

Term Paper for Module B 2004

Argument: Why listening to women's experiences, and chronicling them, is particularly important in understanding the "refugee situation" and gauging appropriate responses.

by Fatma Kasem Agbaria

Though women hardly have any role to play in decisions about war, they suffer its consequences. A refugee women is a product of a system over which she has no control[1]

Colonial and national historiography has shaped and reproduced male dominance. Spivak pointed out that if in the context of colonial production, the subaltern has no history and cannot speak, the subaltern as female is even more deeply in the shadows. Feminist scholars who have lately started to address the issues related to women's lives and experiences did play a role in constructing knowledge. In the nation building policy planning, women's needs and desires were not considered as important components of the national strategic policies. Scholars have pointed to gender bias in philosophic and scientific ideals and suggested that these originate in gendered experience.

In the article 'speaking for themselves' the author argues that in the traditional political history women were absent. Women have been excluded from making war, wealth, laws, government, art and science. Women have always figured in history as object of study, rather than as subjects. Feminist historiography has focused attention on the necessity of restoring women to history. The task of restoration has not been easy, primarily because the historical archive has little to offer for such a reconstruction.

In the previous century there have been an increasing numbers of displaced/refugee people. Little has been done to understand the impact of displacement on women. Women and their experiences are marginal in particular in the postcolonial national state. Women as refugees or displaced persons are of minor concern.

A feminist reading of the 1947 partition of India, in the light of the above raises several questions among them: What sorts of questions do we raise and where do we find our sources? How do we disentangle women's experiences from those of other political non-actors in order to enable us to problematise the general experience of violence, dislocation and displacement from a gender perspective? How do we evaluate the state's responsibility to refugees in general and women refugees in particular, as articulated in the policies and programs of the government?

The historical archives, are unlikely to yield the kind of information we are looking for. Women are invisible and their experience of these historical events has never been properly examined. Women historians have noted this absence and have emphasized the importance of retrieving women's history through oral sources. Because women have used speech much more widely than the written word, oral history practitioners have found in interviews and testimonies a rich vein to mine and bring to the surface what, so far, has been hidden from history.

As a result of the 1947 Partition, and the ongoing conflict crises in the subcontinent, it is generally known that women and children form a large part of the populations on the move. Women have more specific needs than general groups. Women immigration wasn't recorded. Meanwhile migration across the border of Afghanistan and India was predominantly a male migration, which has been chronicled in detail.

In fact, women form the bulk of most refugee populations. Most countries ignore this fact and continue to formulate gender "impartial" refugee policies. Such policies are based on male experiences of displacement and so they affect women adversely. The layout and dwellings of the camps are important to women's lives but hardly any attention has been paid to building refugee camps for women's needs. Asha Hans, argues that gender considerations have never been an important component of India's policy on refugees. Camps should be designed with an eye to meeting women's special security needs, with attention given to the placement of latrines, lighting, and how far women should have to go for firewood. Provision should be made for women's active participation in camp administration and decision-making.

The impact of violence used during conflict on women and how conflict affected women's lives has been overlooked. The assumption here is that militant conflicts affect women differently. Further more, the response to sexual violence against displaced women focuses on assisting victims after the attack has taken place rather than on prevention.

In recent conflicts (Kosovo, Kashmir, Sri Lanka) women suffer the worst forms of cruelty and indignity. During conflict situations women face not only a continual threat of rape, but also other forms of gender-based violence including

prostitution, sexual humiliation, trafficking and domestic violence. Health also has its gender dimension as it makes women vulnerable to physical and sexual harassment both by camp and non-camp males.

Displacement causes social dislocation. Gender experiences of displacement are significantly different. In setting a policy the social norms of women, ethnicity, race, language, religion and cultural norms within the groups of women and in between different groups has to be taken into consideration.

One group of the major women's concerns relates to children's education. This can make displaced women feel that the whole generation has been lost. But it is not all of displaced women's concerns?

Women in the refugee camps have to develop skills to cope with the totally different environment. In displacement, most women are alienated from their traditional resource and are forced to look for new ones. This is especially significant when they migrate from rural to urban areas.

During conflict some socio-cultural norms and identities lose their value while others are entrenched which change the lifestyle of women. There are issues or problems of nationalism, ethnicity, and social norms, which complicate the lives of the refugees. A major social problem was linked to women. Honor killing, abductions, and sexual abuse became so dominant that the state was compelled to take notice.

How could government be induced to set up an adequate strategy in facing refugee women's different needs and be compelled to pay attention to their physical needs and their intellectual and vocational development? How can such planning free women (widows and others) from economic dependence? What is required for a properly planned scheme of vocational training and skills?

Primarily we as a policy makers need data upon which to base our policy. We need knowledge about these women. The collection of gender-specific information should become a routine part of assessments done by humanitarian and development agencies. Archives are short of the kind of knowledge needed. To fill the gap. Because of the scarcity of documented resources too provide such knowledge we must rely on the only source available, the oral testimonies that women themselves could provide. For example, Gyan Dyan from a refugee camp telling her story, is one of the voices that could tell of the many histories that lie, still undiscovered. Therefore, the mission is to hear and record more and more stories to restore women as a subject in society that deserves to be treated in the bases of a human being and citizen. Displaced/refugee/women need it more because of their specific location/positions and their needs. The kinds of knowledge about women such as the seven widows who still live in the Karnal Mahila Ashram and are all only mothers of daughters. Without husbands and sons, many thought of themselves as being doubly widowed. Those with sons have been able to settle themselves; those with daughters are as good as dead. Mothers of daughters never quite settled down. There is a physiological value of women gathering. When the women get together, they wail in different voices. Lower class women worked as domestic servants and farm laborers while those from a well-off background didn't. They sewed or embroidered and stayed inside the home's four walls. The Afghan women who are resident in India today say that they live in an unstable world where refuge is provided but where they find themselves cut off from their moorings. Their families are scattered all over the world and they remain in transit while the world decides on a permanent home for them. The trauma of this dislocation in their lives has created a deep psychological impact and stress disorders.

These and all other kinds of knowledge that policy makers need have to be collected orally otherwise planning policy will not take necessary information about women's needs.

The special needs of women are not exceptional for the subcontinent of India. There are also special needs for immigrant women/displaced/ or refugee in 'modern' states like Canada. For example, women in Canada face discrimination by landlords, which narrows immigrant and refugee women's housing options and contributes to their paying more for less. There is overt and covert discrimination. Immigrants frequently lack information about the rights and responsibilities of landlords and tenants, and available avenues of recourse when there are problems.

By listening to Durga Rani's and Gyan Deyi's stories we learn how the government's policies and programs concretely benefited widows and either equipped them with the means to become economically self-reliant or provided the supporting facilities to make them independent of families, should they so choose.

The Indian government assumed responsibility for two groups of women: The first, "abducted" were defined as those women who had somehow been separated from their families. The second, "unattached" comprised those who had been displaced,

became destitute, or widowed. Both groups defined their identity and in turn became the touchstone by which the government formulated and implemented policies with regard to their "recovery" and "resettlement". The government undertook its welfare and legislative responsibility as an independent state. It also revealed the complexity of its relationship to gender and community, secularism and democracy, which safeguards and guarantees addressing women's needs.

In 1947, the Women's Section of the Ministry of Rehabilitation was established to meet not only the economic needs but also the psychological, educational, and emotional needs of women. The government could only partially cope with the situation and many related issues were not even considered to be important. But it was this band of women that took up the challenge of working for women and children displaced by partition, who assisted the government in trying to create gender-sensitive policies. The Women's Section played a key role in rehabilitation of the women. They set up special programs for women including food, shelter, vocational training and work. The aim was to assist women so that they could cope on their own.

Women who were considered unfit for rehabilitation became permanent liabilities of the state. Patriarchal norms had not prepared women for an independent life, especially as the heads of households in an unknown environment.

But in general governments have either not been sensitive to the special needs of this group, or find it difficult to meet the requirements. As the numbers of refugee women and children is not known...It therefore has no specific policy provision for women and children refugees.

Ongoing political crisis, reflect the problematic relationship between women and the state and its implications for women. The state functions in interaction with at least two other major institutions-community and family- and that together, they constitute the contesting arenas for gender issues. They recognize the need for gender sensitive relief and rehabilitation policy. Yet such policy remains rarely employed and most programs remain within the conventional development thinking.

Another problematic issue is whether or not the state determines who is a citizen and who is not will the state will provide care depending upon citizenship. This adds to the power of the state to decide towards whom to extend care /hospitality or deny it. Are such decisions going to be gendered based?

Ranabir Samaddar argues that in a condition of massive and mixed flows, a refugee policy that ignores the structure of population flows will not ultimately do justice to the refugee.

Another question posed by policy study:

Is the issue the duty to extend care or the right to get care? Is the issue the recognition to have the right to get care?

Another question in regard to the oral interview as a base to collect data for policy making is how eleven narratives by eleven authors on eleven histories – can one frame them in a coherent policy relevant account?

Asha hans: refugee women and children [1]

Towards a more complete refugee praxis & discourse: the importance of listening to women's experiences in understanding the refugee situation and forging appropriate responses

By Maria Ahlqvist

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1. Introduction

"Approximately half of both refugees and people migrating for work in the world as a whole are women." (Hayter, 2002) Thus, a fair side of the refugee situation is manifested in and lived through women's experiences. Yet, the women's side of the refugee situation appears to have been reduced to the *other* side, because "historically, the refugee definition has been interpreted through a framework of male experiences" (UNHCR, 2002) and further, "research on the experience of asylum...

has traditionally focused on male experiences.” (Reed, 2002) Therefore, “men become the first focus of research and policy, women’s experiences become secondary. This lack of interest or awareness of women’s experiences can be seen in the responses from statutory bodies.” (Ibid) There thus exists a striking disparity between the reality of the refugee situation and refugee praxis and discourse. Realising this, it is clear that without taking into account refugee women’s experiences, it is not possible to understand the refugee situation in a comprehensive and integrated manner. Omitting women’s experiences leads to a deficient and incomplete refugee discourse and results in inadequate and often even faulty responses to the refugee situation.

What, then, constitutes the female refugee experience? What makes it gender-specific? The issues, influences and vulnerabilities that a women refugees face are multidimensional and often interconnected, which makes the listening to women’s experiences, and hence properly understanding the refugee situation, a challenging and a necessary task.

Within the limits of this term paper I attempt to elaborate on what is specific to women refugees’ experiences, thereby also formulating the argument for the importance of listening to women’s experiences in order to understand the refugee situation at large and thus forging appropriate and sensitive responses. Further and very importantly, refugee women’s experiences cannot be reduced to one single “block”, for they are multivocal, diverse and contextual, calling for a sensitive and critical approach the whole notion of “listening to women’s experiences”. This notion is also worth elaborating on in itself, for example by asking questions such as why indeed *listen* to women’s experiences, how should this be done and by whom, and what are its implications on a larger scale. Such an elaboration will throw further light not only on the issue of refugee women’s experiences but the broader questions for example on the role and status of women in different societies and the power-relations that lie in the process of listening to women.

2. Completing refugee discourse: *listening to women’s experiences*

To begin with, while discussing the importance of listening to women’s experiences in understanding the refugee situation and forging appropriate responses, it is worthwhile and of interest to look into the notion of indeed *listening* to women’s experiences in itself and what lies behind the notion in a broader sense.

Moving towards a more complete refugee discourse through listening to women’s experiences can thus be connected to the feminist historiography’s argument for the “necessity of restoring women to history not only to challenge conventional history-writing, but to emphasize that a representative history can only be written if the experience and status of one half of humankind is an integral part of the story.” (Menon & Bhasin)

Ritu Menon and Kamla Bhasin, in connection to their work with women’s narratives about the partition of India, discuss the notion of listening to women’s experiences: “Hardly ever, and hardly anywhere, have women “written history”... Women historians have noticed this absence and emphasized the importance of retrieving women’s history through oral sources. Because women have used speech much more widely than the written word, oral history practitioners have found in interviews... a rich vein to mine and to surface what, so far, has been hidden from history.” Further, point out Menon and Bhasin, “The real value of these oral testimonies... lies in their ability to capture the *quality* of women’s lives”. Such qualitative information derived from listening to refugee women’s experiences can, for example, vividly point out to the kind of specific needs refugee women have, awareness and understanding of which is important in understanding the refugee situation and in forging appropriate responses. Further, the argument for the importance of listening to refugee women’s experiences is defended by the acknowledgement that “International protection goes beyond adherence to legal principles. Equally important, the protection of refugee women requires planning and a great deal of common sense in establishing programmes and enforcing priorities that support their safety and well-being” (in B.S. Chimni (ed.), 2000) – which can be defined as a process where, “to understand fully and address the protection concerns of refugee women, they themselves must participate in planning protection and assistance activities.” (Ibid)

With reference to refugee situation and the discourse and praxis around it, what, then are the implications of listening to women’s experiences and how, and by whom, should women’s experiences be listened to? The UNHCR Guidelines on International Protection (2002) stress that “women asylum-seekers should be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case.” The same further stresses the essentiality “that women are given information about the status determination process, access to it, as well as legal advice, in a manner and language that she understands.” From this we can draw that the listening of women’s experiences should thus involve a reciprocal element where women also receive information important to them, in a case sensitive manner. Moving towards a more complete understanding of refugee situation through listening to women’s experiences should also be a multilateral enterprise with the input of institutions, organisations, activists and scholars, working in an innovative and collaborative spirit.

It is important to be aware of the complexities connected to listening to women’s experiences. From Menon and Bhasin’s discussion on the problematics of retrieving women’s social experience in connection to women’s experiences on the partition of India, we can draw that listening to women’s experiences in the context of refugee situation involves, for example,

questions about power relations and class privilege in interviewing situations as well as problems of interpretation, evaluation and representation. These are questions and issues, which can have further implications to the project of listening to women's experiences in an attempt to understand refugee situation and forging appropriate responses.

3. The gendered nature of refugee situation – patriarchal norms as shapers of refugee women's experiences

Women constitute half of the world's refugees. Yet their experiences and needs have not so far been appropriately taken into consideration, even if there have been attempts to adopt gender-consciousness and gender-sensitive measures. The argument is strong for the importance of listening to women's experiences in order to understand the refugee situation and to forge appropriate responses. In making this argument, it is vital to look into what constitutes a female refugee experience; what makes it gender-specific? Looking at the vastness of different themes discussed in the literature on the issue, there appears to be a number of possible entry points to what is gender-specific about women refugees' experiences – as Asha Hans points out: "Women's problems... raise conceptual issues regarding the status of women, of universality and diversity, vulnerability and empowerment, of role changes in insurgencies and wars. A refugee woman is a product of a system over which she has no control. In her journey from her home to exile and back she undergoes various transformations, most of which are related to the violence that permeates her life." (Hans in Samaddar (ed.), 2003: 378) This and the further fact that "The existing refugee regime rarely provides her protection from gender based and gender-specific persecution" (Ibid) strongly point out why gender-consciousness, through listening to women's experiences and chronicling them to a "database", is of vital importance in understanding the refugee situation and in forging appropriate responses.

Describing a refugee woman, as in the words of Hans, "a product of a system over which she has no control" calls for investigating what constitutes the *system*. In connection to this, what frequently appears as a major overarching factor greatly influencing and permeating the gendered experience of refugee women is their status and position characterised by patriarchal norms. Patriarchal norms appear to direct, to a large extent, women's socio-cultural and socio-cultural and economic positions, which, in refugee situations, contribute to and become manifested in women's destinies. Different women of course come from different positions and thus the gendered experience is always contextual - there is no "single block of a female refugee experience". Yet, I argue, and literature on the theme also points out to the direction that patriarchal norms are a common denominator to refugee women's experiences from countries and societies under conflict, marking the experiences women refugees frequently go through and contributing especially to refugee women's disempowerment. Points out Asha Hans: "Loss of homes, property, productive capabilities and of social networks are the outcome of displacement which disempowers families, especially women", but "what is singularly disempowering is the baggage of traditional patriarchal norms communities carry with them into displacement." (Ibid. 2000) It is thus imperative to listen to women's experiences in order to understand the factors, of which patriarchal norms are part / in which patriarchal norms are embedded in, that affect and contribute their refugee experience and create gender-specific needs which have to be met by appropriate responses.

To understand and explain how patriarchal norms are central to and mark refugee women's experiences at conflict locations and in displacement, I would like to use a simple diagram to illustrate the issue and some of its central interconnected components:

3.1 Gendered violence and its implications

Displacement situations are “universally often preceded and accompanied by physical violence” (Hans, 2000) but it has to be noted that conflict affects men and women differently and “the targets of ethnic violence are particularly women and they suffer the worst forms of cruelty and indignity in the form of rape.” (Ibid) Indeed, gendered violence stands out as a key denominator permeating a refugee woman’s experience.

Women’s vulnerability to gendered, sexual violence in conflict and refugee situations can, in my view, be seen partly as a manifestation of women’s (patriarchally governed) social positions. “Desecration of women’s honour to demoralise the enemy”, for instance, “has always been an important wartime strategy” (Hans in Samaddar (ed.), 2003: 379) – a strategy which can be viewed as drawing strongly from the patriarchal sense of “ownership” over women.

Another, and a contrasting example of the role of patriarchal norms in the gendered violence faced by women is described by Urvashi Butalia in what happened during the partition of India, where, when "women were concerned, the debate entered another realm altogether – that of the honour of the nation, and of its men". (Butalia, 2000: 189) What characterised the gendered violence drawing from patriarchal norms faced by some women in the partition, was thus the notion that "While the men could thus save themselves, it was imperative that the women – and through them, the entire race – be 'saved' by them" through the martyrdom of women in the face of the threat of forced conversion and rape, through which "not only would they be rendered impure individually, but through them, the entire community could be polluted for they would give birth to 'impure' children." (Ibid: 196)

"The experience of being a woman refugee is already fraught with health risk and uncertainty" (Kennedy & Murphy-Lawless, 2003), a multifaceted situation with interconnected elements contributing to the risk and vulnerability. In conflict and refugee situations, women's particular vulnerability to gendered, sexual violence exposes them to severe health and psychological problems. Further, as Asha Hans points out, "sexual violence is not only a personal trauma but has a social stigma attached to it", which highlights the way in which a woman and her status / position and also sexuality are tied to the society – a further challenge for the understanding and for providing appropriate responses in refugee situation.

The complex, interconnected dimensions of refugee women's experience of violence having multiple implications need to be included in a wholesome understanding of refugee situation and appropriate responsive measures.

3.2 Dynamics of disempowerment and empowerment

Understanding the dimensions and dynamics of disempowerment and empowerment that touch refugee women's lives is again vital in an overall understanding of the refugee situation and for the formation of appropriate responses. Patriarchal norms and their legacy play a central role also in this context marking the way refugee women face and experience disempowerment or empowerment in refugee situations.

Asha Hans discusses refugee women's disempowerment as "basically the product of the absence of State and social support. Consequently to escape this positioning women have to assume unconventional roles... As they have taken up traditionally male roles they achieve the confidence to cross bureaucratic hurdles and violations of their self-esteem and dignity." (Hans, 2000: 26) Women's assuming new roles is, according to Hans, about "redefining conceptions of womanhood" and involves changes in gender roles and identities. This process has a twofold nature – on the one hand, it is a process of empowerment despite the initial powerlessness for example where women have formed networks and organisations in displacement; on the other hand, Hans reminds that "the process of empowerment can be burdening. These women are different and therefore the world may consider them as empowered decision-makers able to take on the disaster confronting them, but society sees them as detractors from traditional socio-cultural norms. The process of empowerment therefore is complex and guilt ridden, and not easy in a hostile environment where patriarchal norms remain entrenched." (Hans, 2000: 27) In connection to this, under the circumstances of displacement, then, are there cultural constraints if women are suddenly involved women in decision-making in the case where women come from a background where their role is limited – does it tamper with their culture? Such a concern "may reflect... inadequate understanding of both traditional cultures and the new circumstances in which refugee women find themselves" (UNHCR Guidelines on the Protection of Refugee Women, in Chimni (ed.), 2000: 192) – instead, focus should be on making alternative and encouraging arrangements to ensure that women's "voices are heard and the perspectives that they have to offer are included in decision-making." (Ibid)

Understanding the question of women's disempowerment in refugee situations and the interplay of patriarchal norms in it, is of vital importance further because it also touches upon the destiny of children. For example where, in displacement situations, "patriarchal norms have not prepared women for an independent life, especially as the heads of households in an unknown environment" there is a risk that "generations of children in refuge go without the common necessities of childhood" (Hans in Samaddar (ed.), 2003: 356).

As an extension, it is of critical importance to identify and analyse the presence of patriarchal norms, and the consequent disempowering impact for women, in the practices of refugee / immigration receiving countries. Susan McDonald's example, where "Often it is the male who applies for and receives permanent residency status and he then will sponsor his wife" (Ibid, in Canadian Woman Studies, Vol. 19, No. 3: 164) points out how such a procedure can leave women in a vulnerable situation: "When a woman does not have a secure immigration status, the fear of deportation can be overwhelming. An abuser may have made threats in this context or actually have withdrawn his sponsorship." This is a further case arguing that women's experiences need to be assessed in a manner where women can also have the "ownership" of her own status in a foreign country.

3.3 Gender, the dimensions of private and public and refugee situation

Listening and chronicling women's experiences is extremely significant in connection to the tackling of one more challenge related to the proper understanding of refugee situation and appropriate responses to it – the "call for a definition of

persecution which acknowledges the feminist theory of social bifurcation: that society is divided into public and private spheres... the public sphere is male-dominated and women are relegated to the private sphere." (Jacqueline Greatbatch in Chimni (ed.), 2000: 35) Understanding the divide between the public and the private and its implications is crucial for a gender-conscious, more complete refugee regime because of "a distinct 'women's experience' of the private sphere which, it is claimed, is the site of gender oppression." (Ibid)

What, thus, amounts to the ignorance of women's experiences of persecution is the fact that "the key criteria for being a refugee are drawn primarily from the realm of public sphere activities dominated by men." (Ibid) An example of this is the shortcoming of the refugee regime to acknowledge or "correspond to the reality of the experiences of women in some societies" (UNHCR, 2002: 8) – as a result, women do not frequently fit the definition of a political refugee, fleeing persecution for direct involvement in political activity while, in reality, women are "frequently attributed with political opinions of their family or male relatives, and subjected to persecution because of the activities of their male relatives." (Ibid: 9)

Based on feminist critiques of refugee discourse, listening to women's experiences and chronicling them is thus important in comprehensively understanding the refugee situation because "The experience of women's oppression is viewed as a trans-historical and trans-cultural. Objectivity is rejected as a method of enquiry and *theory is derived instead from 'women's experiences'.*" (Ibid, italics added)

4. Conclusions and further thoughts

Why is listening to women's experiences, and also chronicling them, particularly important in understanding the refugee situation and forging appropriate responses? This term paper manages only to touch on the surface of some of the issues related to the question but already to this extent, it is apparent that taking into account, and focusing on, women's experiences has indeed vital importance if a comprehensive understanding of the refugee situation and to forging appropriate responses to the same are attempted.

As a fact of paramount significance, women constitute half of refugees and migrants in the world. Yet, as a contrast, the approaches to the refugee situation have been mainly taken from the male vantage point. As a result, the refugee situation has not been understood in its entirety and further, the responses to the same have been partly inappropriate or even totally unsuccessful on different levels – from policies to the practical aspects at refugee camps. In the words of Jacqueline Greatbatch: "By portraying as universal that which is in fact a male paradigm, it is argued, women refugees face rejection of their claims because their experiences of persecution go unrecognised." (In Chimni (ed.), 2000: 34) Omitting women's needs is also obvious, for example, with reference to the responses operationalised in refugee camps, where as Asha Hans points out, "the layout and dwellings... are important to women's lives in refuge, but in India, hardly any attention has been paid to building refugee camps for women's needs." (Hans in Samaddar (ed.), 2003: 378)

What Menon and Bhasin have found true about records on Indian partition can also be seen as the case in refugee discourse in general, namely that women tend to figure "as objects of study, rather than as subjects." This contributes to the fact that women's experience has not been properly examined nor assigned value. In a broader sense, Menon and Bhasin highlight the importance of recognising that women's experiences add a critical and vital dimension to "any analysis of the refugee situation's impact on women *and* men, on the relations between them and also the relation between gender and social as well as historical processes." This is a key argument to why listening to women's experiences, and also chronicling them, is particularly important in understanding the refugee situation and forging appropriate responses.

Further, as pointed out by Asha Hans, listening to women's experiences about how conflict "has affected women's lives... is an important dimension in *the general study* of peace and conflict which is overlooked." (Ibid. 2000, italics added) In this connection, chronicling women's experiences is of importance in the overall understanding and analysis of conflicts.

Central to the gendered approach in order to properly understand refugee situation and to forge appropriate responses, is the comprehension of the elements that as an aggregate make up the gendered experiences of refugee women. Literature on the gendered nature of forced migration, vulnerability, and justice suggests that patriarchal norms are a strong contributory factor marking women's experiences in conflict and refugee situations. Patriarchal norms in a way translate into the gendered experiences of violence and disempowerment faced by women. Understanding the way in which patriarchal norms lie under and work in the gendered experience of women refugees is vital for the proper comprehension of the refugee situation and for the forging of appropriate and sensitive responses. Needless to say, women's experiences need to be carefully listened to in this context.

In adopting women-centered approach and identifying the common denominators of women refugees' gendered experiences, it is however also vital to be aware of the differentiability of experiences of refugee women. Indeed, "the diverse experiences

of women must not be underestimated" (Reed, 2002: 117), as women, as well as asylum-seekers overall, are not a homogenous entity but originate from various geographical locations, with different identities and different stories of persecution. A further useful and important guideline and yardstick discussed by Reed in a gender-sensitive approach to refugee situation is the need to exercise gender-sensitivity in a spirit which enables better and more sensitive exploration of the experiences of *both* women and men and while listening to women's experiences, "the importance of exploring women's experiences on their own and also in comparison to men's" (Reed, 2002: 117) should be recognised.

In addition, listening to women's experiences is important for it can pave the way for a more comprehensive understanding of refugee situation and appropriate responses where it is recognised that the notion of *gender element* should also cover for example refugee claims based on differing sexual orientation.

"To understand fully and address the protection concerns of refugee women, they themselves must participate" (UNHCR Guidelines on the Protection of Refugee Women, in Chimni (ed.), 2000: 191) – listening to women is a vital part of participation. Listening to women's experiences can in itself also be an appropriate response to refugee situation where "Participation itself promotes protection. Internal protection problems are often due as much to people's feelings of... lack of belonging to a structured society and lack of control over their own future... This may be particularly evident in overcrowded camp conditions. Refugee participation helps build the values and sense of community that contribute to reducing protection problems." (Ibid: 192)

Proper listening to and understanding (women) refugees' experiences should also increase critical awareness on the reasons why people are forced to become refugees in today's world to begin with. One critical factor contributing to this is severe economic disadvantage, which "stems from the globalized market and that in advanced economies, from where that globalised market is largely directed, national borders are used as a way to control the movement of labour while capital flows across borders are unimpeded. In that sense, the very concept of asylum-seekers, that is people who do not fall under the 1951 UN Convention, is the creation of a dominant narrative that is intent on retaining as limited a definition of refugee as possible in order to protect its own interests." (Kennedy & Murphy-Lawless, 2003: 42) Further, a gender-sensitive view taking into account women's socio-economic positions reveals that, "presumably because more money is required to flee to Europe than is required to flee to refugee camps in neighbouring countries (as the great majority of refugees are forced to do), less than a quarter of the few asylum seekers... are women." (Hayter, 2002: 7) Such accounts highlight the inequality between those on the favourable and those on the unfavourable side of globalisation, and further, the lot of women in this context, and call for critical self-reflection by the former on their involvement in and contribution to the problem.

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Do you think that International Refugee Law has adequate and wide-ranging provisions for women as a distinct group of refugees?

By Oishik Sircar

Introduction

"The Magna Charta of international refugee law... did not deliberately omit persecution on gender... it was not even considered."^[1]

The majority of the world's refugees are female.^[2] During refugee movements, women and girls risk further violations of their human rights, and have repeatedly been targeted as victims of rape, abduction and family violence. Their passage to safety may have to be bought at the price of sexual favors even within the relative security of a refugee camp or settlement. Frequently bearing additional social responsibilities as heads of households, usually in the absence of adult men, they face discrimination in food distribution, access to health, welfare and education services – they are doubly disadvantaged as refugees and as women.^[3]

Most of these women remain within their own countries and some in neighboring countries' refugee camps or local communities. A small minority of them seeks protection either as asylum seekers or through refugee resettlement processes. Although few in number compared to the total of refugee and internally displaced women, the issues this minority confront are fundamental to the protection of women's human rights.^[4]

There are circumstances which give rise to women's fear of persecution, that are unique to women. However, the existing bank of jurisprudence on the meaning of persecution is based on, for the most part, the experiences of male claimants. Aside from a few cases of rape, the definition has not widely been applied to such female-specific experiences, as genital mutilation, bride-burning, forced marriages, domestic violence, forced abortion, or compulsory sterilization.^[5]

The right to seek asylum is the ultimate protection against violence that has been categorically asserted in Article 14 of the Universal Declaration of Human Rights. International human rights standards also recognize that gender-based violence is a legitimate ground for seeking refuge and is included in the obligation of governments to provide asylum from persecution.

When the drafters of the 1951 Refugee Convention congregated in Geneva not a single woman was to be found amongst the plenipotentiaries. It was the dominant image of a political refugee – someone fleeing persecution resulting from his direct involvement in political activity – which was in the mind of the drafters. This did not necessarily correspond with the reality of women's experiences.

Gender-based Persecution in International Refugee Law

There exists no comprehensive definition of the word 'persecution' in international law. The drafters of the Refugees Convention opted for an open-ended and flexible approach to the concept of persecution in the form of a universal framework.^[6] Article 1A(2) of the Refugees Convention, as amended by the 1967 Protocol relating to the Status of Refugees, defines a 'refugee' as:

any person who... owing to a well-founded fear of being persecuted for reasons of *race, religion, nationality, membership of a particular social group or political opinion*, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her formal residence, is unable or owing to such fear, is unwilling to return to it. (emphasis added)

The concept of persecution is inherently linked to the absence of protection. Persecution not only requires that a claimant be at risk of sustaining serious harm, but also that she cannot expect meaningful protection from that harm in her home country. Thus, recognizing that gender-related harm which threatens basic human rights of women, constitute serious harm is not sufficient to sustain a finding of fear of persecution. To warrant the label of 'persecution', the harm feared must be directly or indirectly attributable to the State. The existence of a 'well-founded fear of persecution' will be recognized only when the State of origin can be held accountable for the harm feared in the sense that the individual cannot expect meaningful protection from authorities in the country of origin.^[7]

The term gender-based persecution refers to asylum applications made by women premised on issues pertaining specifically to their gender. These claims can be separated into two general categories. The first focuses on persecution commonly faced by women – namely, rape^[8], genital mutilation, domestic violence and bride burning. The second category includes claims that constitute persecution because of the applicants' gender, such as persecution for disobeying repressive gender-discriminatory laws or for not conforming with social mores that are offensive to women. This category also includes situations that discriminate against women and strictly prohibits them from engaging in certain activities.

Although the Refugees Convention definition of a refugee appears gender neutral, in practice women have greater difficulty than men in satisfying the legal requirements for refugee status, thereby implying certain built-in male biases in the law.^[9] Women are also much less likely than men to be found to meet the eligibility criteria for refugee status because of

the absence of explicit recognition of gender-based persecution, and because of the social and political context in which the claims of women are adjudicated. Nancy Kelly holds that the problem is twofold: first, the Refugees Convention definition of 'refugee' does not specifically name gender as a base for protection. Second, in applying the refugee definition, adjudicators have traditionally neglected to incorporate gender in their interpretation of the grounds of persecution enumerated in the Refugees Convention.^[10]

In many respects, this failure by adjudicators to incorporate gender in their consideration of claims of women refugees is a product of the general failure of the international refugee and asylum law regime to recognize systematic denial of social and economic rights while emphasizing individual targeting and specific deprivation of civil and political rights. It also relates to a broader criticism of human rights law and discourse – that it privileges male-dominated public activities over the activities of women, which take place largely in the private sphere.^[11] The key criteria for being a refugee are drawn from the realm of public sphere activities dominated by men. According to Doreen Indra: "With regard to private sphere activities where women's presence is more strongly felt, there is primarily silence – silence that assigns the critical quality 'political' to many public activities but few private ones. Thus, state oppression of a political minority is likely to be considered political, while gender oppression at home is not".^[12]

The substantive law applied in evaluating whether an individual is eligible for refugee status is generally narrowly construed and does not usually recognize the full panoply of issues shaping an individual's reasons for seeking safe haven. This is particularly true in regard to claims presented by women.^[13] Another problem is that women mostly plead their asylum cases before male adjudicators, who tend to regard gender-based persecution as a private and personal matter instead of the socially significant phenomenon that it is.^[14]

Non-recognition of gender as grounds for persecution can be argued to be an interpretive problem leading to the denial of refugee status or asylum, particularly in terms of third country resettlement, to those genuinely deserving such status. In rejecting gender as a legitimate ground for persecution, State authorities may easily dismiss people, especially women whose economic, cultural and social rights have been violated, as 'economic migrants'.^[15]

One of the first efforts to recognize the legitimacy of gender-based persecution claims occurred in 1984 when the European Community admitted that such claims might be recognized under the category of membership in a 'particular social group'.^[16] In 1985 the Executive Committee (EXCOM) of the UNHCR issued a recommendation, in which it acknowledged that States could recognize claims of gender-based persecution under the 'particular social group' category.^[17]

In July 1991 the UNHCR issued its Guidelines on the Protection of Refugee Women. These Guidelines were issued to ensure that women refugees are afforded protection as they settle in a new country. These Guidelines confirmed the need to address gender-based persecution and the need for states to recognize claims for asylum and refugee status for women fleeing persecution on account of gender. At a later stage, the EXCOM of UNHCR issued a Conclusion on Violence Against Women that called for the "development by States of appropriate guidelines on women asylum seekers, in recognition of the fact that women refugees often experience persecution differently from refugee men."^[18]

Pursuant to the UNHCR Guidelines, some countries developed a new 'gender asylum law' jurisprudence. The Canadian government was the first in the world to implement guidelines on gender-based persecution in the assessment of refugee claimants. The Canadian Guidelines^[19] are an important step, but they only apply to women who have made it to Canada to claim refugee status. The same applies for the guidelines that have been developed by USA, UK and New Zealand.

Violence Against Women and the State

Concern for women goes much beyond what the international community sees as important. Problems faced by women refugees, for instance, raise deep conceptual issues regarding the status of women, of universality and diversity, vulnerability and empowerment, of role changes in insurgencies and wars. A refugee woman is partly the product of a system over which she has no control. In her journey from her home to exile and back she undergoes various transformations, most of which are related to the violence, including gender-based violence that permeates her life.

This insecurity is compounded by the cultural and societal positions of women in most countries, where they still occupy a subservient position to men. Effectively, their education, resources and recourse to justice for wrongs committed against them are limited.^[20] Conspicuous examples exist of the kinds of treatment that women undergo at the hands of state and non-state actors, imposed upon women refugees as well, where such treatment cannot be redressed in their own states. These lead women to become refugees from their own nations or create innumerable internally displaced women who remain victims of persecution without access to protection mechanisms – domestic or international.

Their exposure to danger does not necessarily cease when they reach a country of asylum. Single women and girls, as well as women heads of household may continue to be vulnerable to exploitation and abuse. For this reason, it is important that the option of resettlement to a third country is equally available to them as to men. Yet women face special obstacles in access to resettlement programs, as they do in access to asylum.[21]

Many governments, eager to avoid their responsibility to provide protection to refugees, are applying an increasingly restrictive definition of who qualifies for refugee status. A number of countries deny refugee status to people persecuted by armed opposition groups and other private actors, and few countries grant asylum where the state has failed to protect against torture by private individuals.[22]

The public-private dichotomy is extremely palpable in South Asian society. Whatever mechanism exists to redress wrongs perpetrated by the State, there is hardly any kind of protection in case of violations by private actors.

The State and Non-State Actor Question

From the perspective of the Refugees Convention, the problem with much of the violence against women is that it is perceived as rooted in the domestic sphere or perpetrated by individuals and therefore non-attributable to the State.[23] This issue of the state's role in the persecution suffered has been a vexed problem in asylum law. Traditionally in refugee law, persecution was understood as an act of the State or those acting in their capacity as state agents. The traditional view, therefore, recognized only persecution perpetrated by public authorities and failed to recognize the rights of women to be free from gender persecution perpetrated in the so called 'private' sphere. That women all over the world are far too often subjected to gender-related harms perpetrated most often in the 'private' sphere of intimate relationships, has often allowed the state to refrain from intruding into that domain, allowing these forms violations of women's human rights to continue with impunity.[24]

If eligibility for asylum is defined on the basis that the government in the country of origin must either refrain from committing violations or provide adequate protection from such violations, then it can be strongly argued that women who suffer gender-based human rights abuses and/or flee because of well-founded fear of gender-based persecution must be eligible for refugee protection.

Thus, failure to respond to the needs of women by either not providing an infrastructure that protects them, or by neglecting enforcement of the existing system to provide them with effective redress, results in persecution by the state in its failure to control the perpetrators.[25]

It would therefore be correct to state that, to the extent that a government does not make criminal, penalize gender-based violence or take steps to rigorously enforce existing laws that prohibit such violence, it condones the violence and in doing so must assume State responsibility for the offensive acts. Thus, it is essential to identify the relationship between the woman seeking protection and the State. Women suffer when there is insufficient police protection of other legal safeguards, as a result of either a gap in the laws or the lack of enforcement of existing laws. Countries in South Asia provide obvious examples of abuses where inaction by the State is clearly an omission, and translates into or amounts to a commission of the offending/ persecutory act by the State.[26]

Undoubtedly, the State is responsible to the extent that it fails to provide or utilize the apparatus that could prevent or redress the wrongs. The State has an affirmative obligation to protect and prevent violence. It is therefore argued that persecution from nonfeasance, namely that liability is thus conferred on the state for commission of those persecutory acts. The State would definitely be found to be in breach of the duties imposed on it by international law, which requires a State to punish those individuals – government agents or private actors – who commit human rights violations. The breach of such duties and the deliberate indifference in protecting a woman's human rights tantamount to the State's connivance in the act of persecution.[27] Thus, when the state can be held accountable for acts of violence against women, and no domestic legal mechanism is capable of her protection, grant of asylum on the ground of gender should be the ideal form of intervention.

However, over the past decade, the jurisprudence of different states, UNHCR and national gender guidelines, have addressed various issues critical to the recognition of status and availability of protection for women asylum seekers. The UNHCR Handbook states that acts of violence in the private sphere may be considered persecutory if the authorities condone them or if they refuse to, or are unable to, provide sufficient protection. The Handbook also states that where an applicant's country has denied her this assurance, such denial of protection may confirm or strengthen the applicant's fear of persecution and may indeed be an element of persecution.

The experiences of women are beginning to be incorporated into the interpretation of 'refugee' in the Convention definition. Forms of harm that are unique to or disproportionately affect women are no longer routinely dismissed as 'private'. Instead, they are being accepted as core human rights violations included within the concept of persecution.[28]

Conclusion

While a reformulation of the refugee definition to include gender is desirable, political realities and trends in immigration policies inevitably lead to the conclusion that this approach can only be effective if efforts are also focused on improving the national legal and judicial practices to supplement existing conventional international refugee law framework. The issuance of gender guidelines by some Western countries and the undertakings by the UNHCR demonstrate important steps toward a more gender-sensitive refugee regime, and a very gradual increase in the willingness of states to recognize violence against women as an issue deserving the intervention of the protection that refugee law provides.

All this must be understood in the light of the fact that refugee law needs to be conceived in a holistic fashion, and a simple inclusion of gender as a form of persecution will not be sufficient to afford protection to women against violence. Still how refugee law could be more effective in strengthening other forms of protection is that refugee law, in part, takes an integrative perspective on women's rights. As Deborah Anker observes: "by interpreting forms of violence against women within mainstream human rights norms and definitions of persecution, refugee law avoids some of the problems of marginalizing women's rights in international law".^[29]

[1] Judith Cumin, commenting on the fact that gender is not enumerated among the grounds of persecution in the 1951 Refugee Convention. Cited in Annette Lyth, *Where are the Women? – A Gender Approach to Refugee Law* (Unpublished), Master Thesis, Lund University, at p. 4

[2] Nancy Kelly, *Gender-related Persecution: Assessing the Asylum Claims of Women*, 26 Cornell Int'l L.J., at p. 625. ("Because UNHCR does not disaggregate refugee figures by gender, the precise number of women refugees is not known. However, authoritative sources estimate that well over half of all refugees are female")

[3] Guy. S. Goodwin Gill, *The Refugee in International Law*, Oxford University Press, at p. 255

[4] Kathleen Newland, *Seeking Protection: Women in Asylum and Refugee Resettlement Processes*, Issue Paper for the United Nations Division for the Advancement of Women, Expert Consultation on Migration and Mobility and How this Movement Affects Women, Malmo, Sweden, 2-4 December, 2003, at p. 1

[5] Audrey Macklin, *Refugee Women and Imperative of Categories*, Human Rights Quarterly 17 (1995), at p. 225

[6] Helene Lambert, *The Conceptualisation of 'Persecution' by the House of Lords: Horvath v. Secretary of State for the Home Department*, International Journal of Refugee Law, Vol. 13, No. 1/ 2

[7] Elizabeth Adjin-Tettey, *Failure of State Protection Within the Context of the Convention Refugee Regime with particular reference to Gender-related Persecution*, 3 J. Int'l Legal Stud., at p. 54

[8] Rape is also widely faced by men in conflict related situations, although not to the extent faced by women. Rape of men is yet to become an issue of public debate.

[9] Anjana Bahl, *Home is where the Brute Lives: Asylum Law and Gender-based Claims of Persecution*, 4 Cardozo Women's L.J., 1997, at pp. 35-36

[10] See *supra* n. 2, at p. 627

[11] Feminists have argued that the public/ private distinction is one of the major obstacles to the achievement of women's rights. (See, e.g., Noreen Burrows, *International Law and Human Rights: The Case of Women's Rights*, in Human Rights: From Rhetoric to Reality, at pp. 80, 86-96 [Tom Campbell et al. eds., 1986])

[12] Doreen Indra, *A Key Dimension of the Refugee Experience*, 6 Refuge 3 (1987), quoted in Nancy Kelly, *supra* n. 3

[13] Pamela Goldberg, *Where in the World is there Safety for Me?: Women Fleeing Gender-based Persecution*, in Women's Rights, Human Rights: International Feminist Perspectives (Julie Peters & Andrea Wolper, eds., 1995), at pp. 345, 346

[14] Gregory A. Kelson, *Gender-based Persecution and Political Asylum: The International Debate for Equality Begins*, 6 Tex J. Women & L. (Spring 1997), at p.183

[15] Sushil Raj, *The Gender Element in International Refugee Law: Its Impact on Agency Programming and the North-South Debate*, Vol. 1 ISIL YBHRL (2001), at p. 170

[16] See *supra* n. 13, at p. 347

[17] UNHCR Executive Committee Conclusion No. 39 on Refugee Women and International Protection

[18] UNHCR Executive Committee, 44th Sess. Refugee Protection and Sexual Violence, Conclusion 2.

[19] For an update on the Canadian Guidelines see generally, Canadian Immigration and Refugee Board, Chairperson's Guidelines, available at www.cisr.gc.ca/en/about/guidelines/women/women_e.htm

[20] Teresa L. Peters, *International Refugee Law and the Treatment of Gender-based Persecution: International Initiatives as a Model and Mandate for National Reform*, 6 Transnat'l L. & Contemp. Probs., at p. 232

[21] See *supra* n. 4, at p. 5

[22] Amnesty International, *Broken Bodies, Shattered Minds: Torture and ill-treatment of women* (AI Index: ACT 40/001/2001), at p. 52

[23] See *supra* n. 3, at pp. 362, 363

[24] Melanie Randall, *Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution*, 25 Harv. Women's L.J. (Spring 2002), at pp. 305, 306

[25] See *supra* n. 12, at p. 41

[26] *Ibid.*, at p. 42

[27] *Id.*, at pp. 42, 43

[28] Deborah Anker, *Refugee Status and Violence Against Women in the "Domestic" Sphere: The Non-State Actor Question*, 15 Geo. Immigr. L.J. (Spring 2001), at p. 391

[29] Deborah E. Anker, *Refugee Law, Gender, and the Human Rights Paradigm*, Harvard Human Rights Journal, Volume 14, Spring 2002