



## GENDER BASED VIOLENCE AND INTERVENTIONS BY LAW IN INDIA: A CRITICAL APPRAISAL

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### Abstract

*Violence based on gender identity has been prevalent in the world since time times immemorial. Gender based violence are the result of existing asymmetrical relationship exists between men and women in the society from ancient times onwards. Depending upon the relationship and the situations, the gender based violence's takes many forms including domestic violence, sexual harassment at workplace, sexual and other violence's against women, etc. Every form of these violence's would amount to violation of fundamental human rights of women and is an obstacle which limits women's participation in various spheres in the society. Thus it can be seen that gender based violence is an impediment to achieve the solemn goal of empowerment of woman. Considering the need to prevent gender based violence several human rights instruments guarantees different types of protection to women at international level.*



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*In India the legislatures have enacted different legislations like Protection of Women from Domestic Violence Act 2005; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; etc. Along with these legislative efforts, the Indian judiciary has also through various decisions taken note of the issue of gender violence and has given several constructive ideas to deal with such violence's. Since effective control of gender based violence is a precondition for achieving the goal of empowerment of women, it is necessary to identify the gaps, challenges and vulnerabilities existing in these legislative and judicial interventions. Thus this paper seeks to examine scope of various interventions made by legislatures and judiciary to deal with gender based violations in India. This paper is a doctrinal research based on both primary and secondary sources of legal research. The paper identifies that to a large extent the framework created by legislative and judiciary to deal with gender violence is successful, however, there some gaps and vulnerabilities still exist. Hence, this paper will provide some pragmatic solutions to make the existing framework more effective.*

**Key words:** *Gender Based Violence; Empowerment; Legislations; Judicial Framework*

### Introduction

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women's participation in various spheres in the society. Thus it can be seen that gender based violence is an impediment to achieve the solemn goal of empowerment of woman. Considering the need to prevent gender based violence several human rights instruments guarantees different types of protection to women at international level.

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### **Gender Based Violence: Concept & Meaning**

Gender-based violence is a phenomenon which is prevalent in every society all over the world. These types of violence includes the violence's directed against an individual because of his/her gender. Both men and women are experiencing this type of violence, however, majority of victims are generally girls and women. Hence, the terms gender based violence and violence against women are being used interchangeably<sup>1</sup>. In the absence of a single accepted definition, there are several definitions to explain the meaning and content of gender based violence. The Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011 defines gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately<sup>2</sup>.

According to United Nations, violence against women means “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”<sup>3</sup>. The Declaration on the Elimination of Violence against Women, 1993 violence against women means, “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”.

The gender based violence can be any form of violence such as physical, sexual or psychological and which results in grave violations of human rights of women. Unlike many other types of violence's, the gender based violence can happen in both private and public spheres as the perpetrator can range from intimate partner, other family members, etc. to even a total stranger. There are many factors which contributes or encourages the commission of these types of violence such as the traditional, cultural and religious beliefs; illiteracy; poverty; use of drugs or drinks, etc. Among

<sup>2</sup>See, ‘What is gender-based violence?’, available at <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>, accessed on 27.01.2021.

<sup>3</sup>Adopted by Council of Europe

<sup>3</sup> [https://www.who.int/health-topics/violence-against-women#tab=tab\\_1](https://www.who.int/health-topics/violence-against-women#tab=tab_1), accessed on 27.01.2021.



the various factors the prominent reason for gender based violence or violence against women is the power imbalance between men and women that exists in the society. These types of violence's are perpetrated with a view to make the women feel inferior to men. Such type's violence's against women is not only a human rights issue but a health (both physical and mental), educational, economic, social and developmental issue also.

### **Gender Based Violence: An Impediment for Empowerment of Women**

The word 'Empowerment' literally means making someone powerful; facilitating the weak to attain strength to increase one's self-esteem; to help someone to be assertive/self-confident; to enable someone to confront injustice and oppression and to support someone to fight for her rights<sup>4</sup>. It is the process of enabling or authorizing individual to think, take action and control work in an autonomous way. Through empowerment one can gain control over one's destiny and the circumstances of ones lives. It includes control over resources - physical, human, intellectual and financial and over ideology- beliefs, values and attitudes. It is not merely a feel of greater extrinsic control, but also growth in intrinsic capacity, greater self-confidence and an internal transformation of one's consciousness that enables one to overcome external barriers to accessing resources or changing traditional ideology<sup>5</sup>.

The word 'women empowerment' essentially means that the women have the power or capacity to regulate their day-to-day lives in the social, political and economic terms -a power which enables them to move from the periphery to the centre stage<sup>6</sup>. It means strengthening them to confront family, community, caste, religion and traditional forces such as patriarchal forces and biases working within the family, society and government<sup>7</sup>. Moreover empowerment is a process where women, individually and collectively, become aware of how power relations operate in their lives. With this awareness they gain self-confidence and strength to challenge gender inequalities at the household, community, national, regional and international levels.

To lead a peaceful life is a basic human right and hence every individual including women is entitled to have a human right against violence. The gender based violence or violence against women causes injury to a women's sense of self-esteem and self-worth. Through the initiatives of women empowerment, society is trying to reinforce the necessary confidence among women to gain the capacity to regulate her own day to day life as her choice. It is estimated that, one in three women in the world will experience gender based violence and hence it can be considered as a global pandemic. Since, all types of violence against women has the potential to interferes with the self-esteem and self-worth of women, it will act as a hindrance to achieve the goal of empowerment of women. Therefore, to ensure empowerment of women, it is necessary to combat all types of gender based violence against women.

### **Interventions by Legislations**

In every society, laws can play a greater role in moulding the behaviour of individuals in a socially acceptable manner. Therefore, the laws will declare certain acts as prohibited and prescribes sanctions for any violation of such prohibitions. At international and regional level, various international human rights documents guarantees right against

<sup>4</sup> Hajira Kumar, Jaimon Varghese, *Womens Empowerment, Issues, Challenges, and Strategies: A Source Book*, Regency Publications, New Delhi, (2005), p.55.

<sup>5</sup> See for more, [http://shodhganga.inflibnet.ac.in/bitstream/10603/8562/9/09\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8562/9/09_chapter%204.pdf), visited on 11.01.2020.

<sup>6</sup> Dr. Dasarathi Bhuyan, "Empowerment of Indian Women: A Challenge of 21st Century", Orissa Review January – 2006, p.60.



violence and prohibits all forms of gender-based violence<sup>8</sup>. These international human rights instruments imposes a duty to State parties “to take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence”<sup>9</sup>. India is a party to most of these human rights instruments and hence has a responsibility to take all possible legislative measures to prevent gender based violations.

In India, the some of the gender based violations were declared as an offence from British era itself. The Indian Penal Code, 1860 makes the violent activities such as assault, rape, cruelty, etc. are as an offence and also prescribes punishments for the same. After the independence, the legislatures have reaffirmed the right against violence and have enacted several specific legislations. The Constitution of India, the supreme law of the land under Article 51A (e) casts a fundamental duty to every citizen of the country to “renounce practices derogatory to dignity of women”.

The legislations like Immoral Traffic in Women and Girl Act, 1956; Dowry Prohibition Act, 1961; Indecent Representation of Women (Prohibition) Act, 1986; The Commission of Sati (prevention) Act, 1987; The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994; Protection of Women from Domestic Violence Act, 2005; The Prohibition of Child Marriage Act, 2006; Protection of Children from Sexual Offences Act, 2012; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; etc. are the most important legislative interventions for the purpose of combating gender based violations in India.

An analysis of all these legislative framework shows that, the following are the major forms of gender based violations prohibited in India: Sex Selection and Female Foeticide<sup>10</sup>; Acid Attack<sup>11</sup>; Rape & its Aggravated Forms<sup>12</sup>; Attempt to commit rape<sup>13</sup>; Kidnapping and abduction for different purposes<sup>14</sup>, Dowry Death<sup>15</sup>, Abetment of Suicide<sup>16</sup>, Cruelty by husband or his relatives<sup>17</sup>; Outraging the modesty of women<sup>18</sup>; Sexual harassment<sup>19</sup>; Assault on women with intent to disrobe a woman<sup>20</sup>; Voyeurism<sup>21</sup>; Stalking<sup>22</sup>; Importation of girls up to 21 years of age<sup>23</sup>; Word, gesture or act intended

<sup>8</sup> UDHR, 1948; ICCPR, 1966; CEDAW, 1979; Declaration on the Elimination of Violence against Women, 1993; Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011; etc.

<sup>9</sup> Committee on the Elimination of Discrimination against Women supra note 5 para. 24(t).

<sup>10</sup> Section 312-316 of IPC; The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

<sup>11</sup> Sections 326A and 326B of IPC

<sup>12</sup> Sections 375, 376, 376A, 376B, 376C, 376D and 376E

<sup>13</sup> Section 376/511

<sup>14</sup> Sections 363–373

<sup>15</sup> Section 304B; Dowry Prohibition Act, 1961

<sup>16</sup> Section 306 of IPC

<sup>17</sup> Section 498A of IPC

<sup>18</sup> Section 354 of IPC

<sup>19</sup> Section 354A of IPC

<sup>20</sup> Section 354B of IPC

<sup>21</sup> Section 354C of IPC

<sup>22</sup> Section 354D of IPC

<sup>23</sup> Section 366B of IPC



to insult the modesty of a woman<sup>24</sup>; Women trafficking<sup>25</sup>; Obscenity<sup>26</sup>; Domestic Violence<sup>27</sup>; Indecent Representation of Women<sup>28</sup>; Sexual Harassment at Workplace<sup>29</sup>; Sexual Abuse of Minor Girls<sup>30</sup>, etc.

It can be seen that in India, all forms of gender based violence's are prohibited and prescribes punishment for its commission. In spite of these legislations and legal provisions, gender based violence is rampant in India. Thus it is argued that the existing legislative frameworks are not sufficient enough to deal with the issue of gender based violence. However, it is to be noted that, various legislations and legal provisions were adequate enough to cover all types of gender based violence. The problem lies with its implementation part. Gender based violence being a crime, it is the duty of the State to take adequate steps for registering cases and effectively conduct the prosecution case. Unfortunately, due to several reasons States are showing an indifferent attitude towards registering and prosecuting such crimes. Further, the societal attitude to compromise such crimes and preventing it from reporting to police and prosecuting will also adversely affect the effectiveness of the said legal framework.

### Interventions by Judiciary

The role of Indian judiciary for empowerment of women assumes great importance due to the fact that Indian society is male dominated and provisions for protection of women are being poorly implemented. In such a situation the judiciary has come forward to protect women by filling the gaps in the legislations and giving liberal interpretations for protecting the equal status and rights of the women. The full development of personality and fundamental freedom of women and their equal participation in political, social, economic and cultural life are important for national development, social and family stability and growth-culturally, socially and economically. All forms gender based violence are declared as violative of fundamental freedom and human rights. This attitude of judiciary has been reflected in a number of decisions given by it.

In *Vishaka v. State of Rajasthan*<sup>31</sup>, it was held that, "The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse". Further in *Court on Its Own Motion v. State of Punjab and Others*<sup>32</sup>, it was observed that, "Crimes committed against women can be termed as social crimes as they destroy the entire social fabric of the community. The growing menace of crimes committed against women in the nature of rape, eve-teasing, sexual harassment and in its other myriad forms require immediate and urgent action. In this regard, focus has to be first and foremost on prevention. The second stage would be in terms of identifying and nabbing the alleged perpetrators of such crime coupled with a time bound investigation process followed by speedy culmination of the trial".

<sup>24</sup> Section 509 of IPC

<sup>25</sup> Sections 370, 370A, 372 373 of IPC

<sup>26</sup> Sections 292, 293 & 294, Indian Penal Code, 1860; Section 67 of the Information Technology Act, 2000; indecent representation of women (prohibition) Act, 1987.

<sup>27</sup> Protection of women from Domestic Violence Act, 2005

<sup>28</sup> Indecent Representation of Women (Prohibition) Act, 1987

<sup>29</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

<sup>30</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>31</sup> (1997) 6 SCC 241

<sup>32</sup> Civil Writ Petition No.26229 of 2012 (Punjab & Haryana High Court)



Recently, in *Satish Chandra Ahuja v. Sneha Ahuja*<sup>33</sup>, the Hon'ble Supreme Court has observed that, “a woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable”. Thus it can be seen that, Indian judiciary is sensitive towards the issue of gender based violence and have given several guidelines and directions to combat the same. However, due to several reasons such as the high standard of proof required in criminal cases; Lack of proper medical evidence; corruption and manipulations by investigating officers; delay and victims go hostile; etc. would adequately affect the justice delivery by judiciary to the victims of gender based violence.

### **Conclusion**

Gender based violence is a pandemic which adversely affect empowerment of women. The legislative and judicial interventions in India for combating the gender based violence and thereby ensuring gender justice and promoting empowerment of women is an appreciable effort. However, in spite of all these the prevention of violence against women and empowerment of women remains a myth for many of Indian women. This is due to the inherent weaknesses in the enforcement of these laws and the justice delivery systems. Moreover, the inherent problems in the society such as poverty, illiteracy and unemployment as well as the age-old customary attitude of the society will also accelerate the violence against women. Hence any effort for combating gender based violence would be successful only if along with fine tuning the implementation of laws and justice delivery system, there should be a change in the traditional mind set of the society. To make women empowerment a reality, it is necessary to fill the gaps existing in the existing legislative frameworks and the shortcomings in the justice delivery system.

<sup>33</sup> Civil Appeal No.2483 of 2020 (SC)