
LEGAL BARRIERS TO GENDER EQUALITY IN DEVELOPING NATIONS: A CRITICAL ANALYSIS OF INTERNATIONAL OBLIGATIONS AND DOMESTIC REFORM

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ABSTRACT

Gender equality remains one of the most pressing yet systematically undermined human rights imperatives of the twenty-first century. Despite near-universal ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and commitments under the Sustainable Development Goals (SDGs), developing nations continue to maintain legal frameworks that structurally subordinate women. This paper undertakes a comprehensive analysis of the principal legal barriers to gender equality in developing nations, including discriminatory personal laws, constitutional exclusions, customary and religious legal pluralism, gaps in legislative enforcement, and institutional deficiencies in access to justice. Drawing on comparative jurisprudence from Sub-Saharan Africa, South Asia, the Middle East, and Latin America, the paper examines how domestic legal architectures intersect with international treaty obligations to either entrench or dismantle gender-based discrimination. The paper further proposes a multilayered reform framework grounded in constitutional transformation, legislative harmonization, judicial capacity-building, and community-based legal empowerment. The central argument advanced is that gender inequality is not merely a social phenomenon but a legally constructed and legally perpetuated condition that demands systematic legal deconstruction.

Keywords: Gender Equality, CEDAW, Legal Pluralism, Developing Nations, Discriminatory Laws, Women's Rights, SDGs, Customary Law, Constitutional Reform.

I. INTRODUCTION

The promise of legal equality for women has been inscribed in international instruments for over seven decades. The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and most consequentially, the Convention on the Elimination of All Forms of Discrimination Against Women (1979) collectively establish a robust normative architecture for gender equality. Yet, as the United Nations noted in its 2023 Progress on the Sustainable Development Goals report, not a single country in the world is on track to achieve gender equality by 2030. The gap between formal legal commitments and substantive legal realities remains wide, particularly in the developing world.

This disjuncture between international obligation and domestic legal practice represents one of the most urgent challenges in contemporary international human rights law. In many developing nations, women confront legal systems that deny them equal rights in marriage, divorce, inheritance, land ownership, employment, and political participation. These are not merely gaps in enforcement; they are, in numerous instances, affirmative legal rules that construct and perpetuate the subordination of women. Statutory laws, constitutional provisions, customary legal systems, and religious personal laws frequently operate in concert to deny women the basic legal standing that formal equality would require.

This paper proceeds from a central jurisprudential premise: gender inequality in developing nations is not simply a cultural or social condition but a legally produced one. Laws create the conditions of inequality by assigning different rights and capacities to persons on the basis of sex. Any serious engagement with gender equality must therefore be a legal engagement one that interrogates not only social attitudes but the specific legal norms, institutions, and processes through which inequality is produced and sustained.

The paper is structured as follows. Part II provides a conceptual framework, situating legal barriers to gender equality within the broader discourse of international human rights law and feminist legal theory. Part III examines discriminatory constitutional and statutory provisions. Part IV analyses the role of legal pluralism the co-existence of customary and religious legal systems alongside state law in perpetuating gender inequality. Part V considers institutional barriers, particularly those relating to access to justice. Part VI surveys the international legal framework and its limitations. Part VII proposes a reform agenda. Part VIII concludes.

II. CONCEPTUAL FRAMEWORK: LAW, GENDER, AND INEQUALITY

A. The Legal Construction of Gender Inequality

Feminist legal theory has long argued that law is not a neutral instrument but an active participant in the construction of gender hierarchies. As Catharine MacKinnon observed, the legal system has historically been designed by and for men, encoding masculine norms as universal standards against which women are inevitably found wanting. This insight has particular force in the postcolonial context of developing nations, where legal systems were often fashioned during periods of colonial rule and subsequently adapted frequently incompletely in the postindependence era.

The formal/substantive equality distinction is foundational to any analysis of gender and law. Formal equality – the requirement that similarly situated individuals be treated alike – is inadequate to address gender inequality because it leaves unchallenged the structural conditions that place women in a position of disadvantage. Substantive equality, by contrast, requires that law actively work to dismantle those structural conditions. CEDAW embodies this substantive conception, requiring states not merely to refrain from discrimination but to take affirmative measures to achieve equality in fact.

For the purposes of this paper, 'legal barriers to gender equality' is defined broadly to encompass: (a) laws that expressly discriminate on the basis of sex; (b) laws that are facially neutral but have a disproportionately adverse impact on women; (c) the absence of laws providing adequate protection against gender-based harms; and (d) institutional and procedural barriers within legal systems that prevent women from accessing justice. This multi-dimensional conception is essential to capture the full range of legal obstacles confronting women in developing nations.

B. Developing Nations and the Specificity of Legal Context

The category 'developing nations' is not monolithic. The legal experiences of women in Sub-Saharan Africa, South Asia, the Middle East and North Africa, and Latin America differ significantly, shaped by distinct colonial histories, religious traditions, ethnic compositions, and political economies. Nevertheless, certain structural features recur with sufficient regularity across these diverse settings to warrant generalisation: weak rule of law institutions,

high levels of legal pluralism, limited judicial independence, low female representation in legal professions and the judiciary, high rates of female illiteracy and poverty, and entrenched patriarchal social norms.

These structural features are not merely contextual background; they are legally significant. They shape how laws are interpreted and applied, who can access legal institutions, and whose interests those institutions serve. An analysis of legal barriers to gender equality must therefore attend to the interaction between formal legal rules and these broader institutional and social conditions.

III. DISCRIMINATORY CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Constitutional Exclusions and Ambiguities

The constitution is the foundational legal document of the state. Constitutional provisions that discriminate against women, or that fail to prohibit gender-based discrimination, have cascading effects throughout the legal system. Several developing nations maintain constitutional provisions that explicitly or effectively exclude women from equal legal standing.

Saudi Arabia's Basic Law, for example, does not recognise gender equality as a constitutional principle. While women have gained certain rights in recent years including the right to drive (2018) and partial relaxation of the male guardianship system these changes have occurred through executive decree rather than constitutional transformation, rendering them vulnerable to reversal. In Malaysia, Article 8(5) of the Federal Constitution explicitly permits laws that discriminate on the grounds of personal law, effectively insulating discriminatory Islamic family law provisions from constitutional equality review.

Even in states with formal constitutional equality guarantees, such guarantees are frequently undermined by exceptions and savings clauses. Nigeria's 1999 Constitution, for instance, guarantees equality in Section 42 but contains a notable exception for personal law the law governing marriage, divorce, inheritance, burial, and devolution of property effectively carving out vast domains of women's lives from constitutional protection. Similar structures obtain in Kenya, Tanzania, and Zambia, where constitutional equality guarantees coexist with personal law exceptions that preserve discriminatory customary and religious rules.

B. Family Law and Personal Status

Family law represents perhaps the most pervasive domain of gender-discriminatory legislation in developing nations. Across Sub-Saharan Africa, South Asia, and the Middle East, personal status laws governing marriage, divorce, child custody, and inheritance systematically disadvantage women.

In many jurisdictions, minimum age of marriage laws either do not exist or contain exceptions that permit child marriage with parental or judicial consent. UNICEF estimates that globally, approximately 650 million women alive today were married before the age of 18, the vast majority in developing nations. Child marriage has profound legal consequences: it truncates girls' educational opportunities, perpetuates economic dependence, increases vulnerability to domestic violence, and constitutes, in the view of the Committee on the Rights of the Child, a form of forced marriage and a violation of international law.

Divorce law provides another stark illustration. Under Islamic family law as applied in many jurisdictions including Pakistan, Bangladesh, Egypt, and Morocco a husband may unilaterally dissolve a marriage through the pronouncement of talaq, while a wife seeking divorce must either obtain the husband's consent or pursue the considerably more onerous khul process, which typically requires the wife to return her dower. While reforms have been introduced in some jurisdictions Morocco's 2004 Moudawwana and Tunisia's progressive Code du Statut Personnel stand as examples these remain exceptions rather than the rule.

Inheritance law presents perhaps the most economically consequential form of genderbased legal discrimination. In many customary and religious legal systems, daughters inherit half the share of sons, or are excluded from inheriting land entirely. Studies conducted by the Food and Agriculture Organization and the World Bank consistently demonstrate that legal barriers to women's land ownership correlate strongly with higher rates of rural poverty, food insecurity, and vulnerability to intimate partner violence.

C. Employment and Economic Rights

Legal barriers to women's economic participation are both direct and indirect. Direct barriers include laws that prohibit women from working in certain occupations or industries, require spousal consent for women to obtain employment or enter contracts, or mandate differential

wages. The World Bank's Women, Business and the Law 2023 report found that women in low and middle-income countries have, on average, only 64% of the legal rights of men in the economic sphere.

Indirect legal barriers are equally significant. The absence of maternity protection, childcare obligations, or legal safeguards against workplace sexual harassment effectively penalizes women for their reproductive roles and creates hostile working environments that deter female economic participation. In many developing nations, sexual harassment is not legally defined or prohibited, and women who report it face retaliation with no legal recourse.

IV. LEGAL PLURALISM: CUSTOMARY LAW, RELIGIOUS LAW, AND THE STATE

A. The Nature and Scope of Legal Pluralism

Legal pluralism – the co-existence of multiple legal orders within a single territorial state – is a defining feature of legal systems across the developing world. In much of Sub-Saharan Africa, South Asia, and Southeast Asia, customary law continues to govern large segments of the population in domains such as marriage, family, land tenure, and inheritance, operating alongside, and often in tension with, state statutory law. Similarly, religious personal law – whether Islamic, Hindu, or customary Christian – exercises normative authority over the daily lives of hundreds of millions of women.

Legal pluralism creates particular challenges for gender equality. State equality guarantees may be formally applicable but practically inaccessible to women living under customary or religious legal regimes, either because those women are unaware of their statutory rights, because social pressure deters them from invoking state law, or because customary authorities exercise greater de facto authority than state courts in their communities.

B. Customary Law and Women's Rights

Customary law across many developing regions is characterised by its patrilineal orientation – the organisation of social life around the male line of descent. In South Africa, despite the formal abolition of the *Bhe v Magistrate Klerksdorp* principle of male primogeniture through the Constitutional Court's landmark 2004 decision, customary succession practices continue to disadvantage women in many rural communities. The Court's ruling that the customary rule of

male primogeniture was inconsistent with the constitutional guarantee of equality was a major advance, but its practical impact has been limited by lack of awareness, enforcement capacity, and community buy-in.

In East Africa, customary land tenure systems frequently deny women independent land rights, treating women as holding land derivatively through their husbands or fathers. The practical consequence is that upon divorce or widowhood, women may lose access to land entirely. Tanzania's Village Land Act (1999) recognised women's land rights in principle but implementation has been undermined by deep-rooted customary practices and the continued authority of village councils predominantly male over land allocation.

C. Religious Personal Law

Religious personal law presents particularly complex challenges for gender equality reform. Proposals to reform discriminatory religious laws are frequently met with resistance framed in terms of religious freedom, cultural autonomy, and anti-imperialism. These objections must be taken seriously particularly given the history of colonial instrumentalisation of gender equality discourse but they cannot be permitted to insulate substantive violations of women's rights from legal scrutiny.

The tension between religious personal law and constitutional equality is exemplified by the Indian experience. India's Constitution contains both a guarantee of equality (Article 14) and a preservation of religious personal laws governing marriage, divorce, and inheritance for different religious communities. The Supreme Court of India has repeatedly grappled with challenges to discriminatory personal law provisions. In *Shayara Bano v Union of India* (2017), the Court struck down the practice of instantaneous triple talaq as unconstitutional a landmark ruling subsequently given legislative effect by the Muslim Women (Protection of Rights on Marriage) Act 2019. However, broader Islamic personal law reform remains politically contentious, and other discriminatory provisions remain intact.

Bangladesh presents a contrasting trajectory. Despite being a predominantly Muslim country, Bangladesh has maintained a comparatively progressive family law framework since the Muslim Family Laws Ordinance of 1961, which restricted polygamy and required registration of divorces. However, gaps remain in inheritance and guardianship law, and legal pluralism continues to permit discriminatory practices in rural communities.

V. INSTITUTIONAL BARRIERS: ACCESS TO JUSTICE

A. Structural Barriers in the Justice System

Access to justice is formally recognised as a human right under international law. Yet in many developing nations, women face systematic barriers to accessing legal institutions, rendering nominal legal rights practically meaningless. These barriers are simultaneously economic, geographic, informational, cultural, and institutional.

Economic barriers are the most immediate. Legal representation is expensive, and in nations without robust legal aid systems, poor women – the majority of the female population in many developing nations – effectively have no meaningful access to courts. The World Justice Project's Rule of Law Index consistently identifies access to justice as among the weakest areas of rule of law performance in low and lower-middle income countries.

Geographic barriers are equally significant. In many developing nations, formal courts are concentrated in urban centres, requiring rural women to travel significant distances to access legal services. Alternative dispute resolution mechanisms, while more accessible, often reflect and reproduce the same patriarchal norms as the customary systems they nominally supplement.

B. Gender Bias in Legal Institutions

The legal profession and judiciary in many developing nations are overwhelmingly male, creating institutional cultures that are frequently hostile or indifferent to gender equality concerns.

Studies conducted by UN Women and the International Bar Association have documented widespread gender bias in judicial decision-making, including in cases involving domestic violence, sexual assault, and marital property.

The under-representation of women in the judiciary is not merely symbolic. Research demonstrates a statistically significant correlation between female judicial representation and more gender-sensitive legal outcomes. In many developing nations, however, structural barriers – including qualification requirements that disadvantage women who have been excluded from legal education, appointment processes controlled by male-dominated elites,

and institutional cultures inhospitable to women perpetuate the marginalisation of women from the bench.

Violence against women and girls represents perhaps the most acute justice failure. Domestic violence legislation or its absence illustrates the gap between formal legal rights and substantive protection. The UN's 2022 Global Status of Laws on Violence Against Women report found that 49 countries had no laws specifically addressing domestic violence, and that even where such laws existed, implementation was severely hampered by police attitudes, prosecutorial reluctance, and victims' lack of awareness of their legal rights.

VI. THE INTERNATIONAL LEGAL FRAMEWORK: OBLIGATIONS AND LIMITATIONS

A. CEDAW and Its Implementation Challenges

The Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979 and ratified by 189 states, represents the most comprehensive international legal instrument addressing gender equality. CEDAW requires states parties to eliminate discrimination in all areas of law and policy, including education, employment, healthcare, and family life. It imposes obligations of both immediacy to repeal discriminatory laws and progressiveness to achieve de facto equality over time.

Despite near-universal ratification, CEDAW's effectiveness has been significantly limited by the high number of reservations entered by states, many of which go to the heart of the Convention's equality obligations. Reservations entered by states such as Egypt, Saudi Arabia, Malaysia, and Pakistan with respect to family law provisions effectively carve out the most pervasive areas of gender discrimination from the Convention's reach. The Committee on the Elimination of Discrimination Against Women has repeatedly characterised these reservations as incompatible with the object and purpose of the Convention, but the Vienna Convention on the Law of Treaties provides no mechanism for compelling their withdrawal.

The CEDAW Optional Protocol (1999), which established individual complaint and inquiry procedures, represents a significant advance. However, only 115 states have ratified the Optional Protocol, and the Committee's decisions are not legally binding, relying instead on diplomatic pressure and moral suasion for their effect.

B. The SDGs and Gender Equality

The Sustainable Development Goals, adopted in 2015, place gender equality at the centre of the global development agenda. SDG 5 explicitly targets the elimination of all forms of discrimination against women, the elimination of violence against women, and the achievement of universal reproductive rights. SDG 16, addressing peace, justice, and strong institutions, contains important complementary commitments relevant to access to justice and legal empowerment.

However, the SDG framework, being a political rather than strictly legal commitment, lacks binding enforcement mechanisms. Progress is monitored through voluntary national reviews, which states design and present themselves, raising significant concerns about self-reporting bias. The 2023 UN SDG Progress Report noted that progress on SDG 5 had been 'alarmingly slow' and that on current trajectories, gender equality would not be achieved for generations.

VII. TOWARDS REFORM: A MULTI-LAYERED LEGAL FRAMEWORK

A. Constitutional Transformation

The foundation of any sustainable legal reform agenda must be constitutional. Constitutions that contain personal law exemptions to equality guarantees must be amended to remove those exemptions. Where constitutional reform is not immediately achievable, courts should be encouraged to adopt substantive equality jurisprudence that interprets existing equality guarantees broadly and scrutinises discriminatory personal law provisions strictly.

The South African Constitution's equality jurisprudence offers a valuable model. Section 9 of the Constitution explicitly lists sex and gender as prohibited grounds of discrimination, and the Constitutional Court has consistently interpreted this provision to require substantive rather than merely formal equality. The Court's willingness to scrutinise discriminatory customary practices as in *Bhe* and subsequent cases demonstrates that constitutional transformation can coexist with cultural sensitivity.

B. Legislative Harmonisation

Statutory reform is essential but must be pursued with attention to the interaction between statutory and customary/religious legal systems. Legislation that formally repeals

discriminatory rules without addressing the community-level enforcement mechanisms of customary law is likely to have limited practical impact. Reform strategies should therefore include provisions for community-based legal education, the training of customary and religious authorities in human rights standards, and mechanisms for the registration and review of customary practices.

Priority areas for legislative reform include: raising and enforcing minimum age of marriage to 18 years without exception; enacting comprehensive domestic violence legislation with robust criminal and civil remedies; reforming inheritance law to provide equal rights for daughters and sons; enacting equal land rights legislation and ensuring women's meaningful participation in land administration bodies; and introducing workplace equality legislation including anti-harassment provisions and equal pay requirements.

C. Judicial and Institutional Reform

Institutional reform must address gender bias in the legal profession, police, and judiciary. Measures should include: mandatory gender sensitisation training for legal professionals; affirmative measures to increase female representation in the judiciary; the establishment of specialised domestic violence courts with trained personnel; and the integration of gender impact assessment into legislative drafting processes.

Legal aid systems must be expanded and resourced to ensure that poor women have meaningful access to legal representation. Community-based legal empowerment approaches including paralegal programmes, mobile legal clinics, and women's legal rights education campaigns have demonstrated effectiveness in increasing legal awareness and access among marginalised women, and should be institutionalised and systematically funded.

D. International Engagement and Accountability

States should be encouraged to withdraw reservations to CEDAW inconsistent with the Convention's object and purpose. The CEDAW Committee's constructive dialogue mechanism and Universal Periodic Review process provide important accountability venues that should be strengthened. Regional human rights bodies including the African Court on Human and Peoples' Rights, the Inter-American Court of Human Rights, and the Human Rights Committee have developed significant gender equality jurisprudence that should inform domestic legal

reform.

International development institutions including the World Bank, the International Monetary Fund, and regional development banks should mainstream gender equality into their governance reform programmes and make legal equality for women a genuine conditionality of development assistance. The evidence that gender-equal legal systems produce stronger economic outcomes is now robust: the World Bank estimates that the global economy foregoes 160 trillion dollars in wealth through the failure to invest in women's human capital.

VIII. CONCLUSION

Legal barriers to gender equality in developing nations are both pervasive and deeply embedded in the foundational structures of legal systems constitutional arrangements, personal status laws, customary and religious legal pluralism, and the institutional architecture of justice systems. These barriers are not peripheral anomalies but central features of legal systems that were, in many cases, designed to reproduce gender hierarchy. They are, moreover, barriers that international law has proved insufficiently equipped to dismantle, largely due to the persistence of reservations to CEDAW and the absence of binding enforcement mechanisms for gender equality commitments.

The path forward requires a multi-layered approach that operates simultaneously at the constitutional, statutory, institutional, and community levels. Constitutional transformation must close the doors left open by personal law exceptions. Legislative reform must harmonise statutory law with international equality standards while attending to the complex interaction between state law and legal pluralism. Institutional reform must address gender bias in legal institutions and expand access to justice for poor women. And community-level legal empowerment must translate formal legal rights into lived realities.

This agenda is ambitious, and its implementation will encounter powerful resistance from political, religious, and cultural actors whose authority and interests are invested in the existing gender order. But the evidence is unambiguous: legal gender equality is a prerequisite, not merely a component, of sustainable development, democratic governance, and the realisation of human dignity. The failure to achieve it is not merely a moral failing it is a legal one, and it demands a legal response.

Ultimately, the proposition that law both constructs and can deconstruct gender inequality should animate every dimension of reform strategy. The goal is not merely the formal elimination of discriminatory legal texts, but the transformation of legal systems into institutions that actively serve the interests of all persons, regardless of sex or gender, and that hold accountable those who would use law as an instrument of subordination.

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