

Women's Rights as Human Rights and Human Rights Jurisprudence in India

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Millions of women throughout the world live in conditions of abject deprivation and attacks against their fundamental human rights for no other reason than that they are women. Considering this position, human rights for women, as for all individuals, are protected in international law. The international community has tried to play a decisive role in protecting human rights of women. And in furtherance to this objective, vigilant and concerted actions have been taken and which includes documenting human rights violations, publicizing these as widely as possible and campaigning to press government authorities seeking an end to the abuses and confronting governments which fail to protect fundamental human rights with full force of international condemnation.

Human rights and fundamental freedoms should be birthrights, but across the globe some countries fail to accord human rights to women. Moreover, women are often victims of human rights abuses. Women's human rights are abused when they cannot participate in decisions that affect their lives and are denied political participation and fair representation, when they are prevented from going to school or receiving health care, when they face discrimination in employment, when they are denied equal rights to own land and property, when they suffer from violence within their homes and when they are subjected to harmful traditional practices such as genital mutilation and honor killings.

Recognition of women's rights began in some countries as they evolved from feudal into more representative forms of government. In the United States, awareness of women's rights came with the ideals of the American Revolution. Strong and intelligent women such as Abigail Adams, wife of the second U.S. president, John Adams, demanded fair and equal treatment, and warned presciently, "If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation." She also advocated equal access to education for girls, writing to her husband, who then represented the new American republic in Paris: "I

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regret the trifling narrow contracted education of the females of my own country.” Women’s suffrage movements began in the United States and Great Britain in the mid-19th century and in a few European countries in the early 20th century.

Women’s human rights only emerged as a global movement during the United Nations Decade for Women (1976-1985), when women from many different geographic, cultural, religious, racial and class backgrounds came together and organized to improve the status of women. It was during this decade that the United Nations sponsored several women’s conferences — Mexico City in 1975, Copenhagen in 1980 and Nairobi in 1985 — to evaluate the status of women and to formulate strategies for women’s advancement.

An International Women’s Bill of Rights

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), a key international agreement on women’s human rights, was adopted by the United Nations General Assembly in 1979. CEDAW is often described as an international bill of rights for women. Its preamble and 30 articles aim to eliminate gender discrimination and promote gender equality. The convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex” that impedes women’s “human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” It sets an agenda for national action to end such discrimination, requiring all parties to the convention to take “all appropriate measures, including legislation, to ensure the full development and advancement of women” and guarantee their fundamental freedoms “on a basis of equality with men.”

Women’s human rights apply to both the “public” and “private” spheres of women’s lives. For many governments, however, addressing women’s rights in the “private” sphere is challenging because the private sphere is often thought to be beyond the purview of the state, exempt from governmental scrutiny and intervention (UNIFEM [now UN Women], About the Convention). As a result, in many countries, discrimination and violence against women and girls that occur in the family and under the guise of religious and cultural traditions and practices continue to remain hidden in the private sphere, where perpetrators of such human rights abuses typically enjoy impunity for their actions.

Women's Rights as Human Rights

Since the 1980s, women around the world have come together in networks and coalitions to raise awareness about problems of discrimination, inequality and violence. They have used a human rights framework to fight for women's rights in the family, social, economic and political arenas. An important outcome of the 1995 Beijing Fourth World Conference on Women was the Beijing Declaration and Platform for Action. These documents embody the international community's commitment to advance and empower women and remove obstacles in the public and private spheres that have historically limited women's full participation. The Platform for Action sets forth three strategic objectives related to the human rights of women: to promote and protect women's human rights through the full implementation of all human rights instruments (especially CEDAW), to ensure equality and nondiscrimination under the law and in practice, and to achieve legal literacy. Governments bear the main responsibility, but persons, organizations and enterprises are important in taking concrete actions to improve women's lives.

Then-U.S. first lady Hillary Clinton famously declared at the 1995 Beijing conference that "human rights are women's rights," adding, "Women must enjoy the right to participate fully in the social and political lives of their countries if we want freedom and democracy to thrive and endure."

CEDAW and the Beijing Declaration and Platform for Action signaled the successful mainstreaming of women's rights as human rights. Although the Beijing Declaration and Platform for Action are not legally binding, they do carry ethical and political weight and can be used to pursue local, regional and national efforts to address women's human rights. CEDAW is a treaty that is binding on its parties.

The principles and practices related to women's human rights are continuously evolving. The large body of international covenants, agreements and commitments to women's human rights developed over the past several decades provides women with an alternative vision and vocabulary to confront violations to their human rights. Such guidelines are important tools for political activism and a framework for developing concrete strategies for change.

International Instruments and Women

International instruments relating to women fall into three distinct categories. The protective conventions, which came earliest, seek to shield women in their employment conditions, such as by prohibiting night work, employment in mines, and certain types of plantation labor.

The second category of convention is corrective in nature, intended to ameliorate a distinct social problem or restriction. This type of convention covers matters such as loss of nationality at time of marriage, restrictions on prostitution, sale of women for forced labor, slavery and similar practices, child labor, and other personal abuses.

The third category, which is the most recent, is intended to prevent discrimination on the basis of sex in a wide variety of fields, with normative sex-neutral provisions as the underlying rationale.

General Duties of The State Under International Law

Generally, international conventions impose three types of duties on the state. First, the state has a duty to respect rights. Second, the state has a duty to protect rights - that is, to prevent the violation of rights by private persons and organizations who are not themselves bound by international treaties. A state's failure to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridical ensuring the free and full enjoyment of human rights constitutes a breach of this duty. Third, the state has a duty to fulfill rights. Upon ratifying international treaties, states must take appropriate legislative, administrative, judicial, budgetary, economic and other measures to achieve individual's full realization of their human rights. In addition, the duty to fulfill rights requires states to alleviate persistent obstacles to the exercise of these rights.²

Various International Instruments Relating To Women

Universal Declaration of Human Rights, 1948

Nearly all international human rights instruments adopted by the United Nations bodies since 1948 elaborate principles set out in the Universal Declaration of Human Rights.

² Inter-American Court of Human Rights: Judgment in Velasquez Rodriguez Case (Forced Disappearance and Death of Individual in Honduras), Inter-Am. C.H.R., 28 I.L.M. 291, 325-326, PP 173, 176 (1989).

The drafters of the Universal Declaration of Human Rights considered women as part of ?humanity? and granted them all rights as were granted to men.³

Convention on the Political Rights of Women, 1952

The Convention on the Political Rights of Women provides for equal political rights for women. Under this Convention, states are obligated to ensure that women have the right to vote in elections, to be elected to publicly elected bodies, and to hold public office on equal terms with men. Women are entitled to be free from discrimination in the exercise of these rights.

Though the Convention does not specifically mention affirmative action for women to increase their participation in political as well as public life, it does recognize the discriminatory practices that hinder women's participation and obligates the state party to equalize the status of men and women in the enjoyment and exercise of political rights.

International Covenant on Civil and Political Rights, 1966

The ICCPR, which was ratified in 1966, is a treaty of paramount importance to the international community which sets forth numerous provisions to ensure the enjoyment of civil and political freedom for all people. The Civil Covenant assures women's civil rights, as well as access to the political process.

International Covenant on Economic, Social and Cultural Rights, 1966

The Economic Covenant, in contrast, recognizes positive rights, such as the rights to food, shelter, health care, and education. The Economic Covenant is linked to distributive justice for the most vulnerable, who are everywhere disproportionately female. The Economic Covenant emphasizes the importance of non-discrimination on the basis of sex by reiterating it in two articles (Articles 2 and 3), and it supports the concept of affirmative action.⁴

³ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt And The Universal Declaration Of Human Rights* 111- 12, 164 (2001).

⁴ Matthew C. R. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* 184 (1995). (concluding that while the travaux confirmed the legitimacy of affirmative action, there is little indication beyond Article 3 that it is required, although the focus throughout on vulnerable and disadvantaged groups is consistent with affirmative action).

Declaration on the Elimination of All Forms of Discrimination against Women, 1967

In 1967, the United Nations promulgated the Declaration on the Elimination of all Forms of Discrimination against Women. This Declaration recognized the particular nature of discrimination against women as worthy of a separate legal response.

The declaration called for member states to submit reports on the status of women in their own countries. The Indian government released its report, *Toward Equality*, in 1971. The report illuminated the poor conditions of women in India with regard to economic freedom, education, family and legal rights and helped the more educated and politicized Indians to see that something needed to be done to achieve full equality in Indian society.

Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974[10]The General Assembly had taken on a true hybrid approach, citing both IHL and human rights law. Through this Declaration, the Assembly demanded states abide by the Geneva Conventions and other instruments of international law relative to respect for human rights in armed conflicts. It specifically noted the relevance in armed conflict of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Declaration of the Rights of the Child.

Although this document fails to address specifically the issue of wartime rape, the preamble does acknowledge that women are too often the victims of inhuman acts during periods of armed conflict and are in need of special protection. The Declaration also establishes mistreatment of women during war as a criminal offense. While the document adds validity to the need for recognizing women's issues in conflict situations, it is only a nonbinding declaration and, thus, plays a limited role in ending foreseeable, gender-specific war crimes. Convention on the Elimination of All Forms of Discrimination against Women, 1979.

Since the first years of the 1970s, the international community was convinced of the need to gather, in one single compulsory instrument, the great bulk of norms enunciated in the resolutions, declarations, and recommendations of the international organizations and the provisions of Conventions and Covenants already adopted. This included the principles

contained in the Declaration on the Elimination of All Forms of Discrimination Against Women, approved by the UN General Assembly in 1967 (Declaration of 1967).

This Convention has been rightly called the "Charter of the Human Rights of Women." In sixteen articles legally related to one another, several principles that had been set forth at the international level in the Declaration of 1967 are confirmed. Also, it emphasizes those established in the Covenants of Human Rights, or in some other specific conventions, such as the 1952 Convention on the Political Rights of Women.

It is important to point out that the Convention, once opened to the signature and ratification of states, was one of three multilateral instruments to achieve in the least time the greatest number of ratifications or accessions, thereby surpassing the International Covenants on Human Rights of 1966. Thus, since 1980, the year in which it was opened to signature, thru October, 2000, 166 states have ratified or acceded to it.

The Convention is structured in six parts. Part I is devoted to general principles and commitments. Part II refers to the civil and political rights of women. Part III corresponds to the social areas, with special attention to rural women. Part IV is devoted to equality before the law and within the family. Part V contains the follow-up and surveillance provisions for the implementation of the Convention and also establishes the Committee on the Elimination of Discrimination Against Women (CEDAW). Finally, Part VI refers to issues of procedure, entering into force, solution of controversies, and presentation of reservations.

The Convention obliges governments to prohibit discrimination against women on the one hand, and ensure their equality on the other, equality being one of the Convention's goals. There is not, at present, any procedure for complaints under this Convention, though it is under active consideration. The Convention prohibits any "distinction, exclusion or restriction" based on sex, or marital status, which is either intended to, or has the effect of, impairing women's fundamental rights and freedoms, in any field. This covers unintentional (or indirect) discrimination, as well as deliberate acts that disadvantage women, and it affects the protection of rights in private (or family) life as well as public life.⁵

Declaration on the Elimination of Violence against Women, 1993

⁵ See Louis Henkin et al., Human Rights 370 (discussing authorship of the Universal Declaration)

The United Nation's 1993 Declaration on the Elimination of Violence against Women defines gender-based violence broadly to include any gender-based act that causes physical, sexual, or psychological harm.

The final Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly in 1993 making it applicable to all United Nations member states, condemned both public and private physical, sexual, or psychological harm or suffering to women, specifically naming violence within families and female genital mutilation as human rights violations. This Declaration noted that these rights were already protected among several international conventions, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Conclusion

The efforts done till now though have bettered the position of women however we have not reached the stage of fully protecting the human rights of women. There are still many instances occurring around the world that are absolutely violative of women's human right. For example, combatants and their sympathizers in conflicts, such as those in Sierra Leone, Kosovo, the Democratic Republic of Congo, Afghanistan, and Rwanda, have raped women as a weapon of war with near complete impunity.

Men in Pakistan, South Africa, Peru, Russia, and Uzbekistan beat women in the home at astounding rates, while these governments alternatively refuse to intervene to protect women and punish their batterers or do so haphazardly and in ways that make women feel culpable for the violence.

As a direct result of inequalities found in their countries of origin, women from Ukraine, Moldova, Nigeria, the Dominican Republic, Burma, and Thailand are bought and sold, trafficked to work in forced prostitution, with insufficient government attention to protect their rights and punish the traffickers. In Guatemala, South Africa, and Mexico, women's ability to enter and remain in the work force is obstructed by private employers who use women's reproductive status to exclude them from work and by discriminatory employment laws or discriminatory enforcement of the law. In the U.S., students discriminate against and attack girls in school who are lesbian, bi-sexual, or transgendered, or do not conform to male standards of female behavior. Women in Morocco, Jordan, Kuwait, and

Saudi Arabia face government-sponsored discrimination that renders them unequal before the law - including discriminatory family codes that take away women's legal authority and place it in the hands of male family members - and restricts women's participation in public life.

Hence it is necessary that the campaign to protect women's human rights is waged on more specific fronts and specific issues in addition to protecting general human rights. The efforts be made successful and the concept of women's human right? remains prosaic and revolutionary.

They should be used to lobby for legislative and policy changes at local, national and international levels, equally and used as important tool for grassroots organizing. As the women's human rights not only teach women about the range of rights that their governments must honor; 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. What is so useful about this framework is that it provides women with principles by which to develop alternative visions of their lives without suggesting the substance of those visions.

The fundamental principles of human rights that accord to each and every person the entitlement to human dignity give women a vocabulary for describing both violations and impediments to the exercise of their human rights. The large body of international covenants, agreements and commitments about human rights gives women political leverage and a tenable point of reference. And finally, the idea of women's human rights enables women to define and articulate the specificity of the experiences in their lives at the same time that it provides a vocabulary for women to share the experiences of other women around the world and work collaboratively for change.
