

Women human rights defenders in India: Few socio-legal aspects

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I want to start my deliberation with what Ms. Hina Jilani opined that ‘I have repeatedly emphasized that there is no better protection for women human rights defenders than the strength and support of their own movements’.

With this statement I want to fix few contexts for discussion, these contexts are

- **Resistance to state violence and repression of women human rights defenders, with a focus on state actors’ responsibility;**
- **Responsibility for violations by non-state actors, including violations perpetrated by family and community members and obstacles faced in those arenas;**
- **Violations perpetrated in relation to heightened fundamentalisms on a global level**
- **Violations perpetrated in relation to regulation of, and attack on women’s sexuality.**

Women’s struggles for freedom and equality have been a vibrant part of all social movements for transformation and social justice through history. Mary Wollstonecraft wrote in 1792 in her *Vindication of the Rights of Women* that the struggle for rights of women is located within the personal space – the home and the family; and within the public space – the political and economic world.

Two hundred years later, women activists defined their experiences of violence, subordination and disadvantage as located within **patriarchy**. Patriarchy is a social formation that gives privilege to male power and separates the public and the private worlds. It constructs ‘gender’ (the socially constructed meaning assigned to the sexes) as a binary of male and female and assigns particular roles and privileges to these. It assigns to women roles within the private sphere which are attributed lesser value - creating and perpetuating inequality. Patriarchy also privileges heterosexuality, establishing sexual hierarchies and marginalizing sexual and gender identities that do not fall within this power dynamics. A pattern of violence, oppression, silencing and marginalization are used to enforce this value system.

Who are women human rights defenders?

To address violations of women’s human rights, women activists have worked courageously for the defence of their own rights, and for the defence of the rights of others. We call them **women human rights defenders**.

‘Women human rights defenders’ include women active in human rights defence who are targeted for **who they are** as well as all those active in the defence of women’s rights who are targeted for **what they do**.

Why focus on women human rights defenders?

Women human rights defenders put themselves on the front line in the promotion and protection of human rights. In doing so, they face risks that are specific to their gender and additional to those faced by men. Frequently, the violence or threat against them is sexual in nature, or they face restrictions in their work on account of their gender. Furthermore, prejudice, exclusion and public repudiation by both state forces and social actors weigh heavily in their lives.

Harassment and attacks against them may themselves take gender specific forms ranging from verbal abuse directed exclusively at women because of their gender, sexuality or gender identity to sexual

harassment and rape. These human rights abuses can, in turn, have repercussions that are, in and of themselves, gender-specific.

For example, the rape of a woman human rights defender in custody can result in pregnancy and sexually transmitted diseases, including HIV/AIDS. Other gender-specific consequences could also include forced abortion or forced childbirth.

Since the abuses against women human rights defenders are generally not classified as human rights violations, one serious consequence is that the atrocities against them are given lower priority.

Sometimes they are not considered 'serious enough' to merit response or redress, or they are simply ignored in favour of those committed against 'recognized' human rights defenders who are usually male. As a consequence, women defenders are deprived of protection afforded to their male colleagues in the movements.

Moreover, interlocking networks of silence and shame that blame victims (especially of sexual violence), and male language or male-defined processes in legal institutions have often resulted in the suppression of stories of abuse. For example, women activists have had to struggle – even within the human rights circle – to assert that 'rape' is not just an act of violence, but also an affirmation of unequal power relations.

In cases where the perpetrators are trusted members of the family or community, self-censorship and the internalization of fear can also become so ingrained that breaking the silence is difficult. This has serious repercussions on the well-being of women human rights defenders.

Thus, it has been difficult to argue for adequate protection for women human rights defenders within male-dominated social formations or spaces that exist all over the world. Most mainstream human rights frameworks and institutions fail to recognize the private or hidden nature of the violations, and focus on the public arena and state accountability. This leads to a disregard of non-state actors' abuses. The lack of mechanisms to hold *individual* perpetrators accountable under international human rights law contributes to a culture of impunity for these violations against women human rights defenders.

Women human rights defenders also have to do their work within a context where democratic principles are being undermined. In authoritarian regimes, human rights defenders are arrested, detained, harassed or killed for criticizing the state. Making state and non-state actors accountable for human rights violations has become more frustrating than ever, and the work of women human rights defenders more dangerous than before.

Patriarchy – how does it affect women human rights defenders?

As defined clearly in the *Introduction*, patriarchy is a term used to describe the oppressive and exploitative relations experienced by women as a result of privileging male power in society. This is enforced by restricting women's autonomy – especially their sexual autonomy – and justifying violence against women as natural.

Moreover, women's realm for making decisions about their own lives is severely limited. Women who step outside social norms of femininity can face severe retribution. Such patriarchal power relations result in the systematic abuse of women's human rights.

Patriarchy divides the public and private spheres. Such separation has serious implications in the lives of women. For example, it gives rise to the sexual division of labour, which is an allocation of tasks on the basis of sex. This division of labour between sexes is based on what a society expects a man or a woman should do, and it values the products of male labour more than those of women, compounding gender discrimination.

The same structural gender inequality and disempowerment of women that create a sexual division of labour also account in part for the non-recognition and lack of protection of women human rights defenders. They have to fight continually against gender stereotypes that invalidate their role as leaders of the community. They have been treated as mere extensions of their husbands,

An analysis that takes into account gender, as well as other categories of social marginalization is critical to understanding the sphere or type of violence women human right defenders experience.

This intersectional approach looks at the various factors of social identity and axes of discrimination - including gender, race, sexual orientation, gender identity/expression, ethnicity, (im) migrant status, health status, age, physical disability, language – which mutually constitute not only the exercise, but also the violation of human rights of an individual or group. In particular, Special Rapporteurs on Violence Against Women Radhika Coomaraswamy and Yakin Erturk explained, ‘(When) patriarchy intersects with other sites of oppression such as class, race, ethnicity, displacement, etc., discrimination becomes compounded, forcing the majority of the world’s women into situations of double or triple marginalization’ .

Women defenders may arouse more hostility than their male colleagues because as women human rights defenders they may defy cultural, religious or social norms about femininity and the role of women in a particular country or society. In this context, not only may they face human rights violations for their work as human rights defenders, but even more so because of their gender and the fact that their work may run counter to societal stereotypes about women’s submissive nature, or challenge notions of the society about the status of women.

Few points for reckon with

Militarization – what are its impacts on women Human Rights defenders?

Fundamentalisms and other forms of religious and nationalist extremisms – how do they affect women human rights defenders?

Globalization – is it relevant to women human rights defenders?

What human rights principles apply to the protection of women human rights defenders?

Inalienability and universality

Human rights are fundamental rights everyone has by virtue of being human. They are inherent and inalienable in every person regardless of their status in any given society. Human rights cannot be granted or withdrawn or taken away. They are enshrined in the Universal Declaration on Human Rights, and subsequently in conventions and treaties such as: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

Many states and human rights experts claim that the universal nature of human rights is beyond question. States have repeatedly proclaimed their acceptance of them by subscribing to Universal Declaration on Human Rights, the ICCPR, and the ICESCR (referred to as the International Bill of Human Rights) and incorporating these human rights into national constitutions or domestic laws.

Further, the principle of non-discrimination on the grounds of sex or any other distinction, which is codified in the UN Charter and the Universal Declaration on Human Rights, clearly establishes the inclusion of women in the universal application of human rights.

Despite these pronouncements, there remains a tension between the affirmation of the universality of rights, and the need to create space for cultural differences and diversity. Espousing 'cultural relativism', some governments argue that human rights are not universal, but a product of the West. They contend, human rights do not apply to all, but are culturally specific to the West or global North.

This argument is particularly problematic for women human rights defenders. For example, those who advocate against child marriage are perceived to defy culture and tradition, and such a harmful practice against girls is not seen as a human rights violation.

The enactment of CEDAW in 1981 addresses this tension between human rights and culture. The CEDAW Committee, which monitors the implementation of the Convention, has categorically stated that traditional, religious or cultural practices cannot be used to justify discrimination against women. Article 5 stipulates that states shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women that are linked to inequality between sexes and gender stereotypes. Hence, reservations made by governments under Articles 2 and 16 of CEDAW on cultural or religious grounds are considered incompatible with the object and purpose of the Convention.

These are few women specific sections in Criminal Procedure Code of India, which are again rampantly in violation by the state agencies in majority of cases related with Women Human Rights Defenders

In section 160 (1) of the Code, there is provision for women where any police officer making an investigation in a crime may, by order in writing, require the attendance before himself of any person as witness being within the limits of his own or any adjoining police station. If such person is a woman, in that case her statement will be recorded at her residence only.

In section 46 (4), there is specific provision of arrest of women where except in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Further it is law where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest

Whenever a female is searched, the search shall be made by another female with strict regard to decency as per provision made under 51 (2) of the Code.

In section 26 of Code, if any offence of Rape is tried under penal provision of section 376 and sections 376A to 376D of Indian Penal Code, the trying court shall be as far as practicable by a Court presided over by a woman.

In case of rape victim, further provision has been made under section 157 of the Code. In investigating the offence of rape, the investigation shall be conducted at the residence of the victim and, as far as

practicable by a woman police officer, and if the victim is under eighteen years of age, she should be questioned in the presence of her parents or a social worker of the locality.

The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station and in some incidents of rape where it took place under custody (Sec 173 of Cr.P.C.). The trial of offence committed for rape should be held *in camera* as per provision under 327 of the code. The reporting and printing of the rape trial can be done provided the identity of the parties can be kept secret.

In question of medical examination of women after arrest, the examination of the body shall be made only by or under the supervision of a female registered medical practitioner as per provision under section 54 of Cr. P. C.

Any woman aged below 18years if arrested shall be detained in Observatory Home, not in police station or jail.