

DOMINANT APPROACH TO GENDER IN INTERNATIONAL HUMAN RIGHTS LAW - THE EQUALITY APPROACH INCLUDING THE PROHIBITION OF DISCRIMINATION

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Abstract: Human rights are those minimum rights which are compulsorily obtainable by every individual as she or he is a member of human family. Women constitute almost fifty percent of the population of entire human society but they have been neglected, humiliated and discriminated all along. The issue of gender-based violence was the rallying point for women all around the world to push for recognition of their rights. Until a decade or so ago, violence against women was not taken seriously as an issue of human rights. It was too politically sensitive, too culturally specific, too controversial, and too difficult to deal with. UNO declaration and the constitution of India also guarantee the equality of rights of men and women. However, in the sphere of women's human rights in India, there exists a wide gap between theory and practice. The women in India very often have to face discrimination, injustice and dishonour. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable. Against this background, current paper attempts to clarify the rising chaos by addressing three interrelated concerns: First, it deals with the present phenomenon of Women and Human rights in global perspective and attempts to conceptualize it. And second, it discusses the evolution of the very idea and concept of human rights and investigates how feminist thinkers interpreted the idea. Third, and also spell out the constitutional and legal provisions for women rights in India to overcome miserable livelihood conditions of women.

Imagine, as we have already enter into the 21st century, needing support for such a simple statement: that over half of the world, meaning women, are indeed humans and have human rights. This apparently revolutionary concept has resulted in a powerful, emerging movement in the international human rights arena which urges the recognition and acknowledgement of women's rights as human rights. The term "women's human rights" does not refer simply to the theoretical approaches that women have used to transform human rights concepts, programmes and agendas. In addition to being instrumental in the formulation of the conceptual challenges and demands levied by women, the idea of women's human rights has had immense impact as a tool for political activism. The concept of women's human rights has opened the way for women around the world to ask hard questions about the official negligence and general indifference to the widespread discrimination and violence that women experience every day. Whether used in political lobbying, in legal cases, in grassroots mobilization, or in broad-based educational efforts, the idea of women's human rights has been a rallying point for women across many boundaries and has facilitated the creation of collaborative strategies for promoting and protecting the human rights of women.

Women are entitled to the human rights elaborated by the International Bill of Rights for all human beings. Unfortunately, human rights have not been scrupulously observed, and the rights of women have been particularly neglected. The international community has therefore developed additional instruments to protect the rights of women. That states become party to international human rights

instruments does not guarantee that rights are protected in fact. States parties to international covenants and conventions sometimes limit their obligations by attaching reservations. They do so often on issues relating to women. Institutions to monitor the observance of human rights are still developing. The 'enforcement' of human rights obligations is less than effective. The human rights movement has made remarkable progress: international commitments have extend, and respect for rights continues to grow. Women's organizations have often led the way.

The slogan 'Women's rights are human rights' was first used at the UN world conference on human rights in Vienna in 1993. This conference was successful in integrating women's rights by recognizing rape, sexual slavery, and all forms of sexual harassment and exploitation as human rights issues. (Shirinian 2010). Though, the issue of gender-based violence was the rallying point for women all around the world to push for admiration of their rights. Until a decade or so ago, violence against women was not taken seriously as an issue of human rights. It was too politically sensitive, too culturally specific, too contentious, and too difficult to deal with. The whole discourses of human rights were often interpreted from a male point of view, for example, the prohibition against torture and inhuman and degrading treatment has traditionally been interpreted as a prohibition against acts committed by public officials, thereby neglecting, for instance, domestic violence faced especially by women. (Cook 1994). In order to integrate a women's perspective into the application of human rights, scholars and activists have actively advocated a re-

characterization of human rights. (Byrnes1992: 205-240).

The United Nations has a long history of addressing women's human rights and much progress has been made in securing women's rights across the world in recent decades. However, important gaps remain and women's realities are constantly changing, with new manifestations of discrimination against them regularly emerging. Some groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socioeconomic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing actions and responses to fighting discrimination against women.

Women's rights have been at the heart of a series of international conferences that have produced significant political commitments to women's human rights and equality. Since the founding of the United Nations, equality between men and women has been among the most fundamental guarantees of human rights. Adopted in 1945, the Charter of the United Nations sets out as one of its goals "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women". In 1948, the Universal Declaration of Human Rights was adopted. It, too, proclaimed the equal entitlements of women and men to the rights contained in it, "without distinction of any kind, such as ... sex, ..." In drafting the Declaration, there was considerable discussion about the use of the term "all men" rather than a gender-neutral term. The Declaration was eventually adopted using the terms "all human beings" and "everyone" in order to leave no doubt that the Universal Declaration was intended for everyone, men and women alike.

A lot of initiatives had been taken for promote and protecting human rights of women. Starting in 1975, which was also International Women's Year, Mexico City hosted the World Conference on the International Women's Year, which resulted in the World Plan of Action and the label of 1975-1985 as the United Nations Decade for Women. In 1980, another international conference on women was held in Copenhagen and the Convention on the Elimination of All Forms of Discrimination against Women was opened for signature. The third World Conference on Women was held in Nairobi, with the Committee on the Elimination of Discrimination against Women having begun its work in 1982. These three world conferences witnessed strange activism on the part of women from around the world and laid the groundwork for the world conferences in the 1990s to address women's rights, including the Fourth World Conference on Women held in Beijing in 1995.

All this might not seem like much in terms of concrete achievements but what it has meant is that practices which were almost never spoken about previously, such as domestic violence, honour killings, female genital mutilation, rape in conflict, marital rape, trafficking for exploitative labour and forced sex, are now firmly on the international agenda. Violence against women whether committed in the home, in the community or by the State is now a matter for international attention. The veil of silence has at last been lifted.

Notwithstanding roadblocks in law and life, women have refused to accept, and indeed have fought strongly against, their imposed invisibility and silence. Throughout time, women have made unrelenting efforts to raise their voices, urge their perspectives, and demand that their needs be met. Women have been at the forefront of this human rights drive, presenting their separate realities and insisting that issues affecting them because of their sex be deemed an integral part of the human rights construct. The traditional exclusion of women from the articulation, development, implementation, and enforcement of human rights has rendered gender issues invisible, and consequently has shielded gender-based abuses from much needed scrutiny. (Truyol 1996).

The dominant approach to gender in international human rights law is the equality approach including the prohibition of discrimination. The basis for this approach can be found in the Charter of the United Nations, which stipulates that one of the tasks of the United Nations is to "achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion"

(article 1). Actually, UNO always tries to promote and protect human rights in worldwide. Theoretically also the first wave feminist thinkers tries to established the political rights of women and second wave feminist thinkers tries to established social and economic rights and the activist and thinkers of the third wave tries to empower women and also radically established their dominant rights.

Another aspect also important for this study, the division between the so-called 'public' has compounded the difficulties posed by women's peripheral status within international human rights mechanisms and organizations and 'private' spheres prevalent in so many societies. The pervasive division of life into 'public' and 'private' spheres has its roots in the desire to limit the jurisdiction of the government. In many countries, this has meant that what individuals do in the 'public' sphere is subject to regulation, while activities taking place in the 'private' sphere are thought to be exempt from

governmental scrutiny. Since this 'public' sphere is seen as the focus of interaction between state actors and citizens, abuses of that relationship have been the focus of international human rights advocacy. Of course, the status of citizen has often been exclusionary, formally or informally entailing gender, racial and socio-economic bias and privileges. Thus, for those citizens—primarily men—who predominate in public and governmental realms and who enjoy gender, racial and economic privilege, the issues of primary concern have tended to be those abuses to which they are most vulnerable—abuses of civil and political aspects of human rights such as the violation of the right to speech, arbitrary detention, torture during imprisonment, and summary execution.

In order for women to be able to provide for themselves and their families, property and ownership rights are essential. In fact it could be argued that property, particularly in the form of land, is crucial especially for rural women, who are the main food producers in most developing countries and who bear the main responsibility for feeding their children and families. Property rights do not solely refer to rights of private ownership, but also to rights of access to and control of property. It has been shown in numerous studies that the most critical moment for the exercise of women's property rights is when she enters into marriage and particularly at its dissolution either due to divorce or the husband's death. Personal and family law is in many states governed by parallel legal systems. (Frostell 2006). Actually man treated as the symbol of 'power' and women treated as the symbol of 'nature'.

Though, Human Rights are the minimum rights which are compulsorily obtainable by every individual as he or she is a member of human society. But it has been found that each and every right of the women is being violated in one or another way. In the sphere of women's human rights in India, there exists a wide gulf between theory and practice. Indian society is a male dominated society where men are always considered to be superior. The women in India very often have to face discrimination, injustice and dishonour. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable. The Indian Constitution guarantees certain basic rights to women, which are often being violated by the traditional practices or by the system prevailing in the present society. These rights include Right to equality, Right to education, Right to live with dignity, Right to liberty, Right to politics, Right to property, Right to equal opportunity for employment, Right to free choice of profession, Right to livelihood, Right to work in equitable condition, Right to get equal wages for equal work, Right to protection from gender discrimination, Right to social protection in

the eventuality of retirement, old age and sickness, Right to protection from inhuman treatment, Right to protection of health, Right to privacy in terms of personal life, family, residence, correspondence etc. and Right to protection from society, state and family system. Recently, the crimes against women in India are increasing at a very fast pace. (Dhanoa 2012).

Now it's time to think beyond ideology, a world of greater hardship for women, who sacrifice their identity, communication and hopes, in a society dominated by male values, Question always arises whether the laws and society's standards ensures that women get their rights? And that their human rights are protected? What is needed at present is the recognition of women's equal humanity and a continuing response to the persistent realities of the contemporary world. The right of every individual is to do what he or she values and becoming and being human is always more difficult for a women in the present world.

Taking up the human rights framework has involved a double shift in thinking about human rights and talking about women's lives. Put quite simply, it has entailed examining the human rights framework through a gender lens, and describing women's lives through a human rights framework. In looking at the human rights framework from women's perspectives, women have shown how current human rights definitions and practices fail to account for the ways in which already recognized human rights abuses often affect women differently because of their gender. This approach acknowledges the importance of the existing concepts and activities, but also points out that there are dimensions within these received definitions that are gender-specific and that need to be addressed if the mechanisms, programmes, and the human rights framework itself are to include and reflect the experiences of the female half of the world's population.

When people utilize the human rights framework to articulate the vast array of human rights abuses that women face, they bring clarifying analyses and influential tools to bear on women's experiences. This strategy has been essential in efforts to draw attention to human rights that are specific to women that heretofore have been seen as women's rights but not recognized as 'human' rights.

Although the framework of women's human rights has been tremendously useful in efforts to lobby for legislative and policy changes at local, national and international levels, it has been an equally as important tool for grassroots organizing. Women's human right not only teaches women about the range of rights that their governments must honour; it also functions as a kind of gestalt by which to organize analyses of their experiences and plan action for change. The human rights framework creates a space

in which the possibility for a different account of women's lives can be developed.

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