



IV. Conclusion

As laws confer formal equality on groups, it disturbs the institutions and practices that maintain social stratification, and to the extent it does so, incremental changes in the relative social position of groups may result.¹²³ This is the definition of 'formal equality,' but formal equality also promotes individualization and neutrality and masks a bias towards the dominant.

Equality can have varied meanings, treatment, opportunity and results. The redistribution of resources and the enhancement of the capabilities of women as a marginalized group are essential. The social transformation of a society that appreciates women's equality is an important ingredient and the State is obliged to start the process for this transformation. Jurisprudential developments around the world promoting substantive equality are encouraging. Sandra Fredman cites the decision of Canadian Chief Justice Beverley McLachlin who she says has put distance between Section 15 of the Canadian Constitution (the equality clause of the Canadian Charter of Rights and Freedoms) and formal equality.¹²⁴ In the "Andrews" decision, the Chief Justice pointed out the "potential vacuity of formalistic concepts of equality and emphasized the need to look at the reality of how differential treatment impacts on the lives of members of stigmatized groups. The purpose of the Canadian Charter guarantee of equality, the Court affirmed, was not to guarantee some abstract notion of similar treatment for the similarly situated, "[but] rather to better the situation of members of groups which had traditionally been subordinated and disadvantaged."

Finally, CEDAW is an instrument that ideally promotes substantive equality like no other. Its promotion and the facilitation of its implementation is an important national and international tool. Evidence from the review of States' Parties by the CEDAW Committee reveals that an adequate legal framework to ensure applicability of the substantive equality standards of the Convention is still not the norm. Hence the potential of CEDAW is not effectively exploited in the countries of South East Asia.

123. Fredman, S., 'Discrimination Law,' 2002

124. Fredman, S., *Ibid.*