

Gender-Based Violence and Human Rights

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Abstract

Violence against women is often known as “gender-based violence” because it mainly stems from women’s subordinate position in society. Considered as one of the most pervasive human right violations in the world, gender based violence violates the rights of women. World Health Organisation (WHO) estimates about 1 in 3 women worldwide has experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. Crime against women is committed every three minutes and 70 percent of women are victims of domestic violence in India. According to a survey conducted, 38 percent of Indian men admit that they have physically abused their partners and 65 percent of Indian men believe women should tolerate violence in order to keep the family together. This paper seeks to study gender based violence in relation to human rights violations and its impact on the women of India in a special way.

Keywords: Gender-based Violence, Human rights, Women, Intimate Partner.

Gender-based violence is considered as the most pervasive human right violence in the world.¹ World Health Organization (WHO) estimates about 1 in 3 women worldwide has experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. In India, crime against women is committed every three minutes² and 70 percent of women are victims of domestic violence.³ 38 percent of Indian men admit that they have physically abused their partners and 65 percent of Indian men believe women should tolerate violence in order to keep the family together.

United Nations defines violence against women as any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁴ Violence against women is often known as “gender-based violence” because it mainly stems from women’s subordinate position in society. Gender based violence includes harmful behaviour directed at women or girls because of their sex, including sexual assault, dowry related murder, marital rape, forced prostitution, female genital mutilation and sexual abuse

¹ Weston H. Burns, “Encyclopaedia Britannica, human rights,” (World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council, 2013), <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#sthash.A2Wb3Kr4.dpuf>, accessed February 14, 2017.

² Crime Against Women, (National Crime Record Bureau 2013)

³ International Men and Gender Equality Survey, www.icrq.org

⁴ UN, Declaration on the elimination of violence against women (1993), 85TH plenary meeting. <http://www.un.org/documents/ga/res/48/a48r104.htm>

of female children. It also includes any act of verbal or physical force coercion or life-threatening deprivation, directed at an individual women or girl that causes physical or psychological harm, humiliation or deprivation of liberty.⁵ Gender-based violence violates the rights of women including right to life, right to have decent life, right to equal protection under law, right to equality in family or the right to the highest standard attainable of physical and mental health.⁶

Human right and women

Human right violations are committed against men as well as women but the consequence differs depending upon sex of the victim. The atrocities inflicted upon women are grounded on unequal power distribution in society. The asymmetrical relationship between men and women has not only perpetuated the subordination of women to men but also intensified the violence. National and international bodies, as well as women activists have taken firm initiatives to tackle the problem of violence against women. One of the central goals of United Nations is the reaffirmation of "faith in fundamental human rights, the dignity and worth of the human person, in the equal rights of men and women."⁷ The United Nations General Assembly resolution (1999) 54/134 recognized that violence against women constituted an obstacle to the achievement of equality, development and peace and that its persistence infringed upon the human rights and fundamental freedoms of women.

The 1948 Universal Declaration of Human Rights constitutes the first international instrument to detail the rights and freedoms of individuals covering the political, civil and economic rights.⁸ It set out a comprehensive set of fundamental rights to which all persons are entitled, without discrimination on ground of race, sex, language, religion, colour, political or other opinion, national or social origin, birth or other status.⁹ The Convention on the Elimination of all Forms of Discrimination against Women¹⁰ also known as the international bill of rights for women addresses violations of women's rights and discrimination against women. It declared that violence against women inhibits women's ability to enjoy rights and freedoms on a basis of equality. The International human rights conference at Vienna in 1993 set up an important landmark as it affirmed that "women's rights are human rights and highlighted the need to address women's rights systematically."¹¹

In India, the Constitution has guaranteed the rights and freedom to both men and

⁵ L. Heise, M. Ellsberg, M. Gottmoelle, "A global overview of gender-based violence" *International Journal of Gynaecology and Obstetrics*. 78, no. S1 (2002).

⁶ CEDAW (1992).

⁷ UN Charter (1945).

⁸ United Nations, *the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol* (Handbook for Parliamentarian, Inter-Parliamentary Union, 2003).

⁹ Nancy P. Robinson, "Origin of the International Day for the Elimination of Violence against Women: The Caribbean Contribution," *Caribbean Studies* 34, no.2, (2006): 141-161.

¹⁰ Committee on the Elimination of Discrimination Against Women, www.ohchr.org

¹¹ Donna J. Sullivan, "Women's Human Rights and the 1993 World Conference on Human Rights," *The American Journal of International Law* 88, no.1, (1994): 152-167.

women equally. These include right to equality, right to live with dignity, right to education, right to equal opportunity for employment, right to free choice of profession, right to livelihood, right to work, right to protection from inhuman treatment, right to privacy, right to protection of health, right to liberty etc. Article 15 states that the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Besides constitutional mandates there are various acts or legal safeguards to protect women's human rights and prohibit violence against women. These include Protection of women from Domestic Violence Act (2005), Immoral Traffic Prevention Act (1956), Dowry Prohibition Act (1961), Medical Termination of Pregnancy Act (1971), Pre-conception and Pre-Natal Diagnostic Techniques,¹² Maternity Benefit Act (1961), Equal Remuneration Act (1976), Dissolution of Muslim Marriages Act (1939), Indian Penal Code (1860), National Commission for Women Act (1990) and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013). Though the provision in the Indian constitution and various acts prohibit discrimination on the grounds of sex, women are generally discriminated and besmirched.

Violation of Human Rights of Women in India

Human rights are inalienable rights to which a person is inherently entitled simply because she or he is a human being.¹³ However, the right of women is being violated in one way or the other. Nowhere in the world do women enjoy the same legal or constitutional rights as men.¹⁴

A life free of violence is a right that every individual is entitled to have without discrimination. Contrary to it, the issue of gender-based violence remains prime concern of recent times. According to National Crime Record Bureau (NCRB) 3,27,394 cases of crime against women were reported in the country during the year 2015 as compared to 3,37,922 in the year 2014, showing a decline of 3.1% during the year 2015. These crimes have continuously increased during 2011 to 2014. It declined to 3,27,394 in 2015 (NCRB, 2015). Delhi has reported the highest crime rate (184.3) at all India level during 2015, followed by Assam (148.2), Telangana (83.1), Odisha (81.9), Rajasthan (81.5), Haryana (75.7) and West Bengal (73.4) (NCRB, 2015). There is decrease in cases of rape from 36,735 in 2014 to 34,651 in 2015. Incidents of gangrape too have shown a decrease from 2,346 in 2014 to 2,113 in 2015. Highest numbers of custodial rape and gang rape were reported in Uttar Pradesh, rape cases other than custodial rape cases were reported in Madhya Pradesh. West Bengal (1,551 cases) tops in attempt to commit rape cases followed by Assam (499 cases), Uttar Pradesh (422) and Rajasthan (407). The case of dowry deaths have declined by 9.7% during the year 2015 (7,634) over the previous year (8,455). The highest crime rate in respect of dowry deaths was reported in Bihar and Uttar Pradesh.¹⁵ The cases of "cruelty by husband or his relatives" in the country

¹² Prohibition of Sex Selection Act, 1994.

¹³ Burns, Encyclopaedia Britannica, human rights.

¹⁴ N. Seager, and A. Olason, *Women in the World: An International Atlas* (New York: Simon and Schuster, 1986).

¹⁵ Crime in India, (National Crime Records Bureau, 2015).

have decreased by 7.7% during 2015 over the previous year 2014 (1, 22,877 cases). Most of these cases were reported in West Bengal followed by Rajasthan, Assam, and Uttar Pradesh.

However, there has been marginal increase in other sexual offences against women. Under the category of “assault on women with intent to outrage her modesty”, 82,422 cases being registered across the country in 2015 as against 82,235 in 2014. There has been increase in number of kidnapping and abduction of women by 3.4% during 2015 over previous year 2014. Domestic violence has also increased from 426 in 2014 to 461 in 2015. Maximum number of registered cases is from Bihar followed by Kerala, Madhya Pradesh, Himachal Pradesh, Rajasthan and Haryana. According to NCRB data for 2015, out of 6,877 cases of human trafficking in the country, 3,490 (51%) involved children. Of these 3,087 (88.5%) were cases registered under section 366A (procurement of girl to force her into sex) of the India Penal Code (IPC). Assam and West Bengal recorded the highest number of trafficking cases both among adult and children.

The United Nation Charter encourages respect for human rights and fundamental freedoms for all individual without distinction as to race, sex, language or religion.¹⁶ However, India’s women crime figure indicates that the rights of women are rampantly violated. According to the Global Gender Gap Report¹⁷ released by the World Economic Forum in 2016, India ranked 87 on the Gender Gap Index among 144 countries.¹⁸

Violation of women’s right to equality

The violation of women’s right to equality are discussed in the following sections:

Foeticide

Article 15 of Indian Constitution prohibits discrimination on the ground of sex. However, in practice, discrimination starts from mother’s womb in the form of determination tests leading to foeticide and female infanticide. In India it is estimated that around 10 million female foetuses have been aborted in the last 20 years (1998-1918).¹⁹ As per the Census of 2011 the child sex ratio (0-6) has declined from 927 females per thousand male in 2001 to 919 females per thousand males in 2011.²⁰ In spite of the fact that government has declared pre-birth sex determination through the use of amniocentesis as unlawful, still illicit termination of female foetuses is widely

¹⁶ United Nations, “the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol” in *Handbook for Parliamentarian, Inter-Parliamentary Union* (2003).

¹⁷ The World Economic Forum publishes a Global Gender Gap Index score for each nation every year. The index focuses on empowerment of women, relative gap between women and men in four categories- economic participation, education, health and survival and political empowerment.

¹⁸ Global Gender Gap Report 2016, http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf. accessed 19/02/2017.

¹⁹ “10 million aborted female foetuses in India”, *The New York Times*, <http://www.nytimes.com/2006/01/09/world/asia/10-million-aborted-female-fetuses-in-india.html>, accessed Jan 9, 2006.

²⁰ “Decline in Child Sex ratio” (Government of India, Ministry of Health and Family Welfare, Press Information Bureau), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103437>

prevalent in the states like Haryana, Rajasthan and Punjab.²¹

Right to property

The driving factor of gender inequality is the preference for sons as compared to girls. It is historically rooted in the patriarchal system of the Indian Society. Boys have an exclusive right over parental property and hence led to the neglect of girl's right. Due to prevalence of patrilineal inheritance, both productive resources and property such as household goods have ended up in the hands of men not of women. These inequalities led women to have little opportunity to improve their living condition. Although the Hindu Succession Act of 2005 provides equal inheritance to ancestral property, the law is weakly enforced, especially in Northern India.²²

Education

Education enables women to comprehend their social, political and cultural environment better and respond to it appropriately. Higher level of education and literacy lead to a greater awareness and contribute in social and economic development. It is a basic indicator of the level of development. According to 2011 census, the literacy rate in India is 74.04%. There has been great improvement in literacy rate in India since Independence, but still many people are not able to read and write. The gender-gap in literacy rate is a matter of concern. Female literacy rate is lower than male literacy rate as many parents do not allow their female children to go to school. According to 2011 census female literacy rate is 65.46% whereas, male literacy rate is over 80% (Census, 2011). Parents give importance to male children and send them to better schools, whereas girls are married off at very young age. Although article 21 A of the Indian Constitution provides free and compulsory education for children between 6 and 14, the female literacy rate is still lower as compared to male in India.

Health

Gender based violence has direct impact upon the health of women. According to WHO, the impact of violence on physical and mental health of women range from broken bones to pregnancy related complications, mental problem and impaired social functioning. In terms of women's health India is lowest performing country as Global Gender Gap report stated that India continues to rank third-lowest in the world on Health and Survival, remaining the world's least improved country on this sub index over the past decades.²³ It is also estimated that India is ranked second in the world of the number of children suffering from malnutrition. The presence of malnutrition among female children remains the major cause of female infertility. It is because of intra-family allocation of food between male and female children. The male children are fed better than female children.

²¹ Sutapa Saryal, "Women's right in India: Problems and Prospects", *International Research Journal of Social Science* 3, no. 7 (2014): 49-53.

²² "The Hindu Succession Bill, 2005", <http://164.100.47.4/BillsTexts/LSBillTexts/AsIntroduced/2935LS.pdf>

²³ Global Gender Gap Report, 2016.

Violation of women's right to life and personal liberty

Article 21 of Indian constitution provides right to life and personal liberty. However, the violence against women in the form of domestic violence jeopardizes these rights mentioned in Indian constitution. Domestic violence includes violence perpetrated by intimate partners and other family members and manifested through physical abuse (include slapping, beating, arm twisting, stabbing strangling, burning, choking, kicking, threat with an object or weapon and murder), sexual abuse (include coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or forcing sex with others), psychological (includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threat to take away custody of children, destruction of objects, isolation, verbal aggression and constant humiliation), economic abuse (includes denial of funds, refusal to contribute financially, denial of food and basic needs and controlling access to health care, employment etc).²⁴ The Domestic Violence Act of 2005 of India legally defines domestic violence and prosecution guidelines of those cases that are reported to the police. Despite of safeguards provided domestic violence is increasing in India. According to NCRB it has increased from 426 in 2014 to 461 in 2015 (NCRB, 2015). It is also stated that cruelty by husband or relative is highest (i.e. 34.6%) among other crimes in India.²⁵

There is no single factor to account for violence perpetrated against women. Firstly, there are cultural and social factors which keep women vulnerable to the violence directed at them. All these are grounded on historically unequal power relations between men and women. Due to unequal power relation women are made to feel inferior to men and perpetuate the belief in the inherent superiority of men. The social and cultural factors denied women and independent legal and social status (UNICEF, 2000). Secondly, there are economic factors. Lack of economic resources, as these are appropriated by men due to patrilineal inheritance, underpins women's vulnerability to violence. Thirdly, lack of legal protection is another cause of domestic violence. Until recently, the public/private distinction has been the major obstacle to women's right. Domestic violence is considered as private matter as it occurred at home and states are not seen as responsible for protecting the rights of women.

²⁴ "Domestic Violence", (UNICEF, 2000),
<https://www.unicef-irc.org/publications/pdf/digest6e.pdf>

²⁵ Other crimes being Immoral traffic act (0.7%), abetment of suicides of women (1.2%), attempt to commit rape (1.4%), Dowry death (2.3%), insult of the modesty of women (2.7%), dowry prohibition act (3.0%), rape (10.6%), Kidnapping and Abduction of Women (18.1%), Assault on women with intent to outrage her modesty (25.2%) (NCRB, 2015).