

# Gender Based Violence against Women in India with Special Reference to Human Rights



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### Abstract

Violence against women in the domestic as well as in public sphere is a direct violation of their individual rights to personal security and it is also a violation of the right to development. It is said that violence against women is partly a result of gender relations that assumes men to be superior to women; given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. It is an established fact that 'home' is supposed to be the most secured for a women. Nowadays, it is said that women are often in great danger in the places where they should be safest, within their families. The irony is that for many of them 'home' is the place where they are subjected to untold harassment, violence – physically and at times, sexually by the same male folks who are supposed to protect her honor and dignity. They are unable to take their own decisions, voice their own opinions or protect for fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence looming large over their lives.

**Keywords:** Gender, Violence, Women, Human Rights, United Nations.

### Introduction

Several years have passed since the historic day i.e. 10 December, 1948 when the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. During this period the movement of human rights has spread all over the world. Though, after the establishment of the United Nations, the movement of the human rights started as a reaction against the large scale violation of human rights. Human Rights, broadly speaking– may be regarded as those fundamental and inalienable rights that are essential for life as a human being; it is based on increasing demand of mankind for a life in which the inherent dignity and worth of each human being that receive respect and protection.

Violence against women has been clearly defined as a form of discrimination in numerous documents. The Declaration on Elimination of Violence Against Women adopted by the UN General Assembly in 1993, defines Violence Against Women as “any act of gender based violence against women 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 deprivations of liberty, whether occurring in public or private spaces”.<sup>1</sup>

### Aim of the Study

The research paper covers the gender based violence and violation of human rights against women. The main objectives of the research paper are as follows:

1. To analyze the genesis, nature and extent of gender based violence against women in India;
2. To find out the causes of violation of human rights against women in India;
3. To find out the causes of physical, sexual and psychological violence occurring in the families in India;
4. To find out the impact of such violence perpetuated on women;
5. To find out the individual (victims), family and societal responses to such crimes;
6. To analyze the impact of various declaration adopted by the United Nations Organization;

7. To understand the existing law in India pertaining to combat such crimes.
8. To suggest a sustainable engendered development paradigm on the basis of the findings for gender equality to prevent gender based violence.

#### **Kinds of Violence against Women**

Studies identify different kinds of violence against women, in the United Nation's special report, 1995 on *Violence Against Women*:

1. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non spousal violence and violence related to exploitation.
2. Physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
3. Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs by it policies.

Indeed, the law relating to human rights is conspicuous by its breaches rather than by its observances. It is therefore, sometimes argued that "law is becoming less important and political action more important in shaping policy in increasingly dynamic society and this is particularly true, internationally. Violence against women in the domestic as well as in public sphere is a direct violation of their individual rights to personal security and it is also a violation of the right to development. It is said that violence against women is partly a result of gender relations that assumes men to be superior to women; given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction.

The status of women in the society depends on the role played by them and how others look at their roles. Social structure, cultural norms and values are important determinants of women's roles and their status in the society<sup>2</sup>. At present, women have become sex objects and are widely treated as inferior to men in different spheres of life.

It is an established fact that 'home' is supposed to be the most secured for a women. Nowadays, it is said that women are often in great danger in the places where they should be safest, within their families. The irony is that for many of them 'home' is the place where they are subjected to untold harassment, violence – physically and at times, sexually by the same male folks who are supposed to protect her honor and dignity. They are unable to take their own decisions, voice their own opinions or protect for fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence looming large over their lives. In Indian society, a man as a husband was to act as a provider in a family and he was to provide leadership and physical protection to his wife.

Along with these duties the husband used to enjoy many rights and privileges. Wives were looked at with suspicion and were secluded from outside world. The women were not able to move out without seeking the permission of their husband<sup>3</sup>.

Usually, domestic aggression towards women and girls, due to various reasons, remain hidden. Cultural and societal factors are interlinked with the development and propagation of violent behaviour of man-dominated society. With different processes of socialization that men and women undergo, men take up stereotyped gender roles of domination and control, whereas women take up that of submission, dependence and respect for authority. A female child grows up with a constant sense of being weak and in need of protection, whether physical, social or economic. This helplessness has led to her exploitation at almost every stage of life.

Sexual violence against women can occur any where – on the streets, at home, in public or private places by the strangers or even by members of the family. Violence is not simply aggression or injury committed by one individual against another; it is more precisely the abuse of power. The behaviour in which a more powerful person takes advantage of and abuses a less powerful one, is an act of violence. This relationship of power differential is obvious in sexual violence against women which includes rape, kidnapping and abduction, molestation, eve teasing, sexual harassment at work place etc. Sexual violence is a violation of basic human right to live with sexual dignity and without fear.

The United Nation System's role in the arena of women's human rights has been made easier in India by the government ratification of most of the conventions on human rights and India has made the most sincere efforts for the protection and promotion of human rights the world over and India is the greatest champion of the human rights in the Third World and the impact of the Universal Declaration of Human Rights is in the Constitution of India. To research the issue of violence in India is considerably difficult. The Indian government has consistently prohibited independent human rights organizations from investigating allegations of torture in the country. These groups include Amnesty International, Human Rights Watch–Asia, the International Red Cross, the British Parliamentary Human Rights Group and even the United Nation Human Rights Rapporteurs (India is obliged to permit assess under the conditions of the International Covenant on Civil and Political Rights). Moreover, it has also consistently refuted many of the allegations that permits torture and it has, unconvincingly, stated that all those found to have practiced torture have been quickly and sufficiently punished. The recommendations of these agencies could solve most of the problems in relation to violence against women. In spite of numerous researches in the field of gender based violence and the remedial actions suggested accordingly, the same has not been abated. On the contrary, it is still on the rise. Why so? It needs different approaches to probe the causes of the human rights violation against

women and only then a remedial action can be suggested.

The United Nations Commission on the status of women defines violence against women to include "any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women".

Specifically, The Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women to mean '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 private life'. Declaration on the Elimination of Violence against Women further outlines the scope of private and public to include violence in the family, violence in the community, and violence perpetrated or condoned by the state, wherever it occurs. Typically, the forms of violence have been categorized into the following three categories:

#### **Violence in the Family**

Such as domestic violence; battering; marital rape; incest; forced prostitution by the family; violence against domestic workers and the girl child (non-spousal violence, violence related to exploitation); sex-selective abortion and infanticide; traditional practices such as female genital mutilation; dowry-related violence; and religious/customary laws.

#### **Violence in the Community**

Such as rape/sexual assault; sexual harassment; violence within institutions; trafficking and forced prostitution; violence against women migrant workers; and pornography.

#### **Violence perpetrated or condoned by the State**

Such as gender based violence during armed conflict; custodial violence; violence against refugees and internally displaced persons<sup>4</sup>.

The criminal procedure code in India divides all the crimes into two categories-cognizable crime and non-cognizable crime. While cognizable crimes reported are dealt by the police, non-cognizable crimes are generally left to be pursued by the affected parties themselves in the courts. Women like men may be victims of any of the crimes such as murder, robbery, cheating etc., but the crimes which are directed specifically against women are characterized as 'crimes against women' and these are broadly classified under two categories:

2. the crimes under the Indian Penal Code (IPC) and
3. the crimes under special laws (SLL)

#### **The Crimes under the Indian Penal Code include,**

1. Rape (Section 375 IPC)
2. Kidnapping and abduction for different purposes (Section 363-373 IPC)
3. Homicide for dowry, Dowry deaths or their attempts (Section 302/304-B IPC)
4. Torture both mental and physical (Section 498-A IPC)
5. Molestation (Section 354 IPC)
6. Sexual Harassment (Section 509 IPC)

7. Importation of Girls (up to 21 years of age) (Section 366-B IPC)

#### **The Crimes under the Special Laws include:**

1. Immoral Traffic (Prevention) Act, 1956.
2. Dowry Prohibition Act, 1961.
3. The Child Marriage Restraint (Amendment) Act, 1979.
4. Indecent Representation of Women (Prohibition) Act, 1986.
5. Commission of Sati (Prevention) Act, 1987.
6. The Muslim Personal Law (Shariat) Application Act, 1937.
7. The Cinematography Act, 1952.
8. The Special Marriage Act, 1954.
9. The Hindu Marriage Act, 1955.
10. The Hindu Adoption & Maintenance Act, 1956.
11. The Hindu Minority & Guardianship Act, 1956.
12. The Maternity Benefit Act, 1961.
13. The Foreign Marriage Act, 1969.
14. The Indian Divorce Act, 1969.
15. The Medical Termination of Pregnancy Act, 1971.
16. The Equal Remuneration Act, 1978.
17. The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994.
18. Protection of Women from Domestic Violence Act, 2005.
19. Sexual Harassment of Women at Workplace (prevention, prohibition and redressal Act, 2013.

The incidence of total crime in the country has been increasing over the years, but the rate of increase in crime against women has been higher than the rate of increase in total crime.

#### **Conclusion**

According to statistics available from the world over, around thirty three percent of the women have experienced violence in one form or the other, at the some point of their life by the intimate relatives. Statistical data available about the actual prevalence of domestic violence against women in India is scant. The only large scale survey conducted by the National Crimes Record Bureau, Ministry of Home Affairs, Government of India relating to crimes against women, reveals a record 71.5 per cent increase in cases of torture and dowry deaths during 2001 to 2015. The studies conducted by the different scholars indicate that physical abuse of Indian Women is quite high, ranging from 22 percent to 80 per cent of women surveyed. It was reported that about 25 per cent of dowry victims in India were driven to suicide. However, it is difficult to measure the actual extent of domestic violence. It may be very much higher than what the reports indicate because many instances of domestic violence against women are not reported. The research studies and surveys conducted by the scholars generally produce higher estimates of violence than official records. However, they are also assumed to underestimate the actual extent of domestic violence. Domestic violence against women is partly a result of dominance factor. Such assumptions are not only a fact in India, but also form a basis in many other countries of the world. Given the subordinate status of women, much of domestic violence is considered normal and enjoys social sanction. With different processes of socialization that

man and women undergo, men take up stereotyped gender roles of domination and control, whereas women are forced to take up that of submission, dependence and respect for authority. A female child grows up with a constant sense of being weak and in need of protection, whether physical, psychological, social or economic. This helplessness, forced by the society and its culture, has led to her exploitation at almost every stage of life.

It is said that India's recent domestic violence legislation was less a product of India subscribing to international human rights law than it was of the internal pressure from the domestic activist groups. In other words, India's present domestic violence legislation is in large part an outcome of internal activist groups pressuring the government for comprehensive law on domestic violence. However, a significant intensification of internal domestic violence activism coincided with India's ratification of a major international convention on discrimination against women, the convention on The Elimination of All forms of Discrimination Against Women, CEDAW. This ratification of CEDAW by the government of India in the year 1993 contributed to a strong intensification of the internal activist groups pressuring the government for a comprehensive domestic violence law to protect the human rights of victims and their families in times of violence in the family.

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