

AN IDEALISTIC APPROACH OF HUMAN RIGHTS TO COMBAT VIOLENCE AGAINST WOMEN AND GENDER DISCRIMINATION

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ABSTRACT

Discrimination against the girl child starts the moment she enters into the mother's womb. The child is exposed to gender differences since birth and in recent times even before birth, in the form of sex-determination tests leading to feticide and female infanticide. If a girl child opens her eyes in any way, she is killed after her birth by different cruel methods in some parts of the country. Thus, the very important "right to life" is denied to women. In India, men are always assumed to be superior to women and are given more preference. The "World Human Rights Conference in Vienna" first recognized gender-based violence as a human rights violation in 1993. The same was declared by United Nations Declaration in 1993.

Objective: To combat the rapidly growing violence in the society against women and to aware women about their rights which have been provided to them by certain statutes and to abolish gender discrimination.

Method: The doctrinal method has been adopted. The author made a study of different books, periodicals, and journals to check the exact status of women who face violence in their daily life.

Results: The violence has been increasing very fast. It's of different types such as domestic violence, social violence, and mental violence. However, many conventions have been adopted to eliminate this evil and to provide an equal status to women as is provided to another gender of society.

Conclusion: The article concludes that due to different international and national conferences and conventions the conditions of women are improving. The greater powers of the world are trying hard to stop sexual abuse and gender discrimination. The developing countries are making new strategies to abolish those rituals which are obstacles to female progress.

Keywords: Sexual abuse, Gender discrimination, Domestic violence, Trafficking, Right to life.

INTRODUCTION

Human beings are born equal in dignity and rights. These are moral claims which are inalienable in all human individuals by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed that is the consent of the subject of the rights. Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. Violence against women takes a dismaying variety of forms, from domestic abuse and rape to child marriages and female circumcision. All are violations of the most fundamental human rights. In a statement to the Fourth World Conference on Women in Beijing in September 1995, the United Nations Secretary – General, Boutros Boutros – Ghali, said that violence against women is a universal problem that must be universally condemned. However, he said that the problem continued to grow. The Secretary – General noted that domestic violence alone is on the increase. Studies in 10 countries, he said, have found that between 17% and 38% of women have suffered physical assaults by a partner. In the Platform for Action, the core document of the Beijing Conference, Governments declared that "violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development, and peace."

KINDS OF VIOLENCE AGAINST WOMEN

Domestic violence

Violence against women in the family occurs in developed and developing countries alike. It has long been considered a private matter

by bystanders including neighbors, the community, and government. But such private matters have a tendency to become public tragedies. In the United States, a woman is beaten in every 18 minutes. Indeed, domestic violence is the leading cause of injury among women of reproductive age in the United States. Between 22% and 35% of women who visit emergency rooms are there for that reason [1,2]. The highly publicized trial of O.J. Simpson, the retired United States football player acquitted of the murder of his former wife and a male friend of hers, helped focus international media attention on the issue of domestic violence and spousal abuse.

Female genital mutilation

While female genital mutilation has been criminalized in several countries, many laws do not contain a specific definition of this "harmful practice." It is imperative that legislation provides a clear definition of female genital mutilation so as to allow effective prosecution and punishment of perpetrators, as well as protection and support for potential and actual victims/survivors. According to the World Health Organization, 85 million to 115 million girls and women in the population have undergone some form of female genital mutilation and suffer from its adverse health effects. Every year an estimated 2 million young girls undergo this procedure. Most live in Africa and Asia but an increasing number can be found among immigrant and refugee families in Western Europe and North America. Indeed, the practice has been outlawed in some European countries [3].

Son preference

Son preference affects women in many countries, particularly in Asia. Its consequences can be anything from fetal or female infanticide to neglect of the girl child over her brother regarding such essential needs as nutrition, basic health care, and education. In China and India,

some women choose to terminate their pregnancies when expecting daughters but carry their pregnancies to term when expecting sons. According to reports from India, genetic testing for sex selection has become a booming business, especially in the country's northern regions. Indian gender-detection clinics drew protests from women's groups after the appearance of advertisements suggesting that it was better to spend \$38 now to terminate a female fetus than \$3,800, later on, her dowry. A study of amniocentesis procedures conducted in a large Bombay hospital found that 95.5% of fetuses aborted were identified as female, compared with a far smaller percentage of male fetuses.

Dowry – related violence and early marriage

In some countries, weddings are preceded by the payment of an agreed on dowry by the bride's family. Failure to pay the dowry can lead to violence. In Bangladesh, a bride whose dowry was deemed too small was disfigured after her husband threw acid on her face. In India, an average of five women in a day is burned in dowry-related disputes and many more cases are never reported [4]. Early marriage, especially without the consent of the girl, is another form of human rights violation. Early marriage followed by multiple pregnancies can affect the health of women for life.

Sexual assault within marriage

In many countries sexual assault by a husband on his wife is not considered to be a crime: A wife is expected to submit, it is thus very difficult in practice for women to prove that sexual assault has occurred unless she can demonstrate serious injury [5].

Sexual harassment

Sexual harassment in the workplace is a growing concern for women. Employers abuse their authority to seek sexual favors from their female co-workers or subordinates, sometimes promising promotions or other forms of career advancement or simply creating an untenable and hostile work environment. Women who refuse to give in to such unwanted sexual advances often run the risk of anything from demotion to dismissal [1]. But in recent years, more women have been coming forward to report such practices – some taking their cases to court. In her report, the Special Rapporteur stressed that sexual harassment constitutes a form of sex discrimination. "It not only degrades the women," the report noted, "but reinforces and reflects the ideas of non-professionalism on the part of women workers, who are consequently regarded as less able to perform their duties than their male colleagues."

Incest and rape

Some females fall prey to violence before they are born, when expectant parents abort their unborn daughters, hoping for sons instead. In other societies, girls are subjected to such traditional practices as circumcisions, which leave them maimed and traumatized [6,7]. In others, they are compelled to marry at an early age, before they are physically, mentally or emotionally mature. Women are victims of incest, rape and domestic violence that often lead to trauma, physical handicap or death.

Prostitution and trafficking

Many women are forced into prostitution either by their parents, husbands or boyfriends – or as a result of the difficult economic and social conditions in which they find themselves. They are also lured into prostitution, sometimes by "mail – order bride" agencies that promise to find them a husband or a job in a foreign country. As a result, they very often find themselves illegally confined in brothels in slavery – like conditions where they are physically abused and their passport withheld. Most women initially victimized by sexual traffickers have little inkling of what awaits them. They generally get a very small percentage of what the customer pays to the pimp or the brothel owner [8]. Once they are caught up in the system, there is practically no way out, and they find themselves in a very vulnerable situation. Since prostitution is illegal in many countries, it is difficult for prostitutes to come forward and ask for protection if they become victims of rape or

want to escape from brothels. Customers, on the other hand, are rarely the object of penal laws. In Thailand, prostitutes who complain to the police are often arrested and sent back to the brothels upon payment of a fine. The extent of trafficking in women and girl children has reached alarming proportions, especially in Asian countries. Many women and girl children are trafficked across borders, often with the complicity of border guards.

DEFINING GENDER-BASED ABUSE

The Declaration on the Elimination of Violence against Women is the first international human rights instrument to exclusively and explicitly address the issue of violence against women. It affirms that the phenomenon violates, impairs or nullifies women's human rights and their exercise of fundamental freedoms. The Declaration provides a definition of gender-based abuse, calling it:

"any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" [9].

The definition identifies three areas in which violence commonly takes place:

- (i) Physical, sexual, and psychological violence that occurs in the family, including battering; sexual abuse of female children in the household; dowry – related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation;
- (ii) Physical, sexual and psychological violence that occurs within the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution;
- (iii) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

The importance of the question of violence against women was emphasized over the last decade through the holding of several expert group meetings sponsored by the United Nations to draw attention to the extent and severity of the problem. In September 1992, the United Nations Commission on the Status of Women established a special Working Group and gave it the mandate to draw up a draft declaration on violence against women. The World Conference on Human Rights, held in Vienna in June 1993, laid extensive groundwork for eliminating violence against women. In the Vienna Declaration and Programme of Action, Governments declared that the United Nations system and the Member States should work toward the elimination of violence against women in public and private life', of all forms of sexual harassment, exploitation, and trafficking in women, of gender bias in the administration of justice; and of any conflicts arising between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

IDEOLOGICAL AFFILIATIONS IN THE THIRD WORLD

The specific identity of a national political system can only be provisionally established by whether it is classified as "socialist" or "capitalist". Such labels may be more or less descriptive of actual patterns of organization and underlying approach to governance. Many governments in the Third World have evolved distinctive economic programs, allowing private economic initiative in some sectors, while reserving others for state ownership. Others have opted for hybrid ideological and political approaches. Regardless of their internal development strategy, the most Third World governments seek to project an international image of non-alignment so as to safeguard their political independence and discourage meddling by the superpowers. Third World leaders of almost every persuasion are eager to avoid getting caught in the maelstroms of geopolitics; this preoccupation undoubtedly explains the widespread controversy in the Third World over Cuba's African presence, because whatever else, Cuba is aligned. Nevertheless, ideological orientation as capitalist or socialist does seem

to have a significant bearing on the degree to which the economy and development strategy of a given society will accord priority to meeting the basic needs of its population as a whole. Despite the immense pressure from the United States, recent studies support the view that Cuba under Castro has done exceptionally well by need criteria, even as compared to Mexico, and despite a series of economic setbacks and obstacles.

As "human rights" were formulated initially as a dimension of liberal, capitalist ideology, what has been required is the elimination of those aspects of human rights that pertain only to capitalism while adding those rights that have been protected heretofore only in socialist conceptions. Not only must the conception of human rights be broadened to take account of socialist perspectives but it must also be depended to include international structural issues. The attempts to achieve a new international economic order are part of the struggle for human rights in the present world setting. Even the notion of "basic needs" can be regressive unless associated with the international, collective expression of economic rights (for countries, as well as for the poor in countries) prefigured in the United Nations Charter of the Economic Rights and Duties of States. Surely part of the squeeze on Third World societies comes from "neo-colonial" patterns, as well as from distortions of international economic relationships reflecting longer term differentials of power, wealth, prestige. It is also increasingly unacceptable to overreact to the socialist critique of Western liberalism by going to the opposite extreme of associating human rights exclusively with basic needs or economic rights, conceived of as the material bases of minimum human existence.

FUNDAMENTAL HUMAN RIGHTS

Having specified some ground rules, we can now clarify the content of human rights that will serve as the criteria for assessing the performance of particular governments. The most obvious starting point of inquiry is the substantial body of international law on the subject. Leaving aside the thorny question of whether and to what extent human rights norms are binding on various governments (including the extent to which the obligations imposed depend on expressions of formal sovereign consent), can we rely on the Universal Declaration of Human Rights (along with more detailed, specialized, and treaty like instruments such as the International Covenants on Economic, Social, and Culture Rights and on Civil and Political Rights) as an adequate description of what is to be encompassed by "human rights"? After all the Universal Declaration is the product of inter-governmental negotiation, it has been widely-endorsed and invoked as authoritative in all parts of the world, and it is an eclectic instrument that seems reasonably sensitive to the concerns of both socialist and capitalist systems. The same generalizations apply, to a lesser extent, to the subsequent international human rights treaties. There are several difficulties, however, with these "authoritative" formulations that rest on international law:

1. The type of eclecticism embodied in the documents of international law includes whatever is vital to either ideology rather than what is fundamental to both; for instance, Article 17 of the Universal Declaration upholds the right of property, obviously inimical to socialist systems, whereas Article 23 affirms the right of everyone to work at a job of his or her choice, obviously inconsistent with the operational codes of capitalist systems.
2. The rights endorsed include those that can be realized only through the dissolution of the coercive sovereign state and the abolition of the war system; for example, Article 28 of the Universal Declaration states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."
3. The corpus of international human rights law is too diffuse in coverage to permit a focus on the most serious, pressing or correctable violations.
4. Some important "fundamental" human rights are omitted, for example, rights to survival associated with ecological balance and threats to use weapons of mass destruction.

5. The normative foundations of human rights are entrusted too exclusively to mechanisms of negotiability and implementation among governments of sovereign states; the legitimacy of naturalist, communitarian, and populist assertions should also be incorporated into the basic conception.
6. The ideological "bias" embodied in international human rights law is somewhat slanted toward the liberal ideas of capitalist society rather than towards the ideas and ideals of socialism, thereby reflecting the relevant weight of the two ideologies in the negotiating setting, and such law offers no proposal for rectifying the international economic order.

Second, there is the right to the fulfillment of such vital needs as food, shelter, health care, and education. We recognize that the fulfillment of this right will depend, in part, on the stage of a nation's economic development. However, we also know that this right can be violated by a government's action or inaction for example through corrupt official processes which divert resources to the elite at the expense of the needy or through indifference to the plight of the poor.

Third, there is the right to enjoy civil and political liberties: Freedom of thought, of religion, of assembly; freedom of speech; freedom of movement both within and outside one's own country; freedom to take part in government.

To focus inquiry, reflection, and policy recommendation, five categories of rights are set forth as a proposal to delimit the subject-matter of human rights:

1. Basic human needs: The rights of individuals and groups to food, housing health, and education; the duty of governments to satisfy these rights, taking into account resource constraints and natural disasters (e.g., drought, flood).
2. Basic decencies: The right of individuals and groups to be protected against genocide, torture, arbitrary arrest, detention, and execution, or their threat; the duty of peoples and governments and their officials to establish an atmosphere wherein these rights can be securely realized, including the protection of the society against para governmental violence of various kinds (e.g., "death squads"), taking into account constraint on governmental capabilities and the threats and tactics relied upon by enemies of the state.
3. Participatory rights: The rights of individuals and groups to participate in the processes that control their lives, including choice of political leadership, of job, of place of residence, of cultural activity and orientation; the duty of peoples and governments to uphold these rights in ways that provide individuals and groups with opportunities to lead meaningful lives, including the freedom to participate in procedures for the shaping and execution of norms.
4. Security rights: The rights of individuals and groups (including those of unborn generations) to be reasonably secure about their prospects of minimal physical well-being and survival; the duty of governments and peoples to uphold this right by working to achieve sustainable forms of national and ecological security.
5. Humane governance: The rights of individuals and groups to live in societies and a world that realizes the rights depicted in 1-4; the duty of individuals, groups, governments, and institutions to work toward this end.

PROVISIONS MADE FOR COMBATING GENDER DISCRIMINATION

The convention on the Elimination of All forms of Discrimination against Women [10] entered into force on 2 September, 1981. By now there are more than 150 States Parties to this Convention. There is no provision under the Convention for inter-State complaints nor complaints from individuals. The committee on the Elimination of Discrimination against Women, a body of 23 independent experts, established under the Article 17 of the Convention, considers periodic reports from State Parties regarding their compliance with the provision of Convention. The Committee makes general recommendations on specific articles of the Convention, or on issue related to the Convention. In 1992, General

Recommendation No. 19 was made on the issue of violence against women which, whilst not specifically mentioned in the Convention, is deemed by the Committee as constituting discrimination against women and, as such, violates, amongst others, Articles 1 to 4 of the Convention. The recommendation suggests specific measures which States should take to protect women from violence. The Committee submits to the General Assembly an annual report which contains a record of the examination of State reports, concluding observations and general recommendations.

Provision of separate convention for women's rights

The object of the convention on the elimination of all forms of discriminations against women is to implement equality between men and women and to prevent discrimination against women, in particular such specific form of discrimination as forced marriages, domestic violence and less access to education, health care and public life as well as discrimination at work. These issues were recognized at an early stage by the Commission on the Status of Women (a body of governmental representatives), which was established in 1946 with the mandate to further gender equality. It was also given the task of drafting the convention. In emphasizing the indivisibility of human rights, the commission has focused attention on development issues as an area which affects women disproportionately. More recently, the commission has been concerned with practical measures to ensure the implementation of women's rights.

CONCLUSION

Many strategies were followed to ensure the women's equality. These are broadly aimed at integrating the human rights of women into all United Nations activities, as well as creating special mechanism to deal with violations of those rights specifically concerning women. To further promote the rights of women, the United Nation convened several world conferences in Mexico City, Mexico (19 June-2 July 1975), Copenhagen, Denmark (24-30 July 1980) and Nairobi, Kenya (15-26 July 1985). The World Conference on Women held in 1985 adopted the Nairobi Forward-Looking Strategies for the Advancement of Women to the Year 2000, which are aimed at the achievement of a genuine equality of women in all spheres of life and the elimination of all forms and manifestations of discrimination against them. The Vienna Declaration and Programme of Action (1993) called for increased integration of women's rights into the United Nation human rights system. It furthermore endorsed the need to recognize the particularity of women's rights and development of means to

implement them, including the more vigorous implementation of All Forms of Discrimination against Women. In a follow-up to the Vienna Declaration, the Commission on Human Rights passed a resolution at its 50th session calling for intensified effort at the international level to integrate the equal status of women and the human rights of women into the mainstream of United Nations system-wide activity. The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly in 1993, calls on all States to take measures to prevent and punish violence against women. In March 1994, the Commission on Human Rights established a Special Rapporteur on violence against women, with the mandate to examine the causes and the consequences of violence against women. The fourth World Conference on Women, which took place in Beijing, China, from 4 to 15 September 1995, confirmed the importance of actions in order to ensure the advancement of women, including their full incorporation into the development process, improvement of their status in society, and greater opportunities for education.

REFERENCES

1. Coomaraswamy R. Human security and gender violence. *Econ Polit Wkly* 2005;???:4729-36.
2. Srijoni S, Sanhita A. The Domestic Violence Act, 2005: A New Direction. Available from: <http://www.indlaw.com>.
3. Amnesty International. Rape and Sexual Abuse: Torture and Ill-Treatment of Women in Detention. All Index: ACT 77/11/91. London: Amnesty International; 1991. p. 1.
4. United Nations. Handbook for Legislation on Violence Against Women; 2010. Available from: <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm>.
5. Moss M, Frank E, Anderson B. The effects of marital status and partner support on rape trauma. *Am J Orthopsychiatrics* 1990;60(3):379-91.
6. See Amnesty International. Women in the Front Line All Index: ACT 77/01/91, 18. New York: Amnesty International; 1991. Blatt D. Recognizing Rape as a Method of Torture. *New York: University Review Law and Social Change Forthcoming Winter; 1992. p. 19.*
7. India: Report of the Mali Math Committee on Reforms of the Criminal Justice System; Some Observations by Amnesty International. Available from: <http://www.amnesty.org>. [Last accessed on 2003 Sep 19].
8. Grjebine L. Reporting on Prostitution: The Media, Women and Prostitution in India. Paris: UNESCO; 1985.
9. Article 2 of the Declaration on the Elimination of Violence against Women.
10. Convention on the Elimination of All Forms of Discrimination against Women Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 34/180 of 18 December, 1979.