



Violence against Women – An Introspection with the Causes and Legal Responses

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ARTICLE INFO

RECEIVED 24 MARCH 2021

ACCEPTED 18 DECEMBER 2021

PUBLISHED 21 FEBRUARY 2022

ABSTRACT

Violence against women is a universal and multi-dimensional and greatest human rights challenge facing the whole world. Though it is widely spread throughout the world, but the women of developing and under developed countries are the most vulnerable. As per World Health Organization findings about 1 in 3 (35%) women worldwide have experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. Violence creates pressure and suppression upon the physical and mental health of the women. Fear of violence in the women's mind has been so deep which cannot be out easily even after complete removal of violence against women in the society. Giving stress upon the seriousness of the menace UNO declared 25th November as International Day for the elimination of violence against women. Different legal efforts have been made to tackle this problem at national as well as international level. Despite these legal efforts, gender discrimination and injustice against women continue to occur. In this paper an attempt has been made to analyse the present trend of increasing violence against women and to know where the national and international legal machineries are failed to achieve its goal in providing justice to women.

Keywords:

Women, violence, assault, legal provisions.

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INTRODUCTION

Women, the most beautiful creation of God on Earth is a symbol of W- wisdom, O- origin, M-motherhood, E-energy and N- nectar. The combination of these qualities is a rising factors of every nation. She has to play a number of roles in her life, like mother, daughter, sister, wife, daughter-in-law, sister-in-law etc. When God created man, he also created women because he knew that man alone cannot sustain in the world.

The women has such an important place in our life but the practical position of women in our societies is quite different .They are subjected to exploitation, subjugation, humiliation and discrimination everywhere in societies. They have always been the most vulnerable and oft-exploited section of the societies in any age, time, place and situation. Every woman is victim of violence of one or another type. Only the form and intensity differs from one woman to another.

Violence against women is one of the most widespread violations of human rights and form of discrimination against women. It is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men to the prevention of the full advancement of woman. Violence against women is not a myth but is reality. It is a global phenomenon.

LEGAL DEFINITION OF VIOLENCE

Article 1, of the Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in 1993 defines violence against women is 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 private life”. Again the Article 2 of the declaration states that violence against women shall be understood to encompass, but not be limited to the following:



- a) 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 related to exploitation ;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions, trafficking in women and forced prostitution.
- c) Physical, sexual and psychological violence perpetrated or condoned by state, wherever it occurs.

Convention on the Prevention, Punishment and Eradication of Violence Against Women adopted on June,1994 defines violence against women as any act or conduct ,based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere.

So, typically violence against women means the crimes committed against women of any age, caste and creed. Cases of crimes against women are steadily increasing day by day. It is now a day can be regarded as a universal and multi-dimensional and greatest human rights challenge facing throughout the world. As per World Health Organization findings about 1 in 3 (35%) women worldwide have experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. From the worldwide perspective, records tell us that 38% of murders of women are committed by a male intimate partner and by their own family member. Violence creates pressure and suppression upon the physical and mental health of the women. Giving stress upon the seriousness of the menace UNO declared 25th November as International Day for the elimination of violence against women.



The National Plan of India targets two main types of violence against women - domestic and family violence, and sexual assault.

A) Domestic violence: While there is no single definition of , the central elements of domestic violence include -

- Acts of violence occur between people who have, or have had, an intimate relationship ;
- An ongoing pattern of behavior aimed at controlling a partner through fear, for example by using behavior which is violent and threatening.
- The threatening or violent behavior can comprise of physical, sexual, emotional, psychological and financial abuse.

Physical violence can include slaps, shoves, hits, punches, pushes, being thrown down stairs or across the room, kicking, twisting of arms, choking and being burnt or stabbed.

Psychological and emotional abuse can include a range of controlling behaviors such as control of finances, isolation from family and friends, continual humiliation, threats against children or being threatened with injury or death.

Financial or economic abuse includes forcibly controlling another person's money or assets. It can also include stealing cash, not allowing victim to take part in any financial decisions or preventing a victim from having a job.

B) Family violence: In broader term it refers to violence between family members, which can include violence between current or former intimate partners, as well as act of violence between a parent and a child, between sibling, and more.

C) Sexual assault or sexual violence: It include rape, sexual assault with implements, being forced to watch or engage in pornography, enforced prostitution, and being



made to have sex with friends of the perpetrator.

VIOLENCE ACROSS THE LIFE SPAN

Violence has a profound effect on women. In every patriarchal society, the female foeticide and infanticide practice is a very common issue only because of strong desire for male child and it adversely affects on physical and psychological health of women. Even in many societies women have to face the evil practice of female genital mutilation. Female children are more likely than their brothers to be raped or sexually assaulted by family members, by those in position of trust or power, or by strangers. In some societies when an unmarried women or adolescent is raped, she may be forced to marry her attacker, or she may be imprisoned for committing a “criminal” act. Those women who become pregnant before marriage be tortured, ostracized or murdered by family members, even if the pregnancy is the result of rape. After marriage, the greatest risk of violence of violence for women continues to be in their own homes where husband and, at times, in-laws, may assault, rape or kill them. Women have to face more challenges of violence even in their family when they become old, specially able, widow and divorced. Women who are far from home, imprisoned or isolated in any way are also subject to violent assaults. During arm conflict, assaults against women escalate, including those committed by both hostile and ‘friendly’ forces.

FACTORS RESPONSIBLE FOR VIOLENCE AGAINST WOMEN

A) Patriarchal structure of the society: Indian society is a male dominating society and the idea of women’s subservience prevails. Subjugative and status of women is accepted as normal in our societies even amongst the women themselves. There are a number of myths that exist in our societies like – men can’t control their anger or sexual urges, consumption of alcohol is a symbol of manly attitude etc. So in this type of male dominating social structure a woman is considered as wrongdoer if she tries to raise



her voice against the torture or tries to inform the legal authorities.

B) Socio-cultural factors disfavoring women: Gender specific socialization, cultural definitions of appropriate sex roles, expectation of roles within relationship, belief in the inherent superiority of males, values that has given men proprietary rights over women and girls, different customs of marriage, customs of dowry, acceptability of violence as means to resolve the conflict etc. always encourage acts of violence against women.

C) Financial dependence: Majority of women of our society are not economically self-dependent and are unable to financially support the family. Their financial dependence on men, limited access to cash and credit, discriminatory laws regarding inheritance, property rights and maintenance after divorce or widowhood limited access to education and training for women are causes of social injustice and violence against women in our societies.

D) Lack of legal literacy: There is a lack of legal literacy and awareness among the women about their rights and redressal of injustice, legal status of women, law regarding divorce, child custody, maintenance, legal definition of rape and domestic abuse etc. Low level of legal literacy is the main cause of insensitive treatment to women or girls by police and administration and increasing number of crime against women.

E) Limited political participation: Limited organization of women as a political force, limited participation of women in organized political system, under representation of women in power, politics, the media and in legal professions are also causes for suppression of women in the society.

F) Lack of efficient Judiciary and Law enforcement machinery: An insensitive, inefficient, corrupt and unaccountable judicial system and law enforcement machinery



fails to deter against various forms of crimes against women.

LEGAL EFFORTS TO TACKLE THE PROBLEM

Violence against women occurs across the world, in various forms and affects the people across the society, irrespective of economic status. Legal efforts have been made to tackle this problem at national as well as international level. Since 1994 many developments have taken place in the direction of combating violence against women and girls. Such as--

International level:

Considerable efforts have been made at the international level by international organization and international community to curb the evil practice of violence against women and to enforced women rights. The advancement of women has been a focus of the work of United Nations since its creation. The Preamble of the Charter of United Nation dignity and worth of human person, in the equal rights of men and women. In 1946 the Commission on Status of Women was established to deal with women's issues. The Universal Declaration of Human Rights has affirmed the principle of inadmissibility of discrimination and proclaimed that all human beings are born free and so there should not be any kind of gender based discrimination regarding the enjoyment of freedom and equality. The General Assembly on November 7, 1967 adopted a Declaration on Elimination of Discrimination Against Women, and in order to implement the principle set forth in the Declaration, a Convention on Elimination of All forms of Discrimination Against Women was adopted by General Assembly on December 18, 1979. The Convention is often described as 'International Bill of Rights for Women', came into force in 1981. The fourth World Conference on Women in Beijing, 1995, marked a significant turning point for the global agenda for gender equality. The UN General Assembly in 2000 convened a Special Session on" Women 2000: Gender



Equality, Development and Peace for the Twenty-first Century” also known as Beijing +5 to assess the progress on women’s issues since Beijing Conference. Some of the more recent legal developments at the international level include the following :

UN Optional Protocol to CEDAW: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women was adopted in October 1999 and entered into force on 22nd December 2000. It is the first gender specific international complaints procedure adopted with the following motives –

1. To improve on and add to existing enforcement mechanism for women’s human rights.
2. To improve states and individuals understanding of CEDAW.
3. To stimulate states to take steps to implement CEDAW.
4. To stimulate changes in discriminatory laws and practices.
5. To enhance existing mechanism for the implementation of human rights within the UN system.
6. To create general public awareness of human rights standards relating to discrimination against women.

Protocol on the Rights of Women in Africa: This instrument was adopted by the regional body of African Union which is charged with promoting unity and solidarity among its 53 member nations on 11 July, 2003. This protocol entered into force on 25th November 2005 and it provides broad protection for women’s human rights. The Protocol is a strong instrument for advancing women’s reproductive and sexual rights.

Convention on the Prevention, Punishment and Eradication of Violence Against Women: The signing of the Convention of Belem does Para on 9 June 1994 or inter-American Convention on the Prevention, Punishment and Eradication of Violence



Against Women has led to enactment of domestic violence laws in some Latin American countries. The 'rights protected' under this Convention have been dealt within Chapter III comprising Article 3 to 6. According to this Convention every women has the right to be free from violence in both the public and private spheres. The rights of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on the concepts of inferiority or subordination.

United Nations Special Rapporteur on Violence Against Women: The first UNs Special Rapporteur on Violence Against Women was appointed in 1994 by the Human Rights Commission. The Special Rapporteur was entrusted with the task of analysing and documenting the phenomenon, and holding governments accountable for violations against women. Her mandate was to seek and receive information from governments, organizations and individuals on violence against women; recommend measures to eliminate such violence and remedy its consequences; and carry out field visits.

National Level (Constitutional and Legal provision):

The principle of gender equality is enshrined in the Indian Constitution through its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy. Our national Constitution not only grants equality and liberty to women, but also give clear directions to the state to adopt strong measures which can eradicate all types gender based discrimination for support of women. Within the framework of a democratic polity, India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the CEDAW in 1993, establishment of National Women commission, formulation and implementation of different women supportive acts etc.

Constitutional provisions -



- Article 14, confers on men and women equal rights and opportunities in political, economic and social sphere.
- Article 15, prohibits, discrimination against any citizen on ground of religion, race, caste, sex etc.
- Article 16, provides for equality of opportunities matters relating to employment or appointment to any office under the state.
- Article 39 (a)(d), mentions policy security of state equality for both men and women the rights to a means of livelihood and equal pay for equal work for both men and women.
- Article 42, direct the State to make provision for ensuring just and humane conditions of work and maternity relief.

Legal provisions -

- Maternity Benefit Act 196: A women is entitled 12 weeks' maternity leave with full wages.
- The Dowry Prohibition Act, 1961: Under this act demand of dowry either before marriage, during marriage and or after marriage is an offence.
- The Equal Remuneration Act, 1976: This act provides equal wages for equal work to both men and women.
- The Child Marriage Restrain Act, 1976: This act raises the age for marriage of a girl to 18 years from 15 years and that of boy to 21 years.
- The Medical Termination of Pregnancy Act, 1971: This act safeguards women from unnecessary and compulsory abortions.
- The National Commission for Women Act, 1990: The Commission was set up in January,1992 to review the Constitutional and the legal safeguards for women.
- 73rd and 74th Constitutional Amendment Act: It reserved 1/3rd seats in



Panchayat and Urban Local Bodies for women.

- The Protection of Human Rights Act, 1993: This act aimed at giving all people equal opportunities and preventing unfair treatment on basis of irrelevant personal characteristics. It covers discrimination on the ground of gender.
- The Protection of Women from Domestic Violence Act,2005: This act protects all women from being victim of violence, prevent occurrence of domestic violence in the society.
- The Protection of Women Against Sexual Harassment at Workplace Bill, 2010: On November 4, 2010, the Government introduced the Protection of Women Against Sexual Harassment at Workplace Bill, 2010, which aims at protecting the women at workplace not only to women employee but also to female clients, customer, students, research scholars in colleges and universities, patients in hospitals etc. The Bill was passed in Loksabha on 3.9.2012.

So, from above discussion we can say that despite these constitutional protections and several legislations, gender discrimination and injustice against women continue to occur. Indian women are, by and large, handicapped with respect to all the prerequisites essential for access to justice. The deprived women of our societies makes themselves far away from law and courts only because of the uncongenial judicial system of our country. In terms of combating violence against women, there often exist gaps and ambiguities in the laws in criminalizing violence. This leads to victim's apathy and distrust and avoidance of the system. This is mainly because those who enforced the law or interpret do not always fully share the philosophy of gender justice concept. So, the cases of violence against women are steadily increasing day by day in our country.



SUGGESTIONS

- Women need to be more empowered through education, employment opportunities, legal awareness and right to inheritance.
- Human rights education and information regarding domestic violence should be provided to them because this is a matter of their absolute rights.
- Assistance to help women, rebuild and recover their lives after violence should be part of the intervention strategy, including counseling, relocation, credit support and employment.
- There is a need for attitudinal change which can modify social and cultural patterns of conduct of men and women based on inferiority and superiority of either of sexes or stereotyped roles for women and men.
- Capacity building and training should be provided to service providers and law enforcement officers to handle the cases of violence against women.
- Ensure male involvement in devising program for abuser.
- Community support for women must be provided by all relevant sectors i.e. criminal justice system, health, welfare and private sector support should be available to victim at social level i.e. family, friends, neighbors and local community groups.
- There is need to create public awareness against crime against women through different programmes and policies.
- There should be proper implementation of existing laws to protect the women from violence.

CONCLUSION

Violence against women is not only a threat to women but it is now days become a major threat to human societies. Women have fear of violence in their mind which



causes the lack of participation in various areas of life. Fear of violence in the women's mind has been so deep which cannot be out easily even after complete removal of violence against women in the society. It is rooted in gender-based discrimination and social norms and gender stereotypes that perpetuate such violence. It is creating pressure and heavy responsibility over the shoulders of every citizen. However, the best way to end violence against women is to prevent it from happening in the first place by addressing its root and structural causes. There is an urgent need for women to be empowered and responsible to themselves to understand all the rights and take benefits. Prevention should start early in life, by educating and with young boys and girls promoting respectful relationship and gender equality.

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