

"There is inadequate knowledge of the rights of women under the Convention, its concept of substantive gender equality and the Committee's general recommendations, in society in general, including among all branches of the Government and the judiciary at all levels. It is further concerned that women themselves, especially those in rural and remote areas, are not aware of their rights under the Convention and thus lack the capacity to claim them."²²

Judges certainly have a role to play in identifying gaps in the domestic application of international human rights conventions like CEDAW, particularly in the adjudication of cases in their respective jurisdictions. Several factors influence the readiness of judges to assume this role, such as:

- the practice or legal tradition of the country/region, i.e., whether it subscribes to a monist or dualist approach;
- provisions in national constitutions on equality and/or the domestic application of international human rights law;
- the attitude of the executive branch *vis-à-vis* compliance with state obligations under international human rights law and the overall independence of the judiciary to enforce the rule of law;
- the exposure of judges to continuing judicial education, including developments in international human rights law;
- the willingness of counsel/lawyers/advocates to pitch innovative arguments or submissions that invoke international human rights norms, including CEDAW, and build a case law of precedents;
- the absence, presence and/or use of regional and international human rights frameworks and mechanisms such as optional protocols that facilitate domestic application of international human rights law;
- the degree of litigation on women's rights/human rights, e.g., is it a litigious society? Is there easy access to litigation such as a process of direct petition in India?
- the attitudes/perceptions on gender equality of individual judges. Individual variations are quite striking even within the same country.²³

Advances in the Domestic Enforceability of CEDAW

There are two prevailing approaches regarding the domestic enforceability of international human rights law or any treaty like CEDAW.

In a monist approach where domestic and international legal systems are considered to be one unified system, the act of ratifying an international treaty immediately incorporates it into national law. It can be directly applied by a judge in a domestic court or directly invoked by citizens like any national law. In a dualist approach, which emphasizes that national and international legal systems are two separate spheres, a treaty must be translated into national law to be applied domestically. Each State party to a treaty adopts an approach according to its legal traditions.

22. CEDAW Committee, 'Concluding observations on the combined sixth and seventh periodic report of the Lao People's Democratic Republic, adopted by the Committee at its forty-fourth session,' 20 July – 7 August 2009, as cited in the presentation of Shanthi Dairiam, 4 September 2013

23. Presentation of Imrana Jalal, Commissioner, International Commission of Jurists, 5 September 2013