
A SOCIO-LEGAL STUDY OF GENDER BASED VIOLENCE IN INDIA

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ABSTRACT

Acts of violence committed to any person because of their gender is termed as Gender Based Violence or GBV. According to the United Nations High Commission for Refugees (UNHCR), GBV is a major human rights violation and has various life threatening consequences for the victims. GBV is recognised as a serious issue in the entire world. The socio-legal circumstances of this matter in India are no better. People of all age groups fall prey to this kind of crime in India on a daily basis. It can be done verbally, physically, psychologically and sexually. It happens within households as well. GBV against individuals who suffer from disabilities, GBV against women, GBV against transgender people etc. are the various forms of it. Women are subjected to abuse and exploitation at every opportunity available. It has been observed over time that women are particularly likely to become victims of gender-based violence, regardless the notion that the phrase is gender neutral. Indian society is a patriarchal one and male dominance is deep-rooted in its culture. Women become harassed and are treated with cruelty just because of their gender. Abortion of a girl child, female genital mutilation, intimate partner violence, domestic violence, sexual harassment at workplaces and rape are the various types of violence committed against women. There are legal provisions and Constitutional mandates available to counter this menace. But implementation and awareness are not enough. Fears of getting ostracised and power struggles do not allow justice to the victims. This encourages the perpetrators to continue with their pervy nature. This paper aims at exploring the extent of the prevalence of GBV in India and the combative measures available for it.

Keywords: abuse, exploitation, gender, human rights violation, socio-legal, violence.

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Gender Based Violence in India

Gender Based Violence or GBV is recognised to be a serious problem at the international level. It can be described as sexual, physical or mental damage caused to a person solely based on his or her gender. This is a major issue in India as well. Eradication and prevention of this menace is a huge challenge faced by our country.

There are a number of Constitutional provisions and enacted laws to tackle this issue. But in spite of the existing legal measures and various policies, GBV continues to plague the nation at every corner.

According to the definition framed by the United Nations High Commission for Refugees (UNHCR), Gender Based Violence are the harmful acts directed at an individual based on their gender, and it is a result of some damaging norms, gender inequity and power abuse. Gender based violence is a serious violation of human rights and a life-threatening health and protection issue.

Gender-based violence poses significant costs for the economies of developing economies, including lower productivity and incomes, lower rates of accumulation of human and social capital, and the generation of other different kinds of violence, both present as well as in the future.²

In India GBV is witnessed at a huge extent. It includes inhuman behaviours that result in bodily damage and may be in the forms of sexual abuse and rape. Conducts which constitute gender based violence may also be verbal or coercion.

Major types of GBV are verbal, physical, psychological, economic, sexual and domestic. These types of GBVs are there in our own society in various forms:

- (i) GBV against disabled persons: Persons with disabilities (PWD) coming from all age groups become victims of discrimination and gender based violence. Disabled persons are always in a vulnerable position and often fall prey to gender based violence. However, women and girls suffering from disabilities are at higher risks to be abused physically, sexually and emotionally. It is a defunct social construct

²Andrew Morrison, Mary Ellsberg, *et. al.*, "Addressing Gender Based Violence: A Critical Review of Interventions", 22, *The World Bank Research Observer* 30 (2007)

that persons with disabilities are denied complete social participation. PWDs are often abused for long periods and on many occasions by their own families and acquaintances. Useful interventions in this respect from the government or social organisations are very less.

Another problem towards tackling this issue is lack of data. Insufficient reporting of the problem also deters political and governmental support.

- (ii) GBV against transgender: There are a number of landmark judicial pronouncements that recognise the rights of transgender people. In spite of that they become victims of violence. They are targeted with forced sterilisation. They suffer from marriage restrictions as well. Moreover, they face discriminations from all fronts. Again sexuality of people are also tried to be regularised through institutionalisation. The age old social norms and customs increase the vulnerability of transgender. They often continue to remain in abusive circumstances. The devaluation of transgender communities in the society leads to less reporting of crimes against them. They receive very less support and face a lot of difficulty.
- (iii) GBV against women: In India, GBV against women is a grave problem that many women have to deal with on a daily basis. This problem is pervasive irrespective of age, caste, religion, education, social background and financial status of women. They become victims of GBV in their homes, at their workplaces, in public places etc. GBV against women is a major human rights violation and a serious public health problem in at least one out of three women. Violence against women can be visible or camouflaged and is a coercive instrument to enforce cultural code of conduct.³ Even in the 21st century, women have a subordinate social status than men. An extreme illustration of disparity between men and women is made through many forms of abuse on women. They become subjects of emotional, physical, psychological and sexual tortures. The implications of these on a woman's reproductive and sexual health are grave. Domestic violence and rape are very dark sides of Indian society and women suffer from this every day. Other forms of torture against women in their households include battering, abuse of girl child, female genital mutilation, dowry related abuse and intimate partner violence. As discussed,

³ Maithreyi Krishnaraj, "Understanding Violence against Women", 42, *Economic and Political Weekly* 90 (2007)

GBV against women in any community in India are many. Family members, mostly the male members often engage violence against the married couple in cases of inter-caste or intra-caste marriages that offend cultural norms and family customs. In such situations also the girl becomes subject to greater cruelty.⁴ Rape, molestation, sexual abuse, sexual harassment at the workplace and educational institutions, prostitution and women trafficking are brutal crimes committed against women. Knowingly or unknowingly women become victims of these serious forms of violence and crime. Solely based on their gender, they are tortured and exploited at every available opportunity.

A brief discussion on each form of GBV against women will be as follows:

- Gender based abuse of infants and girl child- India has a patriarchal culture where a boy child is given preference in the family. Abortion of female foetus or female foeticide is a medical procedure where sex of the foetus in the mother's womb is identified through an ultra sound technique. If it is a female foetus, it is aborted. Though this inhuman procedure of prenatal sex screening and female foeticide has been banned and made punishable under The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT)⁵, it is still prevalent in India.

Again, malnourishment of girls, infanticide, deliberate killing of girl child, paedophilia are other forms of Gender Based Violence faced by girls only because they are females. The disparity in the female to male ratio points out the extent and nature of human rights violation of females.

- Female genital mutilation- It is partial or full removal of external genitalia or any injury to the female genitals. This may be performed for religious, cultural or some non-therapeutic purposes. The expression female circumcision or female genital cutting is used to demonstrate this procedure. This is a highly disgraceful form of exploitation of women. One severe

⁴ Prem Chowdhry, "Enforcing Cultural Codes: Gender and Violence in Northern India", 32, *Economic and Political Weekly* 1019 (1997)

⁵ The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994)

negative impact on women undergoing genital mutilation is psychological trauma of excision.

- Intimate partner violence- This type of violence against women is prevalent in almost every society. Both rich and poor women fall prey to this kind of inhuman behaviour from their male partner. Even a former male partner of a woman may subject her to cruelty for revenge. Intimate partner violence typically means some kind of abuse existing between married couple or other cohabiting partners in a live-in relationship. Women are more prone to suffer from this type of GBV than men. Feminist perspectives attribute this type of violence to the patriarchal social structure where men occupy more advantageous position than women.⁶
- Domestic violence- The expression domestic violence describes physical and mental cruelty inflicted upon a woman by her family members. These instances are found to be more frequent in a woman's in-laws' home. Different types of aggression, inflicting serious bodily injury, coercion, taking away the liberties of a woman, harassment for dowry are different kinds of domestic violence that a woman has to face in many situations. Marital violence in India affects women across all castes, socio-economic status, religion, education and region.⁷
- Sexual harassment in the workplace- This type of gender based violence exists more against women though on some occasions men also become victims to their women colleagues or bosses. But in the Indian culture, majority of the working women occupy a subordinate position than men in their workplaces. Sexual harassment of women in their workplace is a technique used by men to debase the role of their female colleagues in their workplace. Men try to undermine the professional capabilities and authorities of women by harassing them sexually. Also mental perversion of men leads to such incidents. This is how women are objectified and their

⁶ Mary E. Gilfus, Nicole Trabold, *et. al.* "Gender and Intimate Partner Violence: Evaluating the Evidence", 46, *Journal of Social Work Education* 246 (2010)

⁷ Meghna Bhat and Sarah E. Ullman, "Examining Marital Violence in India: Review and Recommendations for Future Research and Practice", 15, *Trauma, Violence and Abuse* 66 (2014)

gender is used as a tool to dominate them and keep them under control. Application of Vishakha guidelines is very limited and most organisations in West Bengal do not have complaints committee and they have not amended service rules.⁸

- Rape- Indian feminist movements have recognised rape as a form of male oppression and control over women since the 1970s. As per the records of the National Crime Records Bureau, the number of rape incidents reported each day has climbed by about 700% since the year 1970.⁹ The worst results of rape are transmission of HIV and unwanted pregnancy. It is the most violent form of assault against women and is associated with terror and physical force. Again, the sad scenario is that victims of rape do not get access to abort their unwanted pregnancies easily. These brutal kinds of male aggressive behaviour are performed to demolish women permanently.

Relevant Constitutional provisions against Gender Based Violence in India

The Constitution of India¹⁰ contains several relevant provisions in the forms of the Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties which can curb the menace of Gender Based Violence. These provisions are meant for taking necessary measures to stop and punish the perpetrators of these behaviours.

Based on the available Constitution provisions, the Central Government has taken a number of remedial steps and signed international treaties to guarantee equality and protection to women and other victims of Gender Based Violence.

But it has been observed that in many situations, the victims are unaware of their rights which are given to them by our Constitution.

Now the Fundamental Rights provisions that are included in Part III of the Constitution of India to tackle and stop gender based violence in the society may be explored as follows:

⁸ Paramita Chaudhuri, "Sexual Harassment at the Workplace: Experiences with Complaints Committees", 43, *Economic and Political Weekly* 99 (2008)

⁹ Geetanjali Gangoli, *International Approaches to Rape* 101 (Bristol University Press, Bristol, 2011)

¹⁰ The Constitution of India

- Article 14 - According to Article 14, the State has to treat every individual equally.
- Article 15(1) - It restricts the state from addressing any citizen adversely on the basis of race, caste, religion, sex, or birthplace.
- Article 15(3) - This article empowers the state to make special legal provisions for the protection of interests of women and children.
- Article 16(1) - All citizens enjoy equal rights under this article in matters of employment and employments in any office of the Indian government.

Directive Principles of State Policy impose a sort of responsibility upon the state but they are non-binding in nature because they are unenforceable in any Court of Law. Relevant Directive Principles of State Policy in this respect which is provided in Part IV of the Constitution of India may be described as follows:

- Article 39 (d) - This Article provides that men and women should be paid equally for their work and there should not be any disparity in payment of remuneration based on gender.
- Article 39 (e) – This article stresses that the State has to regard the health, strength and age of a person before employing them in any sector. Financial need of a person must not be the reason for recruiting him (or her) if that particular job is unsuitable for him (or her) physically or by age.
- Article 39A- This Article provides that the state should secure a legal system that promotes justice equally to all and it shall facilitate free legal aid.
- Article 41- This article states that the state shall provide within its economic capacity, right to work, education and public assistance to the people in the state without discrimination.
- Article 42- This article directs the State to ensure good working conditions and also to provide maternity benefits for women.
- Article 45- As per this article, the state has to make provisions of early childhood care

and proper education to children until they turn six years of age.

- Article 46- This article stipulates that the state has to provide protection to scheduled Castes and Schedules Tribes from any sort of exploitation and secure their financial and academic rights.
- Article 47- This article provides that the State shall make endeavours to improve the standard of living and nutritional levels of the people and make provisions for development of public health. It shall make provisions for prohibition of the consumption of non-medicinal drugs and drinks which are injurious to health.

Relevant Legislative provisions against Gender Based Violence in India

Various legislations were enacted to tackle the menace of the many forms of Gender Based Violence in India. These were framed keeping in line with the Constitutional mandates.

- The Dowry Prohibition Act, 1961¹¹- This Act bans giving or taking of dowry in any form by any party at the time of marriage, or before or after marriage.
- The Indecent Representation of Women (Prohibition) Act, 1986¹²- This Act prohibits all sorts of indecent representation of women which can be through film, advertisement, web series, publications, paintings, writings, figures etc.
- The Protection of Women from Domestic Violence Act, 2005¹³- This Act aims to protect women who become victims of any sort of violence within her family.
- The Prohibition of Child Marriage Act, 2006¹⁴- This Act was enacted with an objective to prohibit a marriage where either the bride or the groom is below marriageable age.
- The Protection of Children from Sexual Offences Act, 2012¹⁵ (POCSO) - This Act comprehensively deals with the matter of sexual offences committed against children

¹¹ The Dowry Prohibition Act, 1961(Act 28 of 1961)

¹² Indecent Representation of Women (Prohibition) Act, 1986 (Act 60 of 1986)

¹³ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005)

¹⁴ The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007)

¹⁵ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)

and sets out a support mechanism for the victims. It provides an improved system for catching the perpetrators and provides punishment for the offence.

- The Sexual Harassment of Women at Workplace Act, 2013¹⁶- This was enacted to tackle and redress events of sexual harassment of women at their workplaces.
- The Child Labour (Prohibition and Regulation) Amendment Act, 2016¹⁷- This Act makes illegal the engagement of children in any kind of occupation and forbids employing adolescents in hazardous occupations.

Judicial Decisions

Numerous judgments were delivered by the Indian Judiciary to advance gender justice and to punish gender based violence. Few of them are discussed as follows:

- *Vishakha v. State of Rajasthan*¹⁸: In this case the Supreme Court of India laid down detailed guidelines for preventing sexual harassment of women at workplaces. These guidelines are famously known as the Vishakha Guidelines that address the issue of harassment of women employees at their workplaces.
- *Shayara Bano v. Union of India*¹⁹: Here the Supreme Court of India declared the practice of Triple Talaq as unconstitutional and thus recognised gender justice in matters of Muslim Personal Laws.
- *Navtej Singh Johar v. Union of India*²⁰: In this historic judgment the Supreme Court of India struck down section 377 of the Indian Penal Code and decriminalised homosexuality in India. This is how the Supreme Court of India recognised the rights of LGBTQ+ individuals.
- *Vineeta Sharma v. Rakesh Sharma*²¹: In this judgment the Supreme Court of India upheld the legal rights of Hindu daughters in their ancestral properties. The Court held

¹⁶ The Sexual Harassment of Women at Workplace Act, 2013 (Act 14 of 2013)

¹⁷ The Child Labour (Prohibition and Regulation) Amendment Act, 2016 (Act 35 of 2016)

¹⁸ (1997) 6 SCC 241

¹⁹ (2017) 9 SCC 1

²⁰ (2018) 10 SCC 1

²¹ (2020) 9 SCC 1

that daughters hold equal rights in ancestral properties of their fathers like sons irrespective of whether their father was alive or not at the time of passage of The Hindu Succession (Amendment) Act in 2005.

Suggestions for tackling Gender Based Violence in India

Although there are many legal provisions addressing this issue, Gender Based Violence looms like a big challenge to be overcome by India. Some suggestions to deal with this problem are elaborated as follows:

- Education at all levels can be regarded as key solution to remove this major issue. GBV is mostly a learned behaviour. Education must be spread to unlearn this behaviour. Victims ought to be mindful of their rights including their capacity to report and receive proper remedies. On the other hand, the perpetrators must be aware that their harmful behaviours will contribute to an unhealthy dynamic.
- Identifying the underlying causes of any specific behaviour is very crucial. Examining the inclinations to crime of particular communities and targeting them with counselling and therapy will have the potential to address this menace effectively.
- Believing and supporting the survivors are very important. In majority of the time, the complaints of the GBV survivors are either doubted upon or they themselves become hesitant to voice their problems. Families and friends become afraid of isolations and stigmatisations in the society. This behaviour neglects the sad situations of victims and they are forced to suffer unjustly. Sensitisation in this respect is vital to remove the barriers of discomfort and to call for support as and when required.
- Groups who are at high risks should get special attention. Women, persons with disabilities and members of LGBTQ belong to vulnerable group. They are more prone to such attacks. Prevention measures must be put in force by government and non-governmental organisations and they must be attended immediately on occurrence of any sort of violation of their rights.
- Traditional practices of various communities like female foeticide and female genital mutilations must be eradicated. Placing sound means for community accountability is

very essential. Giving up of harmful traditional practices must be stressed upon. Victims must be informed of their rights and they must be encouraged to report at appropriate forums in events of such occurrences.

- Men should be engaged as allies or as partners. More instances of GBV happen against women. To combat this efforts from all fronts are necessary. Men must come forward to help transformation of attitudes. This will help in changing of scenario and yielding of positive results.
- Gender Based Violence might occur in intimate relationships and behind closed doors. The community has to take charge of putting a stop to this kind of violence. Self-help groups must be launched. Couples must be counselled to moderate their behaviours. They must be taught to respect the rights of their partners.
- Equality must be protected in terms of availability of education. Girls' education must be facilitated and measures must be implemented to keep girl child in schools. Girls must be made aware of their sexual and reproductive health issues. Apart from that, girls must be taught to break all stereotype concepts. They must be fully aware that no matter their gender, they are entitled to exercise same rights in every area.
- Women must be empowered financially. Though there are legal provisions in this respect, differences between men and women still exist. Breaking of stereotypical ideas is very necessary in this regard. Economic dependence of women on men is a drawback in our society. Building economic parity between the sexes through promotion of various welfare schemes can lay the foundation for gender equality on a large basis.
- Women and persons belonging to vulnerable communities should be included more at the political and social levels. Their representation must be given priority while designing new laws and policies regarding these matters.
- The government should address GBV as a public health concern. Both physical and mental health of a survivor is affected to a great extent. Their care and support must be prompt. They must get access to medical treatments like STD screenings and emergency contraceptive means. Their mental faculties should be tended to as well. A survivor should not feel ostracised and must fearlessly approach a health clinic where

assured treatment would be provided.