

MAKING HUMAN RIGHTS EDUCATION INCLUSIVE
The Indian experience

OR

Locating Human Rights Education in the broader
human rights landscape

Devaki Jain
Sitharamam Kakarala
October 17, 2005

The concept underpinning human rights education is that education should not only aim at forming trained, professional workers, but also at contributing to the development of individuals who possess the skills to interact in a society. Human rights education, human rights into education aim at providing pupils and students with the abilities to accompany and produce societal changes. Education is seen as a way to empower people, improve their quality of life and increase their capacity to participate in the decision-making processes leading to social, cultural and economic policies.

—UNESCO¹

Human rights education and dissemination is a fundamental human right. This imposes on governments in particular great responsibilities to explicate, propagate and disseminate human rights principles and their protection mechanisms.

—The Cairo Declaration on Human Rights Education and Dissemination².

“The true republic: men, their rights and nothing more;
women, their rights and nothing less.”

— Susan B. Anthony (1820-1906) – American suffragist³

¹ “What is Human Rights Education?” http://portal.unesco.org/education/en/ev.php-URL_ID=1920&URL_DO=DO_TOPIC&URL_SECTION=201.html.

² http://www.cihrs.org/activities/Conference/Conference2_d.htm.

³ The Revolution, newspaper written and published by Susan B. Anthony and Elizabeth Cady Stanton, 1868 (Hymowitz, 161)

1. Setting the stage

Over the last five decades, ever since the Universal Declaration was adopted by the United Nations General Assembly in 1948, there has been a considerable accumulation of human rights instruments, running into hundreds in quantity. The proliferation happened not only at the international level, wherein besides the United Nations, inter-governmental agencies such as International Labour Organisation and United Nations Educational, Scientific and Cultural Organisation also actively embraced paths of standard setting in their respective fields of work in the light of human rights principles, but also at the regional and national levels.⁴

Simultaneously there has been a continuous search to make the concept of human rights inclusive of the various contexts and the varied human and political experiences of citizens/people.

In this essay, we

- Review the historical evolution of Human Rights concepts, instruments and knowledge pools, in order to broaden the scope of Human Rights Education.
- Draw attention to the significance for all aspects of the landscape mentioned above of the engagement of women in this theatre of knowledge and action
- Spell out some of the problematiqués of engaging with human rights as the best framework for engineering a just society
- Reveal the importance of other forms of pedagogy, not only the classroom and how that has also been supported by the UGC and the NHRC.

2. Women transform Human Rights: its content, scope and outreach

A closer look at the process by which the UDHR's language emerged illustrates the value of involving women in conceptualising and drafting instruments. However the argument here is not only about women's aspirations and efforts. The argument is that their efforts at being

⁴ As per some estimates, within the United Nations framework there are more than 200 human rights documents, including Conventions, Declarations and Guidelines of administrative behaviour. Besides that, the ILO, UNESCO and such similar bodies have adopted numerous Conventions and Declarations in their respective fields of work. There are three well-functioning Regional mechanisms in the jurisdictions of Europe (1950), the North and South Americas (1969) and Africa (1980). Besides all these, ever since the declaration of the Paris Principles in the year 1991 regarding the establishment of national human rights commissions, there are 99 national level human rights commissions established all over the world, often under specialist national statutes (see for details: <http://www.nhri.net/nationaldatalist.asp>). In countries like India, subsequently state level human rights commissions have also been established.

included and given equal place in the justice and rights framework, has in it the torchlight for all other excluded and subordinated social formations.

If just the one needle point of women's rights is taken as the probe, and every step in the human rights agenda, plan of action, assessment, implementation, is looked at with just this one thread, it will not only be enabling for women, but for dalits, for minorities, for any of the groups that have been incarcerated by hierarchical, historically discriminating society and societies.

Of course, unfortunately this cannot happen unless women, as well as these groups themselves rise and make this point and then have very strongly bonded collective actions and advocacies – In other words claim agency.

In the quest for justice - for removal of discrimination, subordination, neglect -that women are engaged in, **rights** - its definition, its identification, its affirmation perhaps is the most vital factor. A striking aspect of women's participation in rights affirmation, is the presence, of other social and political movements engaged in the struggle against racism, colonialism, ethnic oppression and so on. There is a commonality of language, purpose and legal negotiations, among these various struggles. Therefore those working on women's rights enter as participants of a larger community in the struggle against overall discrimination and oppression, and not only in a gendered identity. The identity is embedded in the broader collectivist efforts – there is a common space, a "*human commons*"?.

The Universal Declaration of Human Rights (UDHR) (1948) sets out basic rights and freedoms to which all men and women are entitled – among them the right to life, to work, to education, to liberty and nationality, to freedom of speech, religion, and belief and freedom from fear, and to take part in government. It describes rights as inalienable and indivisible. Yet the implication that these rights apply to every single human being did not come out clearly in the draft formulation of its first article "All men are created equal".⁵

Hansa Mehta, an Indian delegate to the meeting of the Human Rights drafting committee, protested at the use of gender-opaque language,

⁵ Human Rights Commission, Third Session, ECOSOC document E/CN.4/SR.50, p. 9, quoted in Glendon, *A World Made New*, 112. Eleanor Roosevelt had also initially opposed the creation of a separate Commission on the Status of Women for the same reasons. She felt that having a women-only body would tend to marginalize women's issues and women themselves at the UN. See Mathiason, "Mrs. Roosevelt's Letter," in *The Long Road to Beijing*, Part 1; and Galey, "Women Find a Place," 13-14.

“That would never do”, she said, “ ‘all men’ might be interpreted to exclude women”. Although Eleanor Roosevelt, the chair of the Human Rights Commission, tried to argue that the women of the United States had never felt they were cut out of the Declaration of Independence because it said “all men”, she had to agree with the other women, mostly from the South, who felt strongly on this point. Thirty-two voted in favour of the change with only two countries voting against it and three abstentions. The formulation moved from “all men” to read “all human beings”. [Perhaps this marked the beginning of the use of the language, **human** in the UN – later seen in its most visible form as **human development**.

It is often said, but not sufficiently known that “The women’s movement influenced the content of nearly every article. The near absence of gender bias that resulted from the drafting process underscored the genuine universality of the rights contained in the UDHR.”⁶ (Eckert 2001).

Women’s engagement with the rights discourse within the human rights mechanisms within the UN, that began with the drafting of the Charter and the UDHR, has raised many questions, and pointed to the tensions and problems related with language, definition and practice. In the course of their struggles to establish a women-oriented human rights regime, women have also contributed to changing ideas, language and concepts in the area of human rights.

A box

When the Constitution of the to be born Republic of South Africa was being drafted in Geneva (prior to the declaration of its independence) by some of the leading men of the African National Congress, Dr Ginwala was asked to go to Geneva from London to assist them. At the end of the day, the draft read ‘he’ and ‘he’ and ‘he’. Dr. Ginwala’s protests were brushed aside exactly as Eleanor Roosevelt and others tried to brush aside Ms Hansa Mehta’s protest. Dr. Ginwala, being junior to the leaders, politely asked them to let her take the draft to her room and see what can be done. Next morning she brought her draft, and wherever there was ‘he’ she put ‘she’. The comrades were aghast. But Frene said, why not? ‘She’ includes he? At this point they gave in. The Constitution of the Republic of South Africa now has he/she through out. Dr Ginwala then makes the point that women have to be there, to bring their citizenship and their rights into these designing and deciding bodies. If they are not there it does not happen ⁷ (Omara-Otunnu, 2000) Thus 1993

⁶ Universality by Consensus: The Evolution of the Universality in the Drafting of the UDHR by Amy Eckert in Human Rights and human Welfare Vol. 1:2 Columbia April 2001.

⁷ Elizabeth Omara-Otunnu University Of Connecticut Advance September 11, 2000
<http://www.ucc.uconn.edu/~ADVANCE/00091115.HTM>

seems like 1946 - the voice of Hansa Mehta in 1946 and the voice of Frene Ginwala 1992/93 seem to be in one time and one place.

The insistence by women on semantic clarity was not a mere hair-splitting exercise – women have long suffered from the tyranny of a male-created vocabulary masquerading under the guise of ‘universalist’ language.

3. Human Rights Instruments

Even as there is a an enormous proliferation of human rights instruments, standards and enforcement mechanisms there has also been an enormous landscape of discourse and continuous transformation of all aspects of human rights, from its identification to its content and also its location and its implementation

First, this proliferation has created a serious need for effective, value-based and systematic dissemination of those standards, the discourse, the complexity of this area of justice dispensation, and the emergent jurisprudence among the people at large.

Second, it has revealed that in forging the instruments there has been debate and disagreement, challenges and forward movements responding to new circumstances in the globe, and in the individual countries

For example: the progressive changes that were brought about in designing an international instrument to safeguard women from discriminatory practices, a key value of the UN, which claimed to stand for equality, and equal status for all citizens, was the way women in the Commission on the Status of Women (CSW) moved the DEDAW (Declaration on the elimination of all forms of Discrimination against women) to the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)

The process of drafting CEDAW⁸, (1979), provides a vivid illustration of women's alchemy, or their capacity to gather in diverse elements and make them into an intelligible and practical whole. CEDAW has been called the Women's Bill of Rights. Its brilliance lies in its capturing of a wide range of elements, however awkward, into a standard. The awkwardness arises out of the complex nature of the inequality experienced by women. The core idea of CEDAW was discrimination. Equality had mostly been seen in terms of physical or quantifiable elements such as age or income or other such numbers. But

⁸ Convention on the Elimination of All Forms of Discrimination Against Women," Art. 1, UN document A/34/830, December 18, 1979.

discrimination operates within other categories such as race and class. It is a nonquantifiable element that exists in the mind as a perception. So it was a quantum leap forward that the CSW could find a term and a concept which encompassed all inequalities could be universalized across all other categories or classifications.

A Pioneering Human Rights Instrument

The Women's Convention (CEDAW) is a departure from the other human rights treaties and conventions (except to some extent those on racial discrimination). What makes the Convention a pioneering human rights instrument for women are the following:

- The centrality of the concept of "non-discrimination" to the equality of women.
- The inclusion of "private acts" in the definition of discrimination.
- The accompanying articulation of "prejudices," "customary practices," [and] "stereotyped roles of men and women" as features to be eliminated by state parties to comply with the Convention.
- It has upturned the model of "formal" approach to equality and established the norm of "equality of results" or "equality of outcomes"--in other words, equality in real terms.

The Convention defines the phrase "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"

4. Bringing Rights consciousness into Human Rights Education

Putting Human Rights Education in place has created an equally important need for generating pedagogic and research processes, i.e., establishing institutional structures, providing necessary financial and academic resources and materials etc., to meet the requirements of generating a large number of subject specialists, e.g., human rights lawyers and social activists, who would engage with the processes in an informed and committed manner.

Here a challenge that was offered by an interface organised by the UGC

in 1999 to develop curriculum material for HRE in Universities, in consultation with some experts from the UK , opened new doors on where source material lay, for making HRE evocative for the Indian student. HRE , it is suggested is to provoke and stimulate interest in Indian citizens to protect human rights, to participate in activities, especially related to economic and social justice with the knowledge of the law and the ground realities .

The initiative that emerged from the above interface was an attempt to broaden the scope of the syllabus by bringing in the experience of movements for affirming of rights in India. From the historical struggles for freedom, for political rights, spearheaded by Mahatma Gandhi, in the 40's, as a successful non violent struggle; to the movement for the Right to Information in the current year of 2005, there have been non violent and Indian soil generated rights movements in India. It was felt that by getting dossiers prepared on these movements and having them included as source material in the University Syllabus, it would encourage an Indian student, and point to something he/she could identify her/him self with. It could create a rights oriented citizenry; as well as a regard for the Indian culture of democracy, as most of the dossiers were of successful struggles for affirmation of rights .The details of this endeavour are given below,⁹ but here it is being used to reveal that inclusion of ideas, of new locations of knowledge, an important part of the evolution of educational material.

The NHRC further encouraged this process, and had the dossiers transliterated to suit the High School level syllabus as well the wider public, i.e. civil society organisations.¹⁰

⁹ KWIRC (Karnataka Women's Information and Resource Centre) Human Rights Dossiers.

1. Child Rights by *Maharukh Adenwalla*
2. Dalit Rights by *Martin McGowan*
3. Human Rights and the Environment by *Ashish Kothari & Anuprita Patel*
4. Land and Housing Rights by *Miloon Kothari & Sabrina Karmali*
5. Home based Workers' rights by *Renana Jhabvala, Vibha Puri Das & Aditi Kapoor*
6. Right to Information by *Aruna Roy et al.*
7. Fish Workers' Struggle for Human Rights by *Nalini Nayak*
8. Rights of the Disabled by *Meera Pillai*
9. Reproductive Rights by *Sarojini N*
10. Gandhian Rights by *Jeevan Kumar*

¹⁰ To be published by the NHRC in Dec 2005

They also supported a meeting of all the writers – for them to interact and forge a common cause, also be a support group for the NHRC. At this meeting¹¹ the representative of U.G.C as well as Chairman of the Curriculum Development Committee of UGC, Justice Mallimath, and representatives of National Law School of India University, (NLSIU) were present. NLSIU (Bangalore) adopted the dossiers into their course as source material. It was also suggested that the course could include some field visits, that students may be exposed to some lived experiences with groups engaged in human rights struggles. The dossier writers collective offered their spaces to students to learn the ‘ground’. Hence this initiative not only added to some material but also added ‘learning’ techniques to the course.

Thus the history of the evolution of human rights educational material reveals that texts, source materials and other benchmarks and institutional innovations are emerging from other places not only the UN or the early institutions of human rights education. Human rights education has also become popular education, developed and disseminated by movements , as for example the recent Right to Information movement which has led to an Act.

5. The invisibility of women’s contribution

One of the trajectories of the evolution of both the concepts as well as the practices, and the legal institutions in Human rights education, is the vivacity and richness brought to it by the women’s movement, locally, nationally and internationally. Some of these transformatory interventions have already been referred to as the language of the UDHR as well as the very special inclusive drafting of the CEDAW.

However there are many more, which are often not highlighted in mainstream essays on HRE, whether the reference is to civil society contributions, to significant institutions or to the definitional values or even to the transformatory power on general jurisprudence.

For example it is astonishing that in the HDR 2000¹², devoted to Rights and Development a follow on Amartya Sen’s Development as Freedom¹³ - which has so many boxes of interesting pieces from all over the world, both successes and failures, does not have examples of women’s collective

¹¹ Human Rights Round table at the National Human Rights Commission on socio economic rights, Singamma Sreenivasan Foundation and NHRC, New Delhi, 2002.

¹² Human Development Report – 2000 – *Human Rights and Human Development*, Oxford University Press, 2000

¹³ Amartya Sen Development as Freedom, New York: Knopf, and Oxford: Oxford University Press, 1999.

assertion or affirmation of rights. Nor does it have examples of specific changes in the laws on rape, on honour killings, on crimes during armed conflict and the various changes that have been made by women to illuminate human rights knowledge and transform some of the definitions. At every point then, the women's rights issue, often not yet made visible within a human rights idea and practice, has to be highlighted.

There is also the powerful transforming intervention of feminist legal centres on human rights and on law. Feminists have broadened the boundaries of custody and custodial violence; of genocide and war crimes. They have affirmed the universality of human rights and challenged the notion of cultural relativism in human rights identifications.

Mary Robinson affirms in HDR 2000 the universalisation of human rights and the rejection of any qualification such as cultural relativism, Asian values etc. Such an affirmation is crucial from the point of view of women's rights. It is women who are the most likely to be injured by any form of qualification to universalisation of human rights on the basis of region, tradition and cultural values. Almost invariably these have brought with them specific measures to control and subjugate women.¹⁴

6. The Role of UN and other International Conferences on Rights as a source of Education

The **United Nations World Conference on Human Rights held in Vienna in 1993** was the first such meeting since 1968, and it became a natural vehicle to highlight the new visions of human rights thinking and practice being developed by women. Its initial call did not mention women nor did it recognize any gender-specific aspects of human rights in its proposed agenda. Since the conference represented an historic reassessment of the status of human rights, it became the unifying public focus of a worldwide **Global Campaign for Women's Human Rights**-a broad and loose international collaborative effort to advance women's human rights. The campaign launched a petition calling upon the World Conference "to comprehensively address women's human rights at every level of its proceedings" and to recognize "gender violence, a universal phenomenon which takes many forms across culture, race, and class... as a violation of human rights requiring immediate action." The petition was eventually translated into 23 languages, and was used by over 1,000

¹⁴ Devaki Jain, *Democratizing Culture*, for Seminar on Culture, Democracy and Development in South Asia (March 24-25,2000) -edited by N.N. Vohra., Delhi, Shipra, 2001, 309 p., tables, figs., ISBN 81-7541-070-1.

sponsoring groups who gathered a half million signatures from 124 countries. The petition and its demands instigated discussions about why women's rights, and gender-based violence in particular, were left out of human rights considerations, and served to mobilize women around the World Conference. Women acted to inject issues of women's human rights into the entire pre-conference preparatory process:

Women from all regions demanded that women's human rights be discussed at the preparatory meetings held in Tunis, San Jose, and Bangkok, as well as at other non-governmental and national preparatory events. The idea of women's human rights was a framework for women to articulate and collaborate around broad and similar concerns about the status of women; it also provided women with a way to elaborate on the most pressing human rights issues specific to particular political, geographic, economic, and cultural contexts.

By the time the World Conference convened, the idea that "women's rights are human rights" had become the rallying call of thousands of people all over the world and one of the most discussed "new" human rights debates. The *Vienna Declaration and Program of Action*, which is the product of the conference and is meant to signal the agreement of the international community on the status of human rights, states unequivocally that:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. Vienna Declaration (I,18,1993).

A forceful recent, illustration of women using the framework of rights to reflect a complex reality, was at the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (**WCAR**) 2001. Women often experience violations of their rights based on their race or nationality as well as on their sex, gender, or sexual orientation. Women experience racism and sexism not as separate events but as violations that are mutually reinforcing. For example, soldiers and non-combatants subject women to sexual violence in armed conflict not just because they are women but also because they are women of a particular race, nationality, ethnicity, or religion. At WCAR women's rights activists successfully worked to have the final document reflect how **sex and race intersect** to make women vulnerable in ethnic conflict to sexual violence and to trafficking, and emphasised women's right to transfer their nationality, (on an equal basis with men) to their children.

The global conferences in the 1980s and 1990s proved to be fertile ground for raising issues of violence against women and which included the

active participation of NGOs. International attention on issues such as acts of violence against women and discussion in international forums has prompted agencies like the United Nations to propose international covenants for ratification by nations. Macro level changes affect micro level structures and processes and as micro or local level challenges develop they influence macro level process, policy, and change. From its first use, the term “violence against women” encompassed a range of practices in diverse locations, from household brutality to the violence of state security forces. But this “involved a process through which the network helped ‘create’ the issue, in part by naming, renaming, and working out definitions, whereby the concept of ‘violence against women’ eventually unified many practices that in the early 1970s were not understood to be connected (Keck and Sikkink 1998: 171). An example of this was the Final Declaration of the International Conference for the Protection of War Victims, held in Geneva in 1993 which expressed alarm at the “marked increase in acts of sexual violence against women and children.”

The Committee on the Elimination of Discrimination Against Women recently addressed the issue of violence against women in a general recommendation adopted at its 1992 session. In its General recommendation No. 19 the primary aim of the Committee was to clarify the extent to which different forms of violence against women were in its view covered by the Women's Convention (in which the term "violence" does not appear). Another, related goal of the general recommendation was to emphasise the overlap between the obligations which States Parties to the Women's Convention had assumed in relation to violence against women and the obligations which States Parties to other human rights treaties had assumed in relation to such violence. In its discussion the Committee characterised violence against women as a form of "discrimination against women" as defined in article 1 of the Convention and noted that the Convention obliged States Parties to eliminate all forms of discrimination, whether perpetrated by public officials or private individuals:

This definition of discrimination [in article 1 of the Convention] includes gender based violence - that is violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Gender based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of article 1 of the Convention.

The decisive impetus toward further progress on this issue was provided by the Beijing Platform for Action. One of the Platform's key objectives is "the elimination of all forms of violence against women." As many as three of the 12 strategic objectives of the Platform of Action are directly connected to the elimination of violence against women and girls. These three are violence against women, women and armed conflict, and the girl-child. The importance of detecting and eliminating economic, structural, social and cultural violence against women runs throughout the Platform for Action. This also resulted in the violence against the girl child being mentioned in its first ever resolution on the girl-child by the General Assembly in 1995. The theme of eradicating violence against women also figured in the World Social Summit at Copenhagen in 1995 when all governments were urged to act to eliminate all forms of discrimination against women, including abuse and violence.

The issue of **eradicating violence against women** became the subject of a special resolution adopted by the 85th Inter-Parliamentary Conference in April 1991. Measures taken in various countries to follow up the resolution's recommendations have been regularly scrutinized by the Meeting of Women MPs, with close attention being paid to such issues as organized violence against women and sexual violence affecting women and young girls during armed conflicts. These aspects were further stressed in the resolution of the 96th Inter-Parliamentary Conference

In 1992 and 1993, the IPU supported the adoption by the United Nations of the International Declaration on the Elimination of Violence against Women and urged Parliaments and Governments to reflect its principles and standards in national legislation. In May 1996, the IPU sent the Framework for Model Legislation on Domestic Violence to all member Parliaments and invited them to use this document - initially prepared by the UN Special Rapporteur on Violence against Women, its Causes and Consequences - as a reference for national legislation.

Paradoxically, many of the most hidden and taboo-ridden "private" and intimate problems and wrongdoings between the genders have thereby become public politics in the form of global norms. One of the best examples is the issue of men's violence against women (VAW), seen through internal changes and mobilisation around the United Nations (UN) since the first UN conference on women in 1975. (Pietilä 2001) Several multinational institutions have joined the UN in combating VAW (The Council of Europe, SAARC) and in a bid to further the issue of non-

violence the year 2000 was declared as the International Year for the Culture of Peace. This provided the best possible framework for advancement of this issue (Pietilä, 1997). Furthermore the years 2001-2010 have been proclaimed by the UN as the International Decade for the Culture of Peace and Non-Violence. Initially the discussions on the issue even at the CSW was framed in terms of domestic violence and violence involving specific categories of women – women detainees, refugee women etc. It was though viewed as a private matter between individuals that the state or international effort could do little about. It changed due to the concerted efforts of the women's movement and the Nairobi FLS urged governments to take measures against violence against women that it pointed out "exists in various forms in everyday life in all societies."

The fact that violence against women was acknowledged by the UN as a violation of human rights, regardless of where it occurs – in the home, in a public place, as part of warfare implied that women's physical, psychological and sexual integrity was included among the basic citizen's rights. In this way, security, the original main principle of the UN, became fundamentally transformed.

However the issue of violence against women has been at the forefront of the critique of the "mainstream's" failure to recognise violations of women's human dignity. The assertion frequently made by feminists (admittedly in some cases as an attempt to change perceptions rather than as a statement of the existing legal position) that "rape is a human rights violation" is met with the response from traditional human rights groups and the "mainstream" that this is only the case if it is carried out by officials of the State (for example, the rape of women prisoners by prison guards).

This example highlights the conceptual difficulties that the established framework of international human rights law has in recognising that pervasive patterns of private violence against women may involve a failure by the State to respect the human rights of women. Yet the gulf between the two positions is by no means completely unbridgeable. While international law is traditionally reluctant to recognise the acts of private individuals as acts of the State, the discussion above has made clear that States are under an obligation in certain circumstances to take preventive or punitive measures against violations of the rights of individuals by private parties.

Parliament passed the bill in June 2005. This approval is seen as a positive step and it includes many of the recommendations made by various feminist lawyers and grassroots level groups. The scope of the bill is considerable and includes all forms of domestic violence – including

threat of abuse (physical, sexual, verbal, emotional or economic). Domestic relationships are also defined to include relatives, or related by marriage or adoption. Therefore besides wives, sisters, mothers, daughters and others are also covered under the Act. The magistrate can pass an order allowing the women the right to reside in her matrimonial home or shared household, whether or not she has any title or right to such home or household. Besides there are other measures to help decrease the possibility of threat to the abused from the abuser for having complained. The bill also mentions 'protection officers' and allows registration of non-governmental organisations as "service providers" who will proffer legal aid, medical examination or shelter for women in distress.

7. The problematique of the Rights Framework

Ground swell movements in India including parts of the women's movement, are adopting the language of rights as it links them to constitutional and judicial mechanisms which seem to have more potential to provide justice than the government or even civic society - apart from the market of course. As globalisation strides along - and inequality hurts harder - almost as hard if not harder than poverty and deprivation - people are mobilising around rights even in the developing countries.

These responses can be traced to the gradual reduction of people's rights to what was earlier a free public utility - namely rivers, oceans, forests, grazing land etc. These natural resources are beginning to be contracted for production, for trade by agencies which are once removed if not many times removed from the people in these areas, who used to access them.

This crunch or squeeze to use the language of today is beginning to hurt deeply enough to be responded to with a movement for affirming people's rights to natural resources. Thus for example NAPM (National Alliance of People's Movements) - has moved from a call to support the right to work, to a call for the right to resources as even prior to the right to work, and the World Wide Women's Movement from a demand for benefit - sharing to a demand to lead, to have control over her body - sexuality fertility and so on. The resource that she "owns".

However, the language of rights has always been a problem in poor unequal countries where instruments to enforce legal safeguards are muted or blunted by the very poverty and inequality of the situation.¹⁵

For example, one can go to the Human Rights Commission because children are not getting education, or women work. But after going to all

¹⁵ Jain, Devaki. Walking with Human Rights to development. Netherlands 1993.

those courts we come back to the same issue. One cannot implement what is decided internationally on Rights without development. It comes back to the same scene - poverty, lack of finance to get the basic amenities on the ground. We may go back again to Seattle and make a tremendous noise. But when we come back home, we are not able to bring that transformation. Those who come to USA find a very conservative government going backwards on many issues. Those who come back to their countries (to developing countries) often find a government, which says "I am no more a sovereign government. It is all being decided outside."

Another dilemma is in relation to child labour. We want every child to go to school. So we make elementary education compulsory, with punitive laws for defaulting parents. If the parent does not send the child to school, we put her in jail. So in fact we abrogate the woman's Right over her child in order to give the child a Right. In a poverty stricken family, where the only employment opportunity is to the child-worker. It adds a rough edge, and takes away from the macro economic thrust that many of us wish to insist upon whether in relation to the Population Policy of the child labour policy namely that there should be opportunity for livelihood; a Right to work framework for adults with a minimum wage insistence so that the adults earn enough not to send the children to work. This hope is now about to be fulfilled by the National Rural Employment Guarantee Act.

During the 1970s and 80s there was an increase in "the development of human rights norms in various international and regional treaties". The interaction between the UN and the NGOs also increased, and organisations like Amnesty International and Human Rights Watch started playing a more central role in defining norms. The 1979 UN Convention on the Elimination of Discrimination against Women (CEDAW) was seen as one of the most important and path-breaking interventions to ameliorate the gender blindness in the human rights movement. It clearly stated that it is applicable to all women to all societies. This Convention, it has been suggested was possible due to the momentum that had been generated by the UN Decade for women.

This brought into focus *another dilemma Integrate Or Separate?* that haunts the feminist struggle against discrimination - to integrate or keep women's concern separate. The existence of a privileged dominant practice and a "specialised" marginal one presents a strategic choice in this area, as in many areas where the goal is to bring about the advancement of women. The question is: how does one ensure that feminist perspectives are incorporated within the dominant discourse while maintaining the separate focus which is apparently necessary to ensure that these issues are not submerged or overwhelmed. In strategic

terms any attempt to increase the attention given by the "mainstream" to gender issues in human rights must therefore also be accompanied by steps to strengthen the existing "women's rights" rights institutions and to lessen their marginalisation. The difference is also reflected in the way NGOs work.

“Some international women’s rights NGOs such as Women Law and development International (WLDI) and the International Women’s Rights Action Watch (IWRAP) have laboured to move out of the marginalized area and into mainstream UN human rights work...regional women’s rights organisations and southern-based NGOs such as Women in Law and Development Africa (WILDAF), Asia Pacific Women Law and Development (APWLD) ...are still campaigning to get their ‘women’s human rights’ message heard by the mainstream human rights organisations on their continents.”¹⁶

Some of the older institutions such as trade unions and cooperatives have always used the language of rights. Being representative bodies most of their “procedures” and rules are based on elections, on voting and therefore on rights of the members. The reasons these institutions like cooperatives and trade unions need to be seen with greater interest in the landscape of globalisation and liberalisation is not only because of their representative nature which engages itself in rights (even if women are not yet visibly present in the current scenario of these institutions) but because in the context of large corporations, large scale financial institutions coming in to play in the fields of India, the only possible source of countervailing power is to build alternative economic organisations, federate them.

The supra national authority of Rights has begun to create self-consciousness in the developing countries. Women and their claims are especially caught in this self-consciousness of States. They want to belong to a universal framework; the countries want tethering in “tradition” and “culture”.

An interconnected theme, which has also come in for comment is a way of viewing these issues as a struggle between '**traditional**' and '**modern**' and that feminist and human rights discourses are on the side of modernity and that traditions almost always oppresses women. This false binary tends to marginalise the voices, identities and relationships of those women who find aspects of local culture a source of strength. The significance of the collectivities with which these women identify is not

¹⁶ Alice Miller, *Realizing Women's Human Rights: Non-Governmental Organizations and the United Nations Treaty Bodies*, in M. K Meyer and E. Prugl, Eds., *Gender Politics in Global Governance*, Pg 161-176, 1999

well accommodated in either feminist or human rights models. The assumed binaries of modern-liberative against traditional-repressive are 'motivated caricatures' and they overlook equally exploitative modern practices such as cosmetic surgery, sex tours and other forms of commercialised sexuality. This outlook also means that there are less chances of working culturally relevant solutions, instead of a standardised set of rights based on an individualist construction of human rights. Often the solutions and models offered by 'modern' global structures and cultural prototypes have ambivalent implications for women. In the world today there are many major global players, such as capital markets, the multi nationals, the world bank who are already invading on sovereignty- their accountability mechanisms are outside the purview of the country's legal arrangements. These agencies usually bring their own legal and chartered accountancy firms to provide those services and claim supra national. These are major encroachments on national sovereignty. When governments find women's Rights activists, invoking a global civil society they feel one more super authority is coming to impinge on them¹⁷.

Some of the issues which intrude because of their appeal to the "universalism" over and above "culture" are related to women. The age of marriage and consent; forced marriages, female genital mutilation (FGM) and honour killings. The UN has tried to negotiate some of these issues. Taking together the age of consent (which was lower for girls than for boys) and factors related to coerced marriage, and tradition derived customs like pre-puberty marriage; and the fact that many marriages were not recorded; the CSW, after several year's of discussion, drafted the international convention on the question. As a result of its work, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages was adopted by the UN General Assembly on November 7, 1962.

Substantively, the term **human rights** is used to refer to those that are guarantees contained in the "general" or "**mainstream**" instruments, in particular the two International Covenants and the European Convention (as well as the American Convention and the African Charter). Focusing on the "mainstream" in contrast to the "women's rights" bodies has its problems: for instance, talking about the mainstream and recognising its dominant role reinforces its conception of itself as the centre and the marginalisation of those that it defines as on the margins. Nonetheless, the practice relating to the major civil and political rights catalogues is in many respects **a privileged and powerful**

¹⁷ Devaki Jain: "Women and child rights in the context of globalization", Speech delivered at the Roundtable on 'Building bridges for equality – mobilizing actions' for the human rights of children and women organised by UNICEF / Society for International Development (SID) / Bernard van Leer Foundation, New York, 14 – 15 June, 2001.

discourse, reinforced by a considerable allocation of institutional resources and the reality is that these institutions have the prestige, resources and perhaps the power to bring about change. Therefore it was pointed out that the whole human rights system needs to be imbued with a feminist understanding as otherwise there would gross neglect of women's issues. For example, the failure to be aware of the possibility of violations against women and the fact that women will often be reluctant to talk about them, particularly to male interviewers, can mean that women may not be able to make certain claims (say to refugee status). This also points to the need for other appropriate measures, like formulated medical or other programs to address the results of gender-specific violations which may not be perceived.

8. The problematique of individual rights

No other theme reflects the problem of women's need for individual rights as does the quest for reproductive rights. The effective expression of reproductive rights is dependent on a broader acceptance of the language of rights, in a broader set of areas such as - the right to natural resources, the right to protest, the right to leadership and the right to information. The even broader framework of political rights, of democracy is a necessary condition for making any affirmation of reproductive rights a reality;

Furthermore, these individual rights provide a crucial lever for women in general and poor women in particular where they are oppressed by traditional and cultural discrimination and violence. For all women, empowerment is related to economic rights, such as the right to ownership of assets, the right to access credit on her own, and the right to choose a partner; and without realization of these rights women will remain severely disadvantaged. Expanding the concept of reproductive health to include the concept of social and economic security for women introduces the notions of development rights and the rights of livelihood. Again, ground swell movements are adopting this language as it links them to constitutional and judicial mechanisms which seem to have more potential to provide justice than the government or even civil society.¹⁸

The stress on the rights of the individual has also raised questions as to whether it elevates the norms that emphasises autonomy and aggressive individualism and, if so, whether this is problematic. There is also a poser that it may be beneficial to shift the attention somewhat to rights, which emphasise community and communal values above individual rights and whether it is relevant in many contexts to posit one over the

¹⁸ Devaki Jain, *CH 5- Enabling Reduction of Poverty and Inequality in South Asia*, in *Population and Poverty – Achieving Equity, Equality and Sustainability*, UNFPA, New York, June 2003.

other. Nalini Nayak in a monograph on natural resources and the right of the fish workers stresses the importance of community rights.

“Communities or other groupings maybe cohesive enough, or have internal governance mechanisms, to prevent individuals within community from racing among themselves for the community’s share.”

Therefore we straightaway come to an important difference which is normally echoed and heard amongst those who are working in the developing countries with the underprivileged and the deprived, namely community as the basic human organisation”. Feminists, especially from the Third World have argued that rather than positing the individual aspects of the civil and political human rights, as opposed to the collective aspects of the social and economic human rights, the two can be approached as an integrated and mutually interdependent whole. This broad approach then encompasses a whole array of human rights in the development processes - the civil and political rights including the right to participation, the right to freedom, the right to self-determination and the right to equality and social, cultural and economic rights such as the right to health, the right to food, right to livelihood, the right to information. The so-called “solidarity” rights in terms of the right to development and the right to environment are also encompassed in this perspective.

In fighting for or claiming rights, new coalitions are being formed across issues, such as fish workers, home based workers, child rights, natural resource, dalits, adivasis (indigenous peoples),¹⁹ etc. Such coalitions argue for the indivisibility of human rights and show that the effective affirmation of reproductive rights is dependent on a broader acceptance of the language of rights , including, among others, the right to natural resources, the right to protest, the right to leadership and to information. It is difficult to claim a specific right on its own. For instance, the most deprived, for whom food on any given day is not a certainty, not only require the basic economic right to food but also the political right to claim it. This situation applies particularly to women who may, in practice, have very constrained political rights preventing them from accessing provision for other basic needs to which they are entitled: in that sense, social rights are embedded in the political framework and one cannot be accessed without the other.

¹⁹ Human Rights Round table at the National Human Rights Commission on socio economic rights, Singamma Sreenivasan Foundation and NHRC, New Delhi, 2002.

9. In conclusion

The framework is described because it is also the argument of this paper and broadly the women's movement today that the best safeguard for the exercise of rights by any subordinate or disadvantaged group is the existing of the larger framework of democracy. Of all the subordinate or disadvantaged groups, it is my submission that women most acutely need space to protest, deviate, affirm their "agency", their "autonomy". I say this because whatever other types of enabling environment is provided since much of women's subordination is located within the households and often within religious and other such traditional structures of power, the good old freedoms of expression, freedom of association and freedom to resist with access to independent judicial structures is crucial.

Several questions have been asked, as from the ground level such as: how do you implement the rights approach? What do you tell the service providers? How and where will the violated get redressal? We suggest, in the constitutionally mandated Local Self Governments (LSGs). If the social development package in the 11th Schedule of the Constitutional Amendment is handed over, with finance, and if all other mandates follow, – follows then the elected councils can be held responsible for provisioning of services. They can be held accountable via the democratic institutional processes. Women have a voice there. Women's committees can design the project at the local level; they can exercise their agency by making the system respond to their requirements, as a right.²⁰

The rights framework, for enabling development to land with justice, can be tethered on the one hand to the Constitution of India, which offers a platform which is already being used by those fighting against food deprivation, livelihood withdrawal, corruption in government delivery mechanisms; and on the other to the Constitutionally mandated agencies, namely the local self government bodies, both rural and urban.

Right now, they are being put in place, as required by the Amendments (73rd and 74th), and required by the 12th Finance Commission.. These local self government bodies have potential for affirming rights of some of the excluded, such as women and the Scheduled Castes through the reservation of seats, they have the potential for transforming social relations, including the hierarchies of gender relations, through the

²⁰ Devaki Jain and V.S. Elizabeth, *Enabling Population Stabilisation Through Women's Leadership In Local Self Government: A proposal for the department's new scheme*, Department of Family Welfare, Ministry of Health and Family Welfare, Government of India, 17-18 February 2003, New Delhi

political process of bringing women into formal governance in the public space

Thus the Indian landscape, offers an opportunity to design and implement on the ground, in all the approximately about 300,000, three hundred thousand village panchayats in India, a policy, a programme or project which links the themes – Development and Human Rights”. It could provide the institutional and legal framework for such an effort.

The Indian experience²¹ with HRE, viewed broadly, has more than one trajectory. While there is no doubt that the current momentum owes to the perceived obligations of the Indian state under the action plan of the UN HRE decade and the Human Rights Protection Act of 1994,²² this situation was preceded by two voluntary initiatives. First was the need felt by the civil liberties and human rights action groups within civil society in terms of disseminating human rights perspectives within the rank and file of the organisations, which lead to organising numerous human rights literacy sessions.²³ Even though those sessions were not ‘public’ sessions, since the objective was to disseminate the rights literacy to largely people associated with the work of those organisations, it could be viewed as a pre-cursor to the current phase of initiatives. The second pre-cursor was the higher education initiatives in human rights supported by voluntary foundations from the North.²⁴

While it is important to recount the pre-cursors, the substantive progress in HRE could however be made only after the current initiatives of the Indian Government beginning with mid-1990s. The major initiatives from the Indian Government side could be viewed at two levels: first, the pro-active and significant initiatives of the National Human Rights Commission under Section 12 (h) of the Human Rights Protection Act; and, second, the substantive ripple effects of some of those interventions such as the responses of the University Grants Commission (UGC).

²¹ U.N. Doc. A/59/525/Rev.1, March 2005.

²² Section 12 of the Human Rights Protection Act specifies the functions of the NHRC, and sub-section (h) reads, “[to] spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means”.

²³ Though rarely happened in high public visibility, these modest but important initiatives happened in organisations like the Peoples Union for Civil Liberties and the Andhra Pradesh Civil Liberties Committee and such similar groups across the country on a scale which cannot be considered small by any standard. It is therefore not surprising that one of the early initiatives to deliberate on human rights education was organised by PUCL and the Indian Social Institute, New Delhi, in association with the National Human Rights Commission as early as 1994. See, *Human Rights Education*, ed. R. M. Pal, New Delhi: ISI, 1995.

²⁴ Unfortunately there is no clear data as to the extent of such interventions. However, on more impressionistic terms agencies such as the Ford Foundation helped initiating human rights education programmes, particularly in law schools such as the National Law School of India University in Bangalore, whose date precedes the current initiatives of the Indian Government.

The initiatives of the NHRC are of various kinds, ranging from actively engaging and advising various apex educational agencies such as the University Grants Commission to focus human rights education in a big way at the college and university levels, and the National Council for Educational Research and Training to focus on human rights teaching at the school level, and National Council for Teacher Education to focus on teacher training materials, to organising national level consultations on human rights education with a view to bring various stakeholders into a dialogue process, to actively supporting human rights education, both regular as well as continuing education processes, particularly the later for the Judicial and Police service personnel, to setting example by actively contributing to establishing endowment for human rights studies.²⁵

There are many sides to the ripple effects of these initiatives of the NHRC. Most significant of them is the developments at the higher education level, with the UGC responding substantively. The UGC response could be summarised at three levels. First, it has actively encouraged the universities and colleges in India to work for introduction of human rights courses by providing incentives to such efforts.²⁶ Though exact figures are not available, broad estimates suggest that there are nearly a hundred universities and colleges which seem to have taken advantage of the invitation. This indicates a clear push towards bringing human rights into higher education curriculum. The second is, the establishment of a Curriculum Development Committee (CDC) on human rights, which after two years of deliberation produced a comprehensive report, which includes 'model curriculum' for introducing human rights courses.²⁷ This is a substantive move towards professionalising human rights education without losing on the values dimension. The third and by no means less significant response is the introduction of human rights specialisation in the UGC National Educational Test (NET), which adds on to the existing incentive structures to motivate and enthuse young and aspiring students to take

²⁵ Though it is a one-time contribution, it is worth mentioning in a paper reflecting on trajectories of human rights education in India, that the NHRC gave an endowment to institute a Chair on Human Rights Studies at the National Law School of India University, Bangalore. The importance of such an initiative is at least of two fold. That it informs the seriousness with which the Commission views human rights education and research, and secondly paving the way for such similar contributions of endowments from other interested foundations. See for some other details of NHRC educational initiatives, Virendra Dayal, "Evolution of the National Human Rights Commission" *Journal of the NHRC, India*, 2002, 67-68.

²⁶ During the previous plan period, the UGC has invited applications from universities, deemed universities and colleges to start new human rights courses at three levels: Masters, Post-Graduate Diploma and Certificate, each level carrying a set of financial incentives.

²⁷ The CDC comprised of 17 members drawn from various walks of life related to human rights theory and practice. The committee met during June 2000 and December 2001 and finally prepared its report in early 2002.

up human rights as value-based professional option.

The effect does not confine to UGC alone, though by far that is the most significant and systematic one. Before embarking upon an analysis of the UGC interventions in promoting HRE, to which we shall return soon, it is important to map the other developments as well. The other government initiatives include: the efforts of NCERT in generating materials and debate about the introduction of human rights and citizenship education at the school level including evolving a model curriculum; the contributions of few state level human rights commissions to the education process;²⁸ and, a general sense of thrust given to human rights literacy in many government establishments.²⁹

In such a scenario it is quite natural that even organisations of civil society would participate in the HRE initiatives. By far there is no study on the extent of voluntary or civil society initiatives in HRE, but again can be inferred from some of the experiences of institutions and individuals engaged in HRE processes. What seems to be reasonably clear is that there are widespread HRE initiatives undertaken by voluntary and civil society organisations. The nature of interventions range from organising awareness workshops, conducting ‘training’ programmes for specially identified groups such as journalists, lawyers in small towns, social activists or even simply citizenry at large. Few organisations such as the Indian Social Institute have embarked on conducting a regular stream of programmes for social activists. The significant growth of the ‘human rights sector’³⁰ over the last two decades has also contributed to more frequent HRE interventions within civil society.

10. A Perspective on Challenges to HRE

This brings us to a crucial question of analysing the developments in HRE initiatives in India located in the larger international landscape,

²⁸ See for example, *Annual Report 2001-02*, Maharashtra State Human Rights Commission, Chapter 8.

²⁹ Once again, there is no hard data to support the last point, except in the form of few individual/institutional experiences which could be extrapolated, to a limited extent, to make a general point. For example, NLSIU in Bangalore has over the last few years regularly associated with conducting human rights literacy programmes for Foreman trainees in the Foreman Training Institute. Through our discussions with the establishment we understood that it was a decision at the higher levels of the organisation to make human rights literacy a compulsory part of the regular curriculum for the trainees.

³⁰ While it is common nowadays to refer the growth of professional voluntary organisations (eg. NGOs) specialising in human rights activity as ‘human rights sector’ it is not entirely free from controversy. For our purpose it refers to that part of civil society (NGOs) engaged in human rights activity which is different from the ‘voluntary’ social action groups dealing with human rights issues (eg. PUCL). One of the major implications of the rise of the human rights sector is need to professionalise human rights activity.

mapped in the preceding section. How can we provide a constructive critique and analyse the developments in HRE in India so far? What kind of indicators should be the basis of such an exercise? One obvious basis is to reflect on them in the light of the aims and objectives of the UN HRE decade mentioned in the beginning. Another possible way is to take stock of the available situation and provide a critique that could help rethink the core questions in the light of concerns that are close to Indian realities. We do not suggest that each method is mutually exclusive; rather they undoubtedly have a clear overlap between them. The primary difference between them however is the emphasis.

There is not much literature on HRE practices in India.³¹ Even the available literature is either a work-in-progress, hence not fully formed, or personal reflections of teachers and activists and thus largely based on personal impressions. We however feel that there is no harm in making a beginning in the light of available reflections and personal experiences to provide a critique of HRE trajectories in India with a view to help identify core areas of challenges that require to be addressed, first to realise the substantive spirit of the aims and objective of the HRE decade and the follow up World programme on Human Rights Education, and second, highlighting issues that could help HRE initiatives context sensitive and meaningful to Indian circumstances.

³¹ There are two known studies, both still at the analysis stage. The first one is a study being conducted by the Human Rights Programme of the Hyderabad Central University under a Distance Education Council grant, and the second one is being conducted by the National Institute of Human Rights, NLSIU, Bangalore under a grant from the NHRC. Some early findings of the former study were published in, G. Sudarshanam and G. Haragopal, "Human Rights Education: Statusquoist or Transformative", *Indian Journal of Human Rights*, 7(1&2) 2003, 151-168. Besides these there are few rudimentary reflections. For example, A. Raghu Ram, "Human Rights Education in India: Issues and Challenges", *Indian Journal of Human Rights*, 6(1&@) 2002, 166-169.