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VULNERABILITY AND RIGHTS DISCOURSE: INEVITABLE INEQUALITY?

Author –

Jasleen Kaur

Student

Rajiv Gandhi National University of Law

ABSTRACT

“What makes you vulnerable, makes you beautiful.” – Brene Brown

Vulnerability has always been subject to debates in the field of jurisprudence, the social stigmas attached to it, intensifies the subject even more. This brings me to the central argument of the research: Humans who are vulnerable, either because nature or deep-rooted customs, do possess human rights too or in simpler words: equality with the vulnerable sect of the society. In the present exploration, the chief analysis that is being followed up is that of Martha Albert Fineman: “The Vulnerable Subject: Anchoring Equality in Human Condition”. Martha highlights the role of philosophies of justice, equality, human nature together with the role of vulnerability in an individual’s life. The restrictions of anti-disparity laws and acknowledgement of universal anthropoid vulnerability as moral fundamentals of a prosperous and a more receptive and approachable state will also be discussed in the exploration. The question that is tried being answered is “Vulnerability: Inevitable Inequality?” a breakdown on the inequality and its inevitability towards the susceptible faction particularly the females in India, will be drawn and viewpoint of Vulnerability as a beautiful facet of anthropoid life will also be made.

Keywords: inequality, Martha Albert Fineman, rights, vulnerability, vulnerability theory, women.

REVIEW OF LITERATURE

Numerous conducted studies have shown that women are more vulnerable than men. The reading also proposes that they are the more vulnerable faction since there is this monetary disparity between the two sexes.¹

A reading presents the fact that women face diverse types of vulnerabilities in India. Being affiliates of a specific class, societal group, caste, and being ‘submissive’ sex, women face twofold discrimination. They have an inferior social status as equated with men. Being in the ‘vulnerable’ set they have very bantam control even of their own life. Being literally forced

¹ Onwutuebe, C. J., *Patriarchy and Women Vulnerability to Adverse Climate Change in Nigeria*, SAGE Journals, 8 Feb, 2019, at 1, 2.

and wrought into child-bearing, matrimonial rape, and least conceivable health care measures are some of the common practices against females in India.²

INTRODUCTION

Canadian research of populace also demonstrates that even in an industrialized country like Canada that dissimilarities between men and women do exist in a domestic set-up. The socio-economic aspects also play a very crucial role in the disparity between men and women, the exploration suggests.³

The researches tell us that females' vulnerability has a very wide variety of systematic violence and discernment. It is also sustained by the 'privileges' held by men. When women are unable to conform, undeviating violence converts into the answer.⁴ The repudiation of basic rights and requirements also results in organized and straight violence. The discrimination of women begins at a household level, making them more weak and vulnerable than men are, from the very commencement, well imbibed in our minds.⁵

The conclusions of another research tell us that women are encountering huge amounts of problems and obstacles while in the work-fields. As the rate of women's dependency rises, persistent discrimination, unequal access to justice, to resources, over control of in-laws, husband, least provided education and health care measures show the plight of women in India.⁶

Even the womenfolk who are trying to sustain and maintain the kinfolks and contribute to the social order can also be placed in the cluster of 'vulnerable'. Sophisticated women, from so-called 'good families' face matters too which do put them on the pedestal of vulnerability.⁷

Research conducted by Chintey and Chintey also concluded that even though there are a number of laws and acts for the protection of women (and children), but they fail to achieve

² Miss Memi Rani Chintey & Bentul Chintey, *Women and Children as Vulnerable groups in India: their health and Human Rights*, 19, IOSR-JHSS, Jun. 6, 2014, at. 1, 3.

³ Roderic Beaujot, et. al. *Gender inequality in the family setting*, CSP, Special Issue on FCD 2015 Conference, 2017, at. 1, 2, 6.

⁴ 1 MARIAM KURTZ, WOMEN, WAR AND VIOLENCE: TYPOGRAPHY, RESISTANCE AND HOPE, 41-67. (Santa Barbara, Praeger, 2015) (2015).

⁵ *Ibid.*

⁶ Mohideenbawa Riswan & Wazeema TMF, *Gender equality and vulnerability of women in the rural economy*, ISGEE, Aug 2018. at 62, 66.

⁷ *Ibid.*

their objectives because of the mindset of our society. Women are being exploited from centuries back till now, the 21st century.⁸

VULNERABILITY AND RIGHTS DISCOURSE: INEVITABLE INEQUALITY?

Thinking about the word ‘vulnerability’ maybe a cringe-fest for a lot of people.⁹ We may think of helpless, poor, and deprived people. People’s vulnerabilities are rooted deep, in the subconscious minds. The literal meaning of the word ‘vulnerable’ is “exposed to the possibility of being attacked or harmed, either substantially or emotionally”, but is it really about one’s physical or emotional self only?

Many researches prove the fact that vulnerability is often gendered.¹⁰ Womenfolk are the more vulnerable sexual category. Women have mostly assumed the supporting role, they’re the “side-lined” ones. When God (here, Jehovah), created humankind (Genesis 2:21), he created Adam from dust and Eve, from Adam’s rib, to be by ‘his’ side. Most interpretations suggest that even God wanted, women, to take a step back and be the second ones. Many more historical accounts prove the fact that women have always been the “submissive” ones and this has resulted in an intense patriarchal system that exists, today. These practices are so well imbibed in us, that they put the women on the pedestal of vulnerability. Given the disparity amongst the two sexes, women are more likely to have a lower economic status, social goods and legal means to protect themselves from crises; may they be lawful, monetary, or social. While these issues are largely debated around the globe, by academicians, legal luminaries, activists, the depth of this discourse fails to capture women’s insecurities and psychological vulnerabilities.¹¹ Internationally, many conferences, meetings strive to find a solution to this problem, but the core still remains the fact that women are procedurally side-lined.

In a traditionally and culturally diverse country, like India, women face a lot of emotional and psychological vulnerabilities. Things like marital rape, domestic violence, dowry, forced

⁸ *Id.* p.2

⁹ Mark Manson, *Vulnerability: The Key to better relationships*, Mark Manson (Mar. 8, 2020 2:38 PM)
<https://markmanson.net/vulnerability-in-relationships>

¹⁰ *id.*

¹¹ Fionnuala N. Aolain, *Women, Vulnerability, and Humanitarian Emergencies*, 18, MJGL, 2011, at 1, 22.

childbearing, forced prostitution, child-marriage, ‘*Bandhua*’ culture, sexual harassment and the like push women into a state of vulnerability in India.¹²

It can be safely said, that (most) women are born vulnerable in India.¹³ The crux lies in the inequality between the two sexes, in Indian society. The sad tale begins from the prenatal diagnostic techniques, which diagnose the sex of the fetus, resulting in female foeticide. If they are born, they are deprived of basic nourishment and care, as they are the ‘undesired’ ones. This gender inequality and biases kills over 2 lakh girls (under the age of 5), each year¹⁴. The families are considered as an arena of love and care, but even the (most) families discriminate between their male and female children.¹⁵

These practices have prevailed in India for a very long time now. Like morphine, they are all over the Indian system, now. The *Nirbhaya* (Delhi) gang-rape case is one such example. The unfortunate incident took place years ago and even after so many years people still blame women for such crimes. The banned BBC documentary ‘India’s daughter’¹⁶ sends chills down my spine. Even after committing the gravest crime possible the rapist, in the interview, had the audacity to say that hanging them would only infuriate young men: earlier men raped women and left them, but if they’re hanged, men would rape women and kill them, so all evidence vanishes. Other heinous cases like Arusha Shanbaug, the Kathua and the Unnao rape cases¹⁷, etc. are only the highlighted ones. Thousands go unreported, for women are ‘victim-blamed’. Recent news also exposed a couple named Affaq Hussain and his wife, Saira who built ₹100 crore empire by exploiting the most vulnerable sect of the society. The couple pushed almost 5000 poor minor girls into prostitution¹⁸. ‘*structural violence*’ doesn’t really let women outshine. Leatherman (2011) in his research gives out a source of such gendered vulnerability,

¹² *Ibid.* p.2

¹³ Alka Gupra, *Female Foeticide in India*, UNICEF Press Releases (Mar. 8, 2020 10PM) <https://unicef.in/PressReleases/227/Female-foeticide-in-India>

¹⁴ ___, “Gender bias kills over 200,000 girls in India each year: Lancet”, Indo-Asian News Service:India Today. (Mar. 8, 2020 10:09 PM) <https://www.indiatoday.in/india/story/gender-bias-kills-over-200-000-girls-in-india-each-year-lancet-1234138-2018-05-15>

¹⁵ *Ibid.* p.3

¹⁶ BBC, *India’s Daughter: Nirbhaya Delhi Gang Rape*, BBC. (Mar. 8, 2020 09:21 PM) <https://archive.org/details/BBCDocumentaryIndiasDaughterOnNirbhayaDelhiGangRapJyotiSingh>

¹⁷ Diti Pujara, et. al., *Statistics on rape in India and some well-known cases*, Reuters, New Delhi. (Mar. 8, 2020 09:54 PM) <https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV>

¹⁸ Rashme Sehgal, “*The Couple that forced 5,000 girls into prostitution*”, Rediff. (Mar. 8, 2020 09:16 PM) <https://www.rediff.com/news/special/the-couple-that-forced-5000-girls-into-prostitution/20161024.htm>

called the ‘*hegemonic masculinity*’,¹⁹ where the societies are typically male-centered and they are the owners of power and privilege. Foucault also contends that

“Power is not simply a ‘privilege’ acquired or preserved, of the dominant class, (which in a patriarchal society like India, means men).²⁰

Power is something that the society has ‘gifted’ to men and the women lack it. The non-existence of authority and privilege is demonstrated in the variance of the rate of premarital sex amid menfolk and womenfolk. Womenfolk are appreciated for their generative distinctiveness and virginity. In Muslim belief, it is said that a male martyr is rewarded with 72 virgins in paradise, by God. The absence of either of re-productivity or virginity, may result in serious consequences like violence, divorce, torture, etc.²¹ such things imprint deep impressions on a feminine mind. Demeaning things that are heard almost every day contaminate the self-confidence and self-respect women have. Women in India may or may not be physically vulnerable but most of them are emotional. Women themselves are ‘victim-blamed’ for rape, eve-teasing, harassment, etc.²² India is one of the countries where women are questioned even about what they wear, and phrases like ‘asking for it’, ‘whoring’, etc. are used.

In such cases, women do have rights. Womenfolk fancy not using it or are literally forced into not using it. The inequality in the society and prevalence of the so-called ‘systematic violence’, makes women take a step back. For instance, when the triple talaq bill was passed in India, many feminist activities and Muslim women themselves were protesting against it. Why you would ask? For them, they feel that they will not be accomplished of facing the bizarre and threatening consequences of it. Rendering to feminist campaigners, Muslim womanhood, since the bill, will become ‘more’ vulnerable to domestic violence, their own economic status, lose their household rights and social security.²³ Women choose not to speak because of the subconscious inequality that is very well deep-rooted and will not spare women. This was evidenced when the household of a magistrate was seen in the flesh dragging and beating their daughter-in-law, and she cherry-picked not to express herself for a very elongated period of time, keeping in view the consequences. We probe this meek question to ourselves, how many

¹⁹ *Ibid.* p.2

²⁰ *Ibid.* p.4

²¹ *Ibid.* p.4

²² Anuradha Mukherjee & Ranjan Basu, *A Spatio-temporal study on vulnerability of women to domestic atrocities in the social environment of Kolkata City*, 22, IOSR-JHSS, Feb. 2017, at 34, 44.

²³ Prem Chaudhary, *Why Feminists are opposing triple talaq Bill*, Tribune India. (Marr. 9, 2020 01:45 AM)
<https://www.tribuneindia.com/news/archive/comment/why-feminists-are-opposing-triple-talaq-bill-708844>

times have we seen someone or experienced ourselves, cases of eve-teasing, stalking and let them go unreported? The answer lies within our own mindsets.

In the last decade, things may have changed a little bit. More and more women are now joining-in in the work field. Women are part of Multinational Companies, have ventured into businesses, etc. Even after being empowered at a very large scale, why is that women still feel vulnerable in India? In 2020, more and more women are becoming aware of their rights. Strong movements like the MeToo movement have empowered women to come out free, the gay rights (partial decriminalization of Sec. 377, IPC) has also empowered women to express their sexuality and sexual orientation freely. Even after being in workplaces, having means of income, and ascending towards freedom, women still are on the pedestal of vulnerability. This is because of our deep-rooted, coagulated through the process, which refuses to change.

Martha Albert Fineman's work has always struggled with the boundaries that inequality poses on people. Martha's vulnerability theory advances questions, challenges prejudices about individuals, and government accountability and the part of law and statutes, to address the relationship between vulnerability and inequality in society.²⁴ Fineman discards the liberal subject in favor of a vulnerable subject. She argues that people are universally vulnerable, inseparably fixed in official relationships from birth until death.²⁵ She believes that the state must not overlook the reality but the state policies, laws and statutes should be responsive to an individual's vulnerabilities. Martha also adds that human condition is the subset of universal and ever-continuing vulnerability. Martha devised a theory based entirely on human vulnerability and the state is presented as the legitimate governing entity.²⁶ Fineman's essay called "*The Vulnerable Subject: Anchoring Equality in the human condition*" presents a critique of the boundaries of anti-discrimination laws and universal human vulnerability should serve as measures of achieving a more and more responsive state. Fineman, in her essay, bashes the idea of victimhood, dependency, pitiable conditions, etc. she portrays that vulnerability arises from a particular person's location in society i.e. economic, social or political and every person's experiences in its aspect are different and unique.²⁷ Her theory emphasizes the fact that things should not be focused on discrimination against defined groups rather things should

²⁴ Martha Albertson Fineman, *Vulnerability and Inevitable Inequality*, OsLaw, Dec 2017, at 149.

²⁵ Phillip Rich, *What can we Learn from Vulnerability theory?*, Honors Projects, University Honors. (Mar. 9, 2020 10:22 PM) <https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1461&context=honorsprojects>

²⁶ *Id.*

²⁷ Deborah Dinner, *Vulnerability as a Category of Historical Analysis: initial thoughts in tribute to Martha Albertson Fineman*, 67, Emory L.J. 2018, at 1149, 1161.

be focused on privileges conferred upon these marginalized sections of society. Following this approach will ascend us beyond the confines of discrimination models and towards a realized vision of equality. The state or the government plays a very important role in Fineman's theory. She establishes that we all, in some way or another, benefit from society and its institutions, some being advantaged and some being disadvantaged. So the state has a responsibility to mould conditions in which people can fully actualize their capabilities and be themselves as fully as possible. She says:

“A more active state which is responsive to reality would create a more egalitarian society”.

The “responsive” state has an obligation: to not at all give privilege to a sect of society over the other sect. The government or the state is also accountable to defend and validate its freedoms and privileges given to a specific sect. of society.²⁸ Parity and Fairness are only some of the characteristics of association and affiliation between the nation-state and the individual.²⁹ However, in the case of India, many rights are provided by the state to put up with the thousands of years inequality: the prevention of immoral traffic³⁰, dowry prohibition³¹, prevention against sexual harassment of women at the workplace³², protection against domestic violence³³, etc. Putting in view Martha' theory the state and its major institution, the law has provided for the vulnerable, has at least tried to put up with the inequality. But the real problem lies within our society and the implementation of these laws.³⁴ A more responsive society will ultimately result in a more responsive and obliged state.

CONCLUSION

Martha Albertson Fineman in her essay (later published as a book) talks that vulnerability is universal and persons are in recognized associations from the starting of their lives till the very end of it. The institution's people associate themselves with given them autonomy, wings to fly and freely express themselves. The problem that almost every state faces is, that it is not able

²⁸ *Id.*

²⁹ Martha Albertson Fineman, “The vulnerable subject and the responsive state”, 10, Emory L.J, 2016.

³⁰ The Immoral Traffic (Prevention) Act, 1956.

³¹ The Dowry Prohibition Act, 1961

³² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³³ Protection of Women from Domestic Violence Act, 2005

³⁴ *Id.*

to divide or distribute the rights given by it into people, equally. The deprived ones become a vulnerable sect, who live in constant fear of being more and more marginalized. In India, womenfolk are the ones who are the ‘vulnerable’ sexual category. According to Martha’s vulnerability theory, the state is obliged to maintain equality and is responsible to its people. But in a country like India, where mostly customs, norms and traditions dictate, even after having many women empowering laws, women still are the vulnerable ones to a very large extent. Inequality between the sexes is somewhat imbibed into our subconscious minds, which is very hard to get rid of. Take the Sabarimala Temple issue for example.

Keeping in view Martha’s vulnerability theory, inequality against the vulnerable gender: women, is inevitable to a very large extent in a country like India. The responsibility can not only be handed over to a state when the society plays such a keynote in the every-day life of people. Rights and vulnerability are undoubtedly, inseparably related. Still, in today’s date, the latter seems to override the former. In conclusion, the researcher would like to add that vulnerability may make us weak in many ways, but it is universal and one has to overcome such thing by altering the mindset and that vulnerability only comes into existence when we realize the fact that every human has intrinsic dignity which ultimately leads to the discourse of human rights.³⁵ *Strength lies in the beauty of vulnerability.*

³⁵ Roberto Andorno, *Is Vulnerability the foundation of human rights?*, 55, *Ius Gentium Series*, Dordrecht: Springer, 2016., at 257, 270.