

THE CONCEPT OF RIGHTS, ITS IMPACT AND IMPORTANCE ON WOMEN IN CONTEMPORARY SOCIETIES: A LEGAL OVERVIEW

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Abstract

This article provides a legal overview of women's right in contemporary societies as well as plausible explanations on why violations of women's rights are merely given fleeting interests by global communities around the world. It is proposed in the article that the root cause of violations and discrimination, which continue to be pervasive components of many women's lives, can be traced to the concept of rights in general and how it is formulated in accordance to the western perspective. Rousseau's idea of 'social contract' is used to argue why there has been a breach in the said contract when societies and their legal systems fail to protect the rights and overall welfare of women. The article identifies key areas in which women have experienced violations of their rights and the root cause why such violations continue to occur in many societies throughout the world. This article concludes with a brief discussion on the importance of empowering women and recommends the adoption of the Convention on the Elimination of all forms of Discrimination against women into their respective national legal provisions.

'Man is born free; yet everywhere he is in chains.'

Rousseau

INTRODUCTION

One of the greatest challenges faced by all governments in the new millennium is to promote and engender respect for women's rights systematically and thoroughly as a permanent and central part of the human rights agenda at the international and national levels respectively. Presently, many governments' commitment to women's human rights remained at best tenuous since they are always last on any national agenda. Women's rights must continuously be negotiated and violations of women's rights often generate only fleeting interests. At worst, their commitment is non-existent and many governments,

through overt discrimination, attacked women's rights in ways that essentially stripped women of their legal personhood.

The International Center for Research on Women (ICRW) has emphasised that the safety, security and prosperity of people all over the world are intimately linked to the health, education and well being of women. Healthy, empowered women are those who are able to plan their families, increase their earnings and maintain their health. This will inevitably lead to the building of strong families, communities and economies.

What could be the root cause of global apathy in relation to women's rights? It is proposed that the root cause of violence and discrimination, which continues to be pervasive components of many women's lives, can be traced to the concept of rights in general and how it is formulated in accordance to the western perspective.

The Concept of Rights in Western Legal Literature

When one attempts to formulate the definition of 'rights' from the mass of literature on it, many ironies and inconsistencies emerge and it is up to the individual to use the 'self' as a reference point to understand and reflect on the function and importance of rights in one's life with the society as its backdrop.

To begin with, the concept of rights forms an integral part of law and yet law functions as a means of directing and imposing restraints upon human activities. It must therefore seem something of a paradox that the idea of rights and freedom can be embodied in the law. This paradox can be resolved when one directs attention not on man solely as an individual with absolute rights living in an unfettered state of nature, but on *man as a social being living a life of complex inter-relationships with the other members of the community.*

In modern times, however, where *freedom has become closely linked with the egalitarian conception of society*, the whole idea of freedom has assumed a central position and a more positive function in the scale of values set up as the operative ideals of a genuine social democracy on the Western pattern (Lloyd, 1977). Thus social democracy can only exist in an egalitarian society where everyone is treated equally before the law. Hence law is justifiably the tool in which the highest purposes of civilization can be achieved.

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What are rights?

Rights can basically be defined as the standard of permitted action within a certain sphere. Rights spring from right. Principles of liability, in the last analysis, must be derived from the moral sense of the community. Every right therefore involves a relationship between two or more legal persons, and only legal persons can be bound

by duties or be the holder of legal rights. Rights and duties are correlatives: we cannot have a right without a corresponding duty or a duty without a corresponding right.

Turning to another problem in the definition of rights, there are three elements that must be considered. A right is legal because it is protected (or at least recognised) by a legal system – hence the criterion of enforceability must be discussed. The holder of a right exercise his will in a certain way, and that will is directed to the satisfaction of a certain interest. Each of these elements – protection, will and interest – is essential to a true description of a right, but many disputes have arisen because of false emphasis either on the will which is exercised or on the interest desired (Paton, 1967: pp 249-250).

In a modern civilised society, there must always be a delicate balance between the right of the individual and the need of the community at large. Authorities who act on behalf of the community are often given powers, which, so long as they exercise them reasonably, do entitle the authority to encroach, usually with compensation to be paid on the right of the individual (Dias, 1976: pp 272).

According to American sociologist William Graham Sumner in his classic work, *Folkways* (1906:42), when the elements of truth and right are developed into doctrines of welfare... they extend their constructive influence over men and society. They become 'the source of science and the art of living'. They are never 'natural', 'God given' or 'absolute' in any sense (Cotterrell, 1992: pp 19).

If the theory of Rousseau and his idea of "social contract" are scrutinised in relation to rights, it is important to understand that this concept of rights of the individual is very much tied in with the community. Rousseau set to evolve a community in which the community as such would protect the individual; but in which at the same time the "individual will be free from oppression". All should participate in policy making. Accordingly he argued that in the original contract that the individuals did not surrender their rights to any single sovereign, but to society as a whole, and this is their guarantee of freedom and equality. Society having come into being for this purpose is expected to restore these rights to its members as civil liberties. Their basis is a moral one. Each individual is not subject to any other individual, but to the "general will", and to obey this is to obey oneself (Dias, 1976: pp 98).

Government and law are both dependent upon general will, on popular as distinct from parliamentary sovereignty, which may revoke or overthrow them. Enacted law is necessary to avoid arbitrariness and to get law right to begin with; the public servants (e.g. the judges, public prosecutors, and law enforcement officials) should apply the "general will" so that law will produce just results. In the event this is not done there will be a breach of the "social contract" and injustice results (Dias, 1976: pp 98).

Key Developments in Human Rights: Its Impact & Importance on Women

The notion of human rights embodied in the Universal Declaration of Human Rights “affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that every one is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. Nevertheless it is crucial that women’s rights need special emphasis due to their unique social circumstances, which impinge on the “social contract”.

Various developments globally when viewed in the context of women’s human rights indicate that there has indeed been a breach of their social contract with the societies they come from. Law has not produced just results when it is applied in relation to women. The history of women in many societies and their experiences of law exemplify arbitrariness.

Violence and discrimination remained pervasive components of many women’s lives. Governments both actively violated women’s human rights and failed to prevent abuses by private actors (Rights Watch World Report 2002). They are a disenchanted group who could not participate in policymaking and yet they were subjugated to the general will despite the breach in the social contract. Women often experienced violations of their rights based on their race or nationality as well as on their sex, gender, or sexual orientation. Women experienced racism and sexism not as separate events but as violations that were mutually reinforcing. Women continue to experience injustice in the following areas:

- Trafficking-related human rights violations and governmental responses to trafficked women as illegal immigrants or criminals;
- Violations of labour rights: discrimination in employment practices and violence in the workplace, including sexual harassment;
- Violations on women’s rights to enter into marriage with their free and full consent as well as their right to dissolve a marriage on an equal basis with men;
- Unjust laws and practices governing women’s personal status-their legal capacity and role in the family, property ownership and inheritance

The well-documented patriarchal biases of law and its enforcement are important elements of explanations of the resistance within the legal system itself to setting up rules and rights against the powerful. An agreed compromise through dispute processing is likely to reflect the will of the dominant party in any dispute. It is precisely for this reason that those population groups such as women typically finding themselves in positions of relative social disadvantage and powerlessness as against other populations are likely to see formality, in legal and administrative processes as advantageous, since it may hamper blatant discrimination in adjudication, arbitration, mediation and it may have

some potential from excluding from dispute resolution the influence of social statuses that are wholly irrelevant to the issue in dispute (Cotterrell, 1992: pp.293). Thus reliance on women's rights distinctly through formal processes can be, in some respects, a defence and a weapon of socially discriminated or marginalized groups such as them. Due to the violation of the concept of justice, which is based on a sense of equality, either distributive or collective, it is vital that legal mechanisms and redresses are specifically provided for to empower and ultimately restore the breaches of social contract committed on women.

Additionally women as primary care givers are in a particularly disadvantageous position in the hierarchy of contemporary societies. Women's traditional responsibilities frequently constrain their ability to make healthy choices for themselves and their families. According to the International Center for Research on Women (2003), women's opportunities to obtain greater independence by earning their own income are often limited by their "reproductive role" of caring for the children and the household. But at the same time, women who are financially dependent on a husband or male partner lack the power to negotiate reproductive health decisions, such as the number of children to have and how far apart to space them.

Another dimension, which needs to be looked at, is the linkages between economic status and legal rights of women. Economic power is one of the distinctive as well as deciding features, which impacts upon the rights of minorities in contemporary societies. The concept of the legal person or legal subject defines who or what the law will recognise as being capable of having rights and duties. This concept is the foundation of all legal ideology and allows legal doctrine to spin intricate webs of interpretation of social relations, since law defines persons in ways that empower or disable, distinguish and classify individuals for its special regulatory purposes. In this way throughout history law has not merely defined social relations but *defined the nature of the beings involved in them* (Cotterrell, 1992: pp 123). In this context, law has a unique obligation "to ensure the equal rights of men and women so as to enjoy all economic, social, cultural, civil and political rights through specific instruments such as resolutions, declarations, and recommendations in the guise of international conventions.

However extensive discrimination continues to exist despite these various instruments, and hampers the growth of the prosperity of society and family, and makes more difficult the full development of women in the service of their countries and of humanity. In situations of war, economic crisis and poverty women have the least access to food, health, education, training, and opportunities for employment and other basic needs. By redefining the traditional roles of women in society and in the family in alignment with the societies development, a giant step is taken to eliminate all forms of discrimination against women which violates the principles of equality of rights and respect for human dignity as well as the establishment of new international economic order based on equity and justice (The Convention on the Elimination of All Forms of Discrimination against Women, 1981).

Empowering Women

The Convention on the Elimination of All Forms of Discrimination against Women (hereafter referred to as the 'said convention'), which entered into force on September 3, 1981, provides a comprehensive guideline that States Parties can refer to, adopt and incorporate into their respective national legal provisions. It allows national and international commitments for action towards the empowerment and advancement of women. Thus for the first time a pattern of legal machinery of the supra-national form has been provided by which fundamental rights of women could be treated no longer as mere empty formulas, but as genuine legal norms governing actual legal relationships.

Throughout the document there is a reverberation of urgency for pursuing by all appropriate means and without delay a policy of eliminating discrimination against women in all fields, in particular in the political, social, economic and cultural fields; Any necessary measures be it the temporary special variety or permanent ones have to be instituted to eradicate discrimination as defined in the Convention. To this end a Committee on the Elimination of Discrimination against Women will be established in accordance to Part V, Article 17 of the said Convention for the purpose of "considering the progress made in the implementation of the present Convention".

The provisions of the Convention can be regarded as a positive directing force for women's rights, which can be used as an instrument of social progress once it is adopted and incorporated by the States Parties into their legal systems. It necessitates the incorporation of non-discrimination as a value of fundamental importance in every democratic society. It has clearly laid down a code of established human rights, namely women's rights, accepted by all civilised states, and a system of judicial machinery whereby issues involving alleged infringement of these rights can be investigated and determined by a regular procedure.

Although these measures represent only a very tentative beginning and it will be a long and painful process before states can be persuaded even though they are already signatories to the Convention, to adopt the each and every provisions of the said document. It ultimately represents a useful advance for women's rights and point in a significant way to the manner in which the idea of law can be used to give effective expression to the fundamental values existing in civilised society with people centred sustainable development and to translate these from slogans into effective legal norms.

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