

“A Reflection of Women’s Rights in Conflict Areas in India”

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Abstract

The concept of women’s right changes in parallel with the development of our society. To my understanding, a welfare state will only achieve its goals when the womenfolk are on par with men. The idea of women’s rights in conflict area is rather different from what we see in the urban landscape. Conflict areas connote war-zones, internal unrest, environmental disasters etc. In such areas, while addressing the human rights issues, women’s rights are generally overlooked. When we talk about women’s rights it is not only addressing their safety but also their health, access to justice, action against the violence of any form etc.

This paper focuses on the reflection of the socio-political and legal fabric of our nation that has immensely suffered at the hands of conflicts since independence. In a typical Indian society, men enjoy dominance over women’s reproductive capability, mobility, property etc. Further, women are often subjected to discrimination at the hands of men. In a conflict zone setup, the gravity of abuse, discrimination multiples.

The international community in the recent years has increased its attention to women in conflict areas. Various studies have been undertaken which concluded that problems faced by women are ignored and taken to be less serious than that of men. In addition, not only women but also their children are subjected to violence and terror. Basic rights of a secure childhood seems a luxury to them rather than a necessity. Reportedly, children are recruited as ‘soldiers’ in combat and non-combat roles. Through this paper, we shall explore the basic human rights of women and their children in conflict areas and the infringement of the same.

KEYWORDS AND ABBREVIATIONS

1. ICRC - International Committee of the Red Cross
2. J&K - Jammu and Kashmir
3. AFSPA - Armed Forces (Special Powers) Act, 1958
4. Art - Article
5. UDHR – Universal Declaration of Human Rights
6. ICCPR – International Covenant on Civil and Political Rights
7. ICESCR – International Covenant on Economic, Social and Cultural Rights
8. CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women
9. IPC – Indian Penal Code
10. GoI – Government of India
11. UNDP – United Nations Development Programme

Introduction

It goes without saying that the status of women in our society has been a subject of immense scrutiny at all levels. The Indian Constitution provides equal rights for men and women. Legally speaking, the rights of both the genders are equal, however, women are vulnerable and mistreated. Women in urban areas face discrimination, torture, violence etc. but women living in conflict areas are far more vulnerable and susceptible to violence from all quarters and means. Reportedly from the studies conducted by various organizations such as the *International Committee of the Red Cross (ICRC)* found that difficulties women in conflict areas are neglected to great extent¹.

Through this paper, we shall be analyzing certain factors that play a very crucial role in the life of women and children in conflict areas. *Firstly*, we will look into the laws, conventions and legal framework that are in place especially for women in conflict areas. We shall focus on both the international and domestic laws. *Secondly*, health is an important aspect for every citizen. People living in conflict areas are mostly deprived of basic medical requirements due to the destruction of infrastructure, immobility of healthcare providers etc. Through this paper, we will focus on the health rights of women and their infringement of the same. *Thirdly*, women belonging to such regions go through tremendous amount of terror. As stated, they are also subjected to various forms of violence both within and outside their households. Reportedly, there are numerous cases of sexual violence against women by armed forces and militants alike. This begs the questions regarding their access to justice, whether the courts and various tribunals are addressing the problem effectively. Through this, we shall look into the status of women and how they get access to justice or not. *Fourthly*, social factors also bound them to act a certain way. In a conflict setup, the patriarchy takes a different form and lives of men are valued more than men. Many would argue that a similar form of patriarchy is seen irrespective of the region they belong to. However, the patriarchy perceives men to be powerful and dominant and women are often understood to be *symbols of honor*². Thus, this makes women more vulnerable during times of conflict.

In present-day India, conflict areas are in the state of Jammu and Kashmir (J&K), Northeast India and areas where Maoist intervention is prominent like in the states of Jharkhand and Odisha. It is noteworthy that the Government of India is reluctant to recognize these regions as conflict areas and dismiss any form of protection from any international organizations and

¹ Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Aug. 14, 2018, 12:30 AM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

² Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Aug. 14, 2018, 12:30 AM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>.

Geneva Conventions³. We must also understand the most of these regions are affected by Armed Forces (Special Powers) Act, 1958 (AFSPA), a draconian law that has been enforced to curtain the problem of militancy in these regions. It is also imperative to mention the civilian affected by natural or man-made disasters. In the recent years, we have seen a drastic change in the climate resulting from disasters such as flash floods, drought, cyclones etc. Due to these disasters, many civilians are displaced with lack of nutritious food, basic health care etc. As mentioned earlier, women and children living in these conditions are vulnerable to harm and they are often neglected.

Definition of conflict

The idea of conflict may differ when viewed internationally and nationally. However, the impact on the lives of women remains the same. It goes without saying the many internal conflicts goes unrecognized and hence, the impact of it is also not assessed. The government is hesitant to recognize internal conflicts as it would grant legitimacy to the militant groups. Furthermore, for the benefit of this paper, the definition of conflict would not only refrain to war-like situations, insurgency-affected areas but also environmental disasters.

1. Law and legal framework

In the Indian legal system, rights of women can be categorized into two parts i.e. constitutional and legal. Constitutional rights are the rights that are reflected in the Indian Constitution whereas legal rights are the rights that came about due to the enforcement of an Act or a statute.

Constitutionally these articles serve the purpose of protection of women's rights. We must also note that these articles are not specific to women from conflict areas but can be availed by any citizen of India. The articles are listed below –

1. *Art 14* – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India⁴.
2. *Art 15(1)* – The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them⁵.
3. *Art 15(3)* – Nothing in this article shall prevent the state from making any special provision for women and children⁶.
4. *Art 21* - No person shall be deprived of his life or personal liberty except according to the procedure established by law⁷.

³ Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Aug. 14, 2018, 12:30 AM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

⁴ INDIAN CONST. art 14.

⁵ INDIAN CONST. art 15, cl. 1.

⁶ INDIAN CONST. art 15, cl. 3.

5. *Art 23(1)* – Traffic in human beings and begar and other forms of forced labor are prohibited and any contravention of this provision shall be an offense punishable in accordance with law⁸.

The above-mentioned articles from the Part III of the Indian Constitution i.e. Fundamental rights. Violations of these rights can be moved to the Supreme Court of India directly under *Art 32(1)* of the Indian Constitution. Furthermore, *Art 226* provides power to the High Courts to issue writs for the enforcement of any rights that are included in Part III of the Indian Constitution⁹. Moreover, Part IV of the Indian Constitution i.e. Directive Principles of State Policy also provides for articles that are not enforceable by any court but forms a crucial part in the governance of the State¹⁰. The articles concerning women's rights are listed below:

1. *Art 39(a)* – The State shall, in particular, direct its policy towards securing – that the citizens, men and women equally, have the right to an adequate means of livelihood¹¹.
2. *Art 39(f)* - The State shall, in particular, direct its policy towards securing – the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment¹².

Also, it is noteworthy Part IVA of the Indian Constitution i.e. The Fundamental Duties provides for renouncement of use of actions that are derogatory or harm the dignity of a woman¹³.

Furthermore, there are domestic laws that also protect the interest of women. These domestic laws or Acts provide legal rights to women which are enforceable in the courts. Some of the Acts are listed below:

1. *Protection of women from Domestic Violence Act, 2005*
2. *Immoral Traffic (Prevention) Act, 1956*
3. *Indecent Representation of Women (Prohibition) Act, 1986*
4. *Indian Penal Code, 1860*
5. *National Commission for Women Act, 1990*
6. *Dowry Prohibition Act, 1960*

Nevertheless, there are also international laws that are responsible for the protection and welfare of women. Human rights are protected and incorporated in the *Universal Declaration of Human*

⁷ INDIAN CONST. art 21.

⁸ INDIAN CONST. art. 23, cl. 1.

⁹ INDIAN CONST. art 226, cl. 1.

¹⁰ INDIAN CONST. art 37.

¹¹ INDIAN CONST. art 39, cl. a.

¹² INDIAN CONST. art 39, cl. f.

¹³ INDIAN CONST. art 51A, cl. E.

Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). The Declaration and Covenants grant human rights to every individual irrespective of their gender¹⁴. Thus, the rights of women and children are also included. Also, in situations of armed conflict, the *Geneva Convention, and the additional Protocols* can be enforced¹⁵. However, this is not the case in India. This may be majorly due to the reluctance of the government to recognize the conflict and also because it is an internal conflict. The Convention and the Protocols per se do not majorly incorporate internal conflicts and Art 3 of the Convention is the only provision dealing with the same. Moreover, there are customary international humanitarian laws that dictate the protection of women and children in times of conflict and disasters. To elaborate on this, protection shall not be only limited to protection from arms but also sexual violence especially rape. It is noteworthy to mention *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* which undertakes equal rights in regards to political, civil, cultural, economic as well as social life¹⁶. Additionally, we must mention the *Resolution 1325* of the UN Security Council that stands for equal participation of men and women in society building.

2. Health

The context of health shall include Physical, Mental, Reproductive and Sexual Health. Health connoting only the physical factor is rather a blunt way to look at it. In present-day India, the healthcare sector is rapidly growing. The growth is not only depicted by the development of the equipment and medicines but also by the development of the infrastructure and the swift services provided¹⁷.

The condition of the health sector in most conflict areas are very poor and most of the essential medicines are unavailable. In such situations, civilians are ‘collateral damage’ which includes internal displacement, lack of nutritious food, lack of proper medical attention, loss of life and so on. Reportedly, UNHCR in 2013 estimated that nearly 51.2 million people are displaced all across the world¹⁸. International Humanitarian Law focuses mostly on the reaction to barbaric

¹⁴ Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Aug. 18, 2018, 4:00 PM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

¹⁵ *The Geneva Convention of 1949 and their Additional Protocols*. International Committee of the Red Cross (Aug. 18, 2018, 7:15 PM) <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>

¹⁶ Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Aug. 19, 2018, 10:00 AM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

¹⁷ Shohreh Zarrinkolah, *Human Rights and Health care Systems: Women Empowerment and Rights*, Imperial Journal of Interdisciplinary Research (IJIR) (Aug. 19, 2018, 12:15 PM) <https://www.onlinejournal.in/IJIRV3I10/088.pdf>

¹⁸ Prof. Sumitra Pamar, Allahabad University, *Women's health in Disasters and Conflict* (Aug. 19, 2018, 12:15 PM) http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000456WS/P000858/M019308/ET/1486097787QUAD-1.pdf

warfare, lack of health care services, shelter, food etc. However, the *International Conference on Population and Development, 1994* and *International Conference on Women, 1995* dictate that the vulnerability and shortage of services of health care to women in conflict areas should be given paramount consideration. Disasters affect all mankind but the effect on women are rather magnified to great length. Women are already marginalized and situation of conflict magnifies their vulnerability leading to a much devastating effect on them. In a conflict setup, there is always a considerable amount of damage to the healthcare sector due to many factors such as demolition of infrastructure, immobility of healthcare providers etc.

Pre-Conception And Pre-Natal Diagnostic Techniques (Regulation And Prevention Of Misuse) Act, 1994 and *Medical Termination of Pregnancy, 1971* are the two legislations in India that extensively deals with reproductive and sexual rights of women. The former is used to curb and detect the misuse of procedures that are used to determine the gender of the fetus and the latter is used to abolish the practice of forceful abortion. This way women can enjoy their rights without any intervention from men and other social elements. The law and society need to recognize the very much visible thin line between the two medical practices i.e, sex determination of fetus and forceful abortion.

Right to health

In the Indian Constitution, right o health has not been specifically mentioned, however, in the case of *Bandhua Mukti Morcha v Union of India*, the Supreme Court held that the *right to health* falls under the purview of Art 21 of the Constitution i.e. Right to life and personal liberty¹⁹. Furthermore, the Indian Constitution under Art 47 provided that the state shall improve or raise the level of nutrition and standard of living of its citizens which shall also include improvement of public health. Hence, women in conflict also have the right to enjoy proper health care and nutritious food which they are obviously deprived of. In a study conducted during the Indian Tsunami in 2004, the loss of life was estimated to be 2,30,000 out of which in some villages 80-100% of the victims are women²⁰. This clearly shows how devastating the effect of a disaster or an internal conflict can be to women's health.

¹⁹ Indrajit Khandekar, B.H. Tripude, P.N. Murkey, *Right to health care*, J Indian Acad Forensic Med. April-June, Volume 34, No. 2 (Sept. 1, 2018, 10:32 AM) <http://medind.nic.in/jal/t12/i2/jalt12i2p160.pdf>

²⁰ Prof. Sumitra Pamar, Allahabad University, *Women's health in Disasters and Conflict* (Sept. 1, 2018, 12:15 PM) http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000456WS/P000858/M019308/ET/1486097787QUAD-1.pdf

3. Access to Justice

It is rather obvious that obvious that women in conflict areas have poor access to the judicial system. It has also been reported that many women's rights violations go unreported²¹. This may be contributed mostly by the inferiority of women in our society. Social elements influence them to be homebound and take care of children and household. Additionally, they are subjected to fear and violence as a result of the conflict. It is often seen that women fail to and are unable to appear before a court or police station if it is far from their residence²². Hence, they are left behind without any access to justice.

Apart from the social elements, there are also other factors cause a roadblock to women from accessibility to justice. Some of the factors are as follows:

1. *Legal disparity* - The language of the law can be discriminatory to women either by taking away their right or by failing to acknowledge them. One such major discrimination in our legal system is the failure to recognize marital rape. Hence, the case of marital rapes is filed under Section 498A of IPC which deals with cruelty by the husband. Marital rape being tried under the said section is a major drawback which needs immediate correction.
2. *Fear of police* – In many cases police officers have been reported to be involved in sexual violence or crimes of that sort. They are also known to harass women when they go to file complaints at the station. This has been one major reason for the fear of police officers. As a result of this women are discouraged to file complaints, hence, many crimes go unreported²³.
3. *Inaccessibility of legal aid, courts, and other awareness camps* – In a study conducted by Government of India (GoI) and United Nations Development Programme (UNDP) it is concluded that people from conflict areas and marginalized zones remain unaware of legal aid, court procedures, and other awareness programs. This is mostly contributed by the conflict and geographical barriers. Additionally, in a study conducted by a team headed by Prof. Sumitra Pamar, Allahabad University concluded that men are able to access information regarding health, law, rights etc easily as compared to women.

²¹ Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Sept 3, 2018, 3:00 PM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

²² Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Sept 3, 2018, 5:00 PM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

²³ Sona Drahonovska, *Women in conflict zones*, Human Rights Law Network (Sept. 4, 2018, 2:45 PM), <http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>

In an attempt to improve the access to justice for marginalized people the GOI and UNDP started a Project on Access to justice for Marginalised People in 2009. The main objective of this was to increase the outreach of justice to people who are unable to access justice due to the factors listed above. This could empower women to come forward with their complaints and have access to the judicial system which would provide them with justice which they have longed for.

4. Social Factor

Patriarchy is the bitter reality of the Indian society. Since time immemorial, women have been subjected to immense discrimination on various fronts be it social, political, economical etc. More so Indian society Social structure makes it even more difficult for women to put up a united voice in the society.

In a conflict setup, contributing to the patriarchy that exists, women are denied various rights and are forced to limit themselves in their households. Fear of rape, molestation, and crimes of that sort cripple them to be bound in the four walls of their houses. The impact of conflict on women and children are far more devastating than men but they are often overlooked.

The issue with the patriarchy in addition to conflict is that women are deprived of health care facilities, legal aid, education etc. This way they are unaware of their rights and prone to die of diseases that can be cured if proper healthcare is provided. This is nothing but a violation of their constitutional and legal rights. The government has not been effective in their outreach to help women of these regions and hence, they continue to suffer.

Conclusion

Whenever any conflict breaks out in any area, the entire population is subject to immense pressure from all quarters, but it is the women who are vulnerable to tortures which are mostly sexual in nature. It makes it incumbent for the people to be more vigilant of the repercussions of such fallouts.

Various rights of women are prone to be violated and women being the neglected constituent of the society, makes it even more difficult for them to raise a voice in union against such atrocities. Resolutions and agreements which make it incumbent upon states to take care of women's rights during conflict times are a must in today's time. Effective aidance of such resolutions and legal framework must be checked and properly settled. It is time such violations stop and more so such conflicts.