What are "Women's International Human Rights?," 1994

89. Mahajan, G. 'Reconsidering the Private-Public Distinction,' *Cultural Review of International, Social and Political Philosophy*, Vol. 12, No. 2, Routledge, June 2009, pps. 133-143

90. Charlesworth, H., 'What are Women's International Human Rights?,' 1994

91. Charlesworth, H., 'The Public/Private Distinction,' 1988

92. Charlesworth, H., 'Worlds Apart: Public/Private Distinction in International Law,' In *Public and Private: Feminist Legal Debates*, M Thornton (ed), .1995

93. Charlesworth, H. Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law,' 1991, pps. 613-645

94. "The Committee also remains convinced that reservations to Article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn." United Nations, 'Report of the Committee on the Elimination of All Forms of Discrimination against Women,' A/53/38/Rev.1 [47] para 17