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GENDER VIOLENCE AND LEGAL **SAFEGUARDS**

By Author –
Bhavya chowdhary

INDEX

1	INTRODUCTION
2	FORMS & EXAMPLES
3	GENDER BASED VIOLENCE IN INDIA – LITERATURE VIEW
4	SCHEMES POLICIES & LAWS DEALING WITH GBV
5	LANDMARK JUDGEMENTS
6	CONCLUSION

INTRODUCTION

What Is Gender Based Violence?

Gender-based violence is a major factor contributing to gender inequality and remains one of the most pressing human rights issues in all societies. Gender-based violence is violence against an individual based on their gender identity. Both women and men can be victims of gender-based violence, but the majority of cases involve women and girls.

Violence against women and violence against men are often used interchangeably. However, it is important to note that many forms of violence against women are rooted in the inequalities between women and men. The use of "gender" highlights the fact that crimes against women are often disproportionately carried out by men.

There are various forms of gender-based violence:

- **Physical**: This type of GBV can cause injuries, depression, and health problems. The most common forms of physical violence are assault, strangulation, assault, and the use of weapons. According to the National Family and Health Survey in India, the lifetime prevalence of domestic violence among women aged 15-49 is 33.5% and 8.5% for sexual violence.
- **Sexual**: This form of GBV includes sexual activity, sexual business, human trafficking, or other sexual orientation without individual consent. According to the latest government data released on September 29, 2020, India reported an average of 87 rapes per day in 2019 and a total of 405,861 crimes against women during the year, an increase of 7 percent from 2018.
- **Psychological**: 43% of women worldwide experience some form of psychological violence from intimate partners, including domination, coercion, economic violence and blackmail. In India, 34.1% of women who experienced domestic violence reported psychological stress, 29.3% depression, 26.4% sleep disorders, 21.8% anxiety and 15.1% chronic headaches.

1EXAMPLES OF GENDER BASED VIOLENCE

Domestic violence includes all physical, sexual, psychological and economic difficulties that occur in the family, within the family or between couples. These can be former or current partners and not living together. 22% of women with a partner (existing) have been physically and/or sexually abused by their partner since the age of 15.

Sexual violence includes any unacceptable behavior, harassment or physical abuse that has the purpose or effect of violating a person's dignity. Between 45% and 55% of women in the EU have experienced sexual harassment since the age of 15. In 2020, between 25 March and 31 May, 1,477 complaints of domestic violence were reported by women in India. The 68-day Covid-19 lockdown has recorded more complaints than a decade ago between March and May. About 86% of women who experienced violence never sought help, and 77% of victims never reported the incident to anyone.

Female genital mutilation (FGM) is the removal or mutilation of the female genitalia (FGM), normal or otherwise. It distorts women's bodies and often affects their sexuality, mental health, well-being and their social status. It can even lead to death. More than 200 million women and girls in the world today have experienced sexual trauma. According to the World Health Organization (WHO), more than 200 million girls alive today have undergone FGM in more than 30 countries. A 2018 study on FGM in India found that the practice rose to 75 percent in the Bohra Muslim community. At least 500,000 women in England have undergone FGM.

Forced marriage refers to forced or coerced marriage - physical or family stress or emotional distress. Child or early marriage is very close to marriage where children are married before reaching the minimum age.

Cyberbullying is a term used to describe any form of illegal or dangerous behavior towards women in the online space. It can be linked to violence in real life or confined to the online environment. This may include illegal threats, harassment or incitement to violence, email or unsolicited, harassing or sexually explicit messages, unauthorized sharing of personal photos or videos, or inappropriate advances on social networking sites. One in ten women in the EU and India have experienced cyber-bullying.

¹ WWW.worldbank.in

GENDER BASED VIOLENCE IN INDIA

Literature

One in three women worldwide experience intimate partner violence or intimate partner violence in their lifetime. Intimate partner violence, female genital mutilation, early marriage and violence, including gender-based and gender-based violence, are major public health problems in the world, hinder women's empowerment and gender equality, and are obstacles to personal and community development. , at high economic costs.

Globally, seven percent of women experience non-partner sexual violence and 38 percent of female genital mutilation is committed by an intimate partner. In some countries, violence against women is estimated to cost up to 3.7 percent of GDP - twice the amount governments spend on education (World Bank, 2018).

The National Family Health Survey (NFHS-4) shows that 30 percent of Indian women aged 15-49 have experienced physical abuse since the age of 15. sexually assaulted at least once in your life. About 31 percent of married women have experienced physical, sexual, or emotional abuse from their partners.

Unfortunately, violence against women is on the rise in India. They are supported by the continuation of patriarchal gender and social norms. Evidence of violence against women is a manifestation of real inequality in institutions and institutions for many women in India. The average rape rate in India is about 6.3 per 100,000 people.

Key Government schemes, programs and measures to protect women's rights

India has ratified many international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Sexism. Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. At the national level, laws and policies have been introduced to prevent and combat violence against women. Although non-reporting of GBV is a major obstacle to eradicating social ills and achieving equality, the country has laws seeking help for women and other genders.

Several major changes to India's legal system, including the passage of stricter rape laws and the creation of fast-track courts to convict rape victims, have produced better results. In the past, the legalization of homosexual relations under Section 377 and the implementation of the HIV/AIDS Act have been important steps forward for the LGBTQIA community. Recent incidents of violence against women like the Kathua rape and the Unnao rape have led to changes in the law. At least four states - Rajasthan, Jammu and Kashmir, Haryana and Arunachal Pradesh - have imposed the death penalty for raping children under the age of 12.

²All Laws against Gender violence In India

- **Constitution of India - Part III (Sections 12 to 35) Fundamental rights**

The Constitution guarantees that all citizens of India (including women) have the basic right to live in peace and harmony, the right to equality, liberty, the right to freedom of religion, the right to freedom from oppression, the right to a cure for the state.

- **Constitution of India Part IV (Sections 36 - 51)**

Principles of Guidance

These principles are not enforced by the courts, but must be applied at the state level when laws are passed in hopes of creating a just society in the state. The statutory provisions laid down in these principles are related to social justice, economic justice, law and administration news and foreign policy.

- **The Right to Receive Constitutional Property below Section 300A**

As a basic right, the right to property is not recognized by the constitution as a result of the 44th amendment, but another constitutional provision, Article 300(A), was added to ensure that every person has a legal right to property that gives more power to. government.

² Program-Laws-and-Polices-in-India-relating-to-VAW-September-2018

- **Dowry Prohibition Act (1961)**-³An Act of Parliament in India is enacted to protect women from domestic violence, which has been described as including physical, emotional, verbal, sexual and economic abuse in the family and home. It is a public law specifically intended for protection orders and is not intended to penalize criminals.

- **Amendments to the Indian Penal Code, 1862 (1986)**-⁴Amendments to the Indian Penal Code (IPC), which came into force in 1862, cover almost all crimes committed in public. Some of the key sections and amendments that require special mention are:
 - **Article 304 B:** This section was inserted into the Indian Penal Code by an amendment in 1986 and provides for the death of a girl child - death, burning or bodily injury of a girl or otherwise resulting in imprisonment, except in the ordinary case of seven years of marriage, sentenced to life imprisonment for not less than seven years.
 - **Article 354:** This article covers indecent assault or assault on a woman as a felony charge and carries a maximum penalty of two years in prison or both.
 - **Article 366:** This article discusses the abduction or abduction of a woman for the purpose of forcing her to marry against her will, or forcing or seducing her into an illegal sexual relationship. Such behaviour can be punished up to ten years in prison and a fine.
 - **Article 366 A:** This section was introduced to protect young girls (under 18) from being sexually assaulted or harassed by others. Such behavior can be punished with imprisonment up to ten years and a fine
 - **Article 366 B:** Importation of a girl (under the age of 21) is likely to be taken from one country to another or forced or coerced into sexual relations with another person is punishable by up to ten years in prison and a fine

³ DOWRY PROHIBITION ACT 1961- LEGAL SERVICE

⁴ WWW.NCBI.GOV.IN

- **Article 376:** This section provides punishment for rape, which can be punished with a term of not less than seven years, life or a term that can extend up to ten years..

- **Section 498 A:** It was included in the Criminal Code in 1983 and refers to violence by a male or female relative and is punishable by up to 3 years in prison. Violence in this category is defined as an act that intentionally causes a woman to take her own life or cause serious injury to her health, bones or health, mind and body.

- **Section 509:** This section provides imprisonment for one year or a fine or both for uttering any word, making a sound or gesture or showing anything that insults the modesty of a woman. , Such gestures or things should be seen by such women or invade the privacy of such women.

- **Article 366:** This Article deals with kidnapping, kidnapping or seducing a woman into marriage

- **Indecent Representation of Women (Prohibition) Act (1986),** – An Act to prohibit **indecent representation of women** through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.

- **The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (1994), – Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994-** is an Act of the Parliament of India enacted to stop female foeticides and arrest the declining **sex** ratio in India. The act banned prenatal sex determination

- **Protection of Women from Domestic Violence Act (2005),-** An Act of Parliament has been passed in India to protect women from domestic violence, which is defined as physical, emotional, verbal, sexual and economic abuse in the family and home. Community law that focuses on protection orders and not criminal penalties.

- **Criminal Law (Amendment) Act (2013)**, - The amended law contains provisions that address violence against women and includes acid attacks, abortion, sexual assault and rape under the Indian Penal Code. It also raised the age of consent to 18, increased fines and penalties for criminal rape, added measures to prevent the government or government-run hospitals from providing free treatment to acid attack victims, and legal measures to detain government officials. refused to issue a first information report
- **Decriminalization of Gay Sex (Section 377-2018)**, - ⁵in 2018 in a historic judgement, supreme court of India decriminalized Section 377 of the Indian Penal Code was decriminalized, which made private homosexual relations legal
- **Information Technology Act, 2000** - A law that punishes certain crimes against women, including false information, hate speech, sending criminal threats through social media (e.g. email), privacy and the distribution of sexually explicit materials, including child sexual exploitation.
- **Prohibition of Child Marriage Act, 2006**- It outlaws child marriage and aims to protect children's rights and provide support services to victims.
- **Child Protection for Children, Criminal Law, 2012 (POCSO)** - It aims to protect children from sexual abuse, sexual harassment and pornography, and provides for the creation of a Special Court to deal with these crimes and other issues. This law is not gender biased. New, especially in response to a series of cases of child abuse An attack on an eight-year-old girl in Jammu and Kashmir has prompted India's cabinet to approve amendments to sex-related laws.

The death penalty for those accused of raping children under the age of 12 requires a trial to be completed within two months of arrest and an increase in the minimum prison sentence for rape convictions.

- **Immoral Traffic in Women and Girl Act, 1956 (as amended until 1986)** - This Act aims to reduce violence against women and children by preventing trafficking and sexual exploitation for commercial use.

⁵ The economic times of india

LANDMARK JUDGEMENTS

⁶CASES ON DOMESTIC VIOLENCE

1. Supreme Court: Mere vague allegation that respondents are family members will not be sufficient to maintain the complaint [Date - 01-11-2019]

A bench of Justice Banerjee and Justice Shah in the case titled as Kamlesh Devi vs Jaipal & Ors. dated 04.10.2019 has opined that mere vague allegation is not sufficient to bring the case within domestic violence act. The Supreme Court is in favour of high court order and hence dismissed the petition for special leave.

2. Supreme Court: Domestic Violence vs Section 125 CrPC: Both are independent proceedings [Date - 29-10-2019]

The Supreme Court of India has made significant observations, the magistrate indirectly granted maintenance at a rate of Rs. 2,000 per month to the respondent till the proceedings under section 125 crpc is not decided. The order is without jurisdiction and therefore wholly unjustified and unsustainable.

3. Calcutta High Court: Determination of compensation has to be rational and it should not be an outcome of guesses, High Court allowed wife Rs.1,00,000 as compensation [Date - 15-07-2019]

Justice Mitra has passed the order in the case titled as Smt. Haimanti Mal vs The State of West Bengal on 09.07.2019. Calcutta High Court has awarded Rs.1,00,000/- as compensation to the wife for mental agony suffered due to the conduct of the husband. But, in absence of any evidence or materials on record the grant of compensation cannot be justified. Section 22 of the Protection of Women from Domestic Violence Act, 2005 speaks about compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

⁶ www.casemine.com

CONCLUSION

Addressing gender-based violence (GBV) is not just a human rights goal: CEDAW states that those who ratify CEDAW have a legal obligation (called due diligence) to address GBV as much as possible. Addressing GBV has taken many forms to date, including: legal and criminal responsibility, cost and cost of GBV involvement, awareness raising, women's empowerment programs, community programs, and health-based interventions. Efforts have also been made to work with men and boys to change their attitudes towards women and gender equality. Although early research shows that including men and boys shows promising results, it remains a controversial issue among women's rights groups, who fear that it will take away women's resources.

Monitoring and improving GBV programs is essential to ensure responsiveness to targeted interventions and to continually learn from intended and unintended outcomes of interventions. Civil society organizations must play an active role in monitoring government performance and holding the state accountable if it deviates from the correct level of performance.

