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Domestic Violence with Reference to Gender Justice: An Analysis

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ABSTRACT

Gender and violence are linked. Men and women have different responsibilities and behaviours as children and adults, determined by gender norms. These social standards dictate suitable male and female behaviour. Gender roles and behaviours often produce disparities in which one gender gains power at the other's expense. In many civilizations, women are subordinate to men and hold lesser social positions, giving men more decision-making power than women. Gender inequality has lasting societal effects. Gender imbalance boosts men's likelihood of assaulting women. Due to the assumption that men should reign over women, women and girls are more prone to physical, emotional, and sexual abuse by men. They make it harder for victims to flee or seek help. Men commit most of the violence against women despite efforts to promote gender equality.

This paper seeks to analyse Gender Violence against Women in particular while studying the concept of Gender Justice and the response of the Indian Judiciary to the same.

Keywords: *Gender violence, Domestic violence, gender justice.*

I. INTRODUCTION

In Gender and violence are intricately interconnected. Men and women, both as children and as adults, display diverse roles and behaviours that are influenced and reinforced by societal gender norms. These social standards define appropriate behaviour for both men and women (e.g. in some societies, being male is associated with taking risks, being tough and aggressive and having multiple sexual partners). Differences in gender roles and behaviours frequently cause inequalities in which one gender acquires power at the expense of the other. As a result, women are frequently viewed as subordinate to men in many societies and occupy lower social positions, giving men greater power and authority over decision-making than women. Gender inequality has severe and persistent societal repercussions. For example, they may contribute to gender gaps in education, political participation, and representation, levels of income, employment and promotion opportunities, health, and access to healthcare.

Gender disparity frequently increases the chance of men committing violent acts against

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women. Women and girls are more prone to physical, emotional, and sexual abuse at the hands of men, for instance, due to the common belief that men have the right to rule over women. They also make it more difficult for victims to escape violent relationships or seek assistance. Despite efforts to prevent violence against women by promoting gender equality, the bulk of violence against women is perpetrated by men.

There are numerous different forms of violence against women, but this briefing focuses mostly on interventions that help women avoid being assaulted by intimate partners and while dating because there has been most study conducted in this area.²

II. WOMEN AND VIOLENCE

Women are now the most susceptible to assault on a global scale. Violence has afflicted millions of women across the globe, regardless of their socioeconomic or educational status, culture, or religion. In many developing nations, ignorance of women's available rights and a lack of awareness and education are causing an increase in violence against women. Violence against women permeates every level and context of society. Murder, rape, intimidation, pornography, workplace harassment, incest, trafficking, and forced prostitution are all examples of the widespread idea that women are easy prey for violence and exploitation, which is deeply rooted in our so-called patriarchal social order. In addition to domestic abuse, rape, and child marriage, violence against women includes female circumcision. All of these atrocities are perpetrated by the dominant class of men, who violate the basic human rights of women.³

KINDS OF VIOLENCE AGAINST WOMEN:

Women become victims of violence even before they are born, when parents abort a female foetus in order to have a son. Globally, female foeticide is on the rise, particularly in emerging nations like India. The male-to-female ratio calculated from the Census since its inception in 1901 demonstrates this. Sex ratio is the number of females per one thousand males. It is an essential source for determining the female population during the census. According to the 2011 Census performed by the Government of India, there were 940 females for every 1000 males. Despite the fact that the ratio of females to men has increased since the 2001 census, when it was 933 females for 1000 males, the number of females has decreased in the majority of states and union territories.⁴

² “Promoting gender equality to prevent violence against women” available at: https://www.who.int/violence_injury_prevention/violence/gender.pdf (last accessed on 09 Sep., 2022)

³ *Women and Violence*, United Nations Department of Public Information DPI/1772/HR--February 1996, available at <http://www.un.org/rights/dpi1772e.htm>, (last accessed on 09 Sep., 2022).

⁴ Provisional Population Totals Paper 1 of 2011 India Series 1, Statement-13, *Sex Ratio of Total population and*

Domestic Violence

The domestic violence against women is of grave proportions. It is prevalent in both industrialised and underdeveloped nations. Initially, neighbours, the community, and even the government viewed it as a private matter that remained within the home and family, but it was later seen that these formerly private matters frequently became public tragedies. Frequently, it has been observed that husbands employ disproportionate power and domination over their wives in order to silence their voice and violate their rights. They beat their wives, abuse them, subject them to physical, mental, and emotional torture, violate all human rights, and diminish their human dignity. Frequently, such violence is a result of dowry-related issues and frequent quarrels and fights caused by trivial reasons and ego issues. Every eighteen minutes, a woman is beaten in the United States, a developed nation, according to the United Nations.

Female Foeticide and infanticide

Female foeticide is a significant problem in our culture, particularly in developing nations. Family preference for a boy is one of the primary causes of violence against women. Such violence is more prevalent in Asian nations. This has led to the occurrence of female foeticide and infanticide. The prejudice and neglect of a girl child in the family by her own parents in comparison to the sons has resulted in serious discrimination in terms of health care, educational opportunities, nutrition, and other important necessities.⁵

Child Marriage

Child marriage is an additional offence and form of violence against women that violates human rights and endangers the health and lives of young girls. In many countries, especially developing ones, females under the age of 18 are frequently married to men who are twice or even older than their age. These girls are frequently married against their will and lack the physical, mental, and emotional maturity to withstand the hardship and repercussions of such unions. Poverty, which plays a crucial part in child weddings, has been identified as the leading cause of such unions.⁶

Rape

Another extreme form of violence against women is rape. It can occur anywhere in the globe,

child population in the age group 0-6 and 7+ years: 2001 and 2011 Office of the Registrar General & Census Commissioner, India, http://www.censusindia.gov.in/2011-prov-results/prov_results_paper1_india.html, (last accessed on 09 Sep., 2022).

⁵ “*Women, Violence and Gender Justice: A Human Rights Perspective*” available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325876 (last accessed on 09 Sep., 2022).

⁶ Id. At 4.

including the workplace, the house, the family, and outside the home. In the family, rape occurs mostly in the form of marital rape. Even in the community, women can fall victim to perpetrators or abusers. Crimes against humanity are defined in Article 7 of the Rome Statute. The fact that rape is the fastest-growing crime in the world is a reflection of the law and order situation in most nations and the lack of awareness and implementation of laws to prevent violence against women. Crimes against humanity are defined in Article 7 of the Rome Statute. Rape has become the fastest-growing crime in the world, which reflects the law and order situation in countries around the globe and the lack of awareness and enforcement of laws to prevent violence against women.⁷

Sexual Harassment at work place

Sexual harassment in the workplace is a serious issue. It is occurring all across the planet. The United Nations has observed that in many countries, employers mistreat female employees by abusing their authority and demanding sexual favours in exchange for promotion and professional progress. The *Sexual Harassment of Women at Workplace (Prevention, Protection, and Redressal) Act* of 2013 has been implemented in India in order to protect women from such abuse. Sexual harassment is viewed as a sort of sex discrimination that demeans women and frequently attributes to them a poorer capacity to perform successfully at work than male employees.⁸

Trafficking and Prostitution

Human trafficking has been the most severe form of violence against women. Considered to be the third largest trade in the world, it is committed by transnational organised criminal syndicates and is widespread. Many young girls and women are trafficked from their community and country of origin to their destination country, where they are subjected to sexual assault and forced prostitution.⁹

III. CAUSES OF VIOLENCE AGAINST WOMEN

- Lack of educational facilities and illiteracy
- Poor economic conditions and economic dependence
- Poor economic conditions and economic dependence

⁷ Id. At 5.

⁸ United Nations Department of Public Information, 'Women and Violence', DPI/1772/HR--February 1996, available at <http://www.un.org/rights/dpi1772e.htm> (last accessed 09 Sep., 2022).

⁹ Supra note 3.

- Lack of Awareness of Rights

Legislations in India:

In India, a number of laws have been created to protect the rights of women. Article 14 of the Constitution of India establishes the Right to Equality, Article 15 the Right to non-discrimination, Article 19(1)(g) the Right to practise one's profession, and Article 21 the Right to Life. In addition to the rights guaranteed by the Indian Constitution, numerous more laws have been enacted and enforced to prevent violence against women and preserve women's rights. These items are listed below:

- (i) Abolition of Sati in 1829;
- (ii) Hindu Widow's Remarriage Act 1856;
- (iii) Special Marriage Act 1954 to promote inter caste, intercommunity marriages;
- (iv) The Child Marriage Restraint Act 1929;
- (v) The Prohibition of Child Marriage Act, 2006;
- (vi) Hindu Women's Right to Property Act 1937;
- (vii) Suppression of Immoral Traffic in Women and Girls Act 1956;
- (viii) Dowry Prohibition Act 1961;
- (ix) The Indecent Representation of Women (Prohibition) Act 1986;
- (x) Commission of Sati (Prevention) Act 1987;
- (xi) Pre conception and Pre Natal-Diagnostic Techniques (Prohibition of Sex selection) (PCPNDT) Act, 1994;
- (xii) Protection of Women from Domestic Violence Act, 2005
- (xiii) The Sexual Harassment of Women at Workplace (Prevention Protection and Redressal) Act, 2013

In addition to the above-mentioned statutes, there are other industry-related statutes having particular provisions for women, such as, The Workmen's Compensation Act, 1921; Payment of Wages Act, 1936; Factories Act, 1948; Maternity Benefit Act, 1961; Minimum Wages Act, 1948, Employees State Insurance Act 1948 and Pensions Act, 1987 etc.¹⁰

¹⁰ Id. At 13.

IV. GENDER JUSTICE

Gender justice is an ill-defined concept. Sometimes it refers to the equal treatment of men and women, while other times it refers to "justice to the fairer sex." However, for the purposes of this paper, gender justice shall be referred to as "justice for the more advantageous gender." It is an essential component of a civilised society. No civilization can advance if gender equality is denied. Our nation's founding father Mahatma Gandhi once remarked, "Women are men's equal-minded companions." In the majority of ancient societies, women were regarded to be cognitively and physically inferior to males. In the majority of ancient Greece and Rome, women had little rights. There were arranged marriages, and women had no property rights or access to education.

"There is more to gender justice than merely examining the relationship between men and women. It entails formulating methods for corrective action aimed at altering society as a whole to make it more just and equitable, and it entails a setting in which women and men are considered as completely human. In addition, it entails a shift from arbitrary to well-reasoned, reasonable, and balanced, i.e. 'fair social relations' There are important parts of gender justice that are universally applicable and need to be corrected.

1. Fair treatment of women and men, wherein fairness is evaluated on the basis of substantive outcomes and not on the basis of a formal equality concept that employs an implicit "sameness" norm. This implies that in some instances, a different treatment may be necessary for a fair conclusion.
2. Fairness should exist at both the level of human relationships and the level of institutions that mediate these relationships and provide remedy for wrongdoing.
3. Given the lengthy history of gender hierarchies that have disadvantaged women, gender justice necessitates rebalancing the scales in favour of women.
4. Putting into question the arbitrariness of the social construction of gender.

The Third Gender:

In ancient usage, the term 'Gender' refers exclusively to males and women. In recent years, however, society has come to recognise a third gender, notably transgender individuals. This is also commonly referred to as the third gender. The term 'gender justice' signifies that all individuals, regardless of their gender, will be treated with equality, justice, and fairness, and will not be subject to discrimination on the basis of their gender.

GLOBAL VIEW OF GENDER JUSTICE

Women and men's equal participation in economic and social growth, as well as their equitable access to society's resources, are essential for achieving gender justice. The United Nations Development Fund for Women (UNIFEM) was established in 1976 to provide financial and technical support for the empowerment of women. In 1979, the UNGA enacted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It is frequently referred to as an international women's charter of rights. The Decade for Women (1976-1985) and four international conferences on women (1975-1995) made substantial contributions to increasing awareness and commitment to gender equality and gender justice. The General Assembly of the United Nations established UN Women, the United Nations Entity for Gender Equality and the Empowerment of Women, in July 2010. In doing so, UN Member States took a historic step towards accelerating the Organization's gender equality and women's empowerment objectives.

V. ROLE OF INDIAN JUDICIARY IN ENSURING GENDER JUSTICE

1. *Vaisakha v. State of Rajasthan*,¹¹

The Vishaka case stemmed from the gang rape of Bhanwari Devi, a member of a group of women known as sathins who are taught by the local government to perform village-level social work in exchange for honoraria. Bhanwari Devi attempted to prevent the marriage of a one-year-old girl in rural Rajasthan, as part of the government's campaign against child marriage. Members of the local community replied initially by threatening Bhanwari Devi and isolating her family economically. Five guys raped Bhanwari Devi in the sight of her husband on September 22, 1992. When Bhanwari Devi attempted to pursue justice, she encountered multiple obstacles: the police publicly denied her accusation, were hesitant to record her statement or undertake an investigation, and doctors at two government health facilities refused to do a thorough medical examination. The National Commission for Women (a statutory organisation formed by the national government to promote women's rights) launched a thorough investigation and published an impartial report concluding that the victim had been gang-raped. However, the Rajasthan state criminal court acquitted the five defendants of the rape case because, among other reasons, the judge did not believe that males of higher caste would rape a woman of lower caste. Naina Kapur, a lawyer who had attended Bhanwari Devi's criminal trial, was dissatisfied with the criminal justice system's inability to provide tangible remedies, restore the victim's dignity, address systemic issues, and create widespread social

¹¹ AIR 1997 SC 3011.

change. Thus, she decided to "focus on the big picture" by initiating a PIL action in the Supreme Court to challenge sexual harassment in the workplace.

On August 13, 1997, a three-judge bench of the Supreme Court issued the Vishaka decision. The decision, written by then-Chief Justice J. S. Verma, described Bhanwari Devi's gang rape as an example of "the hazards to which [a] working woman may be exposed," "the depravity to which sexual harassment can degenerate," and the urgent need "for safeguards by an alternative mechanism in the absence of legislative measures." The Court accepted the responsibility of addressing these issues "through judicial process, to fill the void in existing legislation." In addition, the Court cited the Constitution's Directive Principle requiring the state to ensure reasonable and humane working conditions and maternity leave, as well as the Fundamental Duty it imposes on all Indian citizens to abandon behaviours demeaning to women's dignity. To address the domestic and international rights abuses exposed by the Vishaka suit, the Court exercised its constitutional authority to issue instructions that are legally enforceable in all Indian Courts, outlining required standards for preventing sexual harassment in the workplace. These directives, which were enacted in 2013, featured a definition of sexual harassment, a list of methods for preventing harassment, and a description of complaint procedures to be "strictly observed in all workplaces for the protection and enforcement of the right to gender equality."

2. *Gaurav Jain v Union of India*,¹²

In this case, the Supreme Court has given multiple directives for the rescue and rehabilitation of child prostitutes and the fallen woman's children. The Court has ruled that it is the responsibility of the State and all voluntarily non-governmental organisations and public-spirited individuals to rescue such women from prostitution and rehabilitate them with a helping hand to lead a life with dignity. Self-employment through provision of educations, financial support, and developed marketing facilities are some of the major avenues in this behalf.

3. *Javed v. State of Haryana*¹³

In this case, the Supreme Court merged almost two hundred writ petitions and high court appeals into a single lawsuit against the State of Haryana and the Union of India, which was treated as a PIL action despite not having been filed as one. The Javed litigants challenged the legitimacy of a population restriction clause in the 1994 Haryana Panchayati Raj Act (the Haryana Provision), which governed the election of Panchayat, or village council, representatives in Haryana. The Haryana Provision prohibited "persons with more than two

¹² AIR 1997 SC 3019.

¹³ AIR 2003 SC 3057.

living children" from holding certain Panchayat positions. The purpose of this two-child standard was to promote family planning on the idea that other citizens would emulate the constrained reproductive behaviour of their elected officials.

Because they had more than two children, the petitioners and appellants in the Javed case were barred from either seeking for election or continuing in the office of a Panchayat.

After hearing arguments from both sides, the Supreme Court determined that the Haryana Provision did not violate Article 14 of the Constitution because it was not arbitrary, unreasonable, or discriminatory; rather, the Court described the provision as "well-defined," "founded on intelligible differentia," and with a clear objective to promote family planning.

4. State v. Ram Singh and another, (Nirbhaya Case)¹⁴

In this instance, a young woman was returning home from a movie with a male companion. They boarded a bus and quickly realised that something was amiss. Six passengers, including the driver, beat the boy unconscious with an iron rod and then raped her individually. They inserted a rod of iron into her vagina, causing significant harm to her bowels, abdomen, and genitalia. They pushed the boy and the mom out of the bus and then drove away. Within twenty-four hours, the woman was brought to the hospital, and the offenders were arrested. Ultimately, the woman succumbed to her injuries, and the perpetrators were quickly brought to justice. One of the defendants committed suicide in jail while on trial. The remaining five individuals were charged with rape and murder. Four adults were sentenced to death, while the kid was placed in a juvenile facility for three years. As a result of this case, the definition of rape was expanded beyond penile-vaginal intercourse. The new definition criminalises the penetration of any female orifice by any portion of a man's body or an object.¹⁵

VI. ARE MEN AT RISK TOO?

Men face a large amount of violence in modern society, including rape, sexual assault, domestic violence, prostitution, and other forms of violence against women, yet they experience abuse differently than women. Significantly fewer males than women encounter domestic violence, and the pattern of victimisation differs being between the sexes, with women significantly more likely to endure repeated and severe types of violence. A 2004 survey conducted in Scotland revealed that 32% of women who had suffered domestic violence did so four to five times or more, compared to 11% of men. The same study revealed that 89% of those who had suffered four or more incidences of domestic abuse were female. Therefore, the pattern and impact of

¹⁴ SC No. 114/2013.

¹⁵ Himangshu Ranjan Nath, "Gender Justice in India: A Critical Appraisal", 5 JOJSS (2015).

violence differs between men and women, and men are more likely to use violence in a way that involves victim control through fear. Men are statistically less likely to fear for their safety, less likely to have significant injuries, and more likely to be financially independent. Where men experience violence at the hands of women, the abuse is typically not as persistent or severe. Extremely violent domestic events frequently result in the death of women. Women are twice as likely as males to get injuries from domestic violence.¹⁶

VII. CONCLUSION

Women and the escalating violence against them have permeated society. The patriarchal structure of society and men's subjugated attitude toward women have fueled and fostered violence and different crimes against women.

Despite several international and regional laws and regulations pertaining to women, the subjugated and deplorable situations of women have not improved, and they continue to face all forms of atrocities, violence, and abuse. This demonstrates the inability of the country's legislative, executive, and judicial institutions to safeguard women from the hands of criminals and to accord women respect in patriarchal societies.

To improve the position of women in society, it is necessary to avoid violence against women and protect them. Since conservative social thought is strongly ingrained in society, it is necessary that such legislation be enacted with the backing of strong public opinion and will.

“Stopping violations of women’s human rights is a moral imperative ... Joining in the efforts to stop violence is everybody’s responsibility. Governments, private enterprises, civil society groups, communities and individual citizens can all make essential contributions. Men and boys must be active in encouraging respect for women and zero tolerance for violence. Cultural and religious leaders can send clear messages about the value of a world free of violence against women.”

Former UN Women Executive Director, Michelle Bachelet, 2010

¹⁶ “Violence against women an issue of gender” https://www.nwci.ie/images/uploads/002594_NWCI_volence_booklet_20pp_mat_lam_320gsm_cover_120gsm_silk_booklet_lo_res_FA.pdf (last accessed on 10 Sep., 2022).

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