WOMEN OF CONFLICT: HUMAN RIGHTS AND KASHMIR

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Abstract

It is easy to say that this is the age of women empowerment when we take a look at ongoing trends in the world but how far is the notion of women empowerment valid? When it comes to the disturbed areas, that still remains a question. We live in a world that is now of a multipolar nature and accordingly people in different realms have different ideologies. There are still places in the world whereby women are considered to be inferior to men and men are considered far more superior both physically and intellectually than their male counterparts. How far this notion is correct, everyone does know it very well. Women in India have a long history of struggle towards getting their basic and fundamental rights secured and yet, even at this point wherein we have plethora of laws meant for the benefit and protection of women, there are endless cases of Women discrimination against women happening all across the country at any given point of time. Kashmir is also seeing its share of discrimination against women when it comes to the handling of law and order and insurgency situations by the security forces. No matter who gets killed or injured, it is mostly women who are at the receiving end and since they are already considered as a vulnerable group, Women in Kashmir have become vulnerable to an utmost and an alarming level. From wailing mothers to Rape victims, from half widows to cold blooded murders, the women of Kashmir have seen it all. Who is responsible for all of it? Well, there is no single perpetrator of these acts nor is the state alone wholly responsible. But how far the rights of women have been violated through all these times and how effective have the laws been in securing the rights of the women of Kashmir, that is yet to be determined and once we know, how women rights are affected in Kashmir we will get to know the fact too as to why laws fail to get implemented in the valley and why no one takes responsibility of the acts that violate the basic, human and fundamental rights of women.

Keywords: Gender Discrimination, Sexual Abuse, Authorities, Human Rights, Vulnerable groups, Insurgency, CASO, Collective Punishments, State and Non-State Actors.

Introduction

“No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is
a third power stronger than both, that of the women”.

Muhammad Ali Jinnah¹

Women unlike men are considered to be an inferior version of human being despite the fact that it is her who makes this sure than there is the continuity of the human race in the world. But this problem is not new as this problem has been there since time immemorial. The role of a woman in the current society and in her home has never been considered to be of a wider scope but has always been thought to be very limited and wrongly so. Generations have changed and this has brought dramatic changes in the social system and the society, but not to the subordinate and the inferior position of women.

Despite their being several religious doctrines that woman should be given a highest regard, people have more often than not, acted like people. There have been times when woman used to even kill themselves or were forced to do the same when their husbands died such as the custom of Sati in Indian Sub-Continent. Women have for very long been made subject to torture and inhumane derogation, irrespective of their residence and When it comes to Kashmir, women have often become subjected to cruel and inhuman conditions on part of both state as well as non-state actors. It is quite evident as to how vulnerable the women are and how easily they are exploited.

In Kashmir, they have seen it all. They have received threats and they have been subjected to attacks more often than not. They have been made subject to torture, be it mentally, physically or sexually. They have suffered from trauma. They have seen death and they have seen their loved ones, their families getting disappeared. How far national and international legislations have proved to be sufficient that can be seen prima facie because there has been little to negligent improvement in protection of their rights.

The fact that nothing has changed becomes a cause of serious concern. One surely needs to ponder over the fact that women have been given the maximum protection even under international laws but at the same time, the lack of implementation of those laws in national scenarios keeps those laws at bay and that needs to change. In addition to this, with the advent of numerous schemes and laws related to empowerment, I seek to understand and enunciate as to far have the rights of women, especially in Kashmir been subjected to violation despite the presence of laws. A load of questions always arises when it comes to Kashmir. The valley has always been a hot bed of the debates as it has been a state in conflict for more than 70 years now and it is women, a vulnerable group which has had to bear a lot of burden as a result of this conflict which has been going on for decades altogether. The laws have turned to be futile and have almost ceased to exist as well.

Women as a Vulnerable Group

There are several groups of human beings which because of the nature or some customs prevalent since time immemorial have been rendered weak and also vulnerable in a society, such as children, women, physically

¹ Quaid-i-Azam Muhammad Ali Jinnah, United Indian Muslims; lawyer, President of Muslim League; founder of Pakistan; first Governor General of Pakistan, available at http://storyofpakistan.com/muhammad-ali-jinnah/
and mentally disabled persons, old age persons, migrant workers, refugee seekers or persons belonging to a particular race, ethnicity. The groups are further more enunciated on the basis of their age, ethnicity, sex, colour, geographical location, etc.²

The inferior status of women is entrenched in history, culture and tradition. Through the times, both the national as well as the religious institutions have been asked to justify the violations of the rights of women such as the rights to equality as well as the enjoyment of the basic and fundamental human rights. Even in the present scenario, women are made subject to discrimination in almost all stages of life, be it in income, education, health or the participation in society, and they are also particularly and exclusively made vulnerable to some specific violations such as gender-based violence or discrimination, human trafficking or even sex discrimination. Various international organizations and bodies have been established with the aim of abolishing and removing such policies and actions that perpetuate discrimination against women and thereby violate women’s basic human rights.³

There are certain matters which ask for a special consideration when it comes to dealing with women’s basic human and fundamental rights, for instance:

a) Trafficking in women and girls;
b) Violence against women;
c) Exploitation of women at work

d) Women in war and
e) Status of women in third world countries.

From the day of its inception International law has remained focused on the rights of women. Both Hague conventions and Geneva Conventions provide for special care and protection of women. United Nations Declaration on Human Rights also provides provisions in order to safeguard the rights of women. United Nations Charter in its very first Article provides that there shall be no discrimination on the basis of gender. The basis of all human rights and instruments related to human rights lies on the set principle of equality and principle of non-discrimination. Considering how women are subjected to the violations, it becomes clear that these laws lay down the basic facts that the women should and must be entitled in totem to the complete enjoyment and security of their basic and fundamental human rights. The vulnerable group of women is definitely not a homogenous one therefore they can be discriminated and are actually discriminated in several forms and kinds.

In addition to this, the most deprived and vulnerable group among the women are the women from minority communities and disturbed areas. They are always over burdened by their predetermined disadvantageous position in the country they live in.

Keeping in view the vulnerability of women, the founding fathers of Indian Constitution have incorporated various provisions regarding the protection of women such as Article 15 (3), Article 16 (2), 16 (4), and with the directive principles, Article 42 was also incorporated. The Supreme Court of India has played an active role in safeguarding the rights of women. In Air India v. Nargesh Mirza, an airhostess was terminated from her services on account of her first pregnancy. It was held that it is an insult against motherhood. In Vishaka v. State of Rajasthan, Supreme Court gave various guidelines with regard to the sexual Harassment of women at workplace and it was further held Such International Law is applicable in Domestic Law which is in favour of women, but the only condition is that it must not be in conflict with the domestic law. This judgment is of far reaching importance as it created scope to allow the implementation of International Laws (Humanitarian as well as Human Rights laws) by the Domestic Courts and also by not being actually incorporated within legislations by Indian Parliament.

Vulnerability of Women in Kashmir and Human Rights Violations

The vulnerability of women started escalating in early 1990s when the Government started counter insurgency operations. In came the reports of sexual abuse, mostly rape on part of the Security Personnel and the reports became frequent with time as well. The sexual abuse, mostly rape, was committed during Cordons (CASO) and the most probable reason is because men were taken away into fields during the CASO and this made the already vulnerable women, more vulnerable to sexual abuse and other atrocities as well. There are numerous reports of rape and other sexual offences committed by the forces since 1990 but hardly ever anyone among them has seen the light of prosecution.

In these situations, the security forces have been alleged to frequently getting engaged in collective punishments towards the civilians most times by beating or instead of that by physically attacking and targeting the locals, and burning the houses. Rape is primarily used as a way of targeting the vulnerable group of women. The Indian forces have most often accused the women of being sympathizers to the militants; and thus, after committing rape and such sexual abuses the security forces have attempted to punish and bring downfall of the entire locality or the community.

From the conflict, the women in Kashmir also became victims of security forces, police officers and militants. Along with threats and attacks on their life, the women’s have also been subjugated to torture (physically as well as sexually), trauma, death and disappearance of their beloved ones. The most important thing is that Hindu women got harassment and molestation from the hands of militants, while as Muslim women became victims of security forces and other government sponsored actors. There are cases of rapes which were documented in various reports; however, the culprits are roaming freely, and no judicial enquiry was ever made against them.

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4. 1829 AIR 1981, 1981 SCC (4) 335
5. AIR 1997, 6 SCC 241
6. These abuses have been documented in the Asia Watch/PHR report, “The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community” (March 1993); and in Asia Watch, “Kashmir under Siege”, May 1991.
8. Inamul Haq, Torture on Women available at https://www.escijournals.net/index.php/JSAS
Some of the reported cases whereby Indian Security Forces were accused are Double Rape and Murder in Shopian on 28 May 2009, rape in Bijbehara in 1993, and the list unfortunately goes on. Furthermore, in 1991, a Cordon and Search Operation was initiated by the Indian Army’s 4th Rajputana Rifles contingent in Kunan Poshpura. They then asked all the men of both the villages to assemble in a filed which was nearby. Once the men assembled, the Army personnel started a rampage altogether and thereby barged into the houses and reportedly raped around 150 women of ages ranging from 11 to 80 years, during that intervening night. It was later termed as the “single largest case of mass sexual violence in the independent India”, and unfortunately, till date no single personnel of that Contingent that committed this grave and horrific act has been punished for this crime. Lots of survivors of this incident have filed several petitions in local courts over the time, but the justice that should have been served to them, continues to remain really far away.

The following photo narrates the story of the plight of the women in Kashmir who are being also named as “half widows”.

Source:

Women whose husbands are subject to “enforced disappearances” are often referred to as half widows and referred to as such in the following. Half widows illustrate one of Kashmir's strongest forms of insecurity at large. Given the risks of generalizations, the conditions outlined in this section broadly define women’s experiences of and roles in the long-standing conflict in Kashmir.

The women in Kashmir are mostly victims of physiological torture. The disappearances of their beloved ones made them the victims of mental torture. They are considered as half-widows and cannot marry because they do not know that if their beloved ones are alive or dead. The waiting for their dear-ones made them even weak that they do not face the society. This psychological torture has ended up by creating depression and stress like diseases among women in the valley. As per the report of Human Rights Watch,

they say that the Rape was brought into Kashmir soon after the armed insurgency gained the momentum in the early 1990s. it further says that it has become quite impossible to get the accurate number of rapes related to the conflict because of several factors which include governmental interference in the investigations which should have been otherwise impartial.\textsuperscript{14}

The governments both central as well as state, have always been claiming that inquiries have been ordered whenever there have been reports of rape and subsequently required actions have also been taken up against the personnel found to be guilty, the Indian authorities on the other hand have never really gotten into prosecutions or penalizing of security personnel involved in any of these cases. In many cases of this sexual abuse, the investigations altogether fail to go through with the established procedures that surely could have provided necessary evidence for any such prosecution.\textsuperscript{15} Perhaps it can’t be said that rape has been sanctioned in Kashmir as per the government policies but by failing to actually prosecute and provide punishment to those who are responsible, or make it public that any such action has been taken against security forces charged with rape, the authorities have signaled that the practice of rape is undoubtedly tolerated, if not condoned as happened in the horrendous world wars. Indeed, when it comes to responding to the reports by the human rights organizations or press about the incidents or occurrences of rape, the officials of the government unfailingly and often try to dismiss and discard the testimony and truthfulness of those women by accusing them of being sympathizers and supporters of the militants and the militant organizations.

The security forces are immunized completely when it comes to the grave crimes like Rape or any other sexual abuse. Out of all the reported cases of this sexual abuse, only a few cases have reached to the mark of investigations but none of the cases has ever resulted in the prosecution of the offenders. This horrendous culture has become so deep-rooted that even the highest-ranking army officials often try to justify the rape and sexual abuses by taking the awful defence citing that, these acts happen because military personnel face stressful conditions in the valley.\textsuperscript{16} We can easily note here that International Criminal Court has expressly recognized the offence of Rape as a type of Crime Against humanity. Both European as well as American Commission on Human Rights have identified the offence of Rape as a prevalent form of torture. In addition to this, the statutes or the laws made for the International Criminal Tribunal for Rwanda (ICTR) or the international Criminal Tribunal for Yugoslavia (ICTY) have signified that rape is a crime against humanity.

\textbf{Effects of Conflicts}

In armed conflict, women are the worst sufferers. Their sufferings are always been neglected. There is a untold pain as mothers, sisters, daughters, caregivers and victims in conflict which has till date brought great


\textsuperscript{15} Numerous incidents of rape have been reported by Indian and Kashmiri human rights groups. See, for example, Committee for Initiative on Kashmir, Kashmir Imprisoned (July 1990).

destruction and despair amongst the people. Women continue to experience violence in many conflict situations around the world, such as rape, sexual slavery, and other human rights abuses, as part of military campaigns and as a result of breaking down community norms that tend to accompany armed conflicts. We are witnessing violence at the hands of state actors, non-state actors (including rebel forces and dissidents), community members, and even, unfortunately, the peacekeeping forces sent for their defense.

The philosophy of human rights is as old as the human race but after Second World War, the significance of human rights started to recognize individual freedoms with holistic approach. The idea of rights for men, women and children were also mentioned in some form of divine scriptures or the other in all culture and societies. However, a legal sanction was recognized in about the 1200’s in England, when the king was forced to sign a paper called the ‘Magna Carta’. Since then, the struggle continued through each century to the present day, without human rights, not all human beings would have the freedom to live the way they want to live. Human rights are very important in the relationships that exist between individuals and the Government. The Government exercises their power over its people. However, this power is not absolute, human rights limits their power to protect individual inalienable rights. It is incumbent that states have to look after the basic needs of their own people and protect some of their freedoms.17

Article 3, Common of the Geneva Conventions is applicable in non-international armed conflicts also. This Article is dealing with the situations of non-international armed conflicts and it includes traditional civil wars, internal armed conflicts that spill over into other states or internal conflicts in which third states or a multinational force intervenes alongside the government. This Common Article 3 establishes fundamental principles from which no immunity is permitted to the armed forces to breach international norms. Article 3 of the Geneva Conventions gives us detailed norms, which are obliged to be followed by the states in internal conflicts under International Humanitarian Law. They are as follows:18

1. Humane treatment for all persons is very important without any adverse distinction. It explicitly prohibits torture, cruel treatment, murder, mutilation, humiliating and degrading treatment, the taking of hostages and unfair trial.

2. It is the duty of the State that the wounded, sick and shipwrecked be collected and cared for.

3. It also grants International Committee of the Red Cross (ICRC) the right to offer its free services to the parties in the conflict region.

4. It also calls parties to the conflict to bring all or parts of the Geneva Conventions into force through special agreements.

5. It recognizes that the application of these rules does not affect the legal status of the Parties to the conflict.

6. The norms of international law becomes applicable to the relationship between a State and its own citizens/residents, a relationship which had up to then been regarded as a matter within the sovereign powers of the State, regulated only by its own domestic legal system.


18 Id. 78.
7. Norms of this Article becomes applicable both to the armed forces of a states and non-State actors, namely organized armed groups that did not belong or belongs to a State were involved in an armed conflict with the State’s armed forces.

8. A role for the International Committee of the Red Cross (ICRC) plays a very important role in non-international armed conflicts.

9. Given that most armed conflicts today are non-international, application of this Article is of the utmost importance. Its full respect is required.

The Declaration on the Elimination of Violence against Women was adopted by the United Nations General Assembly on 20 December 1993. According to Article 1¹⁹ of this Declaration "Violence against Women" means that It includes violence perpetrated not only by the general community but also by the state and family members. In its preamble, it also recognized that women in armed conflict situations are particularly vulnerable to violence.

**Conclusion**

The women in Kashmir has been always neglected and politicized with its past memories, alienation, mourning, and also the emancipatory political movements before and after the partition of India and Pakistan. The ground reality is more than worse than it is shown by electronic media and daily newspapers. There are many political issues which need to be addressed legally as well as politically. The political history of Kashmir enables us to assess in understanding basic needs and urges of the people. The history of oppression especially women in conflict has been witnessed many uprisings and unrest in the Union Territory of Kashmir.

The primary responsibility of all democratic countries is to safeguard life, liberty and property of its citizens and more emphasis should be laid on the women because they are more vulnerable in conflict zone. Human rights violations of women are a grave problem which needs to be extensively and thoroughly to be dealt.

The term Human Right itself expresses that it is the guardian and representative of the rights of the entire human race irrespective of any gender. Individuals of any gender always come to the world with these rights. Human rights are therefore more often classified as rights given by God or as rights given by nature. All people irrespective of their gender have got equal access to these rights. No discrimination whatsoever is allowed while securing the rights.²⁰ When it comes to Kashmir, the situation is worse with regard to the safeguard of even basic fundamental rights. Women in Kashmir have for long times been targeted for exploitation as being already a vulnerable group class and an easy target, In Kashmir, they become a much easier target to get a hold on. With so many draconian laws in place, the situation is such that as long as the forces are given a free hand, they will continue doing that. For insurgents, we may have counter insurgency plans but it looks like, for Security forces we have a cover up plan always as the prosecutions and their

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¹⁹ “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in privat

verdicts speak for themselves. With the laws such as Armed Forces Special Powers Act, 1990, a common civilian is always silenced and is left with nothing to defend himself once any grave mishap occurs in the valley. If indeed Kashmir is considered as integral part then, if the culprits of Nirbhaya are penalized, same must be done with the culprits of crimes against women in Kashmir instead of politicizing those crimes and maligning the investigations and destroying the evidences. But Alas! This notion of being integral is only the word of mouth and has no relevance to the ground situation whatsoever and that is evident with the fact how crimes against women in Kashmir committed by the Security forces have never been taken up. It is in the interest of everyone that the rules of our constitution and the International Humanitarian law, if followed, can bring down these violations drastically down but until then, every Kashmiri will fear to come out of homes. Once exploited, it is a woman’s social death and for last several decades, owing to the blood bath in Kashmir, Kashmiri women have seen it all. It is the duty of every single person to raise the voice and until and unless this happens, women will remain as one of the most vulnerable groups to deal with.