

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

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Violence against Women & the Factors Leading to Violence against Women in India

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ABSTRACT

Violence against women is not something new. Women are subjected to violence since a very long time. It was only in 20th century that the need was felt to tackle the impending menace of violence against women. After the inception of UN various efforts were made by the international community to prevent this kind of violence. However, even after continued efforts of international community plight of women in countries like India remained more or less similar. India, which is a home to around 662 million women, struggles to lessen the instances of violence against women. The problem of women related violence is the most irking issue which has haunted Indian Government for decades. The main cause responsible for violence against women in India is the deep rooted patriarchy embedded in the Indian Society. Albeit the impending problem, there are various safeguards provided in the Constitution of India to prevent the instances of violence against women. This research paper is an attempt to study the meaning of violence against women, factors leading to violence against women in India and constitutional safeguards to prevent violence against women.

Keywords: *violence, women, dowry, patriarchy, constitution, equality.*

I. INTRODUCTION

Violence against women has a long hauled history as it persisted in the society at every point of time. An apt instance of violence against women can be traced in the ancient text of Ramayana, where Sita was abducted by the demon king Ravana. Another historic record which shows the exploitation of women in the ancient era is Mahabharata where Draupadi was humiliated before the public by her own in-laws. In, later Vedic Period the status of women further deteriorated and they were treated as a mere object for fulfilment of compassion. They lost political and economic rights and were deprived from inheritance to properties. Womanhood suffered a devastating setback in the Mughal Era when the *purdah system* was introduced in society. During this period women lost their education and exposure in society and most importantly their identity and individuality.

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Violence against women can be conceptualized as a serious infringement of human rights. Its effect goes from short-term to long-term various physical, sexual and mental repercussions for women which even includes their demise. It adversely affects women's overall prosperity and keeps them away completely from participating in the society. Violence against women has negative impact not only on women but on their families as well; at the end it is the community and the nation which is at loss. It has enormous losses, from more expensive medical services to hefty legal costs and loss in productivity, affecting national budget plans and thereby preventing economic growth and development. Many years of efforts by human right and civil rights have proved to be effective to end gender-based violence at both national and international levels. Pursuant to this, an exceptional number of nations have enacted laws against domestic violence, rape and other different types of brutality against women. However, challenges still persist in implementing these laws. Insufficient is being done to curb violence against a women, and when it does happen, it usually goes unpunished.

II. MEANING OF VIOLENCE AGAINST WOMEN

In common parlance, the term "violence against women" means various types of harmful behaviour which is directed against women because of their gender. One of the most widely accepted meaning of violence against women is stipulated by **Declaration on the Elimination of Violence Against Women, 1993**. According to this declaration violence against women means "any act of gender-based *violence* that results in, or is likely to result in, physical, sexual or mental harm or suffering to *women*, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."² Another meaning given to it is given by **Inter-American Convention on the Prevention, Punishment & Eradication of Violence Against Women, 1995**. As per this convention violence against women means "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 the private sphere."³ Hence, the term "violence against women" connotes acts or threats of acts intended to hurt or make women suffer physically, sexually or psychologically, and which affect women because they are women or affect women disproportionately.

Violence against women is rooted in the unequal power relation between in the society. While sex is a biological factor, gender is social construct and refers to widely shared expectations and norms within the society about appropriate male and female behaviour, characteristics and

² The Declaration on the Elimination of *Violence Against Women, 1993, art. 1*.

³ The Inter-American Convention on the Prevention, Punishment & Eradication of Violence Against Women, 1995, art. 1

roles. These gender roles prescribe a strict division of labour between a man and a woman wherein women are expected to perform reproductive function, household chores, child care, serving the elderly, etc. Gender roles also prescribe characteristics of docility, unending patience and servility of women. Women are judged and condemned by society if they go against the prescribed terms of behaviour for them.

The construction of gender roles imply that women have far lesser access to productive resources and decision-making as compared to men, resulting in unequal balance of power. Unequal treatment and discrimination in child rearing and caring practices in the family, male preference and denial of rights in healthcare and education to females are some of the reasons due to which women become vulnerable and susceptible to different forms of violence. For instance, in South-East Asia the violence against women and girls has been viewed as an increasing discrimination that renders them vulnerable to violence in several phases of their lives. Gender based violence exists in all stages of a woman's life – from infancy to old age and manifests in form of several acts of violence.

III. FACTORS LEADING TO VIOLENCE AGAINST WOMEN IN INDIA

A plethora of factors lead to violence against women in India. Some of these factors are discussed below:

(A) Financial Dependence

Financial dependence of females is one of the main factors contributing to an increase in violence against women. In Indian society, men are considered as a bread earner of the family while women are expected to do household work and take care of children. A working woman is usually stigmatized by the society. In some families women are even explicitly forbidden from working. Due to this, women are dependent on the male members of their family for their livelihood. This leads to an increase in violence against women and the sorriest affair is that such instances of violence remain unreported. Another reason which results in lack of economic self-sufficiency of women is unfavourable working condition at workplace. Due to this, many women choose to stay at home instead of coming out of the four walls and pursuing an employment in the outside world. In India, both the Government and Judiciary have tried to establish favourable working conditions for women. In *Vishakha v. State of Rajasthan*,⁴ the Supreme Court has set out guidelines to prevent sexual harassment at workplace. Further, enactments like Maternity Benefit Act, 1961 show government's vision to seek maximum

⁴ (1997) 6 SCC 241.

participation of women in the employment sector.

(B) Dowry

Dowry stands as one of the most cogent factors that lead to domestic violence against women. It started as custom of giving gift to bride groom on the occasion of marriage. However, the ancient Code of Manu sanctioned dowry and bride wealth in ancient India. Earlier dowry was not mandatory and was generally prevalent amongst Brahmin. In the colonial and the post colonial era it became a widely accepted practice among all sections of Hindu Society. It even became a compulsory exercise. This is where the problem began, groom's families started to ask for more dowry and when the bride's parents were unable to meet their demands, they started harassing the bride. This demand for dowry is the genesis of domestic violence in India. Dowry means "any property or valuable security given or agreed to be given either directly or indirectly: by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of said parties".⁵ To tackle the problem of dowry the government has enacted the Dowry Prohibition Act, 1961. Section 3 of the said act penalises the giving, taking and abetting of dowry for an imprisonment of not less than five years and a fine not less than fifteen thousand. Further, Section 304B of IPC has been inserted in IPC to punish husband and other in-laws of a woman for causing her "dowry death."

(C) Male Dominance

Male power and dominance are taken as an honour in many cultures and if a woman is getting stronger than male, either in education or employment, then the society would try ever curse and blessings to stop or limit her growth and progress by using several forms of violent acts to maintain patriarchy. Violence against women is a common issue where males are subjected to toughness or dominance and their role is based on rigidity. Almost at all times it is men who are the initiators of the violence in relationships and according to some feminist theorists violence in patriarchal society has a motive to make control over partner and for that multiple tactics are used for instance aggression is the weapon of male to show off his strength to female to exploit the weakness of women. Using domestic violence against females to manifest masculinity is the men's stereotypical idea. In recent times, even many educated people believe that women are made for household chores and hence they are abusive towards women. Women are considered to be both biologically and socially inferior to men. It is pertinent to

⁵ The Dowry Prohibition Act, 1961, No. 13, § 2.

mention here what Mahatma Gandhi once said: “To call women the weaker sex is a libel; it is man’s injustice to women. If by strength is meant moral power, then women is immeasurably man’s superior.”⁶

(D) Lack of Education

The “lack of education” is an intrinsic determinant of violence against women. Education increases rationality of human mind. If a woman is educated then it can provide a shield to her against gender-based violence because education enhances women empowerment and women with higher education are subject to a lower level of violence. Violence especially domestic violence is more in rural areas than urban areas and this is because of low literacy rate in rural areas. Women of rural areas have less or even no awareness about gender-based violence as they have this view that violence with them is justified, but women in urban areas are much more aware as they are literate and that is why there fewer instances of violence urban areas. Similarly, an educated male is more tolerant and cooperative. However, on the other hand, an uneducated or rustic man tends to be violent and abusive towards women in his family.

(E) Inability to Produce A Male Child

Most of the Indian Society is patriarchal by nature where birth of a son is considered as a gift of God. On the other hand if a girl is born she is considered as a bane and a blot to the family. This subjugation of male child over female child is one of most essential factor leading to domestic violence. Women, who are not able to produce a male child, generally have to face abuse and hatred by her husband and his family. Such women are usually despised for their inability to give birth to a boy. They are constantly taunted and abused and sometimes even by husband or his family members. This results in mental as well as physical harassment. It is pertinent to mention that definition of cruelty under Section 498A of IPC encompasses both physical and mental harassment. This stereotypical dogmatism has also given rise to “female foeticide”, which connotes killing a girl before she is even born. Due to the advance in the field of diagnosis it became possible to ascertain whether a foetus is a male or female. This, advancement brought itself with the problem of female foeticide, which became an established practise in some of the states like Rajasthan, Haryana & Uttar Pradesh. To curb this problem the Parliament has enacted the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

⁶ Mahatma Gandhi, All Men Are Brothers, GANDHI SEVAGRAM ASHARAM, (Sep. 15, 2021), <https://www.gandhiashramsevagram.org/all-men-are-brothers/chapter-11-women.php>.

IV. CONSTITUTIONAL PROVISIONS AS A MEASURE TO CONTROL INSTANCES OF VIOLENCE AGAINST WOMEN

- **Article 14:** Article 14 instils the general provision of equality. It sets out as “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”. In **Maneka Gandhi**⁷ the Supreme Court ruled out that Article 14 affords a primary guarantee against arbitrariness. Similarly in *Air India v. Nargesh Mirza*,⁸ where Air India required its female flight attendants to retire under three circumstances: (1) upon reaching 35 years of age, (2) upon getting married, or (3) upon first pregnancy. The court held the rules to be arbitrary and discriminatory.
- **Article 15(3):** This article empowers the state to depart from general notion of equality and make special and make any special provision for children and women. In *Dattatraya Motiram v State of Bombay*,⁹ the Bombay High Court held that, If there is a discrimination in favour of a particular sex, that discrimination would be permissible provided it is not only on the ground of sex, or, in other words, the classification on the ground of sex is permissible provided that classification is the result of other considerations.
- **Article 16:** This article call for equality of opportunity for all citizens in matters relating to employment. It further prohibits the State from making any law on public employment, discriminating on the grounds of religion, race, caste, sex or place of birth
- **Article 21:** Article 21 enshrines the right to life and personal liberty to every person irrespective of being a man or woman. It also encompasses various other rights which act as safeguard to curb violence against women. In the case of *Lata Singh v. State of Uttar Pradesh*,¹⁰ it was held that Right to Marriage is an essential part of the right under Art.21 and that people have the right to choose their partners without any compulsion. Further, in *Francis Corallie v. The Administrator, Union Territory of Delhi*,¹¹ the Supreme Court has observed that every person has the right to live with human dignity.
- **Article 21A:** Inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, Article 21A makes it mandatory for the state to provide free and compulsory education to all children of the age of six to fourteen years.

⁷ 1978 A.I.R. 597.

⁸ 1981 A.I.R. 1829.

⁹ A.I.R. 1953 Bom. 311.

¹⁰ (2006) 5 S.C.C. 475.

¹¹ A.I.R. 1981 SC 746.

- **Article 22:** Article 22 provides certain safeguards against illegal arrests and detention. In *Sheila Barse v. State of Maharashtra*,¹² the Supreme Court has held that it is the duty of the police officer making the arrest, to see that arrested females are segregated from men and kept in female lock-up. In case there is no separate locker females should be kept in a separate room. In *Christian Committee Welfare Council of India v. Government of Maharashtra*,¹³ the court held that women should not be arrested after sunset and before sunrise and only in presence of lady police officer.
- **Article 23:** Article 23 provides rights against human trafficking and forced labour. This again helps in curbing violence against women as a large influx of women and girls are either trafficked out of India or are forced into prostitution. Pursuant to this article the Parliament has enacted Immoral Traffic (Prevention) Act, 1986 and added Section 370 and 370A to IPC.
- **Article 24:** This article prohibits the children below fourteen years of age from working at hazardous industries, mines, cracker factories etc. This protection is not confined to boys and equally applies to girls. In the case of *People's Union for Democratic Rights v. Union of India*,¹⁴ the apex court held that children under the age of fourteen must not be employed in the construction work even though it has not been mentioned explicitly under the Employment of Children Act 1938.

V. CONCLUSION

In light of the above discussion, it is stated that the term “violence against women” is any act of violence or aggression which is directed towards a female. However, it is not confined to above meaning as violence against women includes several other acts and behaviour within its ambit. It encompasses all forms of cruelty, harassment, discrimination and abuse whether verbal or physical. The real genesis of gender-based violence is gender roles. These are the roles which the society expects a woman to perform. The women are generally expected to do household work, look after kids and take care of elders. While men are considered to be bread earners of family and are expected to work out in order to make a living for themselves and their family. This expected division of labour between men and women is the root cause of inferior status of women in society. Another reason behind subjugation of women to men is that women are considered biologically weaker than men.

Various factors contributing in increased instances violence against women have also been

¹² (1983) 2 S.C.C. 96

¹³ 1996 (1) BOM CR 70.

¹⁴ A.I.R. 1982 SC 1473.

discussed. These include lack of economic self-sufficiency, lack of education and inability to produce a male child, to name a few. However, time and again both the Government and Courts have tried to curb these factors by way of enactments and judicial pronouncements. The Constitution of India also contains various provisions which afford safeguards against gender-based violence. Fundamental Rights under Part III have been instrumental in curbing the factors resulting in increased instances of violence against women

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