

## ***Violence Against women and International Framework for the Protection of Women***

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### **INTRODUCTION**

“Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details in the activities of man, and she has an equal right of liberty and freedom with him. She is entitled to a supreme place in her own spheres of activity as man in his. This ought to be the natural conditions of things and not as a result only of learning to read and write. By sheer force of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over woman which they do not deserve and ought not to have. Many of our movements stop halfway because of the condition of our women.”<sup>1</sup>

Women constitute nearly one-half of the Indian population, but they are placed at various disadvantageous positions due to gender discrimination and bias. In the male dominated society, women have been victims of violence and exploitation. India being a tradition bound society, women have been socially, economically, physically, psychologically, and sexually exploited for centuries. The concepts like sex-equality, woman's empowerment etc. have come out of the constitutional provision after the constitution of India came into force on 26<sup>th</sup> January, 1950. But truly speaking equality of status guaranteed by the Constitution is only a myth to millions of women who are subjected to various kind of violence within their domestic home. The domestic violence manifests as verbal, physical or psychological abuse of women. The victim's inability to access to law makes legal remedies ineffective and the inability of law to reach the victim is even more tragic.

Material rape is a common form of domestic violence. A government organisation for women's right dealt with a case wherein a middle aged woman called up the Human Rights Commission and accused her husband of forcing sexual contract with her. She wanted to avoid any such contact as her husband apparently visited sex workers quite often and she suspected him of having contacted venereal and related diseases. There is proposal before

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<sup>1</sup>M.K. Gandhi, Speeches and Writings G.A. Natesan & Company, Madras, 1993.

Law Commission of India for inclusion of material rape in the law but man believe that the provisions may be misused and that the Indian society is not prepared for such a provision as

yet. However, there is no doubt that the problem of material rape is a grey area of law and evidence. Crime against women is perhaps the most embarrassing human right violation and it is most prevalent. It knows no boundaries of geography culture or wealth. India is the country of challenges where the women are among the most destitute in the society and on the other hand emancipate and eloquent. It could be justified as women young or old work in different kind of profession, on powerful and at dignifying position. The story revolves around that women's are addressed with ill-favoured, unwished, unwelcomed behaviour of male. If she would have been strong or has been considered at par with men she would not have been shambles like rape, sexual harassment, exploitation, violent incidences, even murder of women for dowry and physical relation.

It is true that women in the past were less likely to indulge in criminality as compared with the present time and criminality was characterised as predominantly a male activity. Even the crimes which are traditionally attributed to females either remained undetected or if detected, were leniently dealt with. But with the advance of criminological researches some behavioural scientists have tried to offer Explanation of growing criminal behaviour of females on the basis of biological, physical, psychological and geneticological theories.

### **International framework for the protection of women**

Human rights are those rights which should be available to every individual human being. Hence, human rights not only know no boundaries but also are non-discriminatory on the basis of sex. This conceptual equality in real life is hypothetical. The plain truth and stark facts are different.<sup>2</sup> It may be noted at the outset the human rights are a matter of International Law because human rights do not depend on an individual's nationality and therefore the protection of their rights cannot be said to be a matter within the domestic jurisdiction of any State.<sup>3</sup>

Sovereignty in the present times is not absolute like the earlier days. Now sovereignty of the State is subjected to various limitations, and self-imposed limitation of International treaties and conventions is one of them. Once a State signs the treaty or convention on gender justice it is supposed to follow it. States like India, give weightage and importance to the gender justice and try to achieve International standard on it. India have followed guidelines of CEDAW for improving the position of women. While deciding the *Vishakha v. State*<sup>4</sup>, the Supreme Court gave exhaustive guidelines to the employers of women to protect them from sexual harassment at work-place. GOI should follow the guidelines of CEDAW 1979, *Beijing Declaration, 1995* and other related International documents to achieve the International standard on human rights of women, concerning their health, education, equal opportunity of employment, etc.

<sup>2</sup>Prof. K.C. Joshi, *Universalization of Human Rights of Women, Supreme Court Sets the Pace*, AIR 2001 Journal 59.

<sup>3</sup> Dr. S.K. Kapoor, *Human Rights Under International Law and Indian Law*, (2001) at 1.

<sup>4</sup> AIR 1997 SC 3011.

International human rights law is a source of norms and standards for the practice of human rights. For the application of these norms to take place at the local level, appropriate institutional arrangements have to be made and municipal law and court practice have to absorb the principles and standards established by International Law. Human rights norms are dynamic and are constantly evolving according to the emerging understanding of the contents of rights for women.<sup>5</sup> State responsibility is a fundamental principle of International law. It provides that a State is accountable for breaches of International obligations under customary International or treaty law that are attributable or imputable to the state. The International law of State responsibility for human rights violations has evolved significantly in recent times. It now requires governments to take preventive steps to protect the exercise and enjoyment of human rights, to investigate alleged violations, to punish proved violations, and to provide effective remedies, including the provision of compensation to victims. Modern development in International human rights law have widened to network of International obligations through state adherence to multilateral human rights conventions and have thereby enhanced prospects of enforcing state responsibility.<sup>6</sup>

Since the Virginian Declaration of rights of 1776, the American Declaration of Independence and the Bill of Rights in the form of the first ten Amendments to American Constitution and the Declaration of the Rights of Man and the Citizen adopted in 1789 by the French National Assembly, the express recognition and the special protection of fundamental rights of man became an establishment fact. Long ago Lord Action declared that the single page of print that was the *French Declaration*, outweighs libraries and is stronger than all the armies of Napoleon. Many writers occasionally have expressed the view that International Law guarantees to individuals both at home and abroad, and whether nationals of a state or stateless, certain fundamental rights usually referred to as rights of mankind, such comprised among others principally the right to life, liberty, freedom of religion and conscience. In 1928, the Institution of Institutional Law at its session in New York declared that the Juridical conscience of the civilized world demands the recognition for the individual rights preserved from all infringement on the part of the State. It is probable that the character of United Nations with its repeated recognition of “human rights and fundamental freedom” has inaugurated a new and decisive departure with regard to this abiding problem of law and government.<sup>7</sup>

### **1. United Nations and Human Rights of Women**

At present UN has six specialized agencies which are working in their respective fields. These agencies must assist women related issues in their respective fields. Security Council should take strict action against the States which fail to curb discrimination against women.

The Charter of the UN represents a significant advancement so far as faith in and respect for human rights is concerned. The appalling atrocities committed during the Second World War led to a strong movement for the International protection of fundamental human rights, and the Charter contains numerous references to them. Human rights are mentioned for the first time in any international treaty. The provisions concerning human rights run throughout the U.N. Charter “like a golden thread”. Much of the credit for this goes to the determined lobbying by non-government organization at the San Francisco Conference.<sup>8</sup>

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<sup>5</sup> Shanty Dairiam, *International Law for the Protection of Women's Rights : In Domestic Violence and Law*, Report of Colloquium on Justice for Women Empowerment Through Law, (2000) at 41.

<sup>6</sup>*Id* at 41.

<sup>7</sup>T.R.Subramanya, *Human Rights in International Law*, (1996) at 25-27.

<sup>8</sup>Dr. S.K. Kapoor, *Human Rights under international Law and Indian Law*, (2001) at 745-46.

### **Provisions of UN Charter 1945 concerning Human Rights of Women**

In the preamble it is stated, “We the people of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”<sup>9</sup>

Among the objectives of Trusteeship system it is provided that according to the purposes of the UN to encourage respect for human rights and for fundamental freedoms for all without distinction as race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world.<sup>10</sup>

### **Achievements of UN**

The following are the achievements of the U.N. in the field of human rights of women since 1945:<sup>11</sup>

- Adoption of the Convention for the suppression of the traffic in persons and the exploitation of the prostitution of others by General Assembly in 1949.
- Adoption of Declaration on the Elimination of discrimination against Women in 1967.
- Adoption of the First World Plan of Action and proclamation of first world decade for women; with the themes of equality, development and peace by world conference of women in *Mexico* city in 1975.
- Establishment of Voluntary Fund for the UN Decade on Women (UNIFEM) and the UN International Research Institute for the Advancement of Women (INSTRAW) by the General Assembly in 1976.
- Adoption of the Convention on the elimination of all forms of discrimination against women by the General Assembly in 1979.
- In 1991 the world's women: Trends and Statistics, a compilation of data on the global situations of women was published.
- In 1993 declaration on elimination of violence against women was adopted by the General Assembly.
- Empowerment of Women was seen as an integral part of development for the first time in International Conference on population and development (Cairo) in 1994.
- Finally the fourth world Conference in women held at Beijing reviewed and debated critical areas of concern and adopted a proposed platform for action.

### **2. International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949**

Each party to the Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons engages in and are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirement for supervision or notification.

### **3. Declaration on the Elimination of Discrimination against Women, 1967**

The General Assembly adopted this Convention in 1967,<sup>12</sup> considering that Universal Declaration on Human Rights asserts that the principle of non-discriminatory and

<sup>9</sup> Charter of the UN, 1945.

<sup>10</sup> Article 76 of Charter of the UN, 1945.

<sup>11</sup> Dr. S.K. Kapoor, *Human Rights under International Law and Indian Law*, (2001) at 82-83.

<sup>12</sup> Dr. S.K. Kapoor, *Human Rights under International Law and Indian Law*, (2001) at 134-35.

proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, including any distinction as to sex.

#### **4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**

The term 'discrimination against women' means any distinction, exclusion, or restriction made on the basis of sex which has the effect of impairing, enjoyment by women irrespective of their marital status, on the basis of equality of men and women, of human rights in the political, social, cultural, civil or any other field.<sup>13</sup>

Implementation of CEDAW-

##### **The committee on CEDAW**

Established under Article 22 of the 1979 Convention on the Elimination of All forms of Discrimination Against Women. It reports annually to the UN General Assembly through ECOSOC. The Committee in addition to hearing states 'Reports' may make suggestions and general recommendations, which are included in the report. For example, general recommendation No. 5 called upon state parties to make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment while general recommendation no. 8 provided that state parties should take further measures to ensure to women, on equal terms with men and without discrimination the opportunity to represent their government at international level. General recommendation No. 12 called upon State parties to include in their reports information on measures taken to deal with violence against women while general Recommendation No. 13 called for measures to be taken to eradicate the practice of female circumcision. General Recommendation No. 19 (1992) dealt at some length with the problems of violence against women in general and specific terms general relations. The committee, however, meets only for two weeks in a year which is clearly inadequate. There is no right of individual petition or interstate complaint under this convention, although these issues are under consideration. There is no doubt that much remains to be done in order to support and develop the work of this committee.<sup>14</sup>

#### **5. Declaration on Elimination of Violence against Women 1993**

This declaration was adopted by the General Assembly in the year 1994.<sup>15</sup>

The nations of the World have become so disturbed at the prevalence of the violence against women that a number of important steps have been taken to combat it.

The committee of CEDAW places emphasis when examining the reports of State parties, both on ascertaining the level of violence against women, whether it is condoned or perpetrated by the State and on what measures are in place to combat it. The UN has appointed a Special Rapporteur on violence against Women and itself has developed a Declaration on the Elimination on Violence Against Women. In that declaration the General Assembly adopted the affirmation in the preamble that: "Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and (is) concerned about the long

<sup>13</sup> Kalpana Roy, *Women's Oppression and Protective Law*, (1999) at 90.

<sup>14</sup> Malcolm N. Shaw, *International Law*, (1998) at 240-41.

<sup>15</sup> General Assembly Resolution 48/104, 1994.

standing failure to protect and promote those rights and freedoms in relation to violence against women.” Violence against women is defined in the declaration as:

“Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Under Article 2, violence against women shall be understood to encompass, but not be limited to, the following:

1. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rap, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
2. Physical, sexual and psychological violence occurring 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;
3. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

It is now widely acknowledged that violence against women prevents them from participating fully in the family, in the work place and in their health is poor, those who have a low level of literacy, those whose participate in community life is a vast waste of the talents and education of one half of the world's population. The inference to be drawn is that where women are not treated equally not only they and their families suffer, but the community itself loses access to an extremely valuable human resource.<sup>16</sup>

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. In view of the alarming growth in number of cases of violence against women throughout the world, the commission on Human rights adopted a resolution in March 1994, in which it decided to appoint the special rapporteur on violence against women, including its causes and consequences. It has a mandate to collect and analyze comprehensive data and to recommend measures aimed at eliminating violence at the international, national and regional level. A preliminary report in 1994 by the special Rapporteur *MsRadhika Coomaraswamy*, focused on three areas of concern where women are particularly vulnerable:

- a. *In the family* including domestic violence, traditional practices, infanticide;
- b. *In the community* including rape, sexual assault, commercialized violence such as trafficking in women labour exploitation, female migrant worker, etc;
- c. *By the State* including violence against women in detention as well as violence against women in situation of armed conflict and against refugee women. Governments agreed to adopt and implement national legislation to end violence against women and to work actively to ratify all international agreements that relate to violence against women. They agreed that there should be shelters, legal aid and other services for women and girls at risk and counseling and rehabilitation for perpetrators. Governments also pledged to

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<sup>16</sup>Murlidhar C. Bhandare, *The World of Gender Justice*, (1999) at 58-59.

adopt appropriate measures in the field of education to modify the social and cultural patterns of conduct of men and women.<sup>17</sup>

The General Assembly in its meeting on 17<sup>th</sup> December, 1999 adopted a resolution to designate 25<sup>th</sup> November as the international Day for the elimination of violence against women and invites, all appropriate governments, the relevant agencies, bodies, funds and programmes of the UN system and other international organizations and non-governmental organizations, to organize on that day activities designated to raise public awareness on the problem of violence against women.<sup>18</sup>

## **6. Vienna Declaration and Human Rights of Women, 1993**

The declaration was adopted by the World Conference on Human Rights on 25<sup>th</sup> June, 1993. The relevant paras 36 to 44 of the declaration runs as under:<sup>19</sup>

In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particular effective response.

## **Beijing Declaration, 1995**

One of the main objectives of Beijing declaration is to prevent and eliminate all forms of violence against women and girls and ensure success of the Platform for Action, which will require a strong commitment on the part of Governments, international organizations and institutions at all levels.<sup>20</sup>

## **CONCLUSION**

Violence against women is a serious violation of women's human rights and as a result of this the problem of violence against women has been drawing increasing political attention. The special reporter has a mandate to collect and analyze comprehensive data and to recommend measures aimed at eliminating violence at the international, national and regional levels. Only legislation and law enforcement agencies can not prevent the incidents of crime against women. There is need of social awakening and change in the attitude of masses, so that due respect and equal status is given to women. It's a time when the women need

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<sup>17</sup> Rahul Rai, *Human Rights UN Initiative*, (2000) at 20-21.

<sup>18</sup> Department of Public Information, News Coverage and Accreditation Service, New York-Press Release, GA, 9699, (17<sup>th</sup> March 2000) at 355-56.

<sup>19</sup> Murlidhar C. Bhandare, *The World of Gender Justice*, (1999) at 257-59.

<sup>20</sup> The Fourth World Conference on Women Beijing (China) (4<sup>th</sup> to 15<sup>th</sup> September, 1995).

to be given her due. This awakening can be brought by education campaign among youth making them aware of existing social evils and the means to eradicate the same. Mass media can play an active role here as in the present days it has reached every corner of the nation. Various NGOs can hold a responsible position here by assigning them with the task of highlighting socio-economic causes leading to such crimes and by disseminating information about their catastrophic effect on the womanhood and the society at large.