

**Conceptualising Islamic Law, CEDAW  
and Women's Human Rights in Plural  
Legal Settings: A Comparative Analysis of  
Application of CEDAW in Bangladesh,  
India and Pakistan**

**Edited by  
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*Dedicated to the memory of the late Shehla Zia*

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I hope the reader will enjoy and appreciate this interesting collection of experiences from our region on a subject that affects us not only as academics, activists and researchers but at a personal level as women. Any oversights are of course, entirely mine!

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## Contents

<b>Acknowledgements</b>	iii
<b>Foreward</b>	vii
<b>Part I: Conceptual Framework</b>	1
Shaheen Sardar Ali Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan	
<b>Part II: Country Studies</b>	107
Mahmuda Islam CEDAW and Bangladesh: A Study to Explore the Possibilities of Full Implementation of CEDAW in Bangladesh	
Kirti Singh, Sumaiya Musharraf & Maimoona Mollah Inching Towards Equality: A Comparative Analysis of CEDAW and Muslim Personal Law in India	135
Fatiman Ihsan & Yasmin Zaidi The Interplay of CEDAW, National Laws and Customary Practices in Pakistan: A Literature Review	199
<b>Part III: Conclusion</b>	265
Shaheen Sardar Ali Implementation of CEDAW in Bangladesh, India and Pakistan: Conclusion	
Bibliography	273
List of Contributors	286
Appendix I	289
Appendix II	309
Appendix III	318
Appendix IV	328
Appendix V	333



## Foreward

It gives me great pleasure to share this study on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and *Shari'a* with you. Looked upon as the Bill of Rights for women, CEDAW is central to UNIFEM's work. Legally binding, it forms the heart of UNIFEM's programming. UNIFEM South Asia is privileged to be associated with this study, which has been a journey of immense learning.

For UNIFEM, supporting the implementation of the Convention is part of a global effort at achieving gender equality and promoting women's human rights. In South Asia, it has long been associated with the processes of facilitating knowledge-based advocacy on the convention through a transparent interactive mechanism, which comprises governments, women's groups, NGOs and CEDAW Committee members. Deepening and expanding the process of implementation and reporting on the convention, it facilitates the implementation of human rights instruments to bring laws into conformity with human rights standards.

The study is extremely timely. Despite the fact that 183 countries have so far acceded to this treaty and there have been a large number of ratifications, discrimination against women continues to persist. This seems to be particularly so in countries with plural legal jurisdictions, like Bangladesh, India and Pakistan where custom, culture, religious norms and tradition dominate legal discourse and inform its implementation. In cases such as these, equality and non-discrimination can mean different things – with regard to CEDAW, with regard to religious freedoms and beliefs, and social and cultural rights and rights of ethnic minorities. It is said that where religious traditions and customary practices

have been used to create gender hierarchies, the right to freedom of religion, belief and culture can legitimise these inequalities. At the level of domestic law, it is said that due to the interface between state law, customary norms and religious injunctions, complications can arise, which can lead to the application of the most patriarchal of all these regulatory norms.

In an effort to understand better, and clarify the issues and concerns that exist with regard to this, UNIFEM thought it was important to undertake an in-depth research and analysis on the relationship between CEDAW and *Shari'a* in Bangladesh, India and Pakistan. At the same time, it was felt that the exercise could also assist in increasing awareness on the potential of CEDAW as a universal human rights instrument to advance women's rights.

The study draws attention to the plurality of legal jurisdictions in Islam, unpacking its diverse dimensions in the three countries of focus. It reveals how the legal discourse and its implementation are in such instances influenced by prevailing customs, culture, religious norms and tradition; and how these often collide with the norms of equality and non-discrimination, enunciated in constitutions, legislations and human right treaties – thus weakening the framework for women's human rights.

The areas of convergence as well as divergence between CEDAW, the *Shari'a* and local religious and customary practices are outlined. It gives an excellent historical background of the *Shari'a* grounded in thorough research and scholarship. Looking at the diverse settings, the research studies try to capture the differences in the state and legal responses to the discourse on women's rights and entitlements, looking at the way things are, the way they need to be, and what needs to be done to get there.

The study informs that *Shari'a* itself is described as “a watering place, a flowing stream....” The fact that it is a flowing stream indicates that the inherent nature of the *Shari'a* is one of flexibility and evolution. It is different to the generally held perception that the *Shari'a* is rigid and inflexible. This may well be because of the fact that the interpretations so far have largely been made by male scholars. Also, sometimes interpretations have been made out of context. What does come through very strongly is the fact that perhaps there has been a failure to use the dynamism and flexibility that is inbuilt in the *Shari'a*. It would appear that much of the flexibility in interpreting the religious text in Islam was lost when Islamic law was codified and that this is a burden that has been carried over, making it almost impossible to challenge, leave alone change. Attention is also drawn to the fact that in the formative period of Islam, though women's status was inferior to men in the socio-economic sphere in Quranic legislation, it was equal in the ethic-religious category.

Quintessentially, this is a study of the evolution of women's rights in Islam with particular reference to CEDAW. It shows how changes have been incorporated since pre-Islamic Arabia, when women had no entitlements or rights to the present, where women have some rights, even if they are cloaked in a protectionist garb or have some discriminatory tones. It shows how, from a position of no rights, there has been progression towards some rights and that the discourse has been moving, which is the essential nature of *Shari'a*. Through a historical tracing, efforts have been made to show how the *Quran* sought to prohibit discriminatory practices such as female infanticide, and made focused efforts to improve conditions of and strengthen the weaker sections of society in pre-Islamic Arabia, including rights of inheritance and dower. Indeed, in the area of

family law, human rights of women are for the most part of the corrective and protective category.

The study proves itself to be an effective vehicle for both informing and raising questions. Out of a total of 6,666 verses, it informs us that only about 6 of them focus on reinforcement of hierarchies based on gender and resources. Thus questions are raised as to how is it that the position of women in Islam appears to be determined solely on rules derived from a literal and restrictive reading of a few verses.

The research, discussion and analysis is deep, rich and learned. The findings highlight the ambivalence of duty bearers and civil society towards human rights treaties emanating from the UN and the fluid and fluctuating nature of women's rights and entitlements in South Asia. The assumption that there is a lack of women-friendly spaces in plural legal systems and that despite ratification of CEDAW by governments, women's human rights to equality and non-discrimination remains an uphill task, is reinforced.

Of the recommendations that emerge from the three country studies, the most important one is that countries need to make good the commitments they made by signing CEDAW. In order to do so, there is a need to institute mechanisms to implement its substantive provisions, to enforce existing laws favorable to women, to repeal discriminatory legislation and withdraw reservations.

To move forward, the importance of translating formal equality for women into substantive equality, by providing equal access to health facilities, education, employment, political participation and safe mobility within the public space, is stressed. Legal literacy and awareness of women to their rights to equality before law

and equal protection of the law are emphasised for the effective implementation of domestic and international human rights instruments. Equality in these areas, the study opines, could be building blocks towards eroding customary norms that promote women's invisibility and disempowerment. The policy of States to distance themselves from the familial sphere of life, is spotlighted. Important insights into the role of the judiciary in interpreting Personal Status laws are provided. All three case studies show that the superior judiciary (High Courts and Supreme Court) has played an active role in addressing issues of gender justice. This, however, has not been the case with the subordinate judiciary and law enforcement agencies, particularly at the lower tiers, which require a great deal of gender sensitisation and which has been made amply evident from judgments in some Hudood cases.

It is evident that though progress has been made in the journey towards equal rights for women and men within the UN system and the countries round the world, the path ahead is both difficult and delicate, as it means challenging deeply held convictions, which have been embedded for a very long time. At the same time, there are indications that a dent has been made in an all male version of religion.

For this splendid work, I take this opportunity to acknowledge the many distinguished women who took part in the journey. I extend my sincere appreciation to all: Professor Shaheen Sardar Ali for editing the studies, for the insightful overview and wrap-up, including recommendations for the way forward; Professor Mahmuda Islam, Ms Kirti Singh and Ms Yasmin Zaidi for leading the research in Bangladesh, India and Pakistan respectively; and Ms Sumaiya Musharraf and Ms Maimoona Mullah for their association in the Indian Study and Ms Fatimah Ihsan for her

association in the Pakistan study. I congratulate them all for producing this remarkable and unique document, which provides a tool and resource of great importance for all women's rights advocates.

We hope that this study will go a long way in meeting the objectives for which it was undertaken. We trust that it will serve to enhance the understanding of the linkages between national laws, 'religious' and customary practices and the exclusion of women. We look forward to it being used as an effective tool for advocacy for legal reform, focusing on legislative and policy change, particularly in the area of personal laws relating to property, inheritance, marriage and guardianship. We also hope that it will provide a meeting ground for further discourse between diverse stakeholders, which includes religious scholars, interfaith leaders, human rights activists and government functionaries. Being widely and effectively used would be its reward.

**Chandni Joshi**

Regional Programme Director

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