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## **GENDER-BASED VIOLENCE IN INDIA: A HUMAN RIGHT ISSUE**

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### **Abstract**

*Gender-based violence is considered as the most pervasive human right violence in the world (WHO, 2013). In India, crime against women is committed every three minutes (National Crime Record Bureau, 2013), 70 percent of women are victims of domestic violence (International Men and Gender Equality Survey, 2011) and 38 percent of Indian men admit that they have physically abused their partners and 65 percent of Indian men believe women should tolerate violence in order to keep the family together (International Men and Gender Equality Survey, 2011). The argument in this paper is that the gender-based violence in India is the most pervasive human right violence. It is examined primarily by drawing the data from NCRB 2015 and NFHS reports. The gender based violence not only endangers women's right to equality and personal freedom but it is detrimental to right to life the very survival of women with dignity.*

### **Introduction**

United Nations declaration on the Elimination of Violence against Women defines violence against women as “any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (UN, Declaration on the Elimination of violence against women, 1993). Violence against women is often known as “gender-based violence” because it mainly stems from women’s

subordinate position in society. Gender based violence includes harmful behaviour directed at women or girls because of their sex, including sexual assault, dowry related murder, marital rape, forced prostitution, female genital mutilation and sexual abuse of female children. It also includes any act of verbal or physical force coercion or life-threatening deprivation, directed at an individual women or girl that causes physical or psychological harm, humiliation or deprivation of liberty (Heise, L, et al., 2002). Gender based violence violates the rights of women including right to life, right to have decent life, right to equal protection under law, right to equality in family or the right to the highest standard attainable of physical and mental health (CEDAW 1992).

## **Human right and women**

Human right violations are committed against men as well as women but the consequence differs depending upon sex of the victim. The atrocities inflicted upon women are grounded on unequal power distribution in society. The asymmetrical relationship between men and women not only perpetuated the subordination of women to men but also intensified the violence. The national and international bodies, women activist has taken up firm initiatives to tackle violence against women. One of the central goals of United Nations is the reaffirmation of “faith in fundamental human rights, the dignity and worth of the human person, in the equal rights of men and women” (UN Charter, 1945). The United Nation General Assembly resolution (1999) 54/134 recognized that violence against women constituted an obstacle to the achievement of equality, development and peace and that its persistence infringed upon the human rights and fundamental freedoms of women.

The 1948 Universal Declaration of Human Right constitutes the first international instrument to details the rights and freedoms of individuals covering the political, civil and economic rights (UN, 2003). It set out a comprehensive set of fundamental rights to which all persons are entitled, without discrimination on ground of race, sex, language, religion, color, political or other opinion, national or social origin, birth or other status (Robinson, Nancy P., 2006). The Convention on the Elimination of All Form of Discrimination against Women (CEDAW) also known as the international bill of rights for women addresses violations of women’s rights and discrimination against women. It declared that violence against women inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men (Robinson, Nancy P., 2006). International human rights conference took place in Vienna in 1993 set up an important landmark as it affirmed that “women’s rights are human rights and highlighted the need to address women’s rights systematically” (Sullivan, Donna J, 1994).

In India, the constitution has guaranteed the rights and freedom to both men and women equally. These include right to equality, right to live with dignity, right to education, right to equal opportunity for employment, right to free choice of profession, right to livelihood, right to work, right to protection from inhuman treatment, right to privacy, right to protection of health, right to liberty etc. Article 15 states that the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Besides constitutional mandates there are various acts or legal safeguards protect women’s human rights and prohibit violence against women. These include Protection of women from

Domestic Violence act (2005), Immoral Traffic Prevention Act (1956), Dowry Prohibition Act (1961), Medical Termination of Pregnancy Act (1971), Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994), Maternity Benefit Act (1961), Equal Remuneration Act (1976), Dissolution of Muslim Marriages Act (1939), Indian Penal Code (1860), National Commission for Women Act (1990) and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013). Though the provision in the Indian constitution and various acts prohibits discrimination on the grounds of sex, women are always discriminated and dishonoured.

### **Gender-based violence and Human right**

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Gender based violence includes harmful behaviour directed at women or girls because of their sex, including sexual assault, dowry related murder, marital rape, forced prostitution, female genital mutilation and sexual abuse of female children. It also includes any act of verbal or physical force coercion or life-threatening deprivation, directed at an individual women or girl that causes physical or psychological harm, humiliation or deprivation of liberty (Heise,L, et al., 2002). Gender based violence violates the rights of women including right to life, right to have decent life, right to equal protection under law, right to equality in family or the right to the highest standard attainable of physical and mental health (CEDAW 1992).

### **Violation of Human Rights of Women in India**

Human rights are inalienable rights to which a person is inherently entitled simply because she or he is a human being (Weston, Burns H, 2014). However, the right of women is being violated in one way or the other. Nowhere in the world do women enjoy the same legal or constitutional rights as men (Seager and olson, 1986). WHO estimates about 1 in 3 women worldwide has experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. In India, crime against women is committed every three minutes (National Crime Record Bureau, 2013), 70 percent of women are victims of domestic violence (International Men and Gender Equality Survey, 2011), 38 percent of Indian men admit that they have physically abused their partners and 65 percent of Indian men believe women should tolerate violence in order to keep the family together (International Men and Gender Equality Survey, 2011).

A life free of violence is a right that every individual is entitled to have without discrimination. Contrary to it, the issue of gender-based violence remains prime concern of recent times. According to National Crime Record Bureau (NCRB) 3,27,394 cases of crime

against women were reported in the country during the year 2015 as compared to 3,37,922 in the year 2014, thus showing a decline of 3.1% during the year 2015. These crimes have continuously increased during 2011 to 2014. It declined to 3,27,394 in 2015 (NCRB, 2015). Delhi has reported the highest crime rate<sup>1</sup> (184.3) at all India level during 2015, followed by Assam (148.2), Telangana (83.1), Odisha (81.9), Rajasthan (81.5), Haryana (75.7) and West Bengal (73.4) (NCRB, 2015). There is decrease in cases of rape from 36,735 in 2014 to 34,651 in 2015. Incidents of gang rape too have shown a decrease from 2,346 in 2014 to 2,113 in 2015. Highest numbers of custodial rape and gang rape were reported in Uttar Pradesh, whereas, rape cases other than custodial rape cases reported in Madhya Pradesh. West Bengal (1,551 cases) tops in attempt to commit rape cases followed by Assam (499 cases), Uttar Pradesh (422) and Rajasthan (407). The case of dowry deaths have declined by 9.7% during the year 2015 (7,634) over the previous year (8,455). The highest crime rate in respect of dowry deaths was reported in Bihar and Uttar Pradesh (2.3 each) (NCRB, 2015). The cases of “cruelty by husband or his relatives” in the country have decreased by 7.7% during 2015 over the previous year 2014 (1, 22,877 cases). Most of these cases were reported in West Bengal (20,163 cases) followed by Rajasthan (14,383 cases), Assam (11,255 cases), and Uttar Pradesh (8,660 cases).

However, there has been marginal increase in other sexual offences against women. Under the category of “assault on women with intent to outrage her modesty”, 82,422 cases being registered across the country in 2015 as against 82,235 in 2014. There has been increase in number of kidnapping and abduction of women by 3.4% during 2015 over previous year 2014. Domestic violence has also increased from 426 in 2014 to 461 in 2015. Maximum number of registered cases is from Bihar followed by Kerala, Madhya Pradesh, Himachal Pradesh, Rajasthan and Haryana. According to NCRB data for 2015, out of 6,877 cases of human trafficking in the country, 3,490 (51%) involved children. Of these 3,087 (88.5%) were cases registered under section 366A (procurement of girl to force her into sex) of the India Penal Code (IPC) (NCRB, 2015). Assam and West Bengal recorded the highest number of trafficking cases both among adult and children.

The United Nation Charter encourages respect for human rights and fundamental freedoms for all individual without distinction as to race, sex, language or religion (UN, 2003). However India’s women crime figure indicate that the right of women are rampantly jeopardize. According to the Global Gender Gap Report<sup>2</sup> released by the World Economic Forum in 2016, India ranked 87 on the Gender Gap Index among 144 countries (Global Gender Gap Report, 2016).

## **Violation of women’s right to equality**

### *Foeticide*

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<sup>1</sup>Rate of crime against women means number of cases registered under crimes against women per 1, 00000 female population.

<sup>2</sup> The World Economic Forum publishes a Global Gender Gap Index score for each nation every year. The index focuses on empowerment of women, relative gap between women and men in four categories- economic participation, education, health and survival and political empowerment.

Article 15 of Indian Constitution prohibits discrimination on the ground of sex. However, in practice, discrimination starts from mother's womb in the form of determination tests leading to foeticide and female infanticide. In India it is estimated that around 10 million female fetuses have been aborted in the last 20 years (The New York Times, 2006). As per the Census, 2011 the child sex ratio (0-6) has decline from 927 females per thousand male in 2001 to 919 females per thousand males in 2011 (Ministry of Health and Family Welfare, 2014). In spite of the fact that government of India have declared pre-birth sex determination through the use of amniocentesis as unlawful, still illicit termination of female fetuses is widely prevalent in the state of India like Haryana, Rajasthan and Punjab (Saryal, Sutapa, 2014).

### *Right to property*

The driving factor of gender inequality is the preference for sons as compared to girls. It is historically rooted in the patriarchal system of the Indian Society. Boys have an exclusive right over parental property and hence led to the neglect of girl's right. Due to prevalence of patrilineal inheritance, both productive resources and property such as household goods have ended up in the hands of men not of women. These inequalities led to women have little opportunity to improve their living condition. Although the Hindu Succession Act of 2005 provides equal inheritance to ancestral property, the law is weakly enforced (The Hindu Succession Bill, 2005).

### *Education*

Education is an important input in overall women empowerment enabling them to comprehend their social, political and cultural environment better and respond to it appropriately. Higher level of education and literacy lead to a greater awareness and contribute in social and economic development. It is a basic indicator of the level of development. According to 2011 census, the literacy rate in India is 74.04%. There has been great improvement in literacy rate in India since Independence, but still many people are not able to read and write. The gender-gap in literacy rate is a matter of concern. Female literacy rate is lower than male literacy rate as many parents do not allow their female children to go to school. According to 2011 census female literacy rate is 65.46% where male literacy rate is over 80% (Census, 2011). The main reasons associated with that the parents gives importance to male child and send him to better school whereas girls are married off at very young age. Although article 21 A of the Indian Constitution provides free and compulsory education for children between 6 and 14, the female literacy rate is still lower as compared to male in India.

### *Health*

Gender based violence has direct impact upon the health of women. According to WHO, the impact of violence on physical and mental health of women range from broken bones to pregnancy related complications, mental problem and impaired social functioning (WHO,2013). In terms of women's health India is lowest performing country as Global Gender Gap report stated that India continues to rank third-lowest in the world on Health and Survival, remaining the world's least improved country on this subindex over the past

decades (Global Gender Gap Report, 2016). India has a large number of malnourished women. According to National Family Health Survey 50 percent of women in India suffer from malnutrition of one form or the other. Chronic energy deficiency persists as the dominant form of malnutrition in rural India affecting around 40 percent of women (Jose, Sunny et.al, 2008). Over half the women in the age group of 15-49 years suffer from iron deficiency anaemia. Adequate nutritional attainment is essential for both men and women equally. However, women's nutrition assumes additional importance due to its critical but complex association with their well-being and implication it has for human development. For instance, maternal malnutrition tends to increase the risk of maternal mortality. Iron deficiency anaemia, increase the risk of death of the mother at delivery, account for at least 20 percent of maternal mortality (Black et al 2008). Further, maternal malnutrition impinges on other important interconnected aspects such as growth retardation, child malnutrition and rising emergence of chronic diseases etc (Osmani and Sen, 2003).

## **Violation of women's right to life and personal liberty**

Article 21 of Indian constitution provides right to life and personal liberty. However the violence against women in the form of domestic violence jeopardizes these rights mentioned in Indian constitution.

### *Domestic violence*

Domestic violence includes violence perpetrated by intimate partners and other family members and manifested through physical abuse (include slapping, beating, arm twisting, stabbing strangling, burning, choking, kicking, threat with an object or weapon and murder), sexual abuse (include coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or forcing sex with others), psychological (includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threat to take away custody of children, destruction of objects, isolation, verbal aggression and constant humiliation), economic abuse (includes denial of funds, refusal to contribute financially, denial of food and basic needs and controlling access to health care, employment etc) (UNICEF,2000). Violence in the home is a global epidemic, without exception, a women's greatest risk of violence is from someone she knows. Such violence can go on for years and may escalate over time. Violence in home is intimidating, humiliating, and degrading. It destroys women's self esteem. Domestic violence is a violation of women's rights to physical integrity, to liberty, and to her right to life itself. Simply put, domestic violence is torture. Such torture of women is rooted in a global culture which denies women equal rights with men and legitimize the violent appropriation of women's bodies for individual gratification or political ends. The common thread is discrimination against women, the denial of basic human rights to individual simply because they are women.

The Domestic Violence Act of 2005 of India legally defines domestic violence and prosecution guidelines of those cases that are reported to the police. Despite of safeguards provided domestic violence is increasing in India. According to NFHS-3 report, overall, one-third of women age 15-49 have experienced physical violence and about 1 in 10 has experienced sexual violence. In total, 35 percent have experienced physical or sexual violence. It is also stated that married women are more likely to experience physical or sexual violence by husbands than by anyone else. Nearly 37 percent of married women have experienced some form of physical or sexual violence. National Crime Record Bureau recorded increasing domestic violence in 2015 as compared to 2014. The problem of domestic violence has deeply rooted in society as it is considered as private matter as it occurred at home. Further, most women do not seek help when they are abused, only one in four abused women have ever sought help to try to end the violence and two out of three women have not only never sought help, but also never told anyone about the violence (NFHS-3, 2005-6). Therefore, states are not seen as responsible for protecting the rights of women. In many countries domestic violence is not even considered as crime.

There is no single factor to account for violence perpetrated against women. Firstly, there are cultural and social factors which kept women vulnerable to the violence directed at them. All these are grounded on historically unequal power relations between men and women. Due to unequal power relation women are made to feel inferior to men and perpetuate the belief in the inherent superiority of men. The social and cultural factors denied women and independent legal and social status (UNICEF, 2000). Secondly, there are economic factor. Lack of economic resource as these are appropriated by men due to patrilineal inheritance underpins women's vulnerability to violence. Thirdly, lack of legal protection is another cause of violence.

### **An Agenda for moving forward**

Ending violence against women requires initiatives and intervention from political as well as social institutions. Following are some of the proposals directed to it.

- ▶ Empowering women and girls and eliminating discriminatory practices such as property and inheritance laws that deny women access to resources.
- ▶ Increasing women's access to education and expanding their control over resources, increasing availability of proper health information and strengthening women's rights, and ensuring women's control over their bodies.
- ▶ Ensuring justice to women who have experienced gender-based violence. Providing protection to women by improving laws and policies, mobilizing communities in defense of women's right to life free of violence and increasing knowledge of women's right.
- ▶ Providing adequate remedies for victims, such as providing appropriate and accessible health care facilities, psychological counseling and legal aid services.

- ▶ Raising the cost to perpetrators engaging in gender based violence by establishing or increasing criminal sanctions and mandating participation in bearing all the expenses of treatment programs.
- ▶ WHO findings on causes of gender-based violence is that of social and cultural factors at the community level play a vital role in determining overall levels of violence. There are cases where large numbers of women and men have internalized norms condoning violence. For instance, WHO study revealed that 50-90 percent of women in some countries agreed that it is acceptable for a man to beat his wife under circumstances like if she disobeys him or refuses him sex. Therefore, there is a need of mass media campaigns and community based education to change community norms and attitudes related to gender-based violence.
- ▶ Conducting research that helps to clarify the causes, consequences, and emerging forms of violence and to identify the most effective response.

## Conclusion

Gender-based violence is a pervasive human right violence in the world but it is tolerated as social phenomenon, in institutions and custom. In this paper the gravity of violence is examined by analysing data recorded mainly in NCRB and NFHS reports. It is also attempted to present remedial approaches directed to violence against women. The prevalence of foeticide, patrilineal inheritance of property, illiteracy, poor health condition or malnutrition, domestic violence, rape etc., remains an obstruction to women's rights and personal freedom. Systematic channelization of institutional mechanisms like improving laws, mobilizing communities, disseminating knowledge about women's rights could be the effective means to tackle the Gender-based violence.

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