



AN ANALYSIS OF THE WOMEN RIGHTS WITH RESPECT TO HUMAN RIGHTS IN INDIAN PERSPECTIVES.

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ABSTRACT

In India, women have had a feeling of great respect since times immemorial. Due to social changes, their status, role and feeling of respect have been shaped. In the ancient time, women were treated like a Goddess, a source of strength to father, husband and son in the society. They were happy and enjoying a respectful life. But now there is a drastic change in women's status in the name of rights and justice. With regards to the violation of human rights, women continue to face immeasurable forms of abuse in society. The new concept of social-globalization tries to give different dimensions to women's identity. In this article the researcher attempt has been made to give an overview of what the forces of globalization have in store for the women of India and how far are these successful in redefining status of women. The author of this paper thinks that abuse of women rights is rampant in many societies in the world. The abuse is attributed to several factors, such as cultural and religious beliefs. The author focuses on genital mutilation and discrimination against women based on religious beliefs.

KEYWORDS: Status of Women, Society, Human rights, Globalization.

1. INTRODUCTION

The status of women in India has been a chequered one as it has seen many ups and downs. According to Pereira (2007), human rights are universally inalienable. All human beings are entitled to these rights at birth. The human rights abuse selected shows a clear conflict between universalism and cultural relativism. In the VEDIC Age 1500-1000 BC, they were worshipped as goddesses. India is a democratic republic with the second largest population (of women as well) in the world. In the Muslim age 1026-1756 AD their status suffered a sharp decline and in the British regime they were looked down upon as 'slaves of slaves' (Sachdeva 1998, p285). In the present society, women in India have established their identity and made progress in the fields of education, health and economics as a result of



democratic governance, evolution of technology and strengthening of the idea of egalitarianism in the society. Feminism is a critical social movement that challenges, and ultimately aims to breakdown, the patriarchal structures of a society. It means different things to different people at different times and has many overlaps, for example the suffrage movement and right to inheritance have been central themes at different times. Women adhere to traditional, religious, and cultural demands that are specific to their communities. Given an option, the majority of women would prefer to abide by the traditions in which they were brought up. Many nations are governed by patriarchal ideologies, which stifle social reforms in society. As such, women have no power to influence oppressive traditions (Brownlie, 2008). Women have been identified as key agents of sustainable development since times immemorial and women's equality and empowerment are seen as central to a more holistic approach toward establishing new patterns and processes of sustainable development.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) can be used to address the issue of violation of women rights. It was adopted by the UN in 1979. Some refer to it as the "international bill of rights for women" (UNDPI, 1987). The provisions of this convention can be integrated into local laws and regulations to address the issue of violation of women rights (UNDPI, 1987). Traditions cultural norms are not static. As such, international and regional legal instruments can be used to combat the abuse of women rights. Women should take the leading role in activities aimed at achieving this. The reason is that women are both targets and 'upholders' of cultural practices. Mechanisms that address women rights must be safeguarded by women themselves. For instance, regional legislators must lobby the government to adopt the provisions of CEDAW (UNDPI, 1987). Inter-Parliamentary Unions (IPUs) between countries can be used to formulate and laws to fight female genital mutilation and religious discriminations against women. For example, laws can be enacted to punish parents who take their daughters through female genital mutilation (UNDPI, 1987).



1.1 Universalism and Cultural Relativism: General Overview

A lot of people are skeptic about the concept of a universal moral language. The skepticism has sparked debate about the universality of human rights in different parts of the world (Pereira, 2007). Cultural relativists contend that culture is the main source of moral rights or rules (Prasad, 2007). Prasad asserts that rights are culturally determined, but excessive relativism is controlled by the universalism of these freedoms. Individuals who subscribe to the idea of cultural relativism contend that human rights vary from one culture to another. They hold that acts regarded as violations of human rights in one culture may be accepted as normal behavior patterns in another culture. The idea that human rights are egalitarian does not take into consideration the fact that societies exhibit cultural differences. The cultural relativism aspect does not provide an inclusive set of universalism. There are cases where human rights have been violated due to this conflict between universalism and cultural relativism.

2. UDHR AND WOMEN RIGHTS

Human rights are fundamental rights everyone has by virtue of being human. They are inherent and inalienable in every person regardless of their status in any society. Human rights cannot be granted or withdrawn or taken away. In the introduction to the Universal Declaration of Human Rights (UDHR) in 1948, it is proclaimed as: ... a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples of territories under their jurisdiction. (UDHR: proclamation)



2.1 GLOBALIZATION AND HUMAN RIGHTS

It will be worthwhile to discuss, once more, what human rights are? The political scientist Alison Brysk, in the introduction to her edited volume *Globalization and Human Rights* (2002: p.3) expresses the legal approach to human rights: Human rights are a set of universal claims to safeguard human dignity from illegitimate coercion, typically enacted by state agents. These norms are codified in a widely endorsed set of international undertakings: the 'International Bill of Human Rights' (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Social and Economic Rights); phenomenon-specific treaties on war crimes (Geneva Conventions), genocide, and torture; and protections for vulnerable groups such as the UN Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women. Donnelly (2003: p.10) analytically explains the essence of Human rights as equal rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all). They are also inalienable rights: one cannot stop being human, no matter how badly one behaves or how barbarously one is treated. And they are universal rights, in the sense that today we consider all members of the species *Homo sapiens* "human beings," and thus holders of human rights. The above definition of human rights places the women in the same category as any other person and unmistakably attributes the equitable dignity and rights at their disposal.

2.2 SOCIAL ISSUES AND WOMEN EMPOWERMENT IN INDIA

In India also, women need to be encouraged and empowered in personal, familial, economic and political fronts. With regards to the violation of human rights, women continue to face immeasurable forms of abuse in society. Changes based on verbal persuasion, affective status and modeling behavior can lead to significant changes and redefine the status of women. Though it is debatable but we can consider Kabeer's (2001) definition: "The expansion in people's ability to make strategic life choices in a context where this ability was previously denied to them" as relevant. The efforts of the Indian state in the direction of achieving the ideals of human rights are definitely encouraging but at the same time, it



cannot be denied that they have not been responsive enough to the specific demands of the Indian situation. Every time a problem concerning women catches limelight, it is treated as a single issue, a kind of tumor, which can be surgically removed. Never ever, an attempt is made to seek the support of the community itself to dig the roots of the problem.

2.3 Religious Based Discrimination against Women

Religion creates a solid foundation and pillar for cultural practices. However, discrimination against women is rampant within religious circles. For example, Islam condones what universalists perceive as human rights violations. Islam has disregarded the universalist point of view, opting for the cultural relativism concept that supports the definition of human rights on a cultural basis (Hashemi, 2008). Gender-based sanctions defined by sharia rules have encouraged segregation of women in the society. For instance, sharia laws postulate that women must be married to Muslims and to one man at a time. Muslim women are prohibited from choosing their spouses. Also, married women are forbidden from flirting or behaving provocatively in front of men, other than their husbands (Penna & Campbell, 2008). Islamic marriage rules regarding men are less restrictive compared to those governing women. Men can marry up to four Muslim women. Also, men have the right to retain or divorce their wives. Universalists are of the view that Muslim women have internalized and accepted these prescriptions. They are brought up believing that they are inferior to men (Brownlie, 2008).

3. PATRIARCHAL SOCIETY AND WOMEN

Patriarchy is a social system in which positions of dominance and privilege are primarily held by men. Despite the longstanding and vigorous women's movement, patriarchy remains deeply entrenched in India, influencing the fiber of its political and social infrastructure and determining the opportunities available to women and men. The negotiation and conflict between patriarchy and the women's movement are central to the improvement of the status of the women in society. This is important to create socially significant knowledge that can be used by the feminist movement to work towards social change, a desire that is shared by many academic feminists: Our desire to do, and goal in doing research, is to



create useful knowledge, knowledge which can be used by ourselves and others to 'make a difference' (Kelly et al., 1994 pg. 28) There are some rights reserved for women but the problem is of their execution in a proper fashion. Despite the initiatives made at the level of the UN, there is also a critical and pessimistic stance towards the role of human rights in women's lives. There are now about two dozen significant international instruments purporting to protect the rights of women or remedy-based inequalities. But rights mean little without corresponding remedies, and remedies are unlikely without institutions. (Fellmeth, 2000 pg. 727). Different ideologies produce different meanings of what human rights are, to the extent that '... the rhetoric of human rights is really a description of ideals – and a controversial set of ideals at that' (Heard, 2001 pg. 1). The modern conception of human rights is of '... international moral and legal norms that aspire to protect all people everywhere from severe political, legal, and social abuses' (Nickel, 2003). A simple example of patriarchy conflicting with the women's rights is right to inheritance in North India. Though women are entitled to equal share in the property but the women are so brain washed that hardly any dares to even think of claiming their legitimate dues for the fear of the social backlash.

4. INDIAN TRADITIONS RELATED TO WOMEN AND MODERNIZATION

It is comparatively difficult to challenge the traditional legal mechanisms. Traditional societies continue to be treated as objects, like machinery, which can be made desirably functional by replacing some old parts with new ones. When James Mill wrote in his History of India in 1817 that the condition of women in a society is an index of that society's place in civilization, he understood rightly that women is the index of modernity. In one swoop, "women," "modernity," and "nation" became essential and inseparable elements in a connected discourse of civilization (D. Chakrabarty 1994). So, we find that the rights of women are in between two worlds of tradition and modernity. Women's struggles for freedom and equality have been a vibrant part of all social movements for transformation and social justice through history. Mary Wollstonecraft wrote in 1792 in her Vindication of the Rights of Women that the struggle for rights of women is located within the personal



space – the home and the family; and within the public space – the political and economic world. We observe that most of the women are undergoing struggles due to Patriarchy and social pressures, Caste based discrimination social restrictions, inadequate access to productive resources, poverty, insufficient advancement facilities and powerlessness etc.

5. INDIAN LEGISLATION AND WOMEN EMPOWERMENT

Today, women in India are victims of verbal assaults; rejecting, degrading, abusive expectations; unpredictable behavior, and emotional blackmail etc .There are a few women specific sections in Criminal Procedure Code of India. In section 160 (1) of the Code, there is provision for women where any police officer making an investigation in a crime may, by order in writing, require the attendance before himself of any person as witness being within the limits of his own or any adjoining police station. If such person is a woman, in that case her statement will be recorded at her residence only. In section 46 (4), there is specific provision to arrest a woman where except in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, a woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made. Whenever a female is searched, the search shall be made by another female with strict regard to decency as per provision made under 51 (2) of the Code. In section 26 of Code, if any offence of Rape is tried under penal provision of section 376 and sections 376A to 376D of Indian Penal Code, the trial court shall be, as far as practicable, Court presided over by a woman. In case of a rape victim, further provision has been made under section 157 of the Code. In investigating the offence of rape, the investigation shall be conducted at the residence of the victim and, as far as practicable by a woman police officer, and if the victim is under eighteen years of age, she should be questioned in the presence of her parents or a social worker of the locality. The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station and in some incidents of rape where it took place under custody (Sec 173 of Cr.P.C.). The trial of offence committed for rape should be held in camera as per provision under 327 of



the code. The reporting and printing of the rape trial can be done provided the identity of the parties can be kept secret. In case of medical examination of women after arrest, the examination of the body shall be made only by or under the supervision of a female registered medical practitioner as per provision under section 54 of Cr. P. C. of India. But legislation alone cannot normally solve deep-rooted social problems.

6. CONCLUSION

Cultural laws take precedence over universal laws. The issue of violation of women rights needs a long term solution. To this end, it is important to note that cultural relativism is not superficial. In countries like India majority of women find themselves stripped off the benefits of social security; government subsidies and protection of labor rights etc. On the other hand there are possibilities of better education facilities and opportunities in the transnational sense which are very attractive to the privileged few. Sporadically, women in India have made progress in the field of education, health or economics as a result of technological developments or because of the process of social evolution. Though in very small numbers, today, India can boast of successful women in almost all spheres of life. Women of today are doctors, engineers, pilots, journalists, teachers, administrators, judges, state governors, ambassadors, members of parliament and ministers. In spite of these achievements the fact remains that ordinary woman's condition is a gloomy reality. Indian women still have a long way to go. There are many problems like Dowry, Girl Education, Female Feticide etc which can be largely attributed to patriarchal mindsets which act as strong barriers in the way of women empowerment. The silver lining is the globalization and explosion of information technology which are proving a double edged weapon in emancipation of women. To address the issue of violation of women rights, an internal and gradual movement that involves both young and older generations should be formed. When this happens, the adoption of universalist rules will not derail mechanisms meant to ensure that women enjoy their rights.



REFERENCES

1. Brysk, Alison, ed. 2002 *Globalization and Human Rights*. Berkeley: University of California Press.
2. Chakrabarty, Dipesh. 1994. "The Difference-Deferral of a Colonial Modernity: Public Debates, Domesticity in British India, David Arnold and David Hardiman, *Subaltern Studies VIII, Essays in Honour of Ranajit Guha*, Oxford University Press, New Delhi.
3. Donnelly, Jack 2003 *University Human Rights in Theory and Practice*. Ithaca: Cornell University Press.
4. Fellmeth, A.X. (2000) *Feminism and International Law: Theory, Methodology and Substantive Reform*, *Human Rights Quarterly*, 22, 658-733.
5. Nickel, J. (2003) *Human Rights*, *The Stanford Encyclopedia of Philosophy* [Online Encyclopedia edited by E. N. Zalta].
6. Heard, A. (2001) *Human Rights: Chimeras in Sheep's Clothing?*
7. Kabeer, Naila. "Reflections on the Measurement of Women's Empowerment." In *Discussing Women's Empowerment-Theory and Practice*, 2001, *Ida Studies* No. 3. Novum Grafiska AB:Stockholm.
8. Kelly, L., Burton, S. and Regan, L. (1994) *Researching Women's Lives or Studying Women's Oppression? Reflections on What Constitutes Feminist Research*, in M. Maynard and J. Purvis (eds) *Researching Women's Lives from a Feminist Perspective*, London: Taylor and Francis.
9. Sachdeva, D. D. R. (1998) *Social Welfare Administration in India* Kitab Mahal, Allahabad.
10. Sinha, S.P(ed) *Hinduism and Human Rights.* Pp. 237-247 in Ven P. Nanda *Hindu Law and Legal Theory*, *International Library of Essays in Law and Legal Theory*. Aldershot: Dartmouth.