

CEDAW Regime and Its Conceptual Parameters on Humanity: The Role of the American Supreme Court

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I. Prelude

CEDAW defines the discrimination against women and sets a framework for countrywide action to end such discrimination. CEDAW is the most authoritative United Nations human rights instrument to protect women from discrimination. It is the first International Treaty to comprehensively address fundamental rights for women in politics, health care, education, economics, employment, nationality, property, marriage and family relations. Equality of rights for women is a basic principle of the United Nations. The Preamble to the Charter of the United Nations sets as one of the Organisation's central goals the reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".² Article 1 of UN Charter proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to, inter alia, sex. By the terms of the Charter, the first international instrument to refer specifically to human rights and to the equal rights of men and women.³ All members of the United Nations are legally bound to attempt towards the full realisation of all human rights and fundamental freedoms. The status of human rights, including the goal of equality between women and men, is thereby elevated as a matter of ethics that becomes a contractual obligation of all Governments and of the UN. The Universal Declaration of Human Rights (UDHR) proclaims the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind and proceeds to include sex among the grounds of such impermissible distinction. The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of 1966, describe the principles of the Declaration as legally binding form. Furthermore, it clearly prescribes that the rights set forth are applicable to all persons without distinction of any kind and again forward sex as such a ground of impermissible distinction. More than sixty years ago the Universal Declaration of Human

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² According to United Nations Charter 1945.

³ *Ibid.*

Rights (UDHR) recognised universal rights and freedoms for all without discrimination between men and women. Sixty years later, women in too many countries remain targets of human rights violation for the very fact that they are women. Gender gaps still exist in every sphere of women's lives and women are deprived of their fundamental rights. Discrimination is enforced through violence in the family, society and community.⁴

II. Discrimination against Women in CEDAW

The right to equality and non-discrimination represent the twin pillars upon which the entire construction of modern international law of human rights is established.⁵ In CEDAW Convention, 'Discrimination against Women' is defined as,⁶

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

CEDAW provides a broad definition of discrimination against women as it includes the broader term - “any distinction, exclusion or restriction made on the basis of sex,” and as it requires that women receive equality in the civil, political, economic, social, and cultural spheres. This includes full access to health, physical and mental services, information, education and economic development including access to non-traditional jobs, access to credit, the right to work; and the obligation to counter stereotypical views of gender. It could be used to address violence by the State, in the community, and in the home. CEDAW guarantees equal access to the law and participation in political arenas. States Parties condemn discrimination against women in all its forms and Government agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. The principle of the equality of men and women in their national Constitutions or other appropriate legislation through law and ensure its practical realisation, establish legal protection of the rights of women through competent national tribunals and other public institutions against any act of discrimination, ensure to modify or abolish

⁴ M. Lakshmi Narasaiah, *Gender Inequity and Poverty* (New Delhi: Discovery House, 2004), pp.2-5.

⁵ McKean, *Equality and Discrimination Under International Law* (Oxford: Clarendon, 1983), p.35-40.

⁶ Article 1 of the Convention on the Elimination of all Forms of Discrimination against Women 1979.

existing laws, regulations, customs and practices which constitute discrimination against women by any person, organization or enterprise.⁷

III. CEDAW Regime and State Obligation

CEDAW acknowledges that discrimination is socially constructed. The laws, policies and practices can unintentionally have the effect of discriminating against women. The world think women have been discriminated historically and do not necessarily come into a situation on an equal basis with men. The principles of CEDAW are equality, non discrimination and State obligation. CEDAW has to be understood from the perspective of the dynamics of human rights treaty law, its domestic application and the principles of CEDAW. The Principles of CEDAW are not only formal legal equity but also equality of results in real terms. The Committee admitted women may have less access to resources, less mobility, less years of experience.⁸ The dynamics of the human rights treaties imposes obligations that are legally binding on the State. According to universal and international standards, the State takes the responsibilities of reforming domestic law and policy, as it touches on matters, which is the subject of the treaty concerned. States parties submit themselves to international scrutiny.⁹ CEDAW demands a strategic view for women's advancement and a gender sensitive rights-based approach. This requires that all interventions for women by the State will be based on:¹⁰

- the principle that it is the obligation of the state to ensure that women's rights are respected, protected and fulfilled;
- the principles of the universality, the interrelatedness and interdependence of rights;
- the norms of substantive equality and non discrimination;
- to ensure equality in the public and private spheres be it in the areas of private enterprise or the family;

⁷ Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women.

⁸ Division for the Advanced of Women, *Short History of CEDAW Convention*, retrieved from <http://www.un.org/womenwatch/daw/cedaw/history.htm> accessed on 13 May 2013.

⁹ Salma Khan, "The Central Issue of Women Equality and the Role of the Convention on the Elimination of All Forms of Discrimination against Women," in *State of Human Rights in Bangladesh: Women's Perspective*, ed.al. (Dhaka: Women for Women, 2002), p.166.

¹⁰ *Ibid.*

- to eliminate not only individual acts of discrimination but also systemic discrimination as manifested and justified in institutional practices;
- to ensure de jure and de facto rights of women.

IV. Social and Cultural Parameters against Women

One of the sensitive provisions of CEDAW is Article 5 (a), according to which States parties are obliged to take all appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”¹¹ The provision which appears to be the most sensitive and most relevant to the present analysis is Article 16, dealing with “marriage and family relations”. Woman is greatly suffering from the misery of the modern society, being maltreated by men and inhumane social laws. The history of the gender related concepts, values and relations presents a tragic picture of humanity. A woman’s miserable degrading position does not suit her natural identity. It breaks the social balance and the equation of man-woman relations. Since the primitive times up to the present modern age, money-oriented civilization has been going on. These laws and cultures have always viewed woman as a commercial commodity in life, a means of pleasure, a prisoner who has no freedom and a creature who enjoys no human merits that have been bestowed on man. From the western view the woman is liable for the original sin that tempted man. For this very reason women is considered as the source of evil that caused *Adam* to be dismissed from Paradise.¹² Most of the religious doctrines and fables teach that women are the cause of evil in the world by setting movable Pandora’s Box of associates.

Europeans continued to discriminate against women and withdraw them of their rights throughout the middle ages. The gap between the sexes, men and women, continued to increase so much that women became fully under the control of men. Women were uncovered completely of all their rights and whatever they owned. All that a woman possessed belonged to her husband. For instance, according to French law, women were not considered capable of making their own financial decisions in their private ownership. If we read Article 217 of the French law that states:¹³

¹¹ According to Article 5 of CEDAW Convention.

¹² Fredson Bowers, ‘Adam, Eve, and the Fall in "Paradise Lost"’ in *PMLA* Vol. 84, No. 2 (New York: Modern Language Association, 1969), pp. 264-273

¹³ The Code Napoleon, 1804 retrieved from http://www.historyguide.org/intellect/code_nap.html accessed on 05 September, 2011.

A married woman has no right to grant, transfer, bond, own with or without payment, without her husband's participation in the sale contract, or his written consent to it, regardless of whether the marriage contract stipulated that there should be a complete separation between the husband's and wife's possessions and ownership of various items.

In spite of all amendments and modifications in French laws, we can still see how these laws are affecting married French women. It is a form of civilized slavery. Furthermore, in some society a married woman loses her family name as soon as she enters into a marriage contract. A married woman shall carry the family name of her husband. Obviously, this indicates a married women's dependence on her husband even taking her names and she will even lose her personal identity. The well-known English writer Bernard Shaw says: "The moment a woman marries; all her personal possessions become her husband's in accordance to the English law."¹⁴ Finally, there is one more inequality that has been imposed upon the woman in the Western society which is that a marriage bond is made to last forever. According to Catholicism there is no right of divorce. Husband and wife are only separated from each other physically. This separation may have throw in to all sorts of social decay and dishonesty, such as having affairs, mistresses, boyfriends, girlfriends, as well as possibly prostitution, homosexual, and lesbian relations. Moreover, a widow is not given the chance to remarry and lead a normal married life after the death of her husband. There is no hesitation to say modern Western civilization which is dominating the globe is indebted to the Greek and Roman traditions for its civil foundations. But in that civilization women were not treated equal on regards men. Even women are subjected to commercial commodities due to gradual and eventual effects of technological and social modernization. For this reason, it is expected that natural reaction about movements demanding women's rights in the society, is directed by thinkers, educators, lobbyists, and human and women rights activists.

V. The USA and Reservation on CEDAW

Gender discrimination remains as one of the most prevalent and disturbing problems for women not only in the developing country but also in some developed countries to some extent. At some point women would have experienced some sort of discrimination based upon her gender. Even

¹⁴ Abdur-Rahman A. Al-Sheeha, *Women in the Shade of Islam*, retrieved from http://web.youngmuslims.ca/online_library/books/women_in_the_shade_of_islam/ accessed on 13 May 2013.

in the West, women were treated as second class citizens.¹⁵ At the digital era when women are Presidents, Prime Ministers, Foreign Ministers, army officers, astronauts and truck drivers, it is tough to believe that the US Constitution does not explicitly guarantee women the same status as men. CEDAW's comprehensive language covers nation's law, political systems, education system, family life, culture, personal relationships, and professional choices. Most of the countries of the world have ratified CEDAW even the countries which are most horrible abusers of women. But the USA has not yet ratified CEDAW. Ratification of CEDAW would subject the USA to the direction of CEDAW Committee and that may infringe her so called liberty. Women are still paid less for their job from dry cleaning to insurance.¹⁶ The value of a woman's unpaid work in the home is often not taken into account in determining divorce settlements and pension benefits.¹⁷ When women turn to the courts to determine whether it is right or wrong, they are at a distinct disadvantage because of what has and has not happened to the Constitution. There are a few reasons why the USA has not ratified CEDAW. If they did so, the US government would essentially not be in compliance with some of the expectations of CEDAW and would have to change certain aspects of existing US laws. These might include the potential use of quotas, such as in the political process to help equalize women's participation. If the US implemented CEDAW, it would mean that equal pay for equal work would be guaranteed by law.¹⁸ In USA an individual's pay is based on what her output is, which is theoretically determined by the market. This output formula is applied on an entirely individual basis, so if the US ratified CEDAW, unequal pay for equal work would not be in compliance with the law.¹⁹ Though American women have made significant gains, there are still problems to overcome. For example, the US Census Bureau reported that in 2005, women over the age of 16 comprise 59 percent of the workforce, yet, on average, they earned only 77 cents for every \$1 their male counterparts earned.²⁰ For the very reason for this might be that women remain gathered in low-paid occupations, according to the data from the US

¹⁵ Derek Heate, *Citizenship: The Civic Ideal in World History, Politics and Education* (UK: Manchester University, 2004), p.261, 289. Again, still now women in the Gulf countries are denied most of their rights. Honor killings are also accepted and practiced there.

¹⁶ Nadine Taub, Beth Anne Wolfson and Carla M. Palumbo, *The Law of Sex Discrimination*, 4th edit (USA: Wadsworth, 2011), p.36.

¹⁷ *Ibid.*

¹⁸ *Ibid*, 171.

¹⁹ Cher Weixia Chen, *Compliance and Compromise: The Jurisprudence of Gender Pay Equity* (Netherlands: Martinus Nijhoff Publishers and VSP, 2011), p.82.

²⁰ United States of America Congressional Record Proceeding and Dabates of the 110th Congress, p.479 and also available on <http://www.cedaw2012.org/index.php/about-cedaw/faq> accessed on 27 November 2012.

Census Bureau. Another challenge for working women are facing is how to balance the demands of home and family with that of the workplace. Many women with children and jobs face puzzle of neglecting one or the other. Some high-achieving women find themselves forgoing families. *Sylvia Ann Hewlett* an economist and author of several books about professional women found that 42 percent of corporate women are childless by age 40, but only 14 percent planned to be.²¹ Every year in America, between 1.5 and 3.6 million women are raped, or physically, assaulted by an intimate partner. Though there is Violence against Women Act, a woman experiences multiple assaults, and these added up to approximately 4 to 6 million intimate partners are assaulted physically and sexually every year and there are many more that go unreported.²²

It is thought to believe, nothing in the US Constitution guarantees a woman the same rights as a man. The 19th Amendment gave them the right to vote and title VII of the Civil Rights Act of 1964 protects them from gender discrimination in the workplace, but there is no legal document that says women and men have equal rights. In a report, disclosing the human tragedy under the materialistic culture, the American Association for Family Services (AAFS) says: “the disintegration of the family, which has reached an epidemic stage, tops the list of social problems. Every year more than one million persons are separated or divorced, which is seven wrinkles higher in percentage compared with that of a century ago.”²³ According to statistics released by UNESCO, more than fifty percent of the housewives in the USA and Europe feel discontented, disappointed, and miserable. In the US, 6,500 people are divorced every day, in other words over a million each year.²⁴ A survey shows between 21 and 43 percent of married women in US have committed adultery.²⁵ Juvenile crime and violence has increased since World War II in the US. Youth suicide is on the increase, children are neglected. In the United States, in the next 24 hours like 1,439 teens will attempt suicide; six of those attempts will end in death (Every 100 minutes another teenager will commit suicide). 2,795 teenage girls will become pregnant, 373 teenage

²¹ Retrieved from <http://www.america.gov/st/peopleplaceenglish/2007/February/20070226171718ajesrom0.6366846.html> accessed on 10 November, 2012.

²² Grovert Amanda, “Master of Science in Criminal Psychology”, unpublished thesis, Pacific University, Hillsboro, Oregon, July 2008.

²³ Retrieved from www.amfamilyservices.com, accessed on 1 November 2012.

²⁴ Kari Christoph, *Life Changing Events Can Create COBRA and HIPAA Obligations*, retrieved from <http://www.associatedfinancialgroup.com/Data/eLineNewsletters/EmployeeBenefits/Archive/ebenartapr05.asp>, visited on 11 July 2011.

²⁵ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) retrieved from www.loweryukon.org/.../Natural_Helpers/US_Teen_Statistics accessed on 15 December 2012.

girls will miscarry, 1,295 teen girls will give birth, 1,106 teenagers will have abortions, 48 teens will contract the HIV virus, 623 teenagers will get syphilis or gonorrhea, 9,506 teens will take their first drink of alcohol, 11 teens will be killed and over 350 will be injured in alcohol-related auto accidents, 3,561 teens will run away from home, 2,806 teenagers will drop out of school, 2,989 teens will see their parents' divorce, 12 kids ages 19 and under will die from a gunshot wound, 4,800 teens will smoke their first cigarette; Almost 2 million become 1,440 people will be raped; many of them will be teenagers.²⁶ In the United States, one in five men is raped in his lifetime, most before the age of 18; One in three women will be raped in her lifetime, many as teenagers.²⁷ Thirty percent of Americans have never been married, the largest percentage in the past 60 years, says the US Census. Among those ages 25 to 29, the never-married increased from 27% in 1986 to 47% in 2009, says the report, based on data from the Survey of Income and Program Participation.²⁸

In fact, CEDAW is often referred to as the UN women's rights treaty; but for many people in the United States have no knowledge in general about the United Nations.²⁹ So we can imagine how little understanding there is of CEDAW. Many Americans do not know about the Convention on the Rights of the Child or in general about human rights. The United States is in the company of Sudan, Somalia and Iran by not ratifying CEDAW. The *Obama* administration was very friendly to CEDAW and the then Secretary of State, *Mrs Clinton*, had clearly said that CEDAW should be something that we ratify. They have stated clearly that they believe in women's equality so in theory they should be in complete agreement on CEDAW. In reality, they are reluctant to push it forward because it is seen as something that they will receive a lot of push back on by Republicans.

VI. Women's Reproductive Rights and the Constitution

This section shows how the women in the USA managed to secure some rights although the Constitution did not favorably address their needs. From time to time it incorporated some human and women's rights through amendments. For example, the 14th Amendment, passed in 1868, guaranteed all "persons" the right to "equal protection under the law." In the second section of the amendment used the words "male citizens" in describing who would be counted in determining how many representatives each State gets

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ That was my personal experience. When I was doing my LLM at Michigan State University in the USA, I found that many American people have no idea about the UN and they are not aware of the existence of CEDAW.

in Congress. This was the first time the Constitution said point blank that women were excluded. Similarly, the 15th Amendment in 1870 extended voting rights to all men, but not to any women.³⁰ Anyway in the USA, like the rest of the world, women are still being raped, trafficked, violated and discriminated against. Though feminists continue to fight against gender injustices, most people seem to think that outside of a few lingering battles, the work of the women's movement is done.³¹ Abortion is often considered one of the most controversial issues of the post-suffrage movement. Women had won the fight for basic freedoms and privileges. After that a second-wave of the Women's Rights Movement began rapidly approaching in the sixties. This part of the movement was called the "Birth Control Movement."³² A public health nurse, *Margaret Sanger*, initiated this part of the Women's Rights Movement. In her opinion, if women had the right to vote and other privileges, women should have the right to control their own body, especially when it came to their own reproduction and their own sexuality. The goal of this wave was to allow women the privilege of deciding whether they would become mothers or not and if so, then what would happen. Throughout this time, women began to advocate for women's reproductive rights and surrogate motherhood.³³ They also began to fight for protection from pornography and sexual harassment. In the fight for women's reproductive rights, women fought for the right to terminate pregnancy through abortion or prevent pregnancy through birth control pills. In other words, they thought that it was their right to have children for the women who could not bear children. For the surrogate motherhood issue, some women argued that it was the free right of women to *rent* out their womb.³⁴ From the perspective of protection from pornography, women argued that it could be potentially dangerous for women and that it was humiliating to them. Some women also said that pornography was a free speech issue and that women could choose for themselves what they wanted because of the First Amendment. In the debate over sexual harassment, women wanted more protection and punishment from sex offenders. The reason is that rape puts women into trauma throughout their lifetime. In their

³⁰ Patricia Irela, *Women's Less Than Full Equality Under the US Constitution* retrieved from www.now.org/issues/economic/cea/ireland.html, accessed on 10 October 2012.

³¹ *The Washington Post*, Jessica Valenti, *For Women in America, Equality is Still an Illusion*, 21 February 2010.

³² Peter C. Engelman, *A History of the Birth Control Movement in America* (USA: Greenwood Publishing Group, 2011), p.175.

³³ Marcia Texler Segal, Vasilikie P. Demos, *Advancing Gender Research from the 19th to the 21st Centuries*, edits. Vol.12 (UK: Emerald Group Publishing Limited, 2008), p.268.

³⁴ Wendy McElroy, *Sexual Correctness: The Gender-feminist Attack on Women* (USA: McFarland Company, Inc., 2001), p.164.

defense, it also causes sometimes serious medical problems as well as emotional trauma. In the fight for reproductive rights, sexual harassment also puts forward for abortion. One of the topics brought up was if a woman was raped and she got pregnant from the offender, she should have the right to abort the pregnancy because it was unwanted. The issue of abortion was first brought up in front of the Supreme Court in 1973 when the *Roe v. Wade*³⁵ case was introduced. This case legalized all abortions. The courts decided that it was the right of women to decide whether they wanted to have a child if they were to get pregnant.³⁶

VII. Role of U.S. Supreme Court: Case Law

In modern times, Supreme Court rulings on women's rights have zigged and zagged, backward and forward. In 1961 a case, the justices upheld Florida's virtual exclusion of women from injuries because women are the center of home and family life. However, in 1971, pioneering feminist attorney *Ruth Bader Ginsburg* made the first breakthrough in the court's "anything goes" attitude toward sex discrimination. She convinced the court to throw out an *Idaho law* that repeatedly gave preference to a man over an equally skilled woman when appointing the person accountable for disposing of the property of someone who has died. *Ginsburg* was the second woman appointed to serve on the Supreme Court. In 1973, the Court struck down a US Air Force policy. It was automatically given a married man's family housing and medical allowances, while a married woman had to prove she was the "head of household," i.e., that she provided all of her own expenses plus at least half of her families in order to qualify for the family benefits.³⁷

³⁵ *Roe v. Wade*, 410 U.S. 113 (1973), Roe, a Texas resident, sought to terminate her pregnancy.

³⁶ Texas law prohibited abortions except to save the pregnant woman's life. After granting certiorari, the Court heard arguments twice. The first time, Roe's attorney Sarah Weddington could not locate the constitutional hook of her argument for Justice Potter Stewart. Her opponent Jay Floyd misfired from the start. Waddington sharpened her constitutional argument in the second round. Her new opponent Robert Flowers came under strong questioning from Justices Potter Stewart and Thurgood Marshall. The Court held that a woman's right to an abortion fell within the right to privacy (recognized in *Griswold v. Connecticut*) protected by the Fourteenth Amendment. The decision gave a woman total autonomy over the pregnancy during the first trimester and defined different levels of state interest for the second and third trimesters. As a result, the laws of 46 states were affected by the Court's ruling.

³⁷ *Patricia Ireland* her article on 'Women's Less Than Full Equality Under The U.S. Constitution'. Her article was included in the 1997 edition of *Perspectives*, a high school text book on Government prepared by Close Up Publishing.

In USA, sex or gender classification has a mixed history with regard to the standard of review used by the courts. From 1789 to 1976 rational basis scrutiny was used exclusively from the time the Constitution was adopted. During the 19th and most of the 20th centuries rational basis scrutiny allowed the court to decide sex discrimination cases using a standard based on the norms that society considered acceptable for women. Thus, Supreme Court decisions denying women the right to vote, practice law, serve on juries, work as bar tenders, etc. were considered “rationally reasonable” because the Court claimed these laws “protected” women or kept them in their “proper sphere.” Although the 19th Amendment, introduced the word “sex” into the Constitution, in 1920, it applies only to the right to vote. Voting is the only constitutionally protected right that women have. The notorious case *Roe v. Wade*³⁸ was decided on the understanding that the Fourteenth Amendment includes women in its jurisdiction.

In 1971 *Reed v. Reed*,³⁹ this was the first successful challenge to a gender classification and definitely sparked a period of judicial interest in this particular classification. However, the law was struck down because it did not meet a rational basis test. Justice Warren Burger said the question at issue was “whether a difference in the sex of competing applicants [bears] a rational relationship to a State objective.” Congress was debating the Equal Rights Amendment in 1971, and many believe this debate influenced the Court’s reasoning.⁴⁰

Frontiero v. Richardson,⁴¹ Justice Brennan attempted to have the Supreme Court declare sex a suspect classification because “sex is an immutable characteristic.” A majority of the court acknowledged that, “Our nation has had a long and unfortunate history of sex discrimination.” In a 5-4 decision, the Court declined to rule sex as suspect saying, “The proposed Equal Rights Amendment will decide this question.” The majority did not

³⁸ *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973). The fact was Roe (P), a pregnant single woman, brought a class action suit challenging the constitutionality of the Texas abortion laws. These laws made abortion a crime to obtain or attempt an abortion except on medical advice to save the life of the mother. Other plaintiffs in the lawsuit included Hallford, a doctor who faced criminal prosecution for violating the state abortion laws; and a married couple with no children, who sought an injunction against enforcement of the laws on the grounds that they were unconstitutional. The defendant was county District Attorney Wade (D). Roe and Hallford won their lawsuits at trial. The district court held that the Texas abortion statutes were void as vague and for over broadly infringing the Ninth and Fourteenth Amendment rights of the plaintiffs.

³⁹ *Reed v. Reed*, 404 U.S. 71 (1971)

⁴⁰ *Ibid.*

⁴¹ *Frontiero v. Richardson*, 411 U.S. 677 (1973)

wish to interfere with the ERA ratification process that was underway at that time.⁴²

Craig v. Boren,⁴³ as an attorney, *Ruth Bader Ginsburg* argued that sex warranted a higher standard of review than rational basis and convinced the Supreme Court to move the level of scrutiny for gender classification to intermediate scrutiny. While intermediate scrutiny is an improvement, it does not make sex a suspect classification that the Court reserves for race, religion, and national origin.⁴⁴

United States v. Virginia et al., *Petitioners* (1996) in a 5-4 decision, the Supreme court allowed women to enter the all-male Virginia Military Institute (VMI). *Justice Ruth Bader Ginsburg*, in the majority opinion, referred to skeptical scrutiny. This is a stricter standard of review than intermediate scrutiny. It would appear that *Justice Ginsburg* is attempting to edge the Court closer to considering sex as suspect. However, such a Supreme Court declaration will never have the force of a constitutional amendment nor a guarantee that future courts will use the higher standard of review and not revert to the lower rational basis standard.⁴⁵ In fact, ever since *Craig v Boren*, the Court has used various standards of review when considering sex discrimination cases.⁴⁶ An amicus brief points out:

Intermediate scrutiny is an “unworkable half measure” that has led to inconsistent and unfavorable results in lower courts such as validating Virginia laws based on gender. White men receive greater constitutional protection from race-conscious affirmative action plans, however benignly intended, than women receive from sex discrimination.⁴⁷

In a more optimistic hint, *Justice Ginsburg* has written⁴⁸:

With the Equal Rights Amendment, we may expect Congress and the state legislatures to undertake in earnest, systematically and pervasively, the law revision so long deferred. And in the event of legislative default the courts will have an unassailable basis for applying the bedrock principle: All men and all women are created equal.

⁴² *Ibid.*

⁴³ *Craig v. Boren*, 429 U.S. 190 (1976)

⁴⁴ *Ibid.*

⁴⁵ *United States v. Virginia et al., Petitioners* (1996)

⁴⁶ *United States v. Commonwealth of Virginia*

⁴⁷ *Adarand Constructors Inc. v. Pena*, 115 S Ct. 2097 (1995), and *the City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁴⁸ *United States v. Virginia* (1996)

A case that was before the court in its 1996-1997, that the inequities still exist at the daylight of the 21st century. The fact was a jury had convicted a judge of violating the civil rights of five women by raping, sexually assaulting, and harassing the women. An appeals court overruled the jury. Even though courts have ruled repeatedly that it is a violation a person's civil rights to be beaten by a police officer, the appeals court could not see anything in the Constitution that would put this judge on notice that it is just as wrong to rape a woman. Without a constitutional guarantee of women's equality, even favorable rulings and good laws on women's rights can be ignored, revoked or overruled. Feminist activists have not given up on a women's equality amendment. They know that to get women into the Constitution they will have to elect a lot more people who support that idea. If they look to the young women and men who are addressing issues of equality and justice in high schools across the country.⁴⁹

VIII. Implementing Optional Protocol of CEDAW

The Optional Protocol to CEDAW aims to encourage women's, NGOs, and human rights organizations to strengthen global initiatives on the OP-CEDAW. Particularly, through networking and exchanges of information is the advantages and effective utilizations of the procedures established in the OP-CEDAW. Women and human rights activists have been lobbying for several years for an 'Optional Protocol' to be added to CEDAW that would strengthen the Convention. On 6 October 1999, the United Nations General Assembly adopted an Optional Protocol to the Convention, which enables women who allege to be victims of discrimination on the basis of sex to submit complaints to the Committee.⁵⁰ This Optional Protocol, represents a new avenue of recourse for women to claim their gender equality rights under CEDAW directly against their governments in an international forum.⁵¹ Now under the Optional Protocol, CEDAW is mandated to act on individual complaints and also to initiate inquiries, bringing the committee into with other committees monitoring international human rights treaties. In the CEDAW regime, in adequate steps, laws and discriminatory attitudes make women suffer tremendously.⁵² Not only Women in America but rest of the world feminine

⁴⁹ Retrieved from www.now.org/issues/economic/cea/ireland.html visited on 11 January 2012.

⁵⁰ Convention on the Elimination of all Forms of Discrimination against Women Committee Reports, 1999.

⁵¹ A. Byrnes, & J. Connors, "Enforcing the Human Rights of Women: A Complaints Process for the Women's Convention?" *Brooklyn Journal of International Law*, Vol XXI No. 3 1996, pp.682-797.

⁵² M. Lakshmi Narasaiah, *Gender Inequity and Poverty* (New Delhi: Discovery House, 2004), pp.2-5.

groups and human rights organizations should continue to be involved in the process of making the OP-CEDAW a meaningful tool for women seeking access to justice.

IX. Concluding Observation

Today humanity is suffering and the cause of its tragedy is the modern culture. This culture curtails the crisis of thought, the ideological loss, together with confused concepts and ideas. The corporate world imposes the weird attitudes. If a researcher or a psychoanalyst casts a passing glance at the nature and appearance of the social, economic and psychological conditions in the contemporary corporate materialistic culture, he will immediately recognize the tragic pictures of human sufferings, injustice, suppression, loss and deprivation in this complex civilization. By tracing the origin of these social, psychological, and intellectual catastrophes to their historical roots, one may realize that these are strongly linked to the superstitious attitudes of the history of unawareness on this planet. They draw a sketch whose lines pass across the dimension of the times of ignorance. That is also unkind through the vacuum of the contemporary period. People both mentally and spiritually are in danger within biggest circle of cultural confusion and loss. They illustrate a disfigured image what makes confused personality, devoid of any humanistic values and concepts and unable to cultivate or express women's true identity and its intrinsic sound. From these concepts of distorted values and relations, curtailing from the depths of the history and pouring into the basin of the culture that man, woman, sex, family life, social relations, etc. have been formed. Thus, historically women have been exploited from century to century.