

VIOLENCE AGAINST WOMEN AND SUSTAINABLE DEVELOPMENT

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© Ontario International Development Agency. ISSN 1923-6654 (print)
ISSN 1923-6662 (online). Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

Abstract: History has witnessed vast gender inequalities and development of society cannot be restricted to a particular section of society. When one talks about development and progress it brings within its sphere; well-being and security of society as a whole i.e. inclusive of both men and women. Economic development and progress of a nation is directly proportional to the process of transformation of a society towards its betterment. Gender inequality based on gender biasness is a determinant of power and priority privilege. The world is most unequal for women and girls; they are beaten, tortured and raped at the hands of male chauvinism. And sadly it not only exists within the boundaries of the nation rather it is in its most brutal form in the 'no man's land.' In a country like India where the present-modern society is still under the clutches of patriarchal male dominance, focusing only on laws protecting women within the territorial boundaries of the State is not sufficient to aim towards global sustainability and development. The most atrocious crimes against women take place where the State boundaries end.

Can violence against women be called to be restricted during peace time or confined within the borders or does it spread beyond the boundaries. Vulnerability of the she-gender: is like being in a constant state of war against a woman's human rights, within the border or across and crossing all cultural boundaries. Crime against women is an existing and ongoing state of war against humanity, it cannot be clubbed in specific spheres, and it ranges from acts of sexual violence to domestic assault to cross border trafficking.

With the incidents as that of Delhi gang rape case; raping and sadistically exploiting a 5 year old and Bijal Patel Rape case the focus has now shifted to re-evaluating and reframing protection of women under

the present law based on recommendations from Justice Verma Committee, which was constituted to look into possible amendments of the Criminal Law within the State. The question that the present paper raises is till what extent can only laws protect and safeguard the citizens? With almost half the population feeling insecure can a nation really progress towards development? Can women be called safe in any part of the world? Be it within the boundaries of the State or beyond? Cross-border crimes not just affect the women of the particular Nations at war but it travels beyond the borders and becomes an issue of global concern. Is it the law that governs and safeguards it's people or is it the executive body regulating the enforcement mechanism that makes any law an effective law. The paper focuses on the various issues relating to sexual-violence faced by women within the boundaries and beyond. In addition to the laws laid down under the International Humanitarian Laws towards protection of women in times of war, the author tries to highlight the missing lacunas in the enforcement of these laws along with solutions to bring a change towards a better tomorrow.

Keywords: Gender Inequality; International Humanitarian Law; Justice Verma Committee Report; Sustainable Development; Violence Against Women.

Introduction

As a general perception of the public and people the term vulnerability is most often connected and classified with 'women'. Vulnerability as a term cannot be defined or restricted to a particular form of violence. It would not be fair to confine the issues relating to violence against women within boundaries of a nation, violence of

such kind travels beyond the boundaries and borders. It is easy to frame laws and control acts of people within a State due to fear of punishment, but how often does one think about the atrocities and torture being succumbed to women in conflict zone or border area. What is called a no man's zone, where no rules or laws apply, neither is there fear of State laws or people; and rules of war and savagery is the only regulation that follows.

A major hindrance in achieving global peace and cultural harmony arises due to the fact that violence against women has yet not reduced. When one half of the population is stricken by circumstances questioning the administrative and executive functions of a state, how can peace and subsequently sustainability be achieved. Women carry with them potential as that of equal drivers of sustainable development. There needs to be a balance that is required to be achieved in the mind set of the people, providing gender equality and equal opportunities and rights, levelling both men and women on the same footing.

Introduction

Wars are no longer fought just on the battle ground they have entered the civilian domains. The importance of drawing attention towards violence against women during war is due to the reason that in times of war; women face its effect in multiple forms as being a member of the civilian population as well as due reason of being a woman. The major issue in this area arises due to conflicting gender roles. A woman or girl has been targeted being weaker of the two genders. Today war is not just restricted as being a man's business. In today's world war it severely impacts both men and women be it a combatant (soldiers fighting on the field) or civilian. Due to gender inequality women face major disadvantages in times of war, which intensifies at the battle field.

After the dreadful incidents as that of Delhi gang rape, raping and sadistically exploiting a minor 5 year old girl and Bijal Patel Rape; the major focus drawn in the field of protection of women is restricted within the boundaries and amongst civilian population. But how does one draw a line to restrict violence within the boundaries. Violence takes a brutal form within the four walls of the house, moving further and ahead; assaults and eve teasing on the streets, is that not a kind of violence in itself? And further beyond the walls and the streets; it crosses the boundaries and borders of the State, in a no man's lands. An individual within a State might fear the laws of the State he is living in and might stop and

rethink the act of violence, but what shall instil fear in the minds of the people when in conflict areas or at the border. Enforcing laws during a war against violence is like trying to avoid a released missile from destroying and differentiating cattle from human. Where no State laws apply and what speaks out is slaughter, barbaric acts and war; it is at this time when violence takes the most brutal and inhumanly turn. With no rules, laws or fear of an enforcing and administrating body and an instilled feeling of brutality and killing brings out the worst form of violence possible against women. It not only creates fear and terror in the minds of the women but also adversely impacts global sustainability, adversely impacting relation between different States. And in such a situation no one is ready to take the responsibility of the safety and protection of the women. It results in feeling of distrust towards the State administration and law enforcing mechanism. These rules laid down only apply to citizens or the civilian population. When laws within the State are not strong enough to protect and execute measures of their protection, then how will new and amended laws help? These laws lack enforcement and execution. There is no doubt that with changing times there is a need for new and improved laws but then laws would not be effective till the time there is not a proper enforcement mechanism.

Being on the border area or the conflict areas such incidents are hardly reported. Major reason for it could be unavailability of strong laws and enforcement mechanism. Violence cannot be solely restricted in terms of rape. Sexual violence also encompasses: forced prostitution, sexual slavery, forced impregnation, maternity and termination of pregnancy, enforced sterilization, indecent assault, trafficking, inappropriate medical examinations and strip searches [1]. Sexual violence is now considered as a means of war instituted by the enemy State against a State. Though not inflicted as a direct form of work, it is devised as a means to torture, extract information, threaten and create fear in the mind of civilian population, specifically aimed at women. It is used as an alternate means of warfare. Women being the physically weaker sex of the two genders are unarmed and cannot protect themselves when left alone by their male counterparts. They are considered as an easy target for inflicting terror and to challenge the dignity of a nation by directing an attack directly on women. In society women's dignity is considered as of cultural and ethically a symbol of representing caste and national dignity. Hence, an act violating the moral chastity of women in turn impacts the society

at large, by creating an imbalance upon the States functioning.

Acts of sexual violence are inter-linked to abducting women or girl child, trafficking leading to sexual assault consequential to slavery, prostitution and rape leading to pregnancy and then child born out as a result of sexual violence. A major concern arises as an after effect to this violence resulting in pregnancy and forced maternity; in some cases forced termination of pregnancy and in other cases they are even sterilized. These are few acts of violence that are specifically women centric. In the process they may even be tortured or succumbed to inhuman and cruel treatment. Sexual violence not just affects an individual but the whole family. The mental trauma faced by not only the women affected but also her family, it creates a sense of fear in the minds of the people living in war affected areas. At times members of the family don't even get to know about the whereabouts of the missing women for months together, when she goes missing.

Due to the brutality and ruthless abuse attached to all forms of war, there is no doubt that both men and women are subject to sexual violence, but due to the women being the weaker sex out of the two they are predominantly affected and inflicted with violence ranging from rape to prostitution to sexual slavery.

Due to the various social stigmas attached to an image of women under various religious and cultural beliefs as that of purity and chastity of women, sexual violence towards women involves not just trauma and fear for the women and her family but it also connects with it religious and cultural beliefs of an individual. A woman needs to be protected against all kinds of evils majorly relating to sexual violence. Hence, the legislature and enforcement bodies work towards forming protectionist policies to curb violence of any kind against women.

Vulnerability of women is due to the reason that this section of the society is regarded as the symbolic bearers of the community's honour and dignity. Rape has always been regarded as a by-product or a reward for combatants. It is executed as a form of torture to extract information from combatants or to compel people to vacate and leave the targeted area. Incidences of slashing women's breasts have been observed as another terrorising means to achieve the goal targeted against an enemy. As an end result; women are either left too scared to report or in other cases are considered as a blot of shame to the society; and hence are subject to punishment from society as that of solitary confinement, shaving their heads off, forcing them to lead a plain and colourless life and in

extreme cases are killed by people of their own committee or in other cases are left to their own fate in enemy's hands.

Problems arising in the cases of sexual violence in times of armed conflict

Due to the social stigma attached to incidents of sexual violence and assault, women do not talk about these incidents and prefer keeping quite. As in accordance with the discussion above, the basic consensus that one could draw could be due to women bearing the status of the society's dignity and integrity. A concept that has been created and embedded long ago by the male dominated patriarchal societies. A woman is held responsible for any action or abuse inflicted upon her; even when the sole reason behind it might be a man, even then it is the woman who is blamed, questioned and ultimately punished. Hence, due to non-reporting of these incidents, it often goes unnoticed and unattended.

Due to the reason that the women avoid reporting these incidents; it leads to a problem in reaching the place where war is being carried on. Non-reporting of such incidents leads to hindrance in the working neutral bodies that assist in finding a redressal against sexual violence.

To add to the horror inflicted by the combatants the peacekeeping troops at times act as a stimulant to the horror attached to this violence. A UN study on children and war (1996) reported that in six of the 12 countries which had been studied: "The arrival of peacekeeping troops has been associated with a rapid rise in child prostitution." In Mozambique in 1992 for example, "United Nations Observer Mission soldiers recruited girls aged 12 to 18 years into prostitution". [2] War-laws deal with problems relating to civilian population on the same footing. There is no major bifurcation in laws of violence against women and other civilian population under the International Humanitarian Laws that acts as a major hindrance in implementing laws to protect women against sexual exploitation in times of war. With no specific legal framework protecting women during war time the whole legal fabric falls out to be weak in implementing existing laws.

Role of International Humanitarian Law

"A set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict." - ICRC

International Humanitarian Laws (IHL) or the Laws of War is a branch of laws of nation governing and administering the relationship between States. It regulates and protects the basic human rights in times

of war with International Committee of the Red Cross (ICRC) being its main regulatory body. ICRC carries out the functions relating to protecting human rights during war.

Violence is regarded as a normal and an ongoing process during war but the same needs to be restricted with respect to basic human rights entrusted to each and every human being; as to life and dignity of an individual. Acts of violence occur in all phases of a conflict but they are required to be directed only against the combatants, civilians shall not be targeted during war. International Humanitarian Laws can be called to be restrictive in nature; it does not list out the reason behind the war, its mode or defines as to whose fault it is in initiating the war but it limits the acts of violence and draws a line when it starts violating human rights.

All States are sovereign in nature and have their say in matters relating to State's functioning, administration and working. Hence, when disagreements arise between two or more States; it takes the form of an International Armed Conflict. In between the conflict amongst two States; the Civilians get most affected. The major purpose for any enemy State is to weaken or threaten his enemy. In this process civilians are the easiest targets to shake the roots of an enemy State. Women being the weaker sex of the two are more vulnerable than men, with sexual violence being the most prominent form of violence to be executed against women.

International Humanitarian Law aims to protect civilian population against war crimes and acts of violence executed in times of war. Due to women being targeted specifically with violence in form of sexual violence, several laws are laid down under various conventions and protocols with an aim to protect women against such atrocities. These Conventions and protocols protect both men and women as civilians, as well their rights as that of combatants. It is dealt in and referred expressly in Geneva Conventions and its additional Protocols.

Article 27 of the Fourth Geneva Convention provides that "*women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault*", specifically laying down the ground rules of war in cases of violence against women. It highlights it as an obligation upon the State to ensure that no such act is carried out in times of war. It builds up the state of women's dignity and connects it to the honour attached to it by making it State's responsibility to protect it. In addition to it,

Additional Protocol I expressly prohibits it. Article 75 prohibits "*outrages against personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault.*" As well, Article 76 deals with protection of women it states as "*women shall be subject of special respect and shall be protected in particular against rape, enforced prostitution and any other form of indecent assault.*"

Justice Verma Committee Report

After the Delhi Gang Rape incident there was an apparent need to amend criminal laws. With an aim to bring in strong and effective laws and policies to govern and administer effective legislation, Justice Verma Committee report was prepared providing sentencing policies and punishments pertaining to offences against women.

Chapter V of the report '*Other offences against women*' deals with '*offences against women in border areas/conflict areas.*' It opens with the line 'we now address a very important, yet often neglected area concerning sexual violence against women-...' an often neglected sphere that indeed required the attention of the authorities has been included in this report making a special reference to the plight of women in areas like that of Kashmir, the North-East, Chhattisgarh, Odisha and Andhra Pradesh. The conflict that arises due to the distrust amongst two States follows immense suffering and sexual violence towards women, in order to inflict terror in the heart of the civilian population living in those disturbed areas, forcing them to vacate the area. Often these instances being administered by a separate law go un-noticed and uninterrupted, hence the report suggests that in order to administer the acts of violence committed against women by armed personnel, the same shall be brought under the purview of ordinary criminal law. Special commissioners need to be appointment for the purpose of security and safety of women. It has been expressed by the committee that such commissioners shall be vested with adequate powers to administer and monitor actions for redress and criminal prosecution in all cases of sexual violence against women. Special care is to be provided to the complainants and detainees in police station and women at army and paramilitary check-points. There shall be a regular monitoring and checking by the special commissioners appointed. Women shall be detained only during the specified hours of the day and the same shall be strictly followed. Jurisdiction issues must be resolved immediately and simple protocols shall be laid down in order to avoid

situations wherein the police personnel refuse to take a complaint against paramilitary personnel due to lack of jurisdictional powers.

Conclusion

Since primitive times; violence has been regarded as the sole means of establishing one's authority and power over the other. Violence when it takes its course takes the most brutal and inhumane form that one could imagine. But even in case of violence and armed outburst a line needs to be a demarcated and drawn between ethics safeguarding human rights. Inflicting torture in the form of sexual violence upon unarmed women not entering into the battle field and having no role to play on the battle ground is the most unethical and immoral form of attack that could be inflicted on mankind.

Though International Humanitarian Laws protect all forms of violence based on the humanitarian grounds on the battle field. Yet, there seems to be no end to such violence due to several missing lacunas in the enforcement mechanism. There is a need for the humanitarian organisations to visit the war site at regular intervals in order to provide medical facilities and treatment and aid to provide regular check-ups and monitoring towards these activities. There needs to be an appointment of women personnel to assist women and provide them a comfortable atmosphere to talk as women are often hesitant in talking to men about such incidents. Lack of data and reports informing about such instances of sexual violence inflicted upon women acts as one of the major drawback to bring in policies towards protection and amendment of laws relating to consequential punishment in cases of sexual violence during an armed conflict. Often women affected by such violence are unaware about avenues to seek redressal. Hence, there is a need to spread awareness about

these issues and prepare women and rest of the civilian population for such challenges.

Justice Verma Committee has tried to bring awareness and attention of the authorities to this situation that is often unattended. And even if one brings it to the notice of enforcement authorities it is not acted upon due to jurisdictional barriers. For a society to reach its true potential and the optimum level of growth, its imperative for them to give equal stature and importance to women in the society. Further, from the global perspective, giving equal importance to women and protecting their rights in the society becomes even more important in order to achieve sustainable growth and development. India is making an attempt to bring in a change to protect women by bringing in amendment and regulations in the criminal law. No doubt the emerging defiance calls for new improved laws but what can be observed from the above discussion is that what is needed is not just a change in the existing legal framework but also better administrative procedures and stronger enforcement mechanism, to execute these laws. Hence, it will only be a combined effort of the law-makers and executive bodies that would bring a change towards a better and prosperous tomorrow.

References

- [1] Charlotte Lindsey-Curtet, Florence Tercier Holst-Rosness and Letitia Anderson "*Addressing the needs of women affected by Armed Conflict*" an ICRC guidance document, March 2004
- [2] Machel, Graca, Expert of the UN Secretary-General, "*The impact of armed conflict on children*", report to the Expert of the Secretary-General, pursuant to resolution adopted by the General Assembly A/RES/48/157, 1996, A/51/306, p.22, point 96.

