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Gender-based violence in India: A critical analysis of legal provisions and their implementation

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Abstract

Violence against women is a technical term used to collectively refer to violent acts that are primarily or exclusively committed against women. Similar to a hate crime, this type of violence targets a specific group with the victim's gender as a primary motive. Attempts to address the issue of violence against women have been lopsided and shortsighted. For example, the Dowry Prohibition Act, which was passed in 1961 and amended in 1984 and 1986, emphasizes marital violence in the context of dowry only. The United Nations General Assembly defines "violence against women" as "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." The 1993 Declaration on the Elimination of Violence Against Women noted that this violence could be perpetrated by assailants of either gender, family members and even the "State" itself. There are forms of violence which are directed specifically against women-rape, sexual harassment, sexual exploitation as in prostitution, sexual debasement as in pornography, domestic violence ranging from battery to torture and even death. Worldwide governments and organizations actively work to combat violence against women through a variety of programs. In these cases the emergency room or a legal authority often is the first to notify the clinician. Most importantly, marital violence "is a major risk factor for serious injury and even death and women in violent marriages are at much greater risk of being seriously injured or killed (National Advisory Council on Violence Against Women 2000)."

The present paper will focus on the gender based violence and Human rights for women in relation to the violence against women prevailing in the Indian society and also focuses on the legal reforms and provisions and their implementation for the betterment of women's in Indian society.

Keywords: Gender, violence, legal provisions

Introduction

Violence in general is a coercive mechanism to assert one's will over another, in order to prove or feel a sense of power. It can be perpetrated by those in power against the hierarchical social system has an inbuilt gradation of domination and subordination, as well as institutionalized violence and victimization. This is perpetuated by various means subtle pressure through the power of ideology, the mechanism of internalized social norms, and the system of social sanctions which penalizes non-compliance. Often the threat of violence is enough for exerting power, while sometimes an atmosphere of terror is created towards the same end. Thus, the problem of defining violence is complex (Kelkar & Krishnaraj, 1985) ^[3]. Violence against women is a technical term used to collectively refer to violent acts that are primarily or exclusively committed against women. Similar to a hate crime, this type of violence targets a specific group with the victim's gender as a primary motive. Attempts to address the issue of violence against women have been lopsided and shortsighted. For example, the Dowry Prohibition Act, which was passed in 1961 and amended in 1984 and 1986, emphasizes marital violence in the context of dowry only.

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Domestic Violence

Violence is perpetrated on women both inside and outside her home. Women are more likely to be victimized by someone that they are intimate with, commonly called "Intimate Partner Violence" or (IPV). The impact of domestic violence in the sphere of total violence against women can be understood through the example that 40-70% of murders of women are committed by their husband or boyfriend. Studies have shown that violence is not always perpetrated as a form of physical violence but can also be psychological and verbal. Domestic Violence Physical violence as well as explicit forms of aggression are used by the more powerful in the household as methods to ensure obedience of the less powerful and therefore related to power dynamics in a household. At every stage in the life cycle, the female body is both the objects of desire and of control (Thapan 1997) [8]. Domestic violence includes not only inter-spousal violence, but also violence perpetrated by other family members. Generally, an important part of the power relationship between spouses and their families relates to dowry and its ramifications (Karlekar, 1995) [2]. There is a wide societal tolerance for wife-abuse, which is very often even considered justifiable under certain circumstance: Disputes over dowries, a wife's sexual infidelities, her neglect of household duties, and her disobedience of her husband's dictates are all considered legitimate causes for wife-beating. It is only when the torture becomes unbearable or death appeared imminent that most women appeared willing to speak out (Karlekar, 1995) [2]. Worldwide governments and organizations actively work to combat violence against women through a variety of programs. A UN resolution designated November 25 as International Day for the Elimination of Violence against Women.

Female Foeticide

The reasons for high number of incidence of female foeticide in India include a deep rooted traditional son preference, continued practice of dowry and concern for safety of the girl child and exploitation and abuse of women and girl children. Technologies like amniocentesis and ultrasound used in most parts of the world, largely for detecting foetal abnormalities, has been used in large parts of the Indian subcontinent for determining the sex of the foetus so that it can be aborted, if it happens to be a female. The information of the sex of the unborn was being extensively misused. To prevent female foeticide and to restrict this misuse, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed on 20th September 1994. The Act forbids the communication of the sex of the foetus, but the enforcement of this act is not easy (Negi, 1997) [4].

Child Marriage

A girl child is twice vulnerable for being a child and a girl. Discrimination against them begins even before their birth and continues as they grow. Their psychological, physical and economic dependence on the family makes them

vulnerable to violence and child abuse within or outside the family. Since 1872, the following efforts have been made to legalise the minimum age of marriage. The Civil Marriage Act of 1872 was passed as a result of the efforts made by Raja Ram Mohan Roy, before which, a provision of the Indian Penal Code rendered the consummation of marriage before the girl attained the age of 10, punishable with life imprisonment. Social reformers of 19th and 20th century tried to counteract child marriage as they felt it was marrying child's educational, physical and economic progress.

Child Sexual Abuse

Sexual abuse is defined as "all sexually oriented conduct, commentary or gestures, intentional and repeated, not desired or accepted freely by their object, for whom it is an imposition, a humiliation or attack on their dignity". The term abuse includes physical as well as non-physical acts. It is institutionalised in various forms, ranging from long hours of labour, often within and outside the home, denial of food, neglect of ailments and verbal abuse to physical violence by the husband and sometimes other family members. Far more difficult to acknowledge are problems caused by the narrow definition of sexuality as a means of perpetuating control over their minds and bodies in a conjugal relationship. (Fourth World Conference on Women, Beijing, 1995)

Table 1: Number of children Raped 1993-1997

Crime Head	Years	Percentage Variation
	1993 1994 1995 1996 1997	1997 1997 Over Over 1993 1996
Child rape (upto 16 years)	3393 3986 4067 4083 4414	30.0 8.1

Child Prostitution and Trafficking

The UN Special Rapporteur on the sale of Children, Child Prostitution and Child Pornography defines Child Prostitution as the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organised by an intermediary (parent, family member, procurer, teacher, etc.) (Bruce, 1996) [1]. Thus the violence against the girl child acquires a new dimension in the sale of young girls below the age of 18 for prostitution and trafficking.

Child Labour

Patil. B.R has defined child labour in two dimensions. If the purpose is to prevent child labour and to provide compulsory education, child labour would mean and include, all those who are below the age fourteen and who are neither in school nor in employment. If the concern is to withdraw children from all kinds of jobs and employment – whether hazardous or non-hazardous - and to bring them into main stream of the human society through education, training and rehabilitation we need to define child labour in a very different manner. One such definition is: the children, who have not completed the age of fourteen, employed for wages or no wages in occupations and employment, whether carried on by the employer or by the family or by self (including a bonded child labour), that interfere with their childhood and education and are injurious to their health and physical, intellectual, spiritual, moral and social development.

Dowry Harassment and Bride Burning

Dowry is a transfer of property from the bride's family to that of the bridegroom, at the time of marriage. According to the present practice, dowry usually subsumes material gifts and cash paid to the bridegroom and his kin. This practice continues even after marriage (Paul, 1993) [5]. The dowry given at the time of marriage is not the only transaction as far as the daughters marriage is concerned. There is a series of ceremonies associated with the girls in the family. The practice of giving gifts to the husband's family in cash and kind and rituals connected with pregnancy, childbirth and ceremonies for piercing the ear of the girl and so on (Negi, 1997) [4]. The gifts are no longer a token of affection from parents to the daughter, but instead an elaborate demand from the marital family (Negi, 1997) [4].

Table 2: Dowry reporting under Crime Heads

Crime Head	1995	1996	1997	% variation in 1997 over 1996
Dowry Death	5092	5513	6006	8.9
Dowry Prohibition Act	2814	2647	2685	1.4

While inadequate dowry may be one of the underlying causes of harassment of women, in rural poor households, where dowry is either non-existent or is only a token payment, there are other causes of abusive behaviour.

Sexual Harassment at Work

Sexual harassment of working women is primarily a problem faced by women, that men rarely face this problem and therefore it should be considered a form of sex discrimination. Sexual harassment means setting boundaries on the term and differentiating sexual harassment from expressions of sexual interest. Not all expressions of sexuality in the workplace could possibly be called sexual harassment. Men and women do meet dating partners and future spouses at work. Some people may even enjoy sexual jokes and flirting that can be ego enhancing and enrich their fantasy life.

National Commission for Women has laid down the code of conduct at work place to prevent sexual harassment of women, which has been sent to all Government offices, Ministries, and Universities with the hope that employers would become more sensitive towards women. The guidelines highlight that it shall be the duty of the employer to prevent or deter the commission of any act of sexual harassment at workplace would include unwelcome sexually determined behaviour by any person either individually or in association with other persons such as eve teasing, unsavoury remarks, jokes causing embarrassment, innuendo and taunts, gender based insults or sexist remarks and unwelcome sexual overtones in any manner, touching or brushing against any part of the body, molestation or displaying pornographic or other derogatory pictures or sayings (Hindu, Sept 16, 1998).

Sale of Wife

In traditional farming communities, women helped in farming and bridegrooms paid a bride price to her parents. In the past this used to be a token amount. If a widow or a married woman chose to enter into a live-in relationship with another man, the latter in turn paid the first husband the amount he had spent at the time of the marriage. This

system has, in the last decade become completely distorted with women being sold and resold for astronomical sums and the panchayats and police turning a blind eye to these goings on. With the bride price sometimes running into a lakh or more, 'nata' brokers have mushroomed around Kotah, Bundi, Deoli, Ajmer and Tonk districts of Rajasthan, whose only job is to keep an eye on prospective women and force them to enter into a nata because the local brokers earned a hefty commission out of this deal. The kind of money at stake can be gauged from the fact that one of the fathers admits to having spent Rs 62,000 in bringing her back.

Eve Teasing

Eve teasing is an act of terror that violates a woman's body, space and self-respect. It is one of the many ways through which a woman is systematically made to feel inferior, weak and afraid. Whether it is an obscene word whispered into a woman's ear; offensive remarks on her appearance; an intrusive way of touching any part of a woman's body; a gesture which is perceived and intended to be vulgar: all these acts represent a violation of a woman's person, her bodily integrity. Eve teasing denies a woman's fundamental right to move freely and carry herself with dignity, solely on the basis of her sex (Hindu, August 2, 1998).

Some acts of eve-teasing mentioned by girl students interviewed are; indecent remarks, singing obscene songs, hitting, touching or pinching in crowded places, snatching dupatta and in some cases even forced kissing, mailing anonymous love letters and exhibiting male genital in front of women.

Violence against Widows

Closely linked with Sati and harassment of widows, is the custom of child marriage producing number of child widows, but not child widowers. Widow remarriage is not common and not sanctioned by society, however men were allowed to remarry. Sati idealised as sitting on the funeral pyre of the deceased husband; and those widows who did not go through this had to make themselves physically unattractive and absent from public functions. Widows are called inauspicious and are avoided.

Important Constitutional and Legal Provisions for Women in India

The principle of gender equality is enshrined in the Indian constitution in its preamble, fundamental rights, fundamental duties and directive principles. The constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. Within the frame work of a democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women.

National Legal Frameworks

Over sixty years ago, the General Assembly adopted the Universal Declaration of Human Rights. The Declaration recognizes the inherent dignity and the equal and inalienable rights of all members of the human family and outlines a set of human rights and fundamental freedoms to which all are entitled without distinction of any kind, such as race, colour,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has recently celebrated its 30th anniversary. One of the nine human rights treaties, the Convention transformed the ideals contained in the Declaration into a legally binding instrument directed at the achievement of women's equality with men. Together with its Optional Protocol, adopted 10 years ago, and the 1993 Declaration on the Elimination of Violence against Women, CEDAW constitutes a bill of rights for women and girls. Accepted by 186 States from all regions of the world, CEDAW is noteworthy in a number of ways. By outlining the steps States must take to eliminate discrimination against women and ensure their equality with men in the civil, political, social, economic and cultural spheres, it is one of the first human rights treaties to incorporate the concepts of universality, indivisibility and interdependence of all human rights. It pioneered the concept of substantive equality for women and girls, making clear that although laws, policies and programmes may not discriminate against them overtly and directly, women and girls will not be equal until they enjoy the same opportunities and privileges as men in reality. And yet, in 1995 the Beijing Platform for Action identified lack of respect for and inadequate promotion and protection of human rights of women as critical obstacles against gender equality and empowerment of women.

Constitutional Provisions

The constitution of India not only grants equality to women but also empowers the states to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socioeconomic, education and political disadvantages faced by them. Fundamental rights, among others, ensure equality before the law an equal protection of law; prohibits discrimination against any citizens on grounds of religion, race, casts, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(b), 39(c) and 42 of the constitution are of specific importance in this regard.

Constitutional Privileges

1. Equality before law for women (Article 14)
2. The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))
3. The State to make any special provision in favour of women and children (Article 15 (3))
4. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
5. The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))
6. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)
7. The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

8. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
9. The State to raise the level of nutrition and the standard of living of its people (Article 47)
10. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))
11. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))
12. Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))
13. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))
14. Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

Legal Provisions

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

The Crimes Identified Under the Indian Penal Code (IPC)

1. Rape (Sec. 376 IPC)
2. Kidnapping & Abduction for different purposes (Sec. 363-373)
3. Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
4. Torture, both mental and physical (Sec. 498-A IPC)
5. Molestation (Sec. 354 IPC)
6. Sexual Harassment (Sec. 509 IPC)
7. Importation of girls (up to 21 years of age)

The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

1. The Employees State Insurance Act, 1948
2. The Plantation Labour Act, 1951

3. The Family Courts Act, 1954
4. The Special Marriage Act, 1954
5. The Hindu Marriage Act, 1955
6. The Hindu Succession Act, 1956 with amendment in 2005
7. Immoral Traffic (Prevention) Act, 1956
8. The Maternity Benefit Act, 1961 (Amended in 1995)
9. Dowry Prohibition Act, 1961
10. The Medical Termination of Pregnancy Act, 1971
11. The Contract Labour (Regulation and Abolition) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Prohibition of Child Marriage Act, 2006
14. The Criminal Law (Amendment) Act, 1983
15. The Factories (Amendment) Act, 1986
16. Indecent Representation of Women (Prohibition) Act, 1986
17. Commission of Sati (Prevention) Act, 1987
18. The Protection of Women from Domestic Violence Act, 2005

Special initiatives for women

National Commission for Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

Reservation for Women in Local Self -Government

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The National Plan of Action for the Girl Child (1991-2000)

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

National Policy for the Empowerment of Women, 2001

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a "National Policy for the Empowerment of Women" in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

Factors affecting the implementation of women's rights

Factors affecting implementation (negatively or positively) are more directly related to the legal system, and are examined below.

Courts

Access to courts is necessary to enforce rights enshrined in the constitution, in legislation and/or in the case law. The equality of all persons before courts and tribunals is stated in article 14 of the ICCPR. The right to a legal remedy for human rights violations is protected by article 14 of the ICCPR, articles 6 and 13 of the ECHR, articles 8 and 25 of the ACHR, article 7 of the CHPR, and article 9 of the Arab Charter on Human Rights (not yet in force). Similar rights are stated in national constitutions and legislation.

Human rights commissions and other independent authorities

Another way to redress violations of women's rights is provided by independent authorities competent to investigate violations. Since 1990s, there has been a considerable spread of these institutions around the world, as a result of a renewed interest of the international community in human rights and good governance. Compared to courts, these institutions provide more accessible and speedy mechanisms of redress, and are less costly and cumbersome. Another advantage is that where violations may be investigated *motu proprio*, they may be redressed even where the victims have no access to justice.

Human rights commissions usually do not issue binding decisions, but rather recommendations (an exception is the Human Rights Commission of Uganda, whose decisions are as binding and enforceable as court judgments). When their recommendations are not complied with, human rights commissions may report to Parliament or, in a few cases, bring an action before courts (as in the case of Ghana's Commission on Human Rights and Administrative Justice).

Customary dispute settlement authorities

Customary dispute resolution systems have received a renewed interest in the 1990s, and have been the object of considerable debate. For women, customary institutions have advantages and disadvantages. On the one hand, compared to courts, customary institutions may provide more easily accessible (both geographically and economically) and speedier forums for rural women, and may enjoy greater social legitimacy in local communities. On the other hand, while their nature varies considerably from place to place, customary institutions are often gender biased in composition and orientation. In most places, they are constituted by male elders, and apply a male-biased interpretation of customary law. In India, *panchayats* (traditional institutions usually based on caste) traditionally excluded women. The 1949 Constitution recognized these institutions on the one hand and democratized them on the other. The Constitution provides for direct election of *panchayat* members and reserves to women one-third of the seats (sects. 243C and D).

Legal information and legal aid

A major obstacle to the implementation of women's statutory rights in rural areas is rural women's lack of legal awareness and of resources. Indeed, rural women are often unaware of their legal rights. Even where they do know about their rights, they often lack the resources necessary to bring claims (which involves paying lawyers and court fees).

The issue of information is linked to illiteracy. In rural areas, female illiteracy rates are very high, although with considerable cross-country variation. This raises concerns about the means for the dissemination of legal information. Publication of laws in official bulletins alone is unlikely to reach rural women, and supplementary means of information accessible to all (e.g. rural radios) should be considered.

Legal aid is provided in most of the covered countries, although to very different degrees. Many countries have not paid attention to gender in their legal aid schemes. In addition to government institutions, legal aid is provided to women by a large number of NGOs throughout the world.

The lack of resources for gender related laws, programmes and institutions

Another problem constraining implementation of gender related legislation is the lack of the necessary resources. This problem cuts across the different issues: as lack of resources constrains the implementation of land reform programmes, and of laws and programmes promoting women entrepreneurs. Resource inadequacy also constrains the effectiveness of the institutional machinery for the advancement of women.

Conclusion

From what has been presented above it is clear that violence against women is endemic in India. The reason is women in the country are highly vulnerable because of poor quality of life indicated by rampant poverty, lack of education, high under five mortality, poor health status, high fertility rate and high maternal mortality rate. Also contributing to the violence against women is societal mindset about women that has not changed much. The government and voluntary organizations are making efforts towards ending/minimising violence against women. The efforts of the government are in the shape of enacting relevant legislations, issuing orders and launching various women welfare schemes. But their implementation remains tardy, as the lower level government functionaries are not gender sensitive. On the other hand the voluntary organisations are taking both preventive as well as reactionary measures. But efforts of the voluntary organisations suffer from paucity of funds and infrastructure. Yet in this rather bleak scenario, many voluntary organisations have devised several innovative strategies to combat the menace and been successful in wiping tears of hapless women.

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