

“Violence against women: Challenges and its Prevention”

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ABSTRACT

The Violence against women is universal and pervasive Human Rights Violation, it affects nearly about a billion woman minimum across the world. It was estimated, about 35 percent woman across the globe have experienced physical and/or Sexual violence. Violence against women have many forms, emotional abuse, early marriage, trafficking female genital cutting, unwanted or forced sex and marital rape. This violence leave a long lasting psychological impact on a woman. Some women are particularly vulnerable for example, old women, young girls, women identify as lesbians, transgender, bisexual, refugees etc. Data of NCRB indicates that crime rate against women across India is very high, this includes only a few cases that are actually registered, among these only fewer cases are tried and very less number of accused actually gets punished. The cases of violence needs to be thoroughly investigated to reduce any further incidences. Today, the number of laws are there to protect women but implementation of the same is still lagging behind. Violence can cost women ripple effect throughout the society, they may suffer loss of wages due to inability to do work, isolation, unable to take care of themselves and their children.

This study aims to analyse different problems that women are facing and how they deal with it and also the authors analyse the laws in India which are currently dealing with the protection of women from all sorts of violence. The research is not just limited to analyse domestic laws but over sea laws are also included in the study. The focus is on interpreting the legal provisions in a manner to protect the rights and provide simple solutions to the problems faced by women. The study also aims at understanding the current situation prevailing and to come up with better solutions to curb these issues.

Keywords:- violence, conventions, fundamental right violation, article 14, article 21, emotional abuse, marital rape, forced sex.

INTRODUCTION

Violence against women is a shameful, brutal crime which strips down her dignity, confidence, and her pride. This violence often considered as a type of hate crime¹. Patriarchal society is the main cause of violence against women to this extent. The intensity of such offences varied over

¹ "Vienna Declaration and Programme of Action". UN General Assembly. 12 July 1993. Retrieved 3 April 2016, Paragraph 18

time and still is varied between societies. These violence seen as to subjugate women, whether in society or in a personal relationship. There are instances of violence against women in ancient India also, the Great Epic Mahabharata written by Tulsidas, also talked about the Dropti, her husband, Yudhishtir staked her in gambling game and lost her, following which Duryodhan ordered his brother to strip her in the presence of everyone in the royal palace, Then the Lord Krishna came to her rescue. Stalking, sexual violence including rape, sexual harassment, physical abuse, psychological abuse by the intimate partners, forced marriage, forced sex, forced sterilisation, child marriage are all traumatising acts of violence which leads to emotional trauma, . India, being a patriarchal society faces almost all these problems. According to 1 in 3 women faces these problems at least once in her lifetime². The violence has taken brutal steps in society, for example the Nirbhaya Case³, which shook the whole nation, where a 23 year old student was cruelly gang raped and killed by people in the bus, the capital punishment to the convicts didn't make any difference, Even after all this the crime rate didn't decrease. Violence can takes place at anywhere, home, streets, school, colleges, workplace, refugee camps, and prison, where it is extremely common. According to an analysis 99% of the violence cases are reported, in which most of them has been committed by the victim's husband. An average women in India is 17% more likely face violence from their husband, analysis shows. The violence is not only devastating for victims and their family, it also involves substantial economic and social costs. In some countries, violence against women and girls estimated to costs about 3.7% of their GDP, which is twice as much many countries spend on their education sector. Studies shown that the children growing up with violence are more likely to become the perpetrators of the violence in the future. If we talk about marital rape, in India it does not exist as de-jure, but as de-facto. The rape is a criminal offence under India Penal Code, but what about Marital Rape? It is neither criminalised nor recognised by the judiciary.

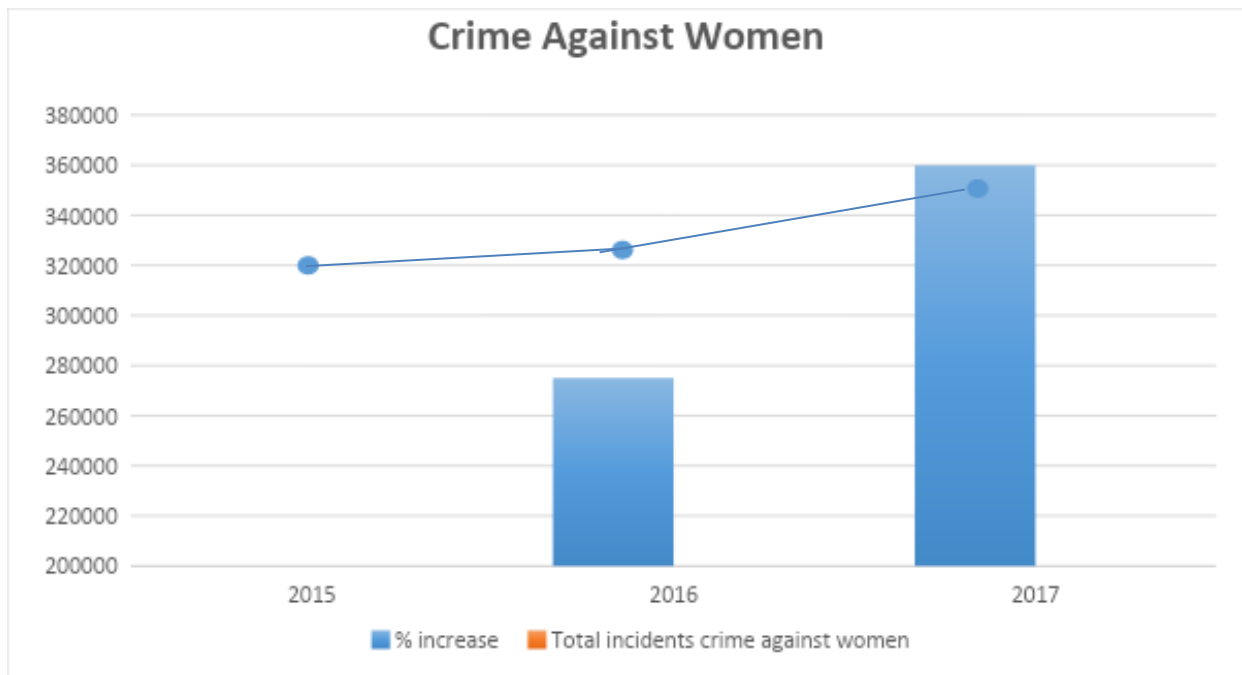
STATISTICS

According to National Crime Record Bureau, there are minimum 39 crimes reported in the country every hour. According to NCRB report⁴ violence against women has increased by 83% in the last decade. In 2017 itself 359,849 cases of crime/violence against women were reported, in which Uttar Pradesh topped the list with 56,011 cases. There was a hike of 6% in 2017 in crimes committed against women compared to 2016 and 9% compared to 2015 (As in graph 1.1). According to the report the majority of the crimes registered under violence against women was 'cruelty by relatives or husband that is (27.9%), followed by 'kidnapping of women' (20.5%), and 'Rape' (7.00%), the report said. The national capital also the crime practical with 40.4% of the crimes in metropolitan cities

² Moradian Azad (10 September, 2010), 'Domestic Violence against Single and Married Women in Iranian Society'

³ Mukesh v. State of NCT of Delhi A.I.R 2017 SC 2161

⁴ NCRB Report 2019, Ministry of Home Affairs, Director Ram Phal Pawar, published on 15th October, 2019



Graph 1.1

According to National Crime Report Bureau (NCRB), there are about 38,947 reported cases were recorded in India. In every 22 minutes, a woman is cruelly raped in India. These cases are increasing day by day, due to lack of justice system, many accused get acquitted, without any charges.

FORMS OF VIOLENCE

The Protection of Women from Domestic Violence Act, 2005 recognizes four types of violence in domestic relationship: Physical, sexual abuse, emotional or verbal abuse and economic violence.⁵

TYPES OF VIOLENCE

Murder

Dowry Death – this includes murder or suicide because of continuous harassment faced by married women by her in-laws and husband for extorting dowry. In India the states which record most number of dowry deaths are Uttar Pradesh and Bihar.

Honour Killing – Honour killing to done to family or village member who brings impurity or shame to the others because of various reasons. In India women face honour killing if they are found to be committing adultery, rape victim, marrying some against the wish and will of the

⁵ Violence against women, Indian Journal of Psychiatry, July 2015, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4539878/>

family members. Northern states of India such as Haryana, Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh and Jharkhand face most number of honour killing incidents.⁶

Female Infanticide – In Countries like India, still in backward areas girl child is treated as a burden on shoulders of parents. Because of thinking which is passed on by generations to generations, people tend to avoid having a girl child. With the development of technologies it is easy to find out if the infant is a girl or a boy, this is leading to the misuse of the same.

SEXUAL CRIMES

Rape

Violence against women is one of key issues in the world. In patriarchal societies like India rape is one of the main issues which a woman faces. There is a long list of amendments in Rape Laws of the country, but it was not an easy task. Cases of violence against women were at the peak and laws had to change. One of these cases which brought amendments in 1983 was Mathura Rape case. A young girl named Mathura was raped under police custody by two policemen. Complaint was lodged and the matter went to Supreme Court. Eventually both accused got acquitted, reason given by Apex Court was that Mathura was ‘habituated to sexual intercourse’; they could only prove that she was sexually active but they couldn’t prove that she was raped. The reason given was lack of injury or marks of struggle in her body. The reason was woman had to prove that the consent wasn’t there. After this case jurists observed that there’s major loophole in rape law of the country. Then, in 1983 changes were made to section 114(A) of Indian Evidence Act. As per this amendment court would presume the absence of consent if female victims say that her consent was not there and the burden of proof shifted to male accused where they had to prove the consent of female victim was there. Also, a new category of rape was included called “custodial rape”.⁷

A PIL was filed by a NGO named **Sakshi**, they pointed out that “*intention of defence is to degrade and humiliate rape victims and their personal space*”⁸. In 2002 section 155(4) of Indian Evidence Act was amended. Trough this amendment, Cross Examination of Rape Victim was prohibited.

Another case which left the country speechless was Nirbhaya Rape case which happened on 16th December, 2012. A 23 year old girl was brutally gang raped in a moving bus, after struggling with her life she died on 28th December, 2012⁹. After this, the public was angry and inflamed by the event and demanding the changes in the rape laws of the country. This case led to the Criminal Law (Amendment) Act, 2013 (Nirbhaya Act). New amendment in criminal law included crime against women like acid attack in section 326B, sexual harassment and its

⁶ "India court seeks 'honour killing' response". *BBC News*. 2010-06-21. Archived from the original on 2016-07-17. Retrieved 2016-04-05

⁷ WTD News, Youth Ki Awaz, 2019, The Evolution Of Anti-Rape Laws In India Since 1860, <https://www.youthkiawaz.com/2018/08/indias-anti-rape-laws-the-evolution/>

⁸ AIR 2004 SC 3566

⁹ *ibid*

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 345D.

Punishment was increased from 7 years to 10 years, also a punishment for causing death or resulting in persistent vegetative state of the victim was increased to minimum 20 years of imprisonment in section 376A of Indian Penal Code.¹⁰

Last year India witnessed another shocking event, an 8 year old girl was raped in the district of Kathau, Kashmir. After this case 2019 amendment in POSCO (Protection of Children from Sexual Offences, 2012) came, under which punishment for rape of a girl who is below 16 years of age was increased to minimum 20 years of imprisonment given under section 4(2), and for aggravated sexual assault punishment was increased to life imprisonment or death under section 6(1)¹¹.

Marital Rape

In India Marital Rape is not declared as a crime, due to these factor women in India tend to face forceful or coercive sex by husband. This is a clear violation of Article 21 of the Constitution of India which states that “No person shall be denied of his life and personal liberty except according to the procedure established by law.”¹²

In *The State of Karnataka v. Krishnappa*, 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.”¹³

Apex Court of the country has started to recognize the freedom to have sexual intercourse but it is yet to include the Marital Rape into it.

Human Trafficking and Forced Prostitution

UNICEF estimates that traffickers force almost two million Children into prostitution each year. Factors which give rise to Human Trafficking and Forced Prostitution is wealth inequality, lack of education, lack of legal aid and protection, gender discrimination, discrimination against minorities. Women are generally kidnapped, abducted or lured into this dirty field. There are around 3 million prostitutes in India, among which many are forced into this job against their willingness and wish. These problems can be solved by providing them education, employment and legal protection.¹⁴

Domestic Violence

Out of all the types of violence against women, most of violence comes from domestic relationship. Factors like dowry, verbal fight, refusing to have sexual intercourse, infertility,

¹⁰ CRIMINAL LAW (AMENDMENT) ACT, 2013

¹¹ THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT, 2019

¹² Constitution of India

¹³ 2000 4 SCC 75

¹⁴ By Freya Tulloch, Forced Prostitution as modern slavery, dec 2018, <https://medium.com/nonviolenceny/forced-prostitution-as-modern-slavery-dc1c1c5f662c>

improper cooking etc become the reasons for domestic violence committed by husband and in-laws. Northern states of India faces number cases related to domestic violence, especially states like Uttar Pradesh, Bihar and Madhya Pradesh.¹⁵

Acid Attack

Acid Attack is known as vitriol attack or vitriolage. It is done with the intent to disfigure, maim, kill or torture. In 2005, a 15 years old girl named Laxmi Agarwal was attacked by acid in Khan Market, Delhi. Acid Attack was finally brought into the criminal law after the amendment in 2013 and it was made a punishable offence under section 326B of Indian penal code.

KEY INDICATORS OF GENDER-BASED VIOLENCE

- Key Indicators of Gender-Based Violence
- Legal frameworks in place to promote, enforce and monitor equality and non-discrimination based on gender.
- Percentage of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by a form of violence and by age.
- Percentage of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence.
- The percentage of time spent on unpaid domestic and care work, by sex, age and location.
- Percentage of seats held by women in national parliaments and local governments
- Percentage of women in managerial positions.
- A fraction of women aged 15-49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care.
- Access to sexual and progenerative health care, information and education
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¹⁵ Ankur Kumar, Domestic Violence In India: Causes, Consequences And Remedies, Youth ki Awaz,

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CHALLENGES FACED BY VICTIMS FOR ACCESSING JUSTICE

In India, women face various challenges while seeking Justice for the violence against her. Various violence against women are not criminalised in India, some are criminalised de-jure but are widely tolerated because of customs in India.

Absence of Criminalisation: Crimes like marital rape, forced marriage, female genital mutilation, child marriage are not even criminalised in India and if there it is, it is widely tolerated because the customs prevail over law. For example, according to Prohibition of Child Marriage Act, 2006, it is stated that marriage of boys under 21 and girls under 19 years of age is illegal and such marriages are void marriages, but in Muslim marriages still there are cases where girls get married right after the puberty hits. Crimes in these instances are considered as minor offences. And also there are laws on marital rapes in which victim is 18 years of age but what about above 18?, no law has been there which criminalise the marital rape whose victims are above 18 years of age. The court in some cases brutally said that a man has all the rights on his wife to have physical relationship with or without consent.

Lack of awareness: In many cases there is a lack of awareness in women, sometimes they get harassed and they don't even know what's happening to them. At some places victim women don't know about the laws present to protect them. In new judgement of Supreme Court case Independent Thought vs. Union of India and Another¹⁶, where the court criminalises the marital rape in which victim is less than 18 years, might not have known to the victims who lives in remote areas of India

Challenges while making a case: In the court the burden of proof lies upon the victim, it means the women has to prove that she is sexually assaulted or a victim of rape. In Bangladesh the victims past sexual relations continues to be considered in the rape case. The victim has to go through a 'Two-finger' test in which a doctor inserts his two fingers to determine the virginity of the victim. This act deters many women to come forward to register a case. In 2013 this act was hugely criticised by other nations, the doctors, advocates various NGOs, Women rights activists came forward to sign a joint statement, in which they called it 'demeaning' and to be abolished as it doesn't deliver any evidence that is associated to proving the offence. Brazil on the other hand allow victims to file a case without their representation.

¹⁶ 2017 SCC 10 800

The attitude of police: The first report of acts goes to the police by victim herself, hence the attitude of police is a crucial part while dealing with her. Casual behaviour or humiliating remarks by cops are also one of the main reasons why victims doesn't show up. Hence it is necessary to have the right attitude while dealing with victims comes to file a report against the wrongdoer.

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, Economic, Social and Cultural Rights, the Convention on the Elimination of All sorts of Discrimination against women, the International Convention on the Elimination of All sorts of racial discrimination, the Convention on the Rights of the child and therefore the Convention on the Rights of Persons with Disabilities. At the national level, laws and policies are placed in situ to forestall and reply to violence against ladies. whereas the under-reporting of GBV has been a serious obstacle within the path of demolition of this social evil and achieving equality, legislation exists in the nation to support women and the different genders who seek assistance.

A few key changes in India's system, as well as the passing of stricter sexual assault laws, and therefore the creation of fast-track courts for prosecution of rapes have reaped higher results. in the recent past, the landmark decision of decriminalising homosexual relationships under section 377 along side the implementation of HIV/AIDS Act came as an enormous relief to the LGBTQIA communities within the nation. Recent cases of violence against women just like the Kathua Rape case and Unnao rape case have additionally diode to legislative changes. at least four states – Rajasthan, Jammu and kashmir, Haryana and Arunachal Pradesh – have introduced the capital punishment for rapes of minors, defined as below twelve years of age.

The increasing frequency of gory cases that are reported or typically not reported by the media, depicts the barbaric mentality of revenge against women and girls, that additionally safeguard harmful traditional and patriarchal norms. The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms may be a serious concern. while not a comprehensive effort to handle problems around objectification of women and her treatment because the "weaker sex", in schools or university, at work, within the family, within the community and in print and electronic media, the exclusion of violence against women remains a challenge.

Women who experience violence are more at risk of unwanted pregnancies, maternal and infant mortality, and sexually transmitted infections, as well as HIV. Such violence will cause direct and long-term physical and mental state consequences. women who experience violence from their partners are less likely to earn a living and are less able to take care of their children or participate meaningfully in community activities or social interaction that may help finish the abuse. In several societies, women who are raped or sexually abused are stigmatised and

isolated, which impacts not only their well-being however additionally their social participation, opportunities and quality of life.

Evidence shows that once men and boys are engaged in tackling gender difference and promoting women's choices, the ensuing outcomes are positive, and men and women are able to relish equitable, healthy and happy relationships. A study on masculinity, son preference, and intimate partner violence (IPV) in india|Bharat|Asian country|Asian nation} showed that 2 out of every 5 men were stiffly masculine (defined as having unjust gender attitudes and high levels of dominant behaviour) which these men were 3 times a lot of likely to pull acts of physical violence against their partners. Therefore, it's vital to engage men and boys to challenge the deeply nonmoving harmful gender norms. so as to curb gender-based violence, the present initiatives should prioritise sexual and generative health and rights so as to tackle harmful gender norms.

USHA MEHRA REPORT

Usha Mehra Commission was formed after the Nirbhaya Rape case to look into the matter and suggest recommendation to Court regarding women safety.¹⁷

- Commission recommended that, instruction should be issued that public officers can remove injured persons to nearest hospitals and private hospitals, who are given land on subsidized rates must do necessary medical treatment immediately.
- Committee suggested that counsellor, a qualified nurse to collect evidences, a woman police inspector and a forensic expert should be present under a single roof where rape victims can be taken.
- Set up **ONE STOP CRISIS CENTRE (OSCC)** at every Taluka in rural & zone in the city.
- These centres would be notified government Hospitals
- There should be qualified, well trained and experienced Female Doctors, Senior police officer (Female), Forensic Team, a Psychiatric(for medical Counselling)
- Police should have authority file Zero FIR (First Information Report) in (OSCC)
- Availability of Legal Aid
- Forensic team could easily collect forensic evidence in this centre making case strong
- Setting up **ONE STOP CRISIS CENTRE (OSCC)** will expedite the legal process, safeguard the evidence and provide medical support to the victims.

INTERNATIONAL CONVENTIONS

1. **Istanbul Convention:** This is the first legally binding Organization by European Union Agency for Fundamental Rights for Violence against women. On 1 August 2014, the Council of Europe's Convention on preventing and combating violence against women

¹⁷ Report by Justice Usha Mehra, Ministry of Home Affairs, 22nd February 2013, https://mha.gov.in/sites/default/files/UshaMehraReport_170913.pdf

and domestic violence comes into effect¹⁸. it is compulsory, to the nation who ratified it, to outlaw all forms of violence defined in its text.

2. **The United Nations' Convention on the Elimination of all forms of Discrimination Against Women:** it came into force in 1981, its primary focus, in which nations parties agrees to condemn discrimination against women in all the forms. 'states must acknowledge that current root problem is not the violence but it occurs because all types of discrimination are allowed to flourish^{19,20},
3. **Universal Declaration Of Human Rights:** in 1947 the United Nations General Assembly adopted the UDHR. Firstly, it was not binding on any nation but it got so wide acceptance that is became the customary international law itself in the UN charter. Article 3 of UDHR states. "Everyone has the right to life, liberty and security of person²¹."

CONCLUSION

Women all around the globe are facing all different types of violence against them. This violence not only leaves a physical injury but also mental issues with the victim. Women have always been the victim of Patriarchal societies. Women are facing violence from long time and now it is necessary to amend laws and implement effective policies to make this world a safe home for women. Government must (i) ensure to establish special cells for the protection of women, (ii) PCR vans should be installed with GPS system, so that, shortest time is taken to carry the victim to hospitals. (iii) A direction should be issued to all the hospitals including private hospitals not to refuse treatment to rape victims. (iv) The monitoring of time for providing compensation to the rape victims, street lights should be provided in all the dark corners of country. (v) Government must also establish fast track courts to ensure speedy trial in cases of violence faced by women in society. The World Health Organisation has also mentioned in its report that health of women who are between the age of 15 to 54 are more affected by Rape and domestic violence than diseases like breast cancer, respiratory problems, labour, heart diseases or road accidents. Around 35.6% women have faced violence by either non-partner or intimate partner or both around the globe.

¹⁸ International Convention to combat violence against women comes into force, bringing hope for an era of change, European Union Agency for Fundamental Right, published on 01 August 2014

¹⁹ Rashida Manjoo, statement to the UN Assembly, 10 October 2011

http://www.un.org/womenwatch/daw/documents/ga66/RAPPORT_on_VAW.PDF

²⁰ UN Human Rights Treaties, Stop Violence Against Women,

http://www.stopvaw.org/un_treaties_on_violence_against_women#_ftn10

²¹ Article 3, Universal Declaration of Human Rights.