
European and International Law



**Critical Evaluation of International
Treaties and Conventions on Women's
Human Right. A Perspective**

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Abstract: Human right is a complete concept within it which never tends to divide the identity of men or women but simply say human. The ways in which women experience human rights and human right violations are unique. While human rights are often understood as the rights that everyone has by virtue of their humanity, the assumption that all humans have the same experiences and needs is particularly problematic for women. The human right revolution which has become a core principle of almost all the laws of the nation around the world discern that its essence is not just in enumerating it into a piece of law but practically applying it and respecting it, as an eternal part of justice. There is an urgent need to adopt a balanced approach in identifying the rights of women as human right. At the same time identifying this right individually and as part of a universal phenomenon of human right should be the concern of every woman in every walk of life. The present study undertakes a doctrinal research and attempt to critically analyze the practical application of human right norms from both national and international law perspective, thus drawing the attention of human right activists to this problematic area of concern.

Keywords: theory of justice; UN Charter; feminism; international law

1. Introduction

“All human beings are born free and are equal in right and dignity”. “State shall not deny to any individual equality before law and equal protection of law”. “Everyone shall have right to effective remedy by competent national tribunal for any act violating the fundamental right granted to them by constitutional law.”²

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² Also see principles of UDHR 1948.

The nature have endowed man with innumerable rights and freedom, the generic term man, is quite wide enough to include women also, though natural function of men and women seems to be differentiated by inborn nature of two opposite sex, the metaphysic of natural law have never denied the basic right of the both. Unlike nature, the attitude of the human society toward women seems to be otherwise. In present era the progressive atmosphere of human civilization, has witnessed transformation of social and economical policy for the betterment of individuals lives adopting a humanistic approach. In spite the existence of several policies in her favor, women seem to be deprived of her right (Neil, 1975, pp. 132-146). Is it due to the absence of a law exclusively defining her right and status in the society? Surely this cannot be the reason; there exist enough national policies and international convention to protect the dignity of women but yes the absence of proper strategically body to implement this law on one side and ignorance of their right on the other, contribute to existing vulnerable situation of women.

The above said proclamations are the basic principal and objectives of both national & international law as such; human right and fundamental freedom are the birth right of all human being, their protection & promotion shall be the first responsibility of the state. The world conference on human right reaffirmed the solemn commitment of all states to fulfill their obligation to promote universal respect for observance and protection of all human right and fundamental freedom in accordance with the Charter of United Nation, instrument relating to human right and international law. Though global commitment to equal human right for women has progressed rapidly during last fifty years, many conventions and treaties were also adopted to provide wide range of right for women (Neil, 1975, p. 132). In spite of this, instruments have not facilitated a practical realization. To take for example physical and psychological abuse of women, domestic violence, women trafficking and rape in war which in fact is a least condemned war crime, etc. such incident insists women globally to condemn the act and demand their status as human being in the eye of law rather than an object in the eye of society. (Neil, 1975, p. 131)

Several international conventions which are used as an instrument for transforming status of women, caste obligation on the state to eradicate inequality on gender basis to understand what equality are and how it can be achieved. Such obligations are in fact legally binding under international law and the courts have to take cognizance of the meaning and scope. Mere ratification of treaty shall not be sufficient it should be subjected to periodical scrutiny by an independent body or a

committee which shall demand its accountability for its obligation under treaty law. Feminism which has become a global movement shapes and reflects the interest of the women in every region of the world. It symbolizes an awareness of oppression on domestic, social, economic level, accompanied by a willing to struggle against such subjugation.

Further UN report on women clearly states that the world 2.8 billion of women remains humanly largest marginalized group.¹ Although there is a formal recognition of women's right and legal acceptance of women's equality with man, extensive data gathered by the UN show that women continues to face discrimination.² They are least presented in public life almost everywhere. Fortunately the issue of women's equality is now acquiring a new significance and forceful feminist movement has created an ideological mandates for actualizing a substantial equality between sexes. Hence how far law has been able to grant equality of status and opportunities to women must be examined. Human right remains both the system of reality and an ever expanding set of objectives, fulfillment of which is possible only through a process of constant struggle.

2. Concept of Women's Right as Human Right

Attempt to understand the meaning of human right is crucial in any enquiry of human philosophy particularly in international sphere where diverse culture are involved, where enforcement mechanism are fragile. Understanding the term human right will enhance one's ability to judge several issue such as, which rights are to be regarded as absolute, which are universal, which right are to be given priority, which can be overruled by other interest, which calls for international pressure and which demands programme for implementation.

Genesis of the term human right lies in both philosophical and moral enquiry. The object here is not to study the moral or philosophical theory of human right but to understand from their view point the moral or philosophical meaning of human right (Symonides, 2000, pp. 31-66). Accordingly human right helps to devise a translation formula which will permit men and women to speak to each other across the gulf of creed and dogma, which could be a necessary exercise if there is to be universal recognition of human right principal (Bhaskar, 2001, p. 14). Moral philosophy on other hand helps to delineate the structure of human thought in a

¹ 51st Session Agenda 11, United Nation Commission on Human Right.

² Amnesty international report 1998.

manner which reveals the implication of thinking and speaking about the right in particular way.

It bears the emphasis at this point, that concept of human right interrelates to human. These are the rights that human being acquire simply because they are human. Some scholars identify these rights as natural inalienable, moral and universal. The second word in the term human "Right" though controversial is not necessarily a trivial. As described by Professor Januz Symonides (2000, pp. 5-14), "Right is a chameleon like term which involves variety of legal relationship". Right in a strict sense involves correlative duty, sometime right is used to indicate immunity or privileges and sometime it refer to the power to create legal relationship. In turn if right is classified into claim against government, individual private organization it shall lead to complexities. For instance it may involve wide variety of interpretation which may not necessarily support individual human rights demand. (Pandey, 2006, pp. 48-182)

The point here is to know whether the concept of human right itself is discriminatory, a peep into modern theory of human right based on justice, dignity and equality of respect and concern reveals that indiscriminating justice should be the first virtue of any social institution.

Monumental thesis of John Rawl's "A Theory of justice" reveals that the role of justice is crucial to understand human right. The first principal of Rawl's theory is that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with similar system of liberty to all. As per this modern theory of human rights discrimination on the ground of sex can victimize both men and women. But discrimination on the basis of gender victimizes on range of ground alongside sex. Nothing can stand to reject the statement that women are human; as such their rights are inalienable integral and indivisible part of universal human right. Human right abuse against a woman is not just about violation of the integrity of person who happens to be a woman but violence to her individual personality and legal status. The stem of discrimination lies in deep sealed cultural attitude which degrade the female sexes. (Pandey, 2006, p. 7)

Suffice to recall, when UNO established the political rights of women, it were an exception rather than a rule. When UDHR was been drafted it was proposed that its first Article should be read as "All men are brothers", Feminist perspective of human right has also emphasized the male bias. The language and content of the earlier proposal of UN were severely criticized; it was proposed that the

fundamental structure underpinning the human right discourse should be altered to acknowledge.

Violation against women, rather than being satisfied with the creation of a special category of human right for women equalize the status of women with her copartner. It's true that UN have failed to incorporate the female perspective into its machinery at fundamental level, example failure of UN to detect systematic sexual violence against women during fact finding mission to Rwanda after 1994 genocide. With regard to this ICRC has also failed to acknowledge hoe right to life have a specific application to women.

Human right norms are only recently merged with parallel process of advancement of women, improvement of the status of women. Human right system is evolving to incorporate a female perspective through creation of specialized instrument and function. This includes convention and committee, specifically on women's right. The creation of special Rapporteur on violence against women in the year 1994, the adoption of General Assembly Declaration on elimination of violence against women and key human right NGO such as Amnesty International develops way for women's human right sectors.¹ Here there is a need to envision a society which will respect her dignity and freedom. For human right of women is a collective right to see and accept her as a person with capacity to decide or act on her own behalf and to develop her full potentiality. As such it has been unanimously expressed that women's right is a human right.

3. International Instrument and Mechanism for Protection of Women's Human Right

There are several international conventions and mechanisms which set universally accepted procedure in relation to human right and also to eliminate discrimination against women. Women's rights are human right. In the past human right advocate often tended to treat women's right separately from human right. But such an attitude is rapidly changing. In recent decades, issues relating to women's right have gained a prominent place in the global policy making arena, especially after the world parliament has equally recognized the right of men and women.² UDHR which gave birth to major human right instrument provide range of right and

¹Amnesty report 1999, 15 steps to protect women.

² In 1945, the UN Charter afforded to women and men equal economic, social, cultural, political and civil rights.

protection for women against women also. Violence against women impairs or nullifies the enjoyment of her right and fundamental freedom. The discussion below provides a brief overview of major policy, instrument, resolution and commitment made by member state of United Nations and regional intergovernmental organization on issues specifically relating to protection of women's right and dignity both in time of peace and war.

3.1. Convention on Elimination of all Form of Discrimination against Women

CEDAW¹ has provided women with a framework to structure their own national debates and advocacy related to attaining the goal of gender equality. Rectified by 177 countries, it was the first legally binding international convention to set out principles on the rights of women in all fields. Countries that have rectified it have an obligation to implement CEDAW. It prohibits discrimination, seeks to eradicate it in all areas of women's live and prescribes the measure needed to ensure that women worldwide are able to enjoy their right. CEDAW covers both public and private act of violence and sets out recommendation for states to address violence against women including legal protection prevention and reporting. CEDAW calls for increasing women's participation in decision making process. This methodology has been used by national and local government as well as regional intergovernmental organization. By adding another star to its project CEDAW optional protocol came into force in 1999. By 2004, 75 states had signed the protocol of which 64 had rectified it. The optional protocol strengthens enforcement and encourages compliance with the convention. It allows non state actors individuals or organization to submit written claims of violation of rights directly to the committee that monitors CEDAW compliance. This is known as communication procedure, the received complaints are further investigated which in fact is mandate on the committee.

Trafficking in persons including women and children has been a matter of great concern especially after the outbreak of sex racket and excessive flesh trading business, any lenient attitude of law to handle the case would worsen the situation resulting increase in trafficking. This alarming situation calls for an effective action to prevent and combat trafficking.

¹ Adopted by the United Nations on 1979.

3.2. Declaration of Elimination of Violence against Women

Declaration on elimination of violence against women recognizes the urgent need for the universal application of rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings. It concerns that violation against women is an obstacle to the achievement of equality development and peace. Taking into account the above declaration and the work of special reporters shows that there are gender based violence such as battering, sexual abuse, sexual slavery, rape, sexual harassment, exploitation and forced prostitution as well as violence against women resulting from cultural prejudice, racism, xenophobia, pornography, armed conflicts, religious and anti religious extremism and terrorism are incompatible with dignity and worth of human personality¹. The declaration urges the government of all member states to take urgent action to combat and eliminate all form of violence against women in private and public life.

3.3. Vienna Declaration and Programme of Action

The declaration and programme of action was adopted by the world conference on human right on June 25th 1993. The world conference on human right considered that the promotion and protection of human right is a matter of priority for the international communities, the conference further affords a unique opportunities to carry out a comprehensive analysis of the international human rights system and the machinery for protection of human rights in order to enhance and promote complete observance of those right in a just and balanced manner. It recognizes and affirms that the human person is the central subject of human rights and fundamental freedoms and hence should be the principal beneficiary of these rights and freedoms. Deeply concern by various form of discrimination and violence, to which women continue to be exposed all over the world, Declaration recognizes that the activities of the United Nation in the field of Human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field.² In particular, the world conference on Human Rights stresses the importance of working toward the elimination of violence against women in public and private life. The world conference of Human Right calls upon the General Assembly to adopt the draft Declaration on violence against women and urges states to combat violence against women in situation of armed conflict. Violation

¹ The Hindu, News paper, February 18th 2002, p. 6.

² [http:// www.amnestyusa.org/women](http://www.amnestyusa.org/women) @12.pm on 26/4/2007.

of women's right and dignity at the time of war is irreverent to the principles of International Human Rights and Humanitarian Law. All violation of this kind including in particular murder, systematic rape, sexual slavery, and forced pregnancy requires a particular effective response. (Kriangsak, 2001, pp. 112-126)

3.4. Beijing Declaration and Platform of Action

The year 1995 witnessed World Conference on women in Beijing China. Beijing Declaration and platform for Action was produced by member states that highlighted twelve critical areas of concern regarding women. The Declaration is not a binding document, but since its conclusion reached through consensus and states are signatories to it, they shall have certain commitment to fulfill their obligation. Beijing Declaration acknowledges the voices of all women's throughout the world and honors those women who defeated the challenging circumstance and paved way of hope to the youth women generation. It reaffirms women right as human right and recognizes absolute right of self dignity of womanhood, aims to prevent and eliminate all forms of violence against women and girls by ensuring the success of the platform for Action which will require a strong commitment on the part of the Government, International Organization and institution at all levels. It concerted action by all to create a peaceful, just, humane and equitable world, including the principles of equality for all people of all ages and from all walks of life. The platform for action is an agenda for women empowerment. Thus the objective of Platform for Action is the full realization of all Human Right and fundamental freedom of all women, which is essential for their empowerment. While it must be kept in mind that the states are under the duty regardless of their political, economic and cultural system to promote and protect all human right and fundamental freedom. The implementation of this platform, through national laws, formulation of strategies, policies, programmes and development priority is the sovereign responsibility of each state.¹

Apart from the above declaration and convention there are two documents on obscenity the Agreement for Suppression of the Circulation of obscene publication and the International Convention for the suppression of Circulation of Traffic in Obscene publication. International legal instrument can never be fully absorbed into our system unless we convince ourselves and our government that the

¹ Also see Amnesty report 1999: 15 step to protect women.

betterment of the country depends on the de facto recognition of women as equal partner. In particular the social relationship of man and women has to be changed within the context of their personal and working lives in the notion of equality, equity and justice. The struggle has been waged through an interactive process that derives its impetus from women's movement, nationally and globally. It welcomes government and international organization to create local and international dynamism to inform each other about the changes. Thus in an attempt to address the inequalities and disadvantages suffered by women, several interventions were put in place at the International level.

4. The UN and Women's Human Rights

Feminist perspectives of human rights have emphasized the male bias from which international human rights law, the language and content of human rights treaties and the functioning of the United Nations itself operate (Worth & Chink, 2000, p. 125). They thereby propose that the fundamental structures underpinning the human rights discourse should be altered to acknowledge violations against women, rather than being satisfied with the creation of a separate category of human rights for women, which merely reinforces their status as an optional extra.

It is true that the UN has indeed failed to incorporate the female perspective into its machinery at a fundamental level. Examples of this include using only the male pronoun in the major treaties; the ICCPR's failure to acknowledge how fundamental rights such as the right to life have a specific application to women. For example female infanticide or honor killings which are outside the boundaries for redressing which apply to violations committed by a "person acting in an official capacity - And the failure of the UN to detect systematic sexual violence against women during a fact finding mission to Rwanda after the 1994 genocide.¹

5. State Responsibility for Women's Human Rights

The state has an obligation to *respect* women's human rights through its direct action, agents and structures of law. A state's constitution must recognize equality between women and men in all spheres; state or official actors must be held

¹ "Has international Human Right Law failed" by Liz Harrop, Tiger Tail communication. Document <http://www.tiger-tail.org>.

accountable when they perpetrate violence against women; private actors who perpetrate violence against women must be prosecuted.

The state has an obligation to *protect* women's human rights. The state must take all necessary measures to prevent individuals or groups from violating the rights of each individual. As such, the state must take affirmative steps to prevent direct and indirect discrimination against women. Women must be fairly represented in government and have legal access to all forms of employment. The state is also required to *fulfill* the human rights of women by ensuring opportunities for individuals to obtain what they need and to provide that which cannot be secured by personal efforts. This obligation for women and men ranges from providing food, water, housing and education to ensuring the conditions necessary for women's organizations to form and function.

International law has developed the standard of *due diligence* as a way to measure whether a state has acted with sufficient effort to live up to its responsibilities to uphold human rights, i.e. to respect, protect and fulfill. As a standard that has been incorporated into UN documents, *due diligence* is a term used to describe the minimum effort which a state must demonstrate to fulfill its responsibility to protect individuals from human rights abuses.¹

6. Conclusion

Human rights of woman throughout the life cycle are inalienable, integral and indivisible; significance of this right is emphasized under national and international law. In pursuance to its protection, several convention and declarations are adopted. Mere ratification of such convention will not automatically confer right on woman. Further the government should undertake step to eradicate discrimination which denies women's human right. It should ensure that women are treated equally in the eye of law, women evidence should receive the same respect as that of the men in all judicial proceeding and should not be punished harsher than the men for the same offence. Where it is alleged that discrimination in the administration of justice contributes to the human right violation against women an independent commission should be appointed to investigate and make recommendation to rectify the situation. All this is possible if the state give significance to both national law as well as international convention.

¹ <http://www.amnesty.org/en/campaigns/stop-violence-against-women> and also see Amnesty international Report 2003, Human Right are Women's Right.

These conventions have to be activated and women must claim their right. The gap between the existence of right and their effective enjoyment also derives from lack of commitment by government to inform men and women alike about them. Almost all parties to the treaty and convention should rectify international legal instrument which provide for the protection of human right of women and girl children. International legal instrument can never be fully absorbed into our system unless we convince our self and our government that the betterment of the country depends on the de facto recognition of women as equal partner. In case, if they have already rectified these instruments then they should examine any limiting reservation with a view to withdrawing them. This is particularly important in case of the Convention on All Form of Discrimination against Women were the commitment of government is examined by the extent of reservations.

7. References

- Agarawal, Nomitha (2002). *Women and law in India*. (University of Delhi, India) New century publication. (original the University of Michigan).
- Bhaskar, B.R.D. (2000). *Human Right* . Vigil India Movement. New Delhi.
- Iyer, KrishnaV.R. (1990). *Human Rights and Inhuman Wrongs*. New Delhi India: B.R. Publication.
- Moyer, K.E. (1976). *The psychology of Aggression* ' 3rd Ed. New York: Humper and Row.
- Myere, Davis G. (2007). *Social psychology* 7th Ed. Worth Publishers.
- Sir Lautpacht, H. (1950). *International Law and Human Right*. 2nd Ed. F. A. Praeger.
- M.C. Neil Jean (1975). *Feminism Femininity and the television series: A content analysis*. Taylor and Francis, Routledge.
- Parashar, Archana (1999). *Engendering Law*. Lucknow: Eastern Book Company.
- Pandey, J. N. (2006). *Constitutional Law of India*. Allahabad: Central Law Agency.
- Symonides, Janusz (2000). *Human Right. Concept and Standard*. Ashgate.
- Kriangsak, Kitticahisaree (2001). *International Criminal Law*. Oxford University Press.
- Worth, Charles & Chink (2000). *The Boundaries of International Law. A Feminist Analysis*. Juris Publishing, Inc.
- *** <http://www.amnesty.org/en/campaigns/stop-violence-against-women>, on 23 may 2011@ 1.30 pm.
- *** (1979). Convention of Elimination of Discrimination against Women.
- *** (1976). International Covenant on Civil and Political Right.
- *** (1976). International Covenant on Economic, Social and Cultural Right.