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**State responsibility and Human Rights for Women – A
Comprehensive Analysis**

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Declaration

I, Hafsa Tabassum Adiba, Student ID: 2018-1-66-001, declare that the work in this dissertation titled “**State Responsibility and Human Rights for Women**” has done by me. This is my original work and information used for this research has been duly acknowledged. I have not published this work in any, Website, Newspaper or Journal.

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Abstract

The topic State responsibility and Human Rights for women are critically discussed on the aspect of international law and gender equality. The topic state responsibility highlighted all the treaties and Convention including CEDAW which can ensure to protect rights and prevent violence. The provision of UN charter and UDHR were discussed where the legal consequences for breaches, how the remedies will be provided and what are the responsibilities a state should fulfil. This thesis explores women's rights under domestic and international law. The conventions, Consequences, responsibility, remedies and how are discussed on the matter of women rights. How the state is accountable to prevent violence and protect and promote human rights treaties in their jurisdiction. This research helps to understand how states fulfil their duty and protect and promote women rights as human rights.

List of Abbreviation

UN	United Nations
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights.
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
OP- CEDAW	Optional protocol to the Convention on the Elimination of All forms of Discrimination against Women
ILC	International Law Commission
ICJ	International Court of Justice
UK	United Kingdom
USA	United States
WADA	Welfare Association for Developing Alternative
OWDEB	Organizations for women's Development in Bangladesh
NUK	Nari Uddug Kendra
UNESCO	United Nations Educational, Scientific and Cultural Organization

State Responsibility and Human Rights for Women - A Comprehensive Analysis

Chapter 1

Introduction

1.1 Introduction

State responsibility and the Human Rights are connected to each other. If any state violates any agreements, it will be considered as a breach, and the breach of a human rights treaties raises the concept of state responsibility. State responsibility is an important area of international law. It mainly focuses on how states follow the rule, for they are bound. The responsibility arises when a state violates any law. It mainly gives instructions to the state, how the problem should be fixed and what will be the remedy. It ensures that state is following the rules.¹ The concept of state responsibility is mentioned in the UN charter, Draft articles and in international customary law. The main rule of state responsibility set in the act name ‘Articles on the responsibility of states for international wrongful act’.² By the human rights treaty state recognized the equal rights, fairness, freedom and peace for all people. There are many treaties made on different human rights. Protection of women rights are on of those, which is known as ‘The committee on the Elimination on the discrimination against women’ which ensures the women’s rights and give protection to women. And violation of any human rights under any treaty, it makes state responsible. This thesis covers the topic of state responsibility and Human rights for women. In the second chapter it covers the” overview of state responsibility”. In third chapter it covers the topic “International Human

¹ Silvia Borelli, “State responsibility in International law”, 27 June, 2017
<<https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0031.xml#t024>> accessed 23 July 2023

²Malcolm N. Shaw QC, “International Law”(first published 2017, printed in United Kingdom) 210,244

Rights for Women”. In fourth chapter it covers the topic “How Bangladesh ensures and maintain the international human rights”. The fifth chapter covers the “conclusion” part.

1.2 Aims and objective of state responsibility and Human rights for women.

The concept of state responsibility has several aims and objectives which ensure to promote justice and endorse the principles of international law. The main objective is to make the state fulfil their duties and maintain peace. It ensures accountability if the states are bound by any obligations, it is their responsibility to hold states accountable for their activities in the international area. Maintaining International peace and security- When states are bound by any obligation ,the term of responsibility of the state discourages states from engaging in any wrongful activity or harmful behavior toward other states. The term state responsibility decreases the conflicts between states. Encourage states to compliance with international law, state responsibility makes states to perform their obligation under international law.

The states are aware of the consequences for their actions which makes states give more respect and perform international laws and treaties Providing remedies for suffered states if they commit any wrongful act. Respect the treaty and obligations, by signing treaty states are bound to follow the obligation. By the treaties obligations states follow according to international norms which reduce the rate of conflicts between states. Ensuring fairness and equality- The term of state responsibility ensures equality and fairness in the international legal system. It considers all states are equal and no state is above the law even if they are powerful. Concept of human rights for women ensure that women can live freely, and they feel protected in the society. The laws related to women’s right protection are mainly made for stopping discrimination and treated fairly everyone according to law. The main aim of the human right of women is that women can get all the rights and in every way.

1.3 Justification and Significance of state responsibility and Human rights for women

State responsibility is an important concept of international law which makes states accountable for their act. It mainly establishes the principles by which states are liable for their conduct towards other states or international organizations. It helps the states to fulfill their duty and ensure justice to states. State responsibility maintains or justify promoting peace by aware of the consequences for their activity. The term state responsibility helps to ensure the commitments and obligations between the states. It also protects the rights and interests of other states and ensure the compensation if any state violate any obligation. It helps to protect people's rights so the affected party can seek justice and compensation. The state's responsibility provides the states to resolve their conflicts fairly and helps to identify the appropriate compensation for wrongful act. A state must ensure human rights to all the citizens of the state. Specially for the women. After establishment of so many laws women are still discriminated by their age, sex. In international covenant on civil and political rights ensures the right to life, right to freedom, freedom from slavery, right relating to legal matters, rights related to family and marriage. And all the rights are mentioned in the "CEDAW". These laws and rules give women protection in every way possible and justify everyone is equal. By these laws effected women can get justice.

1.4 Literature Review

The research on state responsibility and Human rights for women is a very important area in international law. This research reviewed some literature on state responsibility and human rights for women. There are several articles and books published for state responsibility and Human rights for women. Many authors published many books on these topics.

The author Malcolm Shaw's (8th edition) and James Crawford - Brownlies principle of public international law provide a rich source of the principles and developments of international law. Malcom Shaw's in his books covers the matter of international state responsibility and the protection of human rights. Where he broadly described all the provisions of international state responsibility and in his book the author explained all the provisions of state responsibility. The

nature of state responsibility, the attribution of states, state control and responsibilities, invocation of state responsibility. In these points he explained how responsibility arises and what is the nature of breaches, and in which circumstances the wrongfulness arises. He also included the consequences of breaches, how the actor state compensates to suffered state and explained the term reparation and cessation and the protection of diplomatic relations. These provisions of state responsibility give a clear idea how the state is bound by their legal obligations and what consequences could be raised if they breach any of the provisions. This chapter helps how the states are legally bound on some obligations and the norms of international laws. The author explained the international protection of human rights. Where he broadly described the nature of human rights, the prohibition of Discrimination, the United Nations system, the committee on the elimination of Discrimination against women. Where all rights of women are clearly mentioned, and the Human Rights Committee. Which gives clear idea how women right are protected by law.³

In another book the author James Crawford (Brownlie's principle of public international law) in his book, the author briefly discusses international human rights. He broadly described nondiscrimination and collective rights, protection, and enforcement of human rights. Which gives a clear idea everyone should be treated fairly and how the laws should be enforced. the author configuring the law of responsibility and breach of an international obligation how the law of responsibility is concerned with the consequences of unlawful acts. He covered the term origin of state responsibility which firstly arises from the violation of treaty. He explained the classification of international wrong which arises by breach of a treaty or other obligation, he also explained about the responsibility arising out of breach.⁴

In an online journal written by Vedant Saxena, which is about the overview of state responsibility, and it is critically discussed the duties, responsibility, and liabilities of state. Which responsibility a state should fulfil, and the relevant cases also mentioned. The legal consequences of the breaches

³ *ibid*

⁴ James R Crawford,(Brownlie's Principles of Public International Law), Eighth edition, 634,539

were also mentioned which is relevant for this thesis.⁵ In another article by International Justice resource center the women's rights are discussed, the laws, provisions, violation, protection, and consequences were critically discussed.⁶

1.5 Research Questions

1. What role does legislation play for protecting women's right against violation and discrimination?
2. Does Domestic law give effective efforts to decrease the ratio of violations and discrimination against women?

Now a days there are many laws established but women are yet facing discrimination in the society. These questions focus is laws effectiveness and how Domestic law give efforts protecting human rights.

1.6 Methodology

This study of state responsibility aims to ensure justice and maintain accountability for states. It established a connection between the wrongful act and the damage. It also focuses on the treaty obligation and the duty of a state to another state or the international community. In this study the principle of international law, treaty obligations, Human rights treaties, UN charter, convention on the Elimination of All forms of Discrimination against Women, Optional protocol of Convention on the Elimination of All forms of Discrimination against Women. primary source and books, articles, journal, online journal are used as its secondary source.

1.7 Limitations and Scope of Research

This research paper has many limitations. In this research the books and journals were mostly followed. For the time lacking the paper is done in short period of time for this the information

⁵ Vedant Saxena 'All you need to know about State responsibility in International law' 2021 <https://blog.iplayers.in/need-know-state-responsibility-international-law/> accessed 20 July 2023

⁶ International Justice Resource Center, 'Women's Human Rights' <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> accessed 20 July 2023

could not give fully and properly. The area of data collection was limited. While doing the research there was no access to any paid website and the resources are limited. The information provided in the research paper is limited and couldn't be covered properly because the research materials are collected shortly. The scope of international state responsibilities is a very broad area and covers so many aspects of a state's activity in international law. This research focuses on the laws related to state responsibility, Failure to implement of women's rights, Laws of human rights for women, responsibility of states to ensure women rights.

1.8 Conclusion

State responsibilities maintain the international law. The main element for arising the responsibility is treaty violation. Human rights are one of the treaties by which states are bound. By these violations acting states must face legal consequences and it also damages their reputation to other states. State responsibility helps to prevent the violations which maintain the respect of international norms and makes states perform their duties properly. If the states take all necessary actions the laws will be more effective and human rights will not be violated. And the women will get proper rights in the society.

Chapter 2

State Responsibility: A Brief Overview

2.1 Introduction

State responsibilities are the most important area of international law. It mostly ensures the valuation of treaties. There are so many agreements made between state to state under the Vienna convention. The state responsibility arises when any state breaches any agreement with another state. In the UN charter and Draft articles, the provision of state responsibility is mentioned where the states get reparation for any wrongful act committed by other states.⁷ This chapter covers in the second part 'concept of state responsibility', In third part the 'provision of UN Charter' in the fourth part Cases and judgement of state responsibility. In the fifth part 'Conclusion'

2.2 Concept of state responsibility

State follows international law, and they are bound to follow all the rules of international law if they are involved with an international agreement. In customary international law it is referred to that states will be liable if they conduct any wrongful act. If a state violates any obligation, they are liable for the consequences. But this will apply when a state itself occurs any wrongful act.⁸ If a state violates any treaty or interfere in any others states territory or if state himself or the citizen or institution of states commits any wrongful act that can make a state responsible. But in some exceptions if a state violates any obligations for saving lives or the violation was necessary, it might not make the states responsible. If a state makes any violation the suffered states have right to take compensation and the acting state is bound to give compensation and apology. State

⁷ Law Bhoomi, "state responsibility under international law" June 19,2021, <https://lawbhoomi.com/state-responsibility-under-international-law/> accessed 18 August 2023

⁸ Malcolm N. Shaw QC, "International law" Eighth Edition (first published 2017, printed in the United Kingdom), 591

responsibilities is a important principle which makes state aware of their activities. By these all states are concerned for their act towards each other.⁹

2.3 UN articles on State responsibility

In the United Nations articles all the state parties agree to follow the articles and they agreed on these terms knowing that if there is a breach that occurs, they have to face consequences. There are some relevant articles on the United Nations related to state responsibilities.

Elements of international wrongful act is mentioned in article 2 of UN charter: The two main elements of violations are, the act is conducted by the state and state violates any agreement, which causes damages to another state. Conduct of organs of state is mentioned in article 4 in UN charter If any wrongful act committed by state organ it shall be considered an act under international law. Even if the organ ruling judicial, executive, legislative or any function. The existence of a breach of an international obligation mentioned in article 12 of the UN Charter it is mentioned When a state is bound by an international obligation and doesn't do what supposed to do under that agreement the violation arises. It does not matter how the actions were held or comes from. Necessity is mentioned in article 25 of the UN charter. If a state violates or committed a wrongful act, the acting state cannot give excuse, by saying that the act was necessary, unless the state is in a situation where they must break the rule for saving or protecting themselves. if the state's own action creates the problem. In article 28 The legal consequence of an internationally wrongful act is mentioned, in article 29 Continued duty of performance is mentioned, when a state faces any legal consequences, states must follow the obligation and continued the duty which state failed to fulfil. In article 30 Cessation and non-repetition is mentioned, if a state committed any wrongful act that causes damages to other states, the country must stop doing the act if it is continuing and promise not to do it again. In article 31 reparation is mentioned, the acting state who committed the breaches, the state needs to fix the harm in any way. It can be financial or physical. In article 34 forms of reparation are mentioned, the form of reparation can be paying money as compensation or any other way which can fix the injury of damaged states. It is acting states responsibility to fulfil it. In article 35 Restitution is mentioned, Restitution means fixing the

⁹ Sompong Sucharitkul "State responsibility and international liability under international law" Loy. LA Int'l & Comp. LJ 18, 821, 1995

problem and return the position how they were before. Restitution is another term which a damaged state can claim. The acting state must make things right by giving back what the acting state taken. In article 36 the term compensation is mentioned, if a state committed any wrongful act and the things cannot fix as it was before, then the injured states can ask for compensation. All the harm can be calculated financially. The acting state must pay money for fixing the thing. In article 37 satisfaction is mentioned, if an acting state cannot fix the problem by restitution or compensation then the acting state must take steps for making the injured state better by admitting mistakes or by apology or any other suitable way by which injured state get satisfaction.¹⁰

2.4 The Cases Related to State Responsibility under International Law

There are some cases where the states are directly liable for the committed wrongful act against other countries.

Nicaragua v. United States case,1986

Fact - In this case it is about the military activities around Nicaragua. The United States supported rebellion group against Nicaragua government. On 1984 Nicaragua filed a case against United States for doing use of force against Nicaragua. The court said every country should be treated fairly and no country can use force. Court found liable United States for violation of treaty under customary international law and also violated human rights. The United States refused to accept the judgment and argued ICJ has no jurisdiction to hear the case. Later it was proved ICJ has jurisdiction and Nicaragua has right to ask for compensation.¹¹

The United Kingdom v. Albania (The Corfu Channel Case),1947

On October 22, 1946, few British warships passing through the North carfu within the territorial water of Albania. Because of mines explosion most of the crew members died and most of were

¹⁰ Responsibility of states for Internationally Wrongful Acts 2001

¹¹ Military and paramilitary activities against Nicaragua (Nicaragua vs United States) 1986

badly injured. The United Kingdom accused Albania for allowed third state to put mines in their territorial water. Albania in defense said, they were not responsible as they did not put the mines.¹²

Judgement -The court held that Albania was aware of that mine, without Albania's permission no one can put mines of their territorial water and Albania is liable to pay the UK for the damages. With the knowledge the mines were put under the water and for the explosion Albania was liable.

United States v. Iran (1980)

Fact - In 1979, Iranian rebels attack the US embassy in Tehran. They damaged the embassy and they attacked for hours, after repeated requests the Iranian military force did not take any action and did not arrive, many diplomats and citizens were held hostages until January 20, 1981. The military of Iran did not take any action to release them. Later, November 29 ,1979 USA files a case against Iran in ICJ.

Judgement- The ICJ found the rebels were agent of Iranian government ,because Iran supported them and working for Iran. The rebels taking over embassy and attacked and hold hostages seems like official actions of the country. They pretended like workers of Iranian government. Later the ICJ liable Iran for this action.¹³

Germany v. Poland (Chorzow factory case), 1928

Fact- There was an agreement between Germany and Poland called Geneva Upper Silesia convention. It was mentioned after World War 1, certain areas remain the same and the ownership and right will be same. There was a factory named Chorzow factory which was belong to Germany, but Poland violated the treaty and took the company in their possession after the World War 1. Later Germany filed a case against Poland and ask for compensation. Judgement- Here ICJ found that Poland was wrong and violating someone's personal right is different from violating the rights of whole state. Here Poland breach an agreement and later Poland give reparation to Germany. ¹⁴

¹² Corfu Channel (United Kingdom of Great Britain and North Ireland vs. Albania) 1947

¹³ United States Diplomatic and Consular staff in Tehran (United States of America v. Iran) 1980

¹⁴ The Chorzow Factory Germany v. Poland (1928)

2.4.1 Criticism of General rules of State Responsibility

State responsibility is a broad area in international law. It helps to prevent a state from committing wrongful acts. All the states are bound to follow the treaty agreement. But there are some questions that arise “are States follows those agreements properly?”. Mainly state responsibility established from customary international law” by which an injured state can ask for remedy. But the customary international law is unwritten and vague. It can be misinterpreted, and the powerful states somehow benefit by giving excuses like the violation was made under the term necessity, self defence or countermeasure. Even the law-making authorities did not provide any proper and clear sanctions for the violation and there is a gap for enforcing the law. For the violation is continuing in many states.¹⁵

2.5 Conclusion

When a state violates treaty provisions or harms another state. It’s responsibility to take liability and fix the problem. State responsibility helps to prevent war, unfair actions. All the states come together through the United Nations. The relation between the states is getting good and prevents crimes, and disputes. It focuses on making good relations between states. International law is separate from domestic laws. But when a state is in a necessary situation, if the domestic law is stronger than the state can use the domestic law. If a party state violates any law if the punishment is mentioned in domestic law and international law, the states always depend on international sanctions even if the domestic law is stronger. It creates problems among the states because they want to follow the rule, they not give efforts to improve domestic laws.¹⁶

¹⁵ Creutz, K, (2020), *Problems in the General Law of State Responsibility, A Critical Appraisal* Cambridge; Cambridge University press. 110-115

¹⁶ Milka Dimitrovska, “The concept of International Responsibility of State in the International public law system” 2015 *Journal of Liberty and International Affairs*_ the concept of international responsibility of state in the international public law ...

Chapter 3

International Human Rights for Women

3.1 Introduction

Women have all the right to enjoy the freedom and fundamental rights which everyone get. There are some agreements where it was mentioned the government and states should protected women rights and treated equally. In international human rights treaties, it is clearly mentioned that the state must take necessary steps to remove discrimination, inequality or any other terms which affect women's rights. The United Nations and other groups work for the protection of women's rights. They made special rules which give shield whenever a women's rights are violated. It is state responsibility to make sure that the laws are properly applied, and women are safe, and they get all their right.¹⁷ This chapter covers in the second part concept of human rights, In the third part covers the state responsibility under women's convention, fourth part covers the cases related to violation of women rights, and the fifth part covers conclusions.

3.2 Concept of Human Rights 'Abuses of Women'

We are all entitled to have human rights. Which makes sure that everyone is getting their rights properly and fairly. These rights are inherent to us. Women's rights are one of the human rights. Women's have right to live without having discrimination and violence or right to be educated. There are many treaties and laws made for protecting women's rights. In the world the women's or girls both faces unfair or inequality. This occurs because there is discrimination between man and women. For these women's faces so many problems as like can not complete study or faces

¹⁷ International Justice Resource Centre, "Women's Human Rights" <https://ijrcenter.org/thematic-researchguides/womens-human-rights/> accessed 26 August 2023

sexual harassment and facing problems related to health issues. There are lots of women in the world still fighting for their rights to fix the unfairness. Which clearly shows that human rights are not properly treated equally. Many women still don't have any idea international human rights law can help them for their rights.¹⁸

3.2.1 The Role of Legislation to protect Women Rights

In Worldwide women's rights are now considered as human rights. In daily life somehow women are suffering and facing discrimination and violence. To protect women's rights, the legislation plays an important role. The international law made many conventions and laws to protect women rights. In article 26 of ICCPR it ensures that, discrimination should be prohibited on race, color, sex, language or nation. CEDAW is one of the most important Conventions for women rights. On December 18, 1979, The United Nations General Assembly made introduced CEDAW as a treaty by which states are bound to follow and by CEDAW all nations try to protect and ensure women rights. In article 26 of ICPR it ensures that, discrimination should be prohibited on race, color, sex, language, or nation.

3.2.2 Convention of Discrimination Against Women

On 18th December 1979 the convention named Elimination of All forms of Discrimination against women, which is known as 'CEDAW'. This convention plays an important role in the international human rights treaties. This convention aims to treat people with respect and treat men and women equally and it ensures women's rights and how they enjoy those rights. Every four years, state parties submit a report to the committee. In the report it is mentioned that what rules they have followed in this agreement.¹⁹

¹⁸ International Justice Resource Centre, "Women's Human Rights" <https://ijrcenter.org/thematic-researchguides/womens-human-rights/> accessed 25 August 2023

¹⁹ International Justice Resource Centre, "Women's Human Rights" <https://ijrcenter.org/thematic-researchguides/womens-human-rights/> accessed 26 August 2023

Relevant articles related to CEDAW.

According to article 2 it is mentioned about a woman a man should be treated fairly and equally.²⁰ In article 3 it is mentioned, states must use appropriate methods to make sure women are getting equal rights as men. Including political rights, social rights, economical rights.²¹ According to article 7 it is mentioned, states should take appropriate steps to ensure that women are equal to men. Women should be allowed to vote in all elections and can take participate for election.²² According to article 9 it is mentioned that the women should get equality on change or keep their nationality and have the same rights regarding nationality for their children.²³ According to article 10 it is mentioned that the states must ensure that the man and women are getting equal rights on education. According to article 11 it is mentioned that this article ensures the women should treated equally at the job sector. According to article 14 it is mentioned that this article ensures that the women should treated fairly in rural places. It is states responsibility to do every possible thing which can treated a woman fairly.²⁴

According to article 15 it is mentioned that Women should have all legal rights as men. As like dealing with property or handling any agreements. According to article 16 it is mentioned that the men and women should get equal rights when it is the matter of marriage or dissolution of marriage. According to article 17 it is mentioned that it is about the creating of the committee on the Elimination of Discrimination against women. The committee is made to ensure that the rule of the convention is properly followed by the states. According to article 18 it is mentioned that the states will send reports to the United Nations. The committee will consider the report on whether the states are following the rules according to the convention. The committee can also ask for reports in any time. In the reports it will be mentioned how the states make laws, and how they are following the rules of the convention and problems of following the rules of the convention.

3.2.3 Relevant Articles of UDHR (Universal Declaration of Human rights)

²⁰ Article 2 (a, b, c, d, e, f, g)

²¹ Convention on the Elimination of All forms of Discrimination against Women

²² ibid

²³ ibid

²⁴ ibid

In article 1 and 2 of UDHR, all humans are born free and have equal dignity and rights. Without any kind of Discrimination such as color, sex, religion, language, political and other status. In the case **Jessica Lenahan Gonzales and others vs United States of America** the judgement was the inter-American Commission on human rights said that women have equal rights to enjoyment of their human rights and freedoms. In Article 3 of UDHR mentioned that everyone has right to life and security of person is also recognised by ICCPR in the case. Equality **Now and Ethiopian Women Lawyers Association v. Federal Republic of Ethiopia 2016** the African Commission on Human rights said state must take action to protect women from rape, forced marriage and abduction. Article 7 of UDHR mentioned all the people are equal before law and protected by law without any discrimination. Article 19 of the UDHR mentioned that everyone has freedom of opinion and right to opinion without any interference.²⁵

3.3 State Responsibility under CEDAW

Mainly the women convention doesn't not force states for achieving a specific result. The states mostly follow the treaty rules. The states do not give any assurance that there will be no discrimination against women will be happen. The states mostly feel responsible when they violate any treaty. States mostly follow other human rights. By comparing with other human rights, the states follow other promises and rights in every agreement. In the convention of women's rights in article 2(a) it is said that men and women will be treated equally. In article 2(c) it is said the women can go to courts for any discrimination. But how states will follow or how they need to do it is a state's choice. States have a legal duty to choose how they deal with the discrimination. The committee can ask to state how they are planning to protect women rights more effectively.²⁶ In article 2 it is mentioned the discrimination needs to stop without any delay. But it is important that states do not rush to take any decision or activity. The convention is made for protection of women rights, and they want to use the right methods. States responsibility is to use the right method to stop discrimination. It is the state's responsibility to take strong steps against all type of violence.

²⁵ Universal Declaration of Human Rights 1948

²⁶ Rebecca j cook, "Women's International Human Rights Law: The Way forward" Hum. Rts. Q. 15, 230, 1993

For family violence the states are suggested to give punishments and help the victims. And the states should remove the law which can cause violence for family reputation. So that women can feel safe in home. If the state violates any provision of CEDAW the committee can impose sanctions on the state.²⁷

3.3.1 Problems of Justice for Women

A women can get justice means they should treat fairly and equally. They it is their right when their right gets violated, they can ask for help. The right to fair solutions are important for all. In the convention "CEDAW" it is mentioned states must make laws that protect women's right. But in some countries women are still treated unfairly. Even though there is proper law exist but not enforced properly. Women's faces challenges when they try to get justice by not knowing law, lack of education or depending on men. It is states responsibility to that the laws are enforceable, and it protects the women rights.²⁸

3.4 Cases Elated to Violation of Women Rights

There is a term 'The optional Protocol of CEDAW' which means it allows the women's to complaint about any breach of rights committed under the committee of CEDAW" the committee on CEDAW listen the complaints and find a solution. There are some cases for the breaches.²⁹

Aumeeruddy – Cziffra and 19 other Mauritian Women v. Mauritius 1977 In this case the spouses of Mauritian citizens had right to live in Mauritius. In 1977 a new rule made on immigration that the rights were limited for the wives and the foreign husband needed permission

²⁷ *ibid*

²⁸ United Nations Publication, "Women's Rights are Human Rights" orchr <https://www.ohchr.org/Women's Rights are Human Rights> accessed 27 august 2023

²⁹ Optional Protocol to the Convention on the Elimination of All Forms Of Discrimination Against women <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-elimination-all-forms> accessed 27 August 2023

to live there and can be removed any time by the minister. Later Nineteen women from Mauritius used the rule optional Protocol and said they were treated unfairly. This law affected their rights to live with family and it was unfair interference. Later the committee decided the law was discriminated and the government broke the law of ICCPR which is about rights and freedom.³⁰ In another case **SWM Brooks v The Netherlands, 1985** In the Netherlands there was a law which said the married women could not get unemployment benefit unless they are divorced or earn a lot of money, but this is not applicable for men. Mrs. Brooks used the protocol and said it was unfair and there is gender discrimination. The committee argued that it was unfair treatment, and the rules were violated because of her gender. The committee did not approve the law.³¹ **Avellanal v. Peru, 1978** A law was made in article 167 of the civil code mentioned that only men has right to deal with the matters of married couples' property in court. Mrs. Avellanal was married and owned a property but could not go to court about the rent issues. And she uses the optional Protocol for the unfairness. The committee said the law is unequal and treated women unfairly. The Peru needs to solve the law and assure the women's rights are respected.³²

3.5 Conclusion

In a society or a state everyone has right to equally free. Gender equality and establishment of women's right are important for every state. For the economic growth or development of states, women can equally contribute on everything. If a woman right gets respected, it will benefit society. Now a days many states take serious approach for women rights but in some places, women are still not updated because they don't have the idea about rights and laws.³³ The CEDAW committee makes many positive obligations which assures women can get equal rights as men.

³⁰ Cornel Law school, 'women and justice' https://www.law.cornell.edu/women-and-justice/resource/shirin_aumeeruddy-cziffra_and_19_other_mauritian_women_v_mauritius accessed 27 August 2023

³¹ Human Rights Library,, <<http://hrlibrary.umn.edu/undocs/session42/172-1984.htm>> accessed 27 August 2023

³² Cornel school law, 'women and justice' https://www.law.cornell.edu/women-and-justice/resource/ato_del_avellanal_v_peru27aug

³³ Sneha Mahawar, All about women's right" May 24, 2022 <https://blog.iplayers.in/all-about-womens-rights/> accessed 27 August 2023

The violence against women can not be solve only by law the social contribution is important. Only the punishment can not fix the reason behind the violence. To solve the problem the societies people's must change their behavior and mind. It is important now that every woman should work on against the violence and work on the mindset which can truly solve the problem.³⁴

³⁴ Radhika Ghosh, 'Offences against women and International laws' February 5, 2021
<https://blog.ipleaders.in/offences-against-women-international-laws/#:~:text=%27Any%20act%20of%20gender%2Dbased,public%20or%20in%20private%20life>
accessed 27 August 2023

Chapter 4

Recognizing Women's Rights in Bangladesh as Human Rights

4.1 Introduction

Women's rights are the most important area in Bangladesh. The government and the organizations and NGOs have been working for the rules which ensure to treat women fairly. There are some international rules which ensures the Human rights and women's rights are of the most important human rights. International law made many rules by convention and act to ensure women rights. Bangladesh is legally bound to follow the rules which Bangladesh agreed to follow. Bangladesh ratified fourteen human rights instruments and promote women rights. After having so many rules, the Bangladeshi women are still suffering more than other Asian countries. There are many gaps in applying the laws properly. It is a big study to discuss the topic of women's rights.³⁵ This chapter covers, Bangladesh on CEDAW, the law's related to women's right in Bangladesh, problems of the law relating to women rights, why women's are not getting justice properly.

4.2 Bangladesh on CEDAW For Protecting Women's Rights

On 1979 the UN General Assembly recognised the convention on the Elimination of All Forms OF Discrimination Against Women (CEDAW) which was enforce in 1981. Bangladesh ratified the provisions of CEDAW in 1984 and the optional Protocol of CEDAW in 2000. After that Bangladesh regularly submit the reports to CEDAW committee. Bangladesh has reservations two articles on the convention. In Vienna convention it is mentioned that a country can reserve any of the part of treaty which is not compatible with the object. After the reservation it is contradictory to international laws obligations. By these reservation men and women are not equally treated. It goes against the Bangladesh Constitution and at a time women are discriminated. The

³⁵ Begum Afroza, 'Protection of Women's Rights in Bangladesh: a legal study in a international and comparative perspective' PHD theses, Faculty of Law, 2004

government's reason behind the reservation is that CEDAW provisions are conflicting with the Sharia and Muslim Law, it goes against the secularism.³⁶

4.2.1 Causes and Justifications of reservations of CEDAW

Bangladesh reservation the Articles 2, Article 13 (a), 16.1(c) and 16.1(f). Later reservation of Article 13(a) and 16(f) was withdrawn. Article 2 is the main provision of CEDAW which ensures the equality of women rights. Article 2 is the foundation of all the provisions. It directs to states fairly treat women and remove all the domestic provisions related to discrimination. Article 16.1(c) mentioned women's rights and responsibilities during marriage and dissolution. The main Reason for the reservation is, Government thinks that it goes against the rule of sharia and Muslim Law which is based on Holy Quran. The concern is the Fundamentalist Islamic groups will protest if they accept the provisions of CEDAW. Other than this, the government focuses on the religious feelings and political benefits rather than focusing on stopping unfair treatment. The government of Bangladesh still not specified that how the provisions of CEDAW contradictory with Sharia Law. As Bangladesh is a secular Country and religion does not control everything. Only when it comes in marriage and family laws or inheritance, they use religion law. The other Muslim Countries as like Turkey, Yemen, Jordan, Kuwait ratified the CEDAW without reservation. Bangladesh said they will remove the reservation since 2004 but still they didn't take any steps for remove the reservation. It is clearly visible that the reasons of reservation are unjustified. It just creates discrimination for women.³⁷

³⁶ Maliha Khan 'CEDAW at a dead end in Bangladesh' *The daily star*, March 8, 2019
<https://www.thedailystar.net/star-weekend/news/cedaw-dead-end-bangladesh-1711840> accessed 28 August 2023

³⁷ Bangladesh's Reservations in CEDAW and Human Right Protection; Causes, Justifications and prospects"
<https://lcls-south.com/bangladeshs-reservation-in-cedaw-causes-justifications-and-prospects/#:~:text=Bangladesh%20ratified%20CEDAW%20in%201984,periodic%20reports%20to%20CEDAW%20Committee.&text=The%20core%20reason%20behind%20such,on%20Holy%20Quran%20and%20Sunnah> accessed 28 August 2023

4.3 The Role of legislation to protect Women Rights in Bangladesh

Constitution is the main law of Bangladesh. All the citizens and government are bound by following the rules of constitution. In constitution, there are some laws which ensures that all persons are equal under the principles of equity the women's rights are protected.³⁸ In Article 10 of the constitution it is mentioned that this law ensures that women shall be participate and involved in all parts of national life. In article 19(1) of the constitution, it is mentioned that state should ensure all the citizens that they are equal, and everyone shall get same opportunities and chances. In article 27 of the constitution, it is mentioned that every person is equal before the law, and they are entitled to get all equal protection of law. In article 28(1) of the constitution, it is mentioned that state shall not discriminated among the citizens by their age, religion, caste, sex, or place of birth. In article 28 (2) of the constitution mentioned that women have the same rights as men. The women will be treated equally and fairly in everything which is related to government and public life. ³⁹ Nari O Shishu Nirjatan Daman Ain 2000, Aim of the act is making necessary provisions to prevent crime against women and child.⁴⁰ The Muslim Family law ordinance, 1961. Which apply for all Muslim citizens. For resolving disputes regarding marriage, divorce, maintenance.⁴¹ The Child Marriage restrain act 1929 to prevent child marriages and give punishments who are following this.⁴² Hindu Marriage Act 2012, The Aim of the act is to resolve the problems related to divorce and maintenance and apply for all Hindu women.⁴³ The dissolution of Muslim marriage Act 1939, this act clarifies all the provisions of dissolution of marriage and remove all renunciation of Islam of Muslim married women.⁴⁴ Other than these laws there are more special laws which prevent the violence against the women's. The penal code 1860, which have provision to protect women from violence. The Offences related to rape acid throwing, abduction, kidnapping, attempt to cause death, or cause grievous hurt for dowry is treated as serious crime

³⁸ Banglapedia, "Constitution" September 19, 2021 <https://en.banglapedia.org/index.php/Constitution> accessed 28 August 2023

³⁹ The Constitution of the Republic's of Bangladesh 1972

⁴⁰ Nari O Shishu Nirjatan Daman Ain 2000

⁴¹ The Muslim Family Law Ordinance 1961

⁴² The Child Marriage Restraint Act 1929

⁴³ Hindu Marriage Act 2012

⁴⁴ The Dissolution of Marriage 1939

and the punishment of these crimes will death or imprisonment.⁴⁵ The Cruelty to women ordinance 1983 amends some sections and provide life imprisonment for kidnapping, rape, trafficking women, Cruelty because of dowry.⁴⁶ The Dowry Prohibition Act 1980 and the act amended in 1982, it stops to giving and receiving dowry and for the Offences the punishment is giving fine and imprisonment up to one year or both.⁴⁷ Prevention of women and child Repression Act 2000 this act provides effective ways for dealing cases of rape, violence against women, forced prostitution, trafficking, acid attacks.⁴⁸ The suppression of Immoral Traffic Act 1933 provides punishment for detaining women who are under 18 years and they found in the place where prostitution followed.⁴⁹ Trafficking in women and Children Act 1993 provides penalty for forced prostitution and abetment which is three years of imprisonment.⁵⁰ The government also enacted a law to give restrictions on sale of acid in open markets and death penalty for acid attack.⁵¹

4.3.1 Non-Government Organization's Contributions on Women Rights.

There are some non-Government organizations which works for Protecting women's rights. Many NGOs works for universities students for protecting students from sexual harassment. The NGOs try to provide guideline and try to improve and apply the laws for women. There are some NGOs in Bangladesh which works for women rights- WADA (Welfare Association for Development Alternative) the NGO established in 2011 and works for women and girls to preventing violation against women, sexual exploitation, trafficking, reducing social injustice, forced marriage and many more. It mainly stands for improve the women rights and working for the issues arises.⁵² OWDEB (Organizations for women's Development in Bangladesh) The NGO working since 1995. The aim of the organisation is to create equal society where women

⁴⁵ The Penal Code 1860

⁴⁶ The Cruelty to Women Ordinance 1983

⁴⁷ The Dowry Prohibition Act 1980

⁴⁸ Prevention of Women and Child Repression Act 2000

⁴⁹ The Suppression of Immoral Traffic Act 1933

⁵⁰ Trafficking Women and Children Act 1993

⁵¹ Jamila Ahmed Chowdhury, "Rights in Law and Practice: The Cases of Bangladesh

<https://www.hurights.or.jp/archives/focus/section2/2003/06/rights-in-law-and-in-practice-the-case-of-bangladesh.html> accessed 26 August 2023

⁵² WADA, 'Women's Rights NGO' <http://wadabd.org/> accessed 28 August 2023

and men are equal. The NGO works for promoting women's rights, bringing gender equality, improving women's human rights in the social culture, and education.⁵³ NUK (Nari Uddug Kendra) established in 1991, it works for gender equality, Human rights, Women rights, personal and political empowerment of women in Bangladesh. This NGO gained developing projects in gender dimension. It supports women for protecting their rights.⁵⁴

4.3.2 Cases Related to Women's Rights in Bangladesh

In last 20 years the courts taken many steps to deal with the violations of women rights. The judges tried to use those laws properly for women's equality. They followed the constitutional law about treating women fairly. If any law is contradictory, the courts give judgement which is fair for women. There are some cases regarding women's rights. **Bangladesh National Women Lawyers Association v. Bangladesh** the court identified the problem related to sexual harassment at educational institutions, workplace, roads, and buses. The court referred to the provisions of CEDAW. by following CEDAW there will be obligation on state to set a rule how the sexual harassment can be stopped. The court gave some guidelines which should be followed by the government and institutions until a specific law passed. In another Petition the Bangladesh National Women Lawyers Association filed a complaint the sexual harassment can commit in other places too. Regarding these issues court set some guidelines court also included the word eve-teasing should not be used rather it is sexual harassment and staking, unwanted contact also harms the safety of women which should be stopped. **In the case State v. Moinul Haque (2001)** This case is about raped in custody the court said if a woman is raped in custody the burden of prove rely on the accused. If a woman is raped in the custody, it violates the provisions of constitution and for this accused is entitled to give compensation to victim. In 2018 a writ petition was filed by BLAST for banning "**two finger test**" for rape victims. This is not based on sign and not reliable. The court agreed on that and give special instructions for giving special training to

⁵³ OWDEB, 'Women's Rights NGO' <http://owdeb.org/0> accessed 28 August 2023

⁵⁴ NUK, 'Nari Uddug Kendra' <https://nuk-bd.org/> accessed 28 August 2023

medical persons who examined rape victims and give instructions to health care providers not to use any words in front of victim which is inappropriate.⁵⁵

4.4 Domestic Laws Efforts to Prevent The Violation of Women's Rights

In Bangladesh there are lots of laws made for protecting women's rights. Now a days mostly women are suffering from violence, they face violence in their home and in outside too. The women are still struggling to get their rights in the society. They don't get help even after there are lots of laws made in Bangladesh. The enforcement of laws is the major issue. In legal side women faces challenges to get justice, they face corruption and negligence and at last they lost their hope for getting Justice.

4.4.1 Legal Status of Women Rights in Bangladesh

In Bangladesh there are two types are laws followed one is statutory laws which is constitutional law by which everyone is bound to follow. The other law is based on religious aspects. In Bangladesh most of the citizens are Muslim and they follow the principles of sharia law which is Islamic law. The Hindus in Bangladesh follows their Hindu personal laws. The statutory law and religious law are separated and if there is any contradiction arises the constitution will be prevailed. But, it is not happening. If the government supports, the religious perspective then the religious law is priorities specially when it is the matter of women rights. If the government sometimes government when need any help from other countries or create a respectable image in front of other states, they support women's right. The give sometimes pretend that they support women, but they also undermine the women's right in many ways. The true intentions of government are unclear, there is still some gaps that women's rights are not applying correctly.⁵⁶

⁵⁵ *The Daily Star*, 'Landmark Judgements on Women Rights' March 10, 2020 <https://www.thedailystar.net/law-our-rights/news/landmark-judgments-women-rights-1878823> accessed 28 August 2023

⁵⁶ Canada: Immigration and Refugee Board of Canada, Human Rights Briefs: 'Women in Bangladesh', 1 December 1993 <https://www.refworld.org/docid/3ae6a8398.html> accessed 28 August 2023

4.4.2 Problems in the Laws Of Women Rights

In many laws the women are getting protection but sometimes the law itself create discrimination. In Muslim law it is said that Muslim Family law allows husband to divorce their wife anytime. The Dowry prohibition Act protect to women rights, many of the women who suffered take action and file case under this act in the court. But the slow procedure and the police do not cooperate with the victims in the Dowry related cases. And the Dowry prohibition Act mentioned that the Dowry is taken before marriage, when the cases come, where the dowry was asked after marriage, many cases is often rejected. The Finance Ordinance of 1985 allows to gift their daughter gifts without tax ,which somehow encourages dowry. The Cruelty women Act give protection women from rape, sexual exploitation, abduction, attempt to cause death. But crimes of violations against women is not only happening inside the home. It is also common in the outside. Although this act provides sanctions but failed to stop the crime. The family Court Ordinance is providing solutions related to marriage, divorce, dowry, custody, maintenance. This act is effective for all those matters but for the lack the information many women's do not know about their legal rights. In this Act sometimes men and women are treated unfairly. If husband wants divorce, he doesn't need to go through from legal proceedings. But when a wife wants to divorce the proceedings are so lengthy until court approves.⁵⁷

4.4.3 The Reasons of Non-Availability of Women Justice

The main reason that women are not getting justice for lack of knowledge about law. For lack of education, they can not get legal protection and they can not afford legal help.⁵⁸ In 2015, A girl named Salma whose husband and in laws poured nitric acid in her throat because of dowry. In Bangladesh 70% women's faces this kind of violence by their partner and most of women don't take the matter seriously. In many cases like Salma's case victims don't get support of family, community, or by police and many of them were forced to return to their husband, no one get any encouragement for filing suit. The victim Salma faces the problem and after that she has no place

⁵⁷ *ibid*

⁵⁸ Ajnin Begum, Nirmal Kumar Saha, "Women's Access to Justice in Bangladesh: Constraints and way forward" JMCL 44 ,39, 2017

to go. There is another problem for getting legal remedy, the processing is very lengthy. The victims sometimes can not afford the cost for long time proceedings and withdraw the cases. The victims face corruption by their lawyers, the lawyers demand huge money, and tell them to pay bribe. In every proceeding the prosecutor and lawyers ask for tea and snacks cost. By this fact, women cannot get proper justice even if they take legal steps. Which violates many provisions of women rights and discourages women to take legal steps.⁵⁹

4.5 Conclusion

In Bangladesh several times women faced unfair treatment and still in 2023 it is continuing. Because the personal law is not equally treated women as like men. There are so many problems in the application of law. It is clearly visible that under the personal law women can not be treated equally. The law commission rejected the laws which creates discrimination, this idea was suggested by an international organisation UNESCO which works for women. If a state, make one law for everyone that can help to prevent discrimination. In Bangladesh many of follow personal law and many follows statutory law which creates discrimination for women. For the personal law system women are treated unfairly than men and the society is in control by men. And after having so many laws, still it is a challenging issue for women to get justice. The discrimination should be stopped the best solution is everyone should follow one law, and everyone should have the knowledge of the Law.⁶⁰

⁵⁹ The Daily Star, 'Why is it so difficult for women to get Justice?' November 25,2020
<https://www.thedailystar.net/opinion/news/why-it-so-difficult-bangladeshi-women-get-justice-2000469> accessed 29 August 2023

⁶⁰ Laws of Bangladesh, 'A Comparative study on Women's Right in Bangladesh under Hindu and Muslim personal Laws' http://bdlaws24.blogspot.com/2013/02/a-comparative-study-on-womens-right-in_8893.html?m=1 accessed 30 August 2023

Chapter 5

Conclusion

5.1 Overview

State responsibility and human rights for women are connected to each other. States sign many conventions and treaties to keep their promise to fulfil all agreements. In UN Charter and Draft Articles by ILC gives clear idea how a state can be liable if any of the Convention or agreement will be violated by state. But there are still some lacks in the enforcement of the law. States follow international customary law which is not written. State responsibility still follows customary laws. By using customary law, they can interpret the law. An acting state can use the term necessity or self-defense and justify their wrongful act. Many powerful states like USA violates many laws and do not provide remedies.⁶¹

Women rights are one of the human rights which every state is bound to follow. A human right Convention is adopted by United National named CEDAW. By signing this Convention every state is bound to protect women's rights. If any provision is violated by the state, it will be considered as a violation of human rights. If any violation occurs the Convention recommends states to take special measures. CEDAW has so many criticisms for the reservations of the provision, many countries ratified the Convention but also give reservation on article 2 which is the most important provision of discrimination, and Another criticism is that CEDAW did not specify the fact how women are facing the discrimination, rather it provides the gender issue. CEDAW mainly talked about the discrimination but not about the others problem which women are facing in regular basis. CEDAW also did not provide any guidelines, that how a state should stop the discrimination.⁶² In Bangladesh provision CEDAW is ratified and give reservations on

⁶¹ Creutz, K, (2020), Problems in the General Law of State Responsibility, A Critical Appraisal Cambridge; Cambridge University press. 110-115

⁶² Paulina Montez, 'Women Rights are Human Rights: CEDAW'S Limits and Opportunities,' April 4, 2021 <https://www.berkeleyjournalofinternationallaw.com/post/women-s-rights-are-human-rights-cedaw-s-limits-and-opportunities> accessed 5 August 2023

some provision. It clearly visible that Bangladesh did not follow all the provision of CEDAW. For this every day women are facing violation. Also under domestic law, the Justice are not providing properly for the reason of lengthy processing, Corruption, and high amount of fees. There are so many lacks on domestic law for ensuring women rights. These discriminations are not even control by the human rights convention for lack of guidelines. There are lot of laws in international law and domestic law about women's right, but the enforcement of those laws are major challenging issues.⁶³

5.2 Findings

- The rules regarding UN charter must be clear and should impose sanctions for violating any provision of state Responsibility.
- The Enforcement of law should be improved. The authority must clear how the state responsibility should be fulfilled.
- The powerful state should not get any privileges or protection, every state should be treated equally, and the suffered states must entitle to have remedies.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) must make more clear rules that all states must protect women rights. The Convention should make rules that unnecessary reservations should be removed and impose sanctions whoever violates any provision.
- In Bangladesh the reservations of CEDAW should be removed. The enforcement of domestic laws should be improved. The government must ensure that all the girls and women are getting educational facilities and have knowledge about laws.
- The problem regarding lack of confidence. In developed states women has courage and confidence to file cases against the violation. In Bangladesh women feel discouraged and due to lack of confidence victims do not file cases because of the lengthy procedure and corruption. The Government should improve the legal system and make the laws stricter for ensuring women rights.

⁶³ 'World Vision International, Gender equality | Bangladesh' <https://www.wvi.org/bangladesh/gender-equality5aug2023>

5.3 Conclusion

A state has responsibility to perform all the duties related to international law to prevent violation and give protection to the state and Human rights. When a state violates any law by using their power or natural resources, they must compensate the state more than what they took or harm. It not only suffered financially the reputation of the acting states also harmed. There are lots of law made on violation of human rights and what state responsibility on human rights. But the enforcement of those laws is major issue. Women rights consider as a human right but still state do not provide equality among men and women. State do not clearly admit that women are equal. States do not find the major issue for violating Women rights. Under the women rights conventions and treaties States must take action to find and prevent violence againts women. Only giving compensation to individuals do not fulfil international responsibility, state must find and solve the problems of women rights and must fulfil the international duties by ensuring human rights.

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