

# Human Rights and Vulnerable Groups

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Dr. Mallika Ramachandran &

Dr. Deepa Kansra

Dr. Ramachandran is a Freelance Editor and Researcher. She is Guest Faculty at the Centre for Post Graduate Legal Studies, Teri School of Advanced Studies, Delhi.

Dr. Kansra is Assistant Professor at the Human Rights Studies Programme, School of International Studies, Jawaharlal Nehru University, Delhi.

## Topic

The topic covers;

- ▶ A basic understanding of the **concept of vulnerability**, vulnerable groups, and the human rights concerns of such groups.
- ▶ An introduction to some of the **measures at international level** towards protecting /addressing human rights concerns of vulnerable groups.
- ▶ Specific steps taken/instruments **internationally and in Indian law** in the context of two specific vulnerable groups, **women and older persons**.

## Points for Discussion

1. **Concept of Vulnerability**
2. **Vulnerable Groups**
3. **Human Rights Concerns**
4. **International Human Rights Law**
5. **Domestic Laws**
6. **Women**
7. **CEDAW Committee**
8. **Older Persons**
9. **International Framework on Older Persons**
10. **Important Questions**
11. **Final Points**

## Concept of vulnerability

Individuals can be placed in groups based on their vulnerabilities.

Vulnerability signifies actual or potential exposure to harm.

Defined as such, vulnerability is universal as it may occur in everyone's life.

[Ingrid Nifosi- Sutton].

Vulnerability could describe situations of lack of power, physical and psychological weakness, defenselessness or immediate danger.

[Ingrid Nifosi- Sutton].

There are particular groups who, for various reasons, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights.

[Icelandic Human Rights Centre]

Vulnerability is the degree to which a population, individual or organization is unable to anticipate, cope with, resist and recover from the impacts of disasters.

[*Environmental health in emergencies and disasters*- WHO, 2000]

Poverty – and its common consequences such as malnutrition, homelessness, poor housing and destitution – is a major contributor to vulnerability.

[WHO]

## Concept of vulnerability [Cont...]

Harm and suffering feature centrally in most accounts of vulnerability...

Injuries can be bodily, moral, psychological, economic and institutional.

[Peroni & Timmer]

Vulnerability can be the result of

- physical factors (e.g. proximity to disaster-prone geographical areas; lack of access to resources or facilities (such as water, hospitals, etc.));
- Economic factors/poverty (lack of resources);
- Social and cultural (certain social groups like women, disabled persons, certain groups based on color, race, caste, etc. are vulnerable due to social and cultural factors)

'The term vulnerable refers to the harsh reality that these groups are more likely to encounter discrimination or other human rights violations than others.'

[Elisabeth Reichert 2006]

## Vulnerable Groups

\*The following groups are generally identified as vulnerable groups in domestic & international frameworks;

Children  
 Women  
 Minorities  
 Disabled persons  
 Older Persons  
 Indigenous populations  
 LGBT persons  
 Refugees  
 Migrants

**Icelandic Human Rights Centre identifies the following as vulnerable groups :**

1. women and girls; 2) children; 3) refugees; 4) internally displaced persons; 5) stateless persons; 6) national minorities; 7) indigenous peoples ; 8) migrant workers; 9) disabled persons; 10) elderly persons; 11) HIV positive persons and AIDS victims; 12) Roma/Gypsies/Sinti; and 13) lesbian, gay and transgender people etc.

**MGNREGA (India) (Operational Guidelines, 2013)**

Persons with disabilities;

1. Primitive Tribal Groups;
2. Nomadic Tribal Groups; De-notified Tribes;
3. Women in special circumstances;
4. Senior citizens above 65 years of age;
5. HIV positive persons;
6. Internally displaced persons; and
7. Rehabilitated bonded labour

# Human Rights Concerns

- ▶ **GREATER DEGREE OF VULNERABILITY:** It must be noted that these groups are not exclusive of each other and there may be persons or groups who suffer a greater degree of vulnerability due more than one factor; for instance a person who is a woman, and is disabled.
- ▶ **FACTORS INFLUENTIAL:** Also, each of these categories should not be looked at as homogeneous; rather they will be varied depending on various factors such as culture, socioeconomic situation (of the society and family), education levels, etc. among others.
- ▶ **STEREOTYPES:** Stereotypes may be often associated with many or each of these groups (e.g. women as weak; older persons as non-productive) which may contribute to their marginalization or discrimination against them.
- ▶ **HUMAN RIGHTS CONCERNS:** Vulnerable groups may experience; lack of access to social services, lack of access to justice, loss of property & land, loss of identity, violence and discrimination, economic & social exploitation, unlawful arrest or detention, lack of education, physical or other forms of violence (e.g. verbal abuse), denial of human rights.

# International Human rights law

1. At a basic level, **non-discrimination clauses/provisions**, part of most international and domestic instruments, can be seen as seeking to ensure that there is no discrimination against groups vulnerable on certain accounts such as race, color, religion, language, sex, etc. (e.g. UDHR, art. 2)
2. **Special frameworks/laws** have been adopted by the United Nations and States to protect vulnerable groups.
3. The Vienna Declaration and Programme of Action imposes on States the obligation to create and **maintain measures for the protection** of the rights of marginalized groups (esp. para 24).
4. Addressing vulnerability of groups is the **core obligation of States** under the international human rights framework.
5. Measures undertaken for vulnerable groups include **creation of Institutions** for representation [e.g. UN Permanent Forum on Indigenous Issues]
6. Vulnerability is also being addressed through the **monitoring and complaints mechanism under the international human rights treaty framework**. [ICCPR, ICESCR, CERD, CAT, CEDAW, etc.]



# Domestic Laws

## States adopt legal instruments and frameworks for vulnerable groups;

e.g. in India,

- Rights of Persons with Disabilities Act, 2016;
- Integrated Children Protection Services;
- Vocational training centres in tribal areas; etc.

In Cambodia , the Law on the Prevention of Domestic Violence & the Protection of Victims

In Ireland, Equal Status Act, 2002

In Sri Lanka, Prevention of Domestic Violence Act, 2005

In Singapore, Vulnerable Adults Act, 2018

## Participation and dialogue is an important aspect of protection and respect of rights of vulnerable groups.

e.g. in India , ***the Rights of Persons with Disabilities Act*** seeks to ensure full participation and inclusion of people in society;

- The ***Juvenile Justice (Care and Protection) Act, 2015***: recognises in line with the CRC (in section 3) that children have the right to be heard and to participate in processes and decisions affecting their interest, and that such views shall be taken into consideration with due regard to their age and maturity.

## Judicial Interpretation:

According to Supreme Court of India, '***social justice is the signature tune of our Constitution*** and it is their (states) solemn duty under the Constitution to enforce the basic human rights of the ***poor and vulnerable sections of the community*** and actively help in the realization of the constitutional goals.' [PUDR v. Union of India, AIR 1982 SC 1473]

Supreme Court of India;

'Where the Court finds...that the ***poor and the underprivileged continue*** to be subjected to ***exploitation and injustice or are deprived*** of their social and economic entitlements or that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the Court certainly can and must intervene and compel the Executive to carry out its constitutional and legal obligations and ensure that ***the deprived and vulnerable sections of the community*** are no longer subjected to exploitation or injustice and they are able to realise their social and economic rights.'

[State of Himachal Pradesh v. A Parent of a Student of Medical College, AIR 1985 SC 910]

# Women

## International Human Rights

- Convention on Elimination of All forms of Discrimination against Women, 1979
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (to United Nations Convention against Transnational Organized Crime), 2003
- Convention on the Political Rights of Women, 1952

## Domestic Law, India

- Maternity Benefits Act, 1961
- Dowry Prohibition Act, 1961
- Indecent Representation of Women (Prohibition) Act, 1986
- Sati (Prevention) Act, 1987
- Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
- Protection of Women from Domestic Violence Act, 2005
- Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013

## CEDAW Committee

### Specific Vulnerable Groups

.States parties have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to **specific vulnerable groups in particular**.

### Vulnerable to discrimination

Certain groups of women, including women deprived of **their liberty, refugees, asylum seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women**, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices.

### Citizens and Non-Citizens

The obligations of States parties apply, however, without discrimination both to citizens and non-citizens, **including refugees, asylum-seekers, migrant workers and stateless persons**, within their territory or effective control, even if not situated within the territory. States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory. [GR No.28, 2010]

### Legal measures and protections for women in rural areas

Limited institutional capacity of the judiciary, and the high level of impunity in cases related to femicide, sexual violence and violence against women human rights defenders, disproportionately affects women from vulnerable groups such as **indigenous women, Afro-Colombian women, rural women, women with disabilities and lesbian, bisexual and transgender women**. [Concluding Observations, [Periodic Report/Columbia/2019].

[See CEDAW Reports/ Cases for details]

# Older Persons

## International

- Vienna International Plan of Action on Aging, 1982
- UN Principles for Older Persons, 1991
- ICESCR, General Comment 6: The Economic, Social and Cultural Rights of Older Persons
- Madrid International Plan of Action on Ageing, 2002
- CEDAW Committee: General Recommendation 27: older women and protection of human rights
- 2010: Open-ended Working Group on Ageing

## Domestic Law, India

- National Policy on Older Persons, 1999
- Himachal Pradesh Maintenance of Parents and Dependents Act, 2001
- Maintenance and Welfare of Parents and Senior Citizens Act, 2007
- National Policy for Senior Citizens, 2011

## International Framework – Older Persons

Most international instruments or efforts relating to the human rights of older persons so far can be classified as **'soft law' provisions**.

The UN Principles on Older Persons, 1991, recognize **18 principles** in five categories: **independence, participation, care, self-fulfilment, and dignity**, ranging from fulfilment of **basic necessities** and **availability of healthcare** to **opportunities for work and education and integration and participation** in society.

The **Madrid International Plan of Action on Ageing** emphasizes on older persons and development including;

**health and well-being and supportive environments ; seeking to ensure enjoyment of human rights and fundamental freedoms; participation in social, economic and political life; and elimination of all forms of violence and discrimination, among others.**

**The Open-ended Working Group on Ageing** for the purpose of strengthening the human rights of older persons, in its **tenth session report (2019)**, emphasized,

**'older persons can make a significant contribution to the social, economic and sustainable development of their societies, if an enabling environment and adequate guarantees are in place'.**

The focus areas in the session were **'education, training, life-long learning, and capacity building'** and **'social protection and social-security'**.

**[See Reports for details]**

The proposed **Convention on the Rights of Older Persons** is expected to be the next important human rights treaty.

The idea of a treaty is gaining attention owing to **the growing population of older persons, and concerns particularly physical and emotional abuse.**

**[See Reports of the Open-ended Working Group on Ageing]**

# Important Questions

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1. What **factors determine the nature of vulnerability** of individuals and groups?
2. In what ways do **cultural norms & practices** add to the vulnerability of individuals and groups?
3. In what ways has **climate change** made individuals & groups vulnerable to harm?
4. Can groups & individuals be vulnerable to **global practices and policies**?
5. Are there **uniform domestic and international standards** to provide for vulnerable groups?
6. Are there adequate provisions to care for **the mental & psychological harm** caused to vulnerable groups?
7. What is the responsibility of the **international community** towards vulnerable populations?
8. What defined **aid & assistance measures** are provided for under the **international social and economic order**?

## Final Points

1. Vulnerability of individuals and groups to harm/injury is **universal**.
2. States are **obligated under international human rights law** to provide for and protect vulnerable groups.
3. Measures taken for vulnerable groups can ensure **representation of the members of the group** in the political, social, and economic spheres.
4. Measures taken for vulnerable groups can **enable access to goods and resources** for the enjoyment of basic rights.
5. States have a responsibility towards **vulnerable non-citizens** within their territory (as well as outside their territory in certain circumstances).
6. New & changing economic, political, ecological **conditions** may create new forms of vulnerabilities and vulnerable groups.