Gender Violence as a component of Human Rights Violation –An Analysis

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Introduction

While it is true that human rights violations are committed against men as well as women, their impact clearly differs depending on the sex of the victim. Studies of the subject indicate that all acts of aggression against women exhibit some characteristic or other that provides a basis for their classification as gender-based violence. This means that such violence is directly related to the unequal distribution of power and to the asymmetrical relationships that exist between men and women in our society, which perpetuate the devaluation of women and their subordination to men. What differentiates this type of violence from other forms of aggression or coercion is that the risk factor in this case is the mere fact of being a woman. Gender-based violence can take many forms and, depending on the type of relationship that is its context and the type of power being exerted, this crime may therefore fall into any of the following categories: rape and incest, sexual harassment at work or at school, sexual violence against women detainees or prisoners, acts of violence against displaced women, trafficking in women and domestic violence.

Meaning and Definition of violence

According to Webster new collegiate dictionary violence means exertion of any physical force for instance violent treatment of procedure, protonation infringement, outrage assault etc.[1]

According to black dictionary violence means unjust and unwarranted use of force usually accompanied by forcly or outrage, physical force unlawfully exercised with the intent to harm[2].

Curzon's dictionary of law defines violence as any conduct so that it includes violent conduct towards property as well as towards persons and it is not restricted to conduct causing or intended to cause injury or damage but include any other violent conduct[3].

[1] Webster new collegiate dictionary 1961 page 952
[2] Black law dictionary 7th edition 1999 page 1564
[3] Curzon's dictionary of law 4th edition 1994 page 403

Evolution of the Issue of "Gender-Based Violence

Over the past few decades, gender-based violence has increasingly come to be recognized as a serious problem at the international level, not only for women but also for the attainment of equality, development and peace. The issue has also become a priority for women's organizations in the region and a subject for feminist thought during the United Nations Decade for Women: Equality, Development and Peace and in recent years Governments in the region have also begun to devote attention to the issue. Although in 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women, which incorporated women into the sphere of human rights, that instrument did no more than to touch on the problem of violence against women. One of its defects is precisely the lack of a clear definition of gender-based violence. Specific concern for this problem began to manifest itself in 1980, when the World Conference of the United Nations Decade for Women: Equality, Development and Peace, held in Copenhagen, adopted the resolution on “Battered women and violence in the family". Likewise, paragraph 288 of the Nairobi Forward-looking Strategies for the Advancement of Women issued by the Third World Conference, calls for specific measures to deal with violence against women. Since that time, the United Nations has organized meetings of groups of experts on violence against women and has taken steps to bring the issue to the attention of the Commission on the Status of Women, the Economic and Social Council, the Division for the Advancement of Women, the United Nations Statistical Office and the Committee on Crime Prevention and Control. In 1989, the Committee for the Elimination of Discrimination against Women recommended that member States report on violence against women and the measures adopted at the governmental level to eradicate it.

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 framework 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. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993[4].

Constitutional Rights to Women:

The rights and safeguards enshrined in the constitution for women in India are listed below:

1. The state shall not discriminate against any citizen of India on the ground of sex [**Article 15(1)**].
2. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [**Article 15(3)**].
3. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [**Article 16(2)**].
4. Traffic in human beings and forced labour are prohibited [**Article 23(1)**].
5. The state to secure for men and women equally the right to an adequate means of livelihood [**Article 39(a)**].
6. The state to secure equal pay for equal work for both Indian men and women [**Article 39(d)**].
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [**Article 39(e)**].
8. The state shall make provision for securing just and humane conditions of work and maternity relief [**Article 42**].
9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [**Article 51-A(e)**].
10. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [**Article 243-D(3)**].

[4]"Declaration on the Elimination of Violence against Women" UN Document Series Symbol: ST/H/, UN Issuing Body: Secretariat Centre for Human Rights, Proclaimed by the General Assembly Resolution 48/104 of 20 December 1993, viewed on 9 June 2011

11. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [**Article 243-D(4)**].
12. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [**Article 243-T(3)**].
13. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [**Article 243-T(4)**].

Legal Rights to Women:

The following various legislation's contained several rights and safeguards for women:

1. Protection of Women from Domestic Violence Act (2005) is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.
2. Immoral Traffic (Prevention) Act (1956) is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organized means of living.
3. Indecent Representation of Women (Prohibition) Act (1986) prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.
4. Commission of Sati (Prevention) Act (1987) provides for the more effective prevention of the commission of sati and its glorification on women.
5. Dowry Prohibition Act (1961) prohibits the giving or taking of dowry at or before or any time after the marriage from women.
6. Maternity Benefit Act (1961) regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.
7. Medical Termination of Pregnancy Act (1971) provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

8. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994) prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female feticides.
9. Equal Remuneration Act (1976) provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions.
10. Dissolution of Muslim Marriages Act (1939) grants a Muslim wife the right to seek the dissolution of her marriage.
11. Muslim Women (Protection of Rights on Divorce) Act (1986) protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.
12. Family Courts Act (1984) provides for the establishment of Family Courts for speedy settlement of family disputes.
13. Indian Penal Code (1860) contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.
14. Code of Criminal Procedure (1973) has certain safeguards for women like obligation of a person to maintain his wife, arrest of woman by female police and so on.
15. Indian Christian Marriage Act (1872) contain provisions relating to marriage and divorce among the Christian community.
16. Legal Services Authorities Act (1987) provides for free legal services to Indian women.
17. Hindu Marriage Act (1955) introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian man and woman in respect of marriage and divorce.
18. Hindu Succession Act (1956) recognizes the right of women to inherit parental property equally with men.
19. Minimum Wages Act (1948) does not allow discrimination between male and female workers or different minimum wages for them.
20. Mines Act (1952) and Factories Act (1948) prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.
21. The following other legislation's also contain certain rights and safeguards for women:
    1. Employees' State Insurance Act (1948)
    2. Plantation Labour Act (1951)

3. Bonded Labour System (Abolition) Act (1976)
4. Legal Practitioners (Women) Act (1923)
5. Indian Succession Act (1925)
6. Indian Divorce Act (1869)
7. Parsi Marriage and Divorce Act (1936)
8. Special Marriage Act (1954)
9. Foreign Marriage Act (1969)
10. Indian Evidence Act (1872)
11. Hindu Adoptions and Maintenance Act (1956).

22. National Commission for Women Act (1990) provided for the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.
23. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal). Act (2013) provides protection to women from sexual harassment at all workplaces both in public and private sector, whether organized or unorganized.

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[5], etc..

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.

[5]Pragya Singh Dalit women fear and discrimination, central press, new Delhi, 1st edition 2014

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[6].

Violence against Women is a Violation of Human Rights

Violence against Women is a Violation of Human Rights and fundamental freedoms of women. Violence against women is an obstacle towards gender equality[7]. Women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms that include among others.violenc against women is rampant in all concerns of the world. Such violence is a human rights violation that manifests itself in a number of ways including:

Violence against women in custody

The imbalance of powers between inmates and guards is a result of prisoner's total dependency on correctional officers and guards ability to withhold privileges and is manifest in direct physical force and indirect abuses. Because incarcerated women are largely invisible to the public eye, little ids done when the punishment of imprisonment is compounded with that of rape, sexual assault, groping during body searches and shackling during child birth. Women are often coerced into providing sex for favors such as extra food or personal hygiene product, or to avoid punishment. There is little medical or psychological care available to inmates. Though crimes in prison such as rape are prevalent, few perpetrators of violence against female inmates are over held accountable. In 1997 for example were disciplined for sexual misconduct.

Acid burning and dowry deaths

[6]Mandakini das empowering women issues challenges dominant publisher 1st edition 2010 page 69

[7]Sanjeev Kumar, violence against women, Asian journal of multidisciplinary studies, volume 2 January 2014 page 154

Women's subjugation to men is pervasive in the political, civil, social, cultural and economic spheres of many countries. In such societies a woman who turns down a suitor or does not get along with her in-laws far too frequently becomes a victim of a violent form of revenge, acid burning. Acid is thrown in her face or in her body and can blind her in addition to often fatal third degree burns. Governments do little to prevent the sale of acid to the public or to punish those who use it to kill and maim. Similarly, the ongoing reality of dowry related violence is an example of what can happen when women are treated as property. Brides unable to pay high prices to marry are punished by violence and often death at the hands of their in laws or their own husband.

Honor killing

In some societies, women are often looked upon as representatives of the honor of the family. When women are suspected of extra- marital sexual relations, even if in the case of rape, they can be subjected to the cruelest forms of indignity and violence often by their own fathers or brothers. Women who are raped and are unable to provide explicit evidence are sometimes accused of zina or the crimes of unlawful sexual relations the punishment for which is often death by public stoning. Such laws serve a grate obstacle inhibiting women from pursuing cases against those who raped them. Assuming an accused woman's guilt male family members believe that they have no other means of undoing a perceived infringement of honor other than to kill the women[8].

Domestic violence

Violence against women is a global pandemic. Without exception, a women's greatest risk of violence is from someone she knows. Domestic violence is a violation of women's rights to physical integrity, to liberty, and all too often, to her right to life itself. When state fails to take the basic steps needed to protect women from domestic violence or allow these crimes to be committed with impunity, states are failing in their obligation to protect women from torture.

[8]Amnesty International (1999). "Pakistan: Honour Killings of Girls and Women" viewed on 5th Feb 2017 (http://www.amnesty.org/en/library).

Violence against women is a social (economy, health, welfare, and politics) problem and not a private problem of each individual woman or a family. Violence against women means any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women. It also includes threats with such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women includes, but it is not limited to violence occurring in the family, marital rape or rape in a relationship, other sexual abuse, sexual harassment at work, trafficking in women and girls with intention of sexual and other forms of exploitation, forced prostitution, abortion of female fetuses and infanticide of baby girls, traditional practices harmful to women such as genital mutilation, forced or too early marriage, widow burning, honour killing, acid attacks, stoning, war rape, and other[9]. Violence against women is a consequence of an established gender inequality within society and of existing structures of power in gender relations. It is rooted in cultural patterns, especially in harmful influences of particular traditional practices or customs, education systems, religious beliefs and media influences. Violence against women perpetuates gender inequality and stands as an obstacle to achievement of equality, development and peace. Violence against women restricts women in all areas of social life and their access to sources, services and activities.

Role of judiciary in regulating the gender violence against women

In our country Judiciary is known as the independent wing of government. This independent Judiciary has two roles: 1) the traditional role i.e. to interpret the laws and another is 2) Judicial activism i.e. to go beyond the statute and to exercise the discretionary power to provide justice. Our Indian judiciary can be regarded as a creative judiciary. Credibility of judicial process ultimately depends on the manner of doing administration of justice. Justice K. SubbaRao explains the function of the judiciary as thus:

- It is balancing wheel of the federation;
- It keeps equilibrium between fundamental rights and social justice; it forms all forms of authorities within the bounds;
- It controls the Administrative Tribunals

[9]Anil sachdeva s the protection of women from domestic violence Act 2nd edition 2008 page 118

Judiciary can promote social justice through its judgments. Another important role of judiciary is to make precedent for the public interest or welfare of the society. Law is powerless and requires a strong agency to maintain its existence. The level of implementation and the capability of the executor determine the fate of law. During the recent past, the term 'judicial activism' has assumed immense significance. It may be define as dynamic process of judicial outlook in a changing society.The legislations alone cannot make justice available to citizens in society. Seeking equality in an unequal society is a task demanding concerted action on the part of the individuals, the community, government and the judiciary on a continuing basis. This is what women as a class must realize in their struggle for equal justice in the democratic republic of India.

In **C. RavichandranIyer v. Justice A.M. Bhattacharjee,**[10] the court said that the role of the judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. The society demands active judicial roles which formerly were considered exceptional but now a routine.

In **S. P. Gupta v. President of India**[11] the court observed: The interpretation of every statutory provision must keep pace with changing concept's and values and it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirements of the fast changing society which is undergoing rapid social and economic transformation.

The court also went on to say that, "....law does not operate in a vacuum. It is therefore intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. It is here that the Judge is called upon to perform a creative function. He has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest, it with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivery of justice."

[10] 1995 SCC (5) 457
[11] AIR 1982 SC 149, 1981 Supra (1) SCC 87, 1982 2 SCR 365

Also, in **M.C. Mehta v. Union of India (Shriram - Oleum Gas case)**[12]the court said that with the development and fast changing society the law cannot remain static and that the law has to develop its own new principles. The above decision reflects that the courts do make law, they frame new principles; interpret the statutes and the constitution with the changing times.

In Laxmi v. Union of India[13]

On account of increase in number of acid attacks on women in the past few years, Supreme Court in order to curb these gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country.

thukaram v state of Maharashtra[14]

This case is popularly known as Mathura Rape Case. In this case, Mathura, an 18 year old Harijan girl was called to the police station on an abduction report filed by her brother at the police station – DesauiGanj in Maharashtra on 26th March, 1972. When they were about to leave the police station, Mathura was kept back at the police station in the late hours of the night by one of the constables, Ganpat, who was on duty. She was taken to a toilet and raped by Ganpat. Then another constable, Tukaram, molested and tried to rape her, but being too heavily drunk did not succeed. It was alleged that the two constables, while on duty, had bolted the doors of the police station from inside and plunged the place into darkness.

University of Kerala vs. Council, Principals', Colleges, Kerala and Ors[15]

It was in relation to ragging. After consideration of the reports, we direct that the Government in the States and the Union Territories and the University shall act in terms of the guidelines formulated by the Constituted Committee. The MCI, BCI in consultation with UGC shall frame the requisite regulations which shall be binding on the institutions. They shall be indicated to the students at the time of admission by appropriate provision in the prospectus issued for admission.

[12]AIR 1987 SC 965. 142. 23
[13] (2014) 4 SCC 1383
[14] AIR 1979 SC 185
[15] AIR 2010 SC 2532

The consequences which flow from not observing the guidelines shall also be indicated. Inquiries which are pending shall be completed and report shall be submitted before this Court.

In meenasharma v/s state of Madhya Pradesh[16]

In this case the apex court opined that question of harassment; cruelty is a matter of trial at the state providing before trial cannot be quashed under section 482 of IPC

Conclusion

The violence against women along with the larger women's rights movement, in which it is embedded, includes demands for changes in cultural practices surrounding marriage and women's unequal legal, educational, and social status. Such demands for cultural change have been resisted by many countries, particularly those with a religious basis to conceptions of marriage and family. As international declarations and platforms condemning violence against women as a human rights violation are disseminated, they confront important contradictions. Women's rights to protection from violence often conflict with communities' rights to self-determination. If the dominant cultural value in a community is an enduring marriage with extensive husbandly authority and control in the family, controlling violence against women means reshaping the institutions of marriage and family. International lawyers and activists must negotiate the contradiction between protecting rights to culture and protecting women from violence.

The meaning of gender and sexuality and the balance of power between women and men at all levels of society must be reviewed. Combating violence against women requires challenging the way that gender roles and power relations are articulated in society. In many countries women have a low status. They are considered as inferior and there is a strong belief that men are superior to them and even own them. Changing people's attitude and mentality towards women will take a long time -- at least a generation, many believe, and perhaps longer. Nevertheless, raising awareness of the issue of violence against women, and educating boys and men to view women as valuable partners in life, in the development of a society and in the attainment of peace are just as important as taking legal steps to protect women's human rights. It is also important in order to prevent violence that non-violent means be used to resolve conflict between

[16] AIR 2004 SC 3566

all members of society. Breaking the cycle of abuse will require concerted collaboration and action between governmental and non-governmental actors, including educators, health-care authorities, legislators, the judiciary and the mass media.