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WOMEN'S RIGHTS AS AN EXTENSION OF HUMAN RIGHTS

AUTHORED BY - DEVIKA B

We are all entitled to human rights. These include the right to live free from violence and discrimination; to enjoy the highest attainable standard of physical and mental health; to be educated; to own property; to vote; and to earn an equal wage.

Imagine, as we go into the 21st century, needing support for such a simple statement: that over half of the world, meaning women, are indeed humans and have human rights. This apparently revolutionary concept has resulted in a powerful, emerging movement in the international human rights arena which urges the recognition and acknowledgement of women's rights as human rights.

But across the globe many women and girls still face discrimination on the basis of sex and gender. Gender inequality underpins many problems which disproportionately affect women and girls, such as domestic and sexual violence, lower pay, lack of access to education, and inadequate healthcare.

For many years women's rights movements have fought hard to address this inequality, campaigning to change laws or taking to the streets to demand their rights are respected.¹

Considering rising atrocities and discrimination against women, The United Nations Commission on the Status of Women (CSW), after more than thirty years of work, prepared 'The Convention On the Elimination of All Forms of Discrimination against Women (CEDAW).' The CEDAW was adopted by the United Nations General Assembly (UNGA) on 18th December 1979, however, it came into force as an international treaty on 3rd September 1981. Today, around 189 countries have ratified CEDAW & 165 have ratified CEDAW-OP (Optional Protocol).

¹ If you defend human rights, you defend women's' rights. (2023) Amnesty International. Available at <https://www.amnesty.org/en/what-we-do/discrimination/womens-rights/> (Accessed: April 2, 2023).

In its Preamble, the CEDAW explicitly acknowledges that “extensive discrimination against women continues to exist”, and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity”. In its approach, the Convention covers three dimensions of the situation of women. In addition, and unlike other human rights treaties, the CEDAW is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.²

Women constitute the majority of the world’s population, but there is still no society in which women enjoy full equality with men. They often face specific discrimination, even in countries which grant legal equality to both sexes; women are often economically disadvantaged and suffer discrimination. National and local governments should give particular attention to this matter, because the rights of women, to own land, property and housing, often determines their quality of life and the prospects of their children. The extension of the rights of human being to include women came about by a gradual process of change in societies, as the part which women played in society changed and they increasingly entered into public life.³

At this time, it is imperative to analyze the question of human rights and gender-based violence against women from a perspective that offers the possibility of cultural change. To do so, it must be borne in mind that this issue is directly related to the unequal distribution of power in society and that radical changes are therefore needed in this area. The type of social change which demands that women’s rights be upheld should cast women —with all their different ways of thinking, feeling and acting— as leading actors in this process of change. Their historical and day-to-day experiences should be taken into account in this substantive reformulation of human rights, since the definition and application of these rights must not be separated from people’s daily lives.

Women’s Rights are Human Rights

“Women’s rights are human rights” is a historic slogan of the women’s rights movement. It encapsulates the notion that women’s rights are an inalienable, integral and indivisible part of universal human rights. This principle was recognized by the Vienna Declaration and

² *Women’s Rights in India An Analytical Study The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) The Indian Constitution, Legislations, Schemes, Policies & Judgements, National Human Rights Commission*

³ *Women's Rights : A Historical Perspective - jstor.org* (no date). Available at: <https://www.jstor.org/stable/41856500?read-now=1> (Accessed: April 3, 2023).

Programme of Action adopted by The World Conference on Human Rights in Vienna in 1993. Discrimination based on sex is prohibited under almost every human rights treaty. In addition, there are treaties and expert bodies specifically dedicated to the full realization of women's human rights.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the core International human rights instrument for the protection of women's human rights.

It requires States Parties to:

- Eliminate violations of women's rights whether committed by the State, private persons, groups or organizations;
- Take measures to modify social and cultural patterns of conduct based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women;
- Take temporary special measures to end discrimination against women until substantive gender equality is reached; and
- Eliminate discrimination against women in areas such as political and public life; education; employment; health care, including sexual and reproductive rights; land, property and housing; nationality laws; marriage and family life.⁴

Since the adoption of the Universal Declaration, States have repeatedly emphasized the universality and indivisibility of human rights. At the World Conference in Vienna they specifically recognized that women's human rights are part of universal human rights and they have subsequently reaffirmed this, including at the Fourth World Conference on Women.

Despite these commitments by States, the question of universality has often been raised when States have tried to justify violations of women's rights in the name of culture. The Special Rapporteur on violence against women in her report on cultural practices within the family that are violent towards women highlights female genital mutilation, so-called honour killings of women, son preference and witch hunting

As examples of customs that have been defended under the pretext of being part of a given culture. Stereotypes and cultural norms which dictate prescriptive roles for women in society

⁴ Office of the united nations high commissioner for human rights (no date) Manual on Human Rights Monitoring and Protecting the Rights of Women. OHCHR. Available at: https://www.ohchr.org/Documents/Publications/Chapter28_MonitoringAndProtecting.pdf (Accessed: April 3, 2023).

also have a negative impact on women's enjoyment of their human rights. For instance, girls' lack of access to education has sometimes been justified on the presumption that, as mothers and wives, they will not enter the workforce and thus do not require education.⁵

For several years, women have been working around legal rights in the domestic law context. But as we have gained experience in that area there has been a feeling that we are calling upon the benevolence of the state and the men who are in powerful positions – in the parliament and in the cabinet and therefore able to pass laws – to allow women to enjoy such rights. The fundamental difference with working within a human rights framework is the fact that you are starting from a position of entitlement – that you are not begging or calling upon someone's benevolence, that you are demanding something that you are entitled to by virtue being a human being. That recognition is extremely empowering for the women who are activists and facilitating the process, but it is also transformative for the women they are talking to and working with on a daily basis. When a woman starts to reflect on what it might be like to have freedom from violence in the home and in the community, the idea that we are entitled to that freedom can provide great motivation and energy to get through a difficult situation.⁶

By using the human rights framework women have been able to transcend national boundaries, it is possible to access the strategies of the women's rights movement in other regions and in other countries, and to adapt them to the human rights concerns in our own context. This can happen because the underlying human rights principles are the same. The way they have been translated to the national level may differ, but the basic principles remain the same. So this common human rights framework has facilitated networking, mutual support, and so on. Another reason why working within this framework has been important is that it has offered real opportunities for women to influence policy. In particular, the UN World Conference on Human Rights (Vienna, 1993) saw the presence of a very strong movement for women's inclusion in human rights agendas. For the first time governments were forced to pause and listen and to see what is wrong with the current system from a the perspective of women. Since then, women have worked to convert the momentum created around Vienna into opportunities for more gains, whether at the Fourth World Conference on Women (Beijing, 1995) or the

⁵ Women's rights are human rights. Available at: <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> (Accessed: April 3, 2023).

⁶ Women's Rights as Human Rights, Research Gate. Available at: https://www.researchgate.net/publication/309647011_Women's_Rights_as_Human_Rights_Local_and_Global_Perspectives (Accessed: April 3, 2023).

commission on Human Rights in Geneva. And that momentum at the international level has been played out at the national level too. Organizations and women's rights activists have seized the opportunity to take advantage of the international momentum to make demands for changes in national policy and legislation in areas such as domestic violence and property rights.

It is important to emphasize that the women who work to challenge the injustices experienced by women around the world are human rights defenders, even though they have not been named as such. In large part this lack of recognition exists because of a narrow (albeit important) definition of human rights violations that has come to dominate the human rights system over the last fifty years. Dominant approaches to human rights focus on state-sponsored violations such as illegal detention or torture by security forces so that many violations of women's human rights which occur in private contexts or at the hands of non-state actors are rendered invisible. In addition, the focus on direct state-sponsored violations has made it difficult to tackle social exclusion and discrimination as human rights concerns. The mainstream human rights system has also fostered a minimalist and legalistic interpretation of human rights protection at the national level. The result is that as long as states are not directly violating or denying certain civil and political rights, little else is required of them. By insisting that women's rights are human rights, women are channelling this traditional approach to human rights. They are asserting that human rights apply inside as well as outside the home; that all perpetrators of human rights violations must be held accountable whether they are state actors or private individuals; and that human rights are indivisible – that economic, social and cultural rights are equally important as civil and political rights. Women are seeking accountability not only for what the state does, but for what the state fails to do to actively protect and promote women's human rights.

Gender Equality as a Fundamental Human Right of Women

Since the 1990s, the concept of a human-rights-based approach to development has gained in importance and offers a normative framework which is very relevant to standards and standard setting. The rights-based approach naturally includes eliminating all forms of discrimination.⁷ The protection and promotion of equality between women and men are recognized as

⁷ ABC of women workers' rights and gender equality. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_087314.pdf (Accessed: April 3, 2023).

fundamental concepts in the major international human rights instruments, including the Universal Declaration of Human Rights (1948); the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) (1966); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979) And its Optional Protocol of 1999; the Convention on the Rights of the Child(1989); the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990); the UN Declaration On the Elimination of Violence against Women (1993); the Beijing Declaration And Platform for Action (1995) and its follow-up; the Millennium Development Goals; and, most recently, the UN Convention on the Rights of Persons with disabilities, adopted by the Plenary of the General Assembly on 13 December 2006.

Discrimination on the grounds of sex is a major form of discrimination, and has been a focus of attention for the international community since the Second World War.

Gender mainstreaming in the application of international labour standards is important because it helps to ensure that women and men have equal access to benefits derived from those standards. It accords equal recognition to the needs, experiences and interests of women and men when they are different as well as when they are the same. Government reports submitted to the ILO under Articles 19 and 22 of the ILO Constitution, which provide the framework for Member States' regular reporting procedures, refer to cases of discrimination in employment based on a number of grounds not mentioned in Convention No. 111, including marital status, sexual orientation and HIV status. The ILO also has constitutional procedures for address disputes related to member States' compliance with standards under ratified Conventions.

Compromising women's rights is not an option. Therefore, the challenge that confronts us today is to respect and prize our diverse cultures while developing common strategies to resist oppressive practices in the name of culture, and to promote and uphold universal human rights while rejecting encroachments grounded in ethnocentric thinking.⁸

⁸ OHCHR, Fact Sheet No. 23: *Harmful Traditional Practices Affecting the Health Of Women and Children, and Committee on the Elimination of Discrimination against Women, general recommendation No. 14 (1990) on female circumcision.*

Non discrimination and Equality between Men and Women

Non-discrimination and equality between women and men are central principles of human rights law. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on the basis of sex and guarantee women and men equality in the enjoyment of the rights covered by the Covenants. Article 26 of the International Covenant on Civil and Political Rights also provides for equality before the law and equal protection of the law.

Discrimination and inequality can occur in different ways. Discrimination can occur through de jure or direct discriminatory provisions, such as when a law or policy restricts, prefers or distinguishes between certain groups, for instance, prohibiting women from driving, owning land or inheriting property. While much progress has been made to eliminate discriminatory laws, many persist and reforming them should be a matter of the utmost priority for States to comply with their human rights obligations.⁹

Achieving substantive equality requires taking both historical inequalities and the present conditions of women in a certain context into account. Substantive equality may consequently require positive action by the state to address the specific disadvantages and needs of women.¹⁰ The Committee on the Elimination of Discrimination against Women has explained that, to achieve actual equality, the underlying causes of women's inequality must be addressed; it is not enough to guarantee identical treatment with men. In the Committee's view, the Convention requires that women should be given an equal start and also that the State should create an enabling environment for the empowerment of women in order to achieve equality of results (also referred to as equality of outcome). Equality of results is the logical consequence of de facto or substantive equality, according to the Committee. Through special measures, historical wrongs and inequalities are corrected by temporarily giving advantages to women, and giving

⁹ Globally, laws that discriminate against women remain a significant problem, and even when there are laws in place that guarantee gender equality they are not yet being put into practice. See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Progress of the World's Women 2011–2012: In Pursuit of Justice* (2011), and "Report of the Office of the United Nations High Commissioner for Human Rights on good practices in efforts aimed at preventing violence against women" (A/HRC/17/23). See also Working Group on the issue of discrimination against women in Law and in practice, available from www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx (accessed 3 April 2023).

¹⁰ Leilani Farha, "Committee on the Elimination of Discrimination against Women", In *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Malcolm Langford, ed. (Cambridge University Press, 2008), pp. 560–561.

them access to opportunities that traditionally have been out of their reach. Achieving substantive equality requires a change in attitudes, in gender roles and stereotyping; a fundamental societal change which will lead to a change in women's lived realities.¹¹

Direct and Indirect Discrimination

Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women which cannot be justified objectively.

Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. ... a gender-neutral law may leave the existing inequality in place, or exacerbate it.¹²

In its general comment No. 28 (2000) on the equality of rights between men and women, the Human Rights Committee explains that States parties must not only remove obstacles to equality, but that they also have obligations to adopt positive measures to ensure equality. It further specifies that "States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights". It then outlines specific obligations to ensure women's equal rights in relation to the various articles of the Covenant.

Equality, Equity and Gender Equity

"Inherent to the principle of **equality between men and women, or gender equality**, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices."¹³

"**Equity** is the moral imperative to dismantle unjust differences based on principles of fairness and justice. It requires a focus on the most disadvantaged and the poorest. Many [development

¹¹ Committee on the Elimination of Discrimination against Women, general Recommendation No. 25 (2004) on temporary special measures.

¹² Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005).

¹³ Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 22.

organizations] have made equity a central part of their agenda. However, from a human rights perspective, relying on equity has certain risks because its definition is a malleable concept that is not legally binding. While equity may denote justice, it may dilute rights claims if considered separately from equality and non-discrimination and risks being defined arbitrarily according to political and ideological expedience.”¹⁴

Gender equity “is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities.” Analyzing international law and international human rights law from a gender perspective is important, because gender analysis helps us understand how women and men experience human rights violations differently as well as the influence of differences such as age, class, religion, culture and location. It highlights and explores hierarchical and unequal relations and roles between and among males and females, the unequal value given to women’s work, and women’s unequal access to power and decision-making as well as property and resources.

The World Conference on Human Rights, held in Vienna in 1993, also made significant progress in recognizing the rights of women and girl-children as an inalienable, integral and indivisible part of universal human rights. This principle was taken up again by the International Conference on Population and Development, held in Cairo in 1994. Discussions focused on gender issues, stressing the empowerment of women for equitable development: “...the objective is to promote gender equality in all spheres of life, including family and community life, and to encourage and enable men to take responsibility for their sexual and reproductive behaviour and their social and family roles.” The World Summit for Social Development, held in Copenhagen in 1995, took gender equity as the core strategy for social and economic development and environmental protection. The 1995 Fourth World Conference on Women, held in Beijing, reiterated the importance of these new options, drawing up an agenda to strengthen the status of women and adopting a declaration and platform for action aimed at overcoming the barriers to gender equity and guaranteeing women’s active participation in all spheres of life. Governments, the international community and civil society, including NGOs and the private sector, were called upon to take strategic action in the following critical areas of concern: ¹⁵

¹⁴ Catarina de Albuquerque, “*The Future is Now: Eliminating inequalities in sanitation, water and hygiene*”, October 2012. Available from www.ohchr.org.

¹⁵ UN. 1995. Critical areas of concern. In Report of the Fourth World Conference on Women, Beijing, 4-15

- The persistent and increasing burden of poverty on women;
- Inequalities and inadequacies in, and unequal access to, education and training;
- Inequalities and inadequacies in, and unequal access to, health care and related services;
- Violence against women;
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation;
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources;
- Inequality between men and women in the sharing of power and decision-making, at all levels;
- Insufficient mechanisms, at all levels, to promote the advancement of women;
- Lack of respect for, and inadequate promotion and protection of, the human rights of women;
- Stereotyping of women and inequality in women's access to, and participation in, all communication systems, especially the media;
- Gender inequalities in the management of natural resources and the safeguarding of the environment;
- Persistent discrimination against, and violation of the rights of, the girl-child.

The Human Rights Framework in Practice

Since women constitute half the world's population and are entitled to all human rights on an equal basis with men, the focus here is on: public and political life, sexual and reproductive health and rights, the right to an adequate standard of living, violence against women, migration, conflict and crisis, and access to justice. Across all of these, education and the family context are particularly pertinent.

The right to education is recognized in the International Covenant on Economic, Social and Cultural Rights (art. 13), the Convention on the Rights Of the Child (art. 28), the Convention on the Elimination of All Forms of Discrimination against Women (art. 10) and the Convention on the Rights of Persons with Disabilities (art. 24). Besides calling for non-discrimination in the enjoyment of the right to education and free universal primary education, human rights law

September 1995, Chapter III, Item 44, p. 23, United Nations A7CONF.177/20.

also requires States to address the particular obstacles that girls and women face in accessing education, such as early marriages, pregnancies, child labour and violence. The needs of girls suffering from multiple forms of discrimination—e.g., with disabilities, from poor or rural areas and belonging to minority communities—should also be considered. Ensuring equality in education requires financial resources as well as continued awareness-raising about the importance of girls' education.

The right to equality between men and women in marriage and family life is also recognized in various human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Women nevertheless lag behind men in the enjoyment of rights related to the private sphere. In many countries, women are forced to enter marriage, they do not enjoy the same rights with regard to guardianship and adoption, they are not allowed to transfer their nationality to their children and husbands, and they do not have equal legal capacity.

Through activism, women have become a force in the discourse about and development of international norms, and new meaning has been brought to basic notions of sex equality and human rights. For example, in the reproductive freedom area,¹⁶ women's rights activists have transformed the concept of reproductive rights from the narrow concept of women's health in maternity and childbirth (which stereotypes "women as wombs"), to a holistic view coalescing a great amalgam of rights including first, second, and third generation human rights.¹⁷

Women's Realities

Ironically, the first place where women's voices must be raised and their presence made visible is in the very same formal rules' constructs discussed above. The international instruments that

¹⁶ For a discussion of reproductive freedom as an internationally protected human right, see Rebecca J. Cook, *International Protection of Women's Reproductive Rights*, 24, N.Y.U. J. INT'L L. & POL. 645 (1992); Sylvia A. Law & Lisa F. Rackner, *Gender Equality and the Mexico City Policy*, 20 N.Y.U. J. INT'L L. & POL. 193, 193 n.1(1987).

¹⁷ Douglas L. Donoho, *Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards*, 27 STAN. J. INT'L L. 345, 349 n.11 (1991) ("The so-called third generation of human rights are the result of efforts by some human rights advocates to promote some 'collective' rights, such as the rights to development, a clean environment, and to humanitarian assistance.");

define human rights-the U.N. Charter, The Universal Declaration, the ICCPR, The Economic Covenant,” regional instruments, and substantive human rights instruments such as the Women’s Convention and the Race Convention, facially provide protections on the basis of sex. However, the implementation of these human rights documents must be reformulated to protect in practice. Women’s articulated rights must be translated to compel real, not virtual, equality.

In reviewing the realities of women's lives worldwide in the context of international women's human rights, two distressing facts surface. First, the rules are, at best, imperfect and, at worst, venal in effecting women's exclusion-silencing women's voices and rendering them invisible. Second, as far as universally enjoying human rights-women simply do not. This sad truth of women's subordinate status is borne out regardless of which statistics are considered: employment, economics, personal autonomy, education, political participation, health or personal security (i.e., freedom from violence)-all matters that are critical to women's enjoyment of their international human rights and freedoms.¹⁸

In addition to such direct physical abuses, women's human rights and freedoms are further imperiled by the systematic denial of their political, economic, social, civil, and other legal rights which purportedly ensure women’s full participation in the cultural and political life of the state. Even as we approach the 21st century in today's world, some women are still silenced by exclusion from such basic activities as voting, traveling, and testifying in court.

It is indeed ironic that the discrepancy between the paper rights and the everyday realities can be explained, in part, by a review of the very rules that purport to protect women. In fact, many articles in human rights documents expressly exclude *sex* as a basis of protecting first, second, and third generation rights, many of which affect women's well-being. This existing rights framework creates at least the effect of excluding women, and at worst the intent to exclude women from equal participation in, and enjoyment of, internationally accepted rights and freedoms.

¹⁸ Berta E. Hernández-Truyol, *Women's Rights as Human Rights - Rules, Realities and the Role of Culture: A Formula for Reform*, 21 Brook. J.Int'l L. 605 (1996), available at: <http://scholarship.law.ufl.edu/facultypub/511>

The Way Forward

The implementation of women's human rights must extend beyond paper to involve local groups and grassroots organizations in not only the process of taking complaints but in taking appropriate action as well (with the support and assistance of transnational legal institutions) in order to provide real, rather than theoretical, remedies.

The outcome sought from this process is the enjoyment by women of their human rights. This requires the development, expansion, and transformation of the content and meaning of articulated human rights norms so that they include, and apply to, the reality of women's lives. It is important to challenge unlawful deprivations; it is imperative to mobilize a continuing, consensus; it is vital that the rules are interpreted and enforced for the protection and fulfillment of women's human rights.

The methodology for promotion of the rights of women must seek to facilitate the creation and the realization of a holistic, non-essentialist, multidimensional construct in which women are not, and indeed cannot be, marginalized or subordinated. It focuses on the inclusion of all women in a system that defines and defends women's rights as human rights, and thus protects and promotes the well-being, integrity, and international human rights and freedoms of women worldwide.

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