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Violence against Women and its Surge amid the COVID-19 Pandemic

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ABSTRACT

Violence against women is a universal and widespread human rights violation that affects at least one billion women worldwide. It is estimated that around thirty-five percent of women across the world experience physical and/or sexual violence. This violence includes emotional abuse, trafficking, infibulation, unwanted or coerced sex, and marital rape.

The purpose of this study is to analyze the various issues faced by women and how they deal with it and the author also analyzes the laws of India, which are currently concerned with the protection of women from all forms of violence. This research is not limited to the analysis of domestic laws, but also the laws of the abroad. The focus is on interpreting legal provisions to protect rights and provide simple solutions to the problems women are facing.

Keywords: violence; marital rape; human rights; trafficking; crime rates; conventions

I. INTRODUCTION

Social distancing protocols and stay-at-home orders were enacted worldwide in early 2020 to reduce the spread of the COVID-19 virus. Such measures have reduced the risk of exposure to people outside the home who are more likely to carry the virus and increased exposure to the public and their family members. Although these measures were needed to reduce the spread of disease, these measures, combined with fear, segregation, and subsequent economic and social pressures, caused experts to fear a “horrific global surge in domestic violence. Stress time at home can increase the likelihood of partner violence. As people stay home, families spend more time in close contact, even in cramped conditions. At the same time, disruptions to livelihoods and the ability to earn a living limit access to basic needs and services, causing additional stress. Perpetrators of domestic violence may also limit access to social, monetary or health-related items and access to health services.

Disrupting social and protective networks can further exacerbate intimate partner violence and its consequences. Women may also have less contact with family and friends who provide support and protection from intimate partner violence. Offenders may further limit access to

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services, help and psychosocial support from formal and informal networks.² Violence against women is a shameful, cruel crime that abashes her dignity, confidence, and pride. Some women are particularly vulnerable, including older women, young women, women who identify as lesbians, transgender, bisexual, refugees, etc. This violence is often regarded as a kind of hate crime.³ Such violence can have long-lasting psychological effects on a woman. The main cause of violence against women to this extent is the patriarchal society. The severity of such crimes varies over time and still varies between societies. This violence seems to torture women, whether in society or in personal relationships. Rape, Sexual Assault, Forced Marriage, Forced Sex, Forced Sterilization, child marriage, and painful acts of violence that cause psychological distress, India, being a patriarchal society, face all these problems. According to 1 to 3, a woman experiences these problems at least once in their lifetime⁴. As health and other support services, including sexual and reproductive health services, are limited, women exposed to violence may have fewer opportunities to receive support from such emergency services. Other essential emergency services such as hotlines, crisis centres, shelters, legal aid and protection and counselling services may also be curtailed, further reducing access to help for women in abusive relationships.

Violence has taken brutal faces in society, for example, the Nirbhaya Case⁵, which shook the entire country, where a 23-year-old student was brutally gang-raped and murdered on a bus, and the capital punishment for the convicts did not make any difference as there is no significant decrease in such crimes. Violence is very common be it at home, on the roads, in schools, colleges, offices, refugee camps, and prisons. National Crime Record Bureau (NCRB) data shows that the rate of crime against women across India is very high, with only a few cases recorded, only a few of these cases being prosecuted and very few being convicted.

According to a survey, it was found that 99% of cases of violence were reported, most of which were committed by the victim's husband. Statistics show that the average woman in India faces 17% more violence from their husband. Violence is not only devastating to victims and their families, but it also carries significant economic and social costs. In some countries, violence against women and girls' children is estimated to cost 3.7% of their GDP, which in most countries is double what they spend on their education sector. If we talk about marital rape, in

² Buller AM, Peterman A, Ranganathan M, Bleile A, Hidrobo M, Heise L. A mixed-method review of cash transfers and intimate partner violence in low- and middle-income countries.

³ The World Conference on Human Rights, "Vienna Declaration and Programme of Action" A/CONF.157/23, UNGA 2 (1993)

⁴ Moradian Azad, "Domestic Violence against Single and Married Women in Iranian Society", CSPP (2010)

⁵ Mukesh v. State of NCT of Delhi AIR 2017 SC 2161.

India, it is not in the form of de-jure but de-facto. According to the Indian Penal Code, rape is a criminal offence, but what about marital rape? It is neither a criminal offence nor recognized by the judiciary.

Statistics

According to the National Crime Records Bureau, In India, at least 39 crimes are reported every hour. According to the NCRB report, violence against women has increased by 83% in the last decade. In 2017 alone, there were 359,849 cases of crime/violence against women, with the state of Uttar Pradesh topping the list with 56,011 cases. Crimes against women increased by 6% in 2017 compared to the year 2016 and by 9% in 2015. According to the report, most of the crimes reported in violence against women were 'cruelty committed by relatives or husbands' (27.9%), followed by 'abduction of women (20.5%), and 'rape' (7.00%), the report stated. The NCRB data⁶ for the year 2018 recorded reporting of one rape case every fifteen minutes in India. In 2018, women reported about 34,000 rape cases, which is unchanged from a year ago. According to the annual crime report released by the Ministry of Home Affairs, more than 85 per cent were charged with the crime and 27 per cent were convicted.

II. FORMS OF VIOLENCE

According to the Protection of Women from Domestic Violence Act, 2005, domestic violence can be classified into four types: physical abuse, sexual abuse, emotional or verbal abuse, and financial abuse⁷.

Types of Violence

Murder

Dowry death - Married women commit murder or suicide due to the constant harassment from their in-laws and husbands. Uttar Pradesh and Bihar recorded the most number of dowry deaths in India.

Honour Killing - The honour killing of a family or member of a village, who brings indignity or shame to others for various reasons. Women in India face honour killings for being a victim of rape or have been found guilty of committing adultery or marrying someone against the will of their family. The highest number of honour killings in North India is recorded in Haryana, Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, and Jharkhand⁸.

⁶ National Crime Record Bureau, Report: *NCRB Activities and Achievement* (Ministry of Home Affairs, 2019).

⁷ Information Technology Act 2000, India, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4539878/> (Visited May 30, 2020).

⁸ Information Technology Act 2000, India, available at: <https://www.bbc.com/news/10364986> (Visited May 21,

Female Infanticide - In countries like India, a girl child is still considered a burden on parents in disadvantaged areas. The orthodox beliefs passing from generation to generation prevent people from giving birth to a girl child. With the development of technologies, it is easy to know whether the baby is a girl or a boy, and leading to the abuse of the same.

III. SEXUAL CRIMES

Rape

Violence against women is one of the major issues in the world. In the patriarchal societies of India, major problems such as rape are faced by women. There is a long list of amendments to the country's rape law, but it is no easy task. Cases of violence against women are consummate and laws need to be changed. One of the cases that brought an amendment to rape laws was the Mathura rape case in 1983. Mathura, a young woman, was raped under police custody by two policemen. The lawsuit was then appealed to the Supreme Court. The accused were acquitted after the Supreme Court argued that Mathura had a 'habit of sexual intercourse. They could prove that she was sexually active but they could not prove she was raped. The reason given is the lack of trauma or struggle in his body. The woman had to prove that there was no consent. After the case, prosecutors noticed a major flaw in India's rape law. Then, in 1983, an amendment was made to Section 114 (A) of the Indian Evidence Act 1872. According to this amendment, the court will consider the lack of consent if the female victim is denied her consent and the burden of proof is transferred to the male accused that they have to prove the victim's consent. Also, a new category of rape has been added called "Custodial Rape"⁹

"The purpose of the defence is to degrade and humiliate rape victims and their personal space¹⁰", an NGO named SAKSHI pointed out in a PIL filed. In 2002, Section 155 (4) of the Indian Evidence Act was amended. Implementing this amendment, cross-examination of the victim of rape is prohibited.

Another case in which the country was tormented was the December 19th, 2012, Nirbhaya rape and murder case in which A 23-year-old girl was brutally raped and murdered on a moving bus and died on December 28th, 2012, after fighting for her life. Subsequently, people were outraged over the incident and demanded that India's rape laws be changed. This case led to the Criminal Law (Amendment) Act, 2013 (Nirbhaya Act). New Amendments to Criminal Law were made which included the acid attack on women in Section 326B, sexual harassment, and

2020).

⁹ WTD News, "The Evolution Of Anti-Rape Laws In India Since 1860", *Youth Ki Awaaz* 2018

¹⁰ Sakshi vs Union of India, AIR 2004 SC 3566

its punishment in Section 354A, assault or use of criminal force against women with intent to disrobe in Section 354B, voyeurism in Section 354C and stalking in Section 345D¹¹.

The sentence was increased from 7 years to 10 years, also the punishment for causing death, or resulting in a persistent vegetative state of the victim to a minimum of 20 years in Section 376A of the Indian Penal Code. India witnessed another shocking incident last year when an 8-year-old girl was raped in the Kathua district of Kashmir. Subsequently, after this case, an amendment was brought by the 2019 amendment to POCSO (Protection of Children from Sexual Offences, 2012) under which Section 4(2) provides for a conviction for the rape of a girl under the age of 16 years and aggravated sexual harassment sentence under Section 6(1)¹² is extended to life imprisonment or death.

Marital Rape

In India, marital rape has been not declared a crime, and for these reasons, women in India are forced to have coercive sex by their husbands. This is a clear violation of Article 21 of the Constitution of India which states that "A person shall not be denied right to his or her right to life and personal liberty except by the procedure established by law¹³."

In **the State of Karnataka v. Krishnappa**¹⁴, the Supreme Court held that "*Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female.*"

The country's apex court has begun to recognize sexual freedom but is yet to include marital rape.

Human Trafficking and Forced Prostitution

UNICEF estimates that traffickers force about two million children into prostitution each year. Factors promoting human trafficking and forced prostitution include wealth inequality, lack of education, lack of legal aid and protection, gender discrimination, and discrimination against minorities. Women are usually abducted, kidnapped, or attracted to this filthy area. There are about three million prostitutes in India, many of whom come to this job against their will. These problems can be solved by giving them education and employment and legal protection¹⁵.

¹¹ The Information Technology Act, 2000 (Criminal Law (Amendment) Act of 2013)

¹² The Information Technology Act, 2000 (The Protection of Children From Sexual Offences (Amendment) Act, 2019)

¹³ Constitution of India, art 21.

¹⁴ 2000 4 SCC 75

¹⁵ Ruchira Gupta, "Trafficking of children for prostitution and the UNICEF response" *Asia Society*, 2020

Domestic violence

Most of the violence against women comes from domestic relationships. Dowry, altercation, refusal of intercourse, infertility, inappropriate cooking, etc. can cause domestic violence by husbands and in-laws. Domestic violence occurs in the northern states of India, particularly in Uttar Pradesh, Bihar, and Madhya Pradesh.

Acid Attack

An acid attack is called a Vitriol Attack or Vitriolage. This means to mutilate, torture abuse, or kill. In 2005, a 15-year-old girl named Lakshmi Agarwal was acid-attacked at Khan Market in Delhi. After this case, an amendment to, the acid attack was eventually introduced into criminal law in 2013 and made it a punishable offence under Section 326B of the Indian Penal Code.

IV. VIOLENCE AMID THE COVID-19 PANDEMIC**Key Indicators of Gender-Based Violence**

1. Legal frameworks to promote, enforce, and monitor non-discrimination based on gender.
2. Physical, sexual, or psychological violence committed by a current or former intimate partner over the past 12 months, depending on the form and age of the violence.
3. The percentage of women and girls aged 15 and over who have been sexually assaulted by someone other than an intimate partner over the past 12 months according to age and location of occurrence.
4. The percentage of seats that women hold in national parliaments and local governments.
5. The percentage of women in managerial positions.
6. A fraction of women aged 15-49 makes their own decisions about sex, contraceptive use, and reproductive health care.
7. Access to Sexual and Prenatal Health Care, Information and Education
8. Systems for identifying and creating gender equality and public assignments for women empowerment.

Women in India face various challenges in seeking justice for violence against them. Various acts of violence against women in India are not criminalized; some are criminalized but are widely tolerated due to customs in India.

Lack of Criminalization: Marital rape, forced marriages, female genital mutilation, and even child marriage are not criminalized in India, and customs are widely tolerated as they dominate

the law. For example, under the Child Marriage Prohibition Act 2006, marriages for boys under the age of 21 and girls under the age of 19 were said to be illegal and such marriages were void marriages, but there are still instances in the Muslim community where the girl gets married as soon as she hits her puberty. In these cases, the offence is considered a minor offence. There are laws on marital rape, in which the age of the victim is 18, but what about above 18? There is no law criminalizing marital rape, in which the victim's age is more than 18 years old. In some cases, the court held that a man has every right to have physical relations with his wife, with or without consent.

Lack of awareness: In most cases, women lack awareness, sometimes they are abused and they do not even know what is happening to them. In some cases, victims are unaware of the laws for their protection. In a Supreme Court case named *Independent Thoughts v. Union of India*¹⁶, the apex court criminalized marital rape, in which the victim is under the age of 18.

Challenges faced while filing a case: The burden of proof in court lies on the victim, which means that a woman must prove that she had been sexually assaulted or raped. Victims of past sexual relations are considered in cases of rape in Bangladesh. The victim undergoes a 'two-finger' test, in which a doctor inserts two fingers into the victim's vagina. This practice deters many women from coming forward and registering a rape case. This practice was sharply criticized by other countries in 2013, the doctors, various NGOs, and women's rights activists came forward to sign a joint statement, calling it "demeaning" and asking it to be declared void as it doesn't deliver any evidence that is associated to proving the offence. Brazil, on the other hand, allows victims to register a case without their representation.

The attitude of police officials: The first report of action goes to the police by the victim herself, so the police attitude is an important part of dealing with the crime. Negligent behaviour or derogatory remark about the victim is one of the main reasons why victims do not show up and file a case. Therefore, a proper attitude towards the victim of abuse is required when comes to registering a case against the wrongdoer.

V. KEY GOVERNMENT SCHEMES, SYSTEMS, AND MECHANISMS TO SAFEGUARD A WOMAN'S RIGHTS

India has introduced various International Human Rights instruments as well as the International covenant on civil and political rights, the convention on the elimination of all forms of economic, social and cultural rights, discrimination against women and the convention

¹⁶ 2017 SCC 10 800

on racial discrimination, the convention on the rights of the child, and also the convention on the rights of the disabled. At the national level, the laws and policies are kept in situ and respond to violence against women. Although the under-reporting of gender-based violence is a serious obstacle in the way of overcoming this social evil and achieving equality, there are laws in the country for women of different genders who can and do receive aid.

Some important changes in the Indian system, as well as stringent sexual harassment laws and the establishment of fast-track courts for the trial of rape, have yielded high results. Recently, the historical decision to decriminalize homosexual relations under Section 377, also the implementation of the HIV / AIDS Act 2017 has brought great relief to LGBTQI communities across the country. Recent cases of violence against women just like the Kathua Rape case and the Unnao rape case of violence against women have included legislative changes along with diodes. At least four states - Rajasthan, Jammu and Kashmir, Haryana and Arunachal Pradesh - have sentenced minors to death for rape, defined in less than twelve years.

The increase in the frequency of unreported dowry cases, in general, reflects the barbaric mentality of revenge against women and girls, which also protects harmful traditional and patriarchal norms. The persistence of malicious practices, widespread gender stereotypes, and deep patriarchal social and cultural norms are of serious concern. There is no widespread attempt to address the issues around women and the purpose of their treatment, because of "weaker sex," violence against women, at school or university, at work, in the family, in society, and print and electronic media. A challenge remains.

Women experiencing violence have an increased risk of unwanted pregnancy, mother and child deaths, and sexually transmitted infections, as well as HIV. Such violence can cause both direct and chronic physical and mental conditions. Women who experience violence from their partners are less likely to survive and are less able to take care of their children or participate in community activities or social interactions that help end abuse. In many societies, women who have been raped or molested are stigmatized and isolated, this not only affects their well-being but also their social participation, opportunities, and quality of life.

If males are engaged in combating gender differences and promoting women's choice, the results will be positive, and evidence suggests that men and women can rebuild equal, healthy, and happy relationships. According to a study on masculinity, son selection and intimate partner violence (IPV) in India, two out of every five men (defined as having unjust gender attitudes and high levels of dominant behaviour) which these men were times a lot of likely to pull acts of physical violence against their partners. Therefore, it is important to engage men and boys to

seriously challenge non-harmful gender norms. To curb gender-based violence, current programs must prioritize sexual and general health and rights to tackle harmful gender norms.

USHA MEHRA REPORT

After the Nirbhaya rape case, the Usha Mehra Commission was set up to investigate the case and recommend to the court the safety of women¹⁷.

1. The Committee advises that a counsellor carrying a rape victim, a qualified nurse to collect evidence, a female police inspector and a forensic expert should be under one roof.
2. Establishment of ONE STOP CRISIS CENTER (OSCC) in every taluka in zones and rural areas of the city.
3. These centres are to be referred to as government hospitals.
4. There must be a qualified, well-trained, and experienced female physician, a senior police officer (female), a forensic team, and psychiatry (for medical counselling).
5. There should be zero FIR (First Information Report) in (OSCC).
6. Availability of legal aid.
7. The forensic team can easily collect forensic evidence when it comes to strengthening the centre.
8. Establishing the ONE STOP CRISIS CENTER (OSCC) accelerates the legal process, protects evidence, and provides medical assistance to victims.

VI. INTERNATIONAL CONVENTIONS

1. **Istanbul Convention:** It is a legally binding organization of the European Union Agency for the Fundamental Rights for Violence against women. On 1 August 2014, the Council of the Convention of Europe came into force to prevent and counter-violence and domestic violence against women. It is essential to the country that affirms it, to point out all forms of violence defined in its text¹⁸.

2. **The United Nations Convention on the Elimination of all forms of Discrimination against Women:** It came into force in 1981, its primary focus, is on which national parties agree to condemn all forms of discrimination against women. States should recognize that the

¹⁷ Government of India, "Justice Usha Mehra Report Committee" (Ministry of law, 2013).

¹⁸ Council of Europe, "Istanbul convention action against violence against women and domestic violence" 1 Aug 2014

current root problem is not violence, but it occurs because all forms of discrimination that is allowed to flourish.¹⁹

3. **Universal Declaration of Human Rights:** In 1947, the United Nations General Assembly adopted the UDHR. At first, it was not binding on any country, but later it was widely accepted as the UN Charter also became international law. Article 3 of the UDHR states, "Everyone has the right to life, liberty, and security of the individual"²⁰.

VII. SUGGESTIONS

The health care sector has been under enormous burden as COVID-19 expands to hospital and clinic capacity, the health sector can take steps to mitigate the risk of violence against women during pandemic restrictions and help reduce its impact. Governments must include essential services to address violence against women in COVID-19 response plans, resource them and identify strategies to make them accessible to domestic violence survivors. Health facilities should identify locally available support services for survivors (such as hotlines, shelters, rape survivors centres, and counselling) and refer women when they seek health services.

Health care providers should be aware of the risks and consequences of violence against women and provide support and appropriate medical treatment to those affected. It is vital to ensure that essential medical services, such as post-rape care, are maintained, including the availability of essential drugs and other supplies. Older women, women with disabilities, women living in humanitarian crises, poor women living in overcrowded conditions and ethnic minorities may be disproportionately affected and have additional needs. There is an urgent need to explore the use of mobile health and telemedicine to safely support those experiencing violence against women and other ways to reach women in settings where access to mobile phones or the internet is limited or absent.

VIII. CONCLUSION

The prevalence of domestic violence in India is extremely high compared to most of the data available from India and confirms that domestic violence is a universal phenomenon. Primary healthcare sectors in India should be institutionalized for routine screening and treatment of violence and trauma. Furthermore, these results provide important information for the development of public health interventions, assessing the situation, and sensitizing relevant agencies to enforce anti-violence laws and anti-rape laws. Cases of violence need to be

¹⁹ UN Women, *Ending violence against women*, GA Res 48/104 (20 December 1993)

²⁰ Universal Declaration of Human Rights, art 5.

thoroughly investigated so that future incidents can be minimized. Today, there are many laws to protect women, but the implementation of the same is still lagging. Violence across society has a ripple effect on women, also on those who are unable to work, are isolated, and are unable to take care of themselves and their children. Thus we can see that Legislature and Judiciary are trying to cope with the new trends in crime, particularly against women. Rape victims and Sexual harassment cases are increasing day by day. There is a need for that provision in the Indian Penal Code to be amended closing all the loopholes and severe punishment such as genital mutilation should be incorporated under the punishment provisions.
