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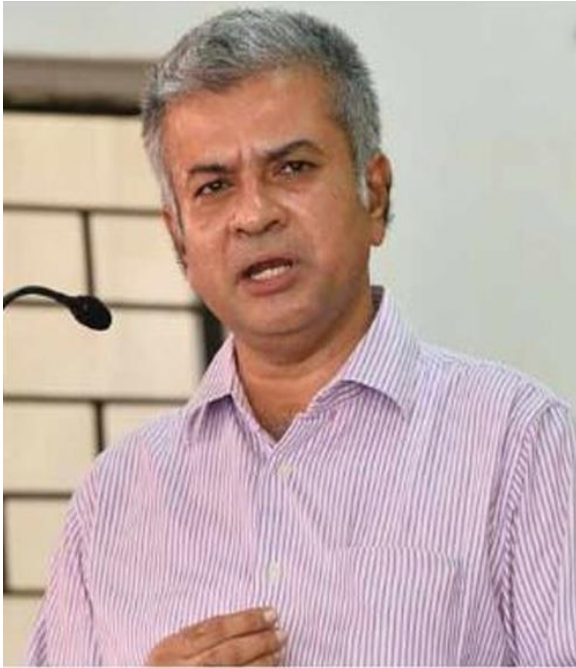
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GENDER-BASED VOILENCE IN INDIA: A DARK AND BITTER TRUTH

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ABTRACT

Perhaps one of the most pervasive and socially acceptable types of violence in the world today is gender-based violence, or GBV. In India, it is a pervasive and enduring issue that is closely related to patriarchy and the underlying notion that males should have the right and ability to abuse women. Gender-based violence is violence directed against a person because of their gender. Both women and men experience gender-based violence but the majority of victims are women and girls. Women are the targets of gender-based violence because of their gender. Power disparities are a module of gender-based violence, with males often acting as the offenders and women as the victims. In India, there is a high prevalence of gender-based violence, including physical and sexual assault, dowry-related violence, honour killings involving women, and sexual harassment on the streets, at work, and in relation to ICTs. It is a prevalent phenomenon in underdeveloped nations. Gender-based violence transcends personal, social, and cultural barriers, and its origins and effects constitute a violation of human rights. Many nations are making an effort to measure the scope of crimes related to gender-based violence as a result of various measures to address the issue. Violence against women requires Strategies coordinated among many sectors of society and the communities and national levels.

Key Words-Violence, Sexual Harassment, Gender-Based Violence, Discrimination, Women.

'Behind every man alive and kicking, there is a women, Behind every women abused and killed, there is a man'

Abhijit Naskar

INTRODUCTION

Gender Based Violence is one of the most pervasive and accepted types of cruelty directed towards people based on the gender that society has assigned them, while being an appalling violation of human right. Preventing violence against women has emerged as a significant global concern for criminal justice systems. The state bears major responsibility for addressing gender-based violence. Building a solid policy framework is essential to stopping GBV and providing a suitable response to the crime in question. When someone with greater authority takes advantage of and mistreats someone with less power, that conduct is called *violence*. The awful thing about violence is that it allows the powerful to build profitable relationships with the weak without expending any work on debate, persuasion, or negotiation.¹ Times have come, and times have gone, but the quandary of women is not likely to change. Women have endured decades of exploitation, violence, dehumanization, harassment, and discrimination while being helplessly observed. Women hold a significant and esteemed status in Indian society. Women were venerated as "Devi" or Goddesses in the Vedas, which extolled them as the mother, the creator, and the giver of life. However, the exaltation of them was somewhat legendary, since women in patriarchal India were also completely restrained and enslaved. Indian women through the countries remained dominated and oppressed because society believed in snug on to orthodox beliefs for the brunt of violence domestic as well as public, Physical, emotional and mental. Man, violence against women is global phenomenon. Violence against women can take many different forms, depending often on the particular socio-cultural context, but manifested nonetheless through a continuum of multiple and often inter-related factors. It's can vary from the most public and often inter related factors. It can vary from the most public and organised form of violence to the most private, in spaces of domestic and matrimonial relationship. Considered distinctly sacred. Domestic violence is the manifestation of this violence in the private space and takes the form of physical, sexual, mental/psychological and economic abuse². Historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement is the root cause of the global problem of violence against women³. Many reasons can be attributed to this growing violence against women. One of them is the lack of awareness among women about the laws made for their protection Secondly, because the offenders are typically their own relatives, neighbours,

¹DR. RASHMI MISHRA, VIOLENCE AGAINST WOMEN IN INDIA: A STUDY ON ODISHA, <https://ijcrt.org/>(visited on 25 February, 2024).

²INDIRA JAISING, LAW OF DOMESTIC VIOLENCE, Pg no. vii, Monica Sakhrani, (2007).

³ ANUPAMA GOEL, GENDER VIOLENCE IN INDIA AND THE LAWS: AN ANALYSIS, <http://www.researchgate.net>>(Last visited on 1 march, 2024).

or people they know well, women typically lack the bravery to register accusations against the accused and appear in court. Additionally, a lack of socioeconomic support keeps women from filing lawsuits. Domestic violence against women is still an issue despite several laws (either directly or indirectly connected to it). Legal remedies, including a specific statute on domestic abuse with severe penalties, were unable to address the victim's issue or stop the violence from happening again⁴. 'Gender violence' is a global subject, and more importantly during existing periods of pandemic, stress and anxiety. There is an urgent need to create and revolutionize effective results with full active participation of women therein. A new zero violence society is the urgent need of the hour.

DEFINATION OF GENDER BASED VIOLENCE

In 1993, the United Nation General Assembly adopted the Declaration the Elimination of Violence against women The Declaration 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'.

The United Nations 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."⁵

CAUSES OF GENDER VOILENCE

One of the most obvious manifestations of the uneven power relations between men and women is gender-based violence, including violence against women specifically, Gender inequality, and the norms and beliefs that violence against women and girls is acceptable, cause gender-based violence. There are also many factors that increase the risk of GBV, with women and girls living through crises experiencing an increase in both the frequency and severity of GBV. The National Crime Records Bureau's (NCRB) annual report reveals a harrowing surge in crimes against women in India. With a staggering 4,45,256 cases registered in 2022 alone, equivalent to nearly 51 FIRs every hour, the data exposes a grim escalation from 2021 and 2020.

There are many factors/causes related to gender violence that are:

⁴ RAHAT ZAMANI, DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA: A CASE STUDY, (2009) <https://core.ac.uk> (Last visited on 2 April, 2024).

⁵ WORLD HEALTH ORGANISATION, WOMEN AGAINST VIOLENCE (Last visited on 2 April, 2024)

1. Social/Political/Cultural factors

- Discriminatory social, cultural or religious laws, norms and practices that marginalize women and girls and fail to respect their rights.
- Gender stereotypes are often used to justify violence against women. Cultural norms often dictate that men are aggressive, controlling, and dominant, while women are docile, subservient, and rely on men as providers. These norms can foster a culture of outright abuse.
- Collapse of family, social and communal structures and disrupted roles within the family often expose women and girls to risk and limit coping mechanisms and avenues for protection and redress.

2. Judicial Barriers

- Lack of access to justice institutions and mechanisms, resulting in a culture of impunity for violence and abuse.
- Lack of adequate and affordable legal advice and representation.
- Lack of adequate victim/survivor and witness protection mechanisms.

3. Individual Barriers

- Threat or fear of stigma, isolation and social exclusion and exposure to further violence at the hands of the perpetrator, the community or the authorities, including arrest, detention, ill-treatment and punishment.
- Lack of information about human rights and on how and where to seek remedies.
- Gender violence is one of the biggest hurdles in women's advancement due to following factors:
 - It seriously affects all aspects of women's health- physical, sexual and reproductive, mental and behavioural health, thus preventing them from realizing their full potential.
 - Violence and threat of violence affects women's ability to participate actively, and as equals, in many forms of social and political relationships
 - Workplace harassment and domestic violence has an impact on women's participation in the workforce and their economic empowerment.

4. Economic Factors

The deficiency of economic resources usually makes women, but also LGBT+ people particularly defenceless to violence. It creates patterns of violence and poverty that become self-perpetuating, making it enormously difficult for the victims to disentangle themselves. When

unemployment and poverty affect men, this can also cause them to assert their masculinity through violent means.

SOME MAJORS FORMS OF GENDER BASED VIOLENCE IN INDIA

We will see some major forms of violence which are mostly facing by the women and girls in the society:

A. Sexual Offences: Rape, Molestation and Sexual harassment at the Workplace

Gender-based violence women have customarily been seen as the sources of virginity, chastity, modesty, and honour. Protecting the honour of the family and community has used as justification for the practice and validation of patriarchal control over women, even through sexual abuse. This idea has given rise to the sexual assault of women with the intention of humiliating and controlling them, as well as their families and communities. It has also provided justification for the restrictions placed on women's choices and freedoms, including clothing regulations. Rape and other forms of sexual violence are instruments of power used to uphold the status quo that Favors males over women in society. Though rape and other forms of sexual violence have been rampant and are on the increase, this issue gained international visibility with the brutal gang rape (Nirbhaya case) and murder of a young woman on a moving bus in December 2012, Kathua Gang rape and Unnao rape case a very famous case of Vishakha vs state of Rajasthan, and many more cases. Sexual violence and rape are tools by which power is exercised to maintain an unsatisfactory status quo in society that privileges men over women. This ideology creates the frameworks for the family, the community, and the state; when combined with communalism and casteism, it results in the subjugation of one community by another. It has to be made sure for the policies maker and the authorities whether the laws related to sexual offences are implementing properly or not. ⁶

B. Dowry Related Death and Harassment

Dowry is an all-Indian phenomenon. In 2019, India reported more than thousand dowry deaths. In lay person terms dowry can be understood as something which is given to son-in-law or to his parents on demand either in cash or in kind. “Any young man, who makes dowry a condition to marriage, discredits his education and his country and dishonours womanhood”, was rightly observed by **Mahatma Gandhi**. According to an alarming trend in India, 20 women are killed or forced to commit suicide every day as a result of harassment connected to dowries. The National Crime Records Bureau (NCRB) says that dowry deaths in India claim the lives of

⁶GENDER BASED VIOLENCE, <https://egyankosh.ac.in>. (Last visited on 13 April, 2024)

an average of one woman per hour, with a yearly total of up to 7000. Dowry was abolished in 1961 with the passing of Dowry Prohibition Act but still dowry continues to be a major concern for brides and their families⁷.

C. Trafficking

Trafficking is the term for illicit trade. The trading of human beings is known as human trafficking. Trafficking in human beings occurs for a variety of purposes, including forced marriage, forced labour, domestic servitude, organ or tissue extraction, and sexual slavery or commercial exploitation. In the globe, human trafficking ranks third in terms of organized crime, after drug trafficking and the weapons trade. The primary purpose of human trafficking, which affects women and children as victims, is sexual exploitation. There are many reasons why people traffic in people, but tragically, the Immoral Trafficking Prevention Act (ITPA), which solely targets trafficking when it is done for sex-related objectives, is the law that prohibits it in our nation. So the legal provisions relating to human trafficking as whole must be strengthened in order to prevent human trafficking in India⁸. In South Asia, India continues to be the primary destination for trafficking victims and survivors. According to India's trafficking trends, just 10% of trafficking occurs across international boundaries, with 90% of trafficking occurring domestically and those in the lowest castes and other socially and economically disadvantaged groups are particularly at risk. Thousands of women and girls are bought and sold, forced to live and work in exploitative, servile, or slave-like conditions, with little ability to negotiate, pressured, duped, drugged, abducted, defrauded, and attacked every year.⁹

D. Domestic Violence

Until recently there was no definition of domestic violence in Indian Law. This does not mean that acts of domestic violence were not punishable in India. Indian law recognised and punished the acts of “cruelty” under criminal law and cruelty was a ground for divorce under all the personal laws and the Special Marriage Act. Domestic violence is often understood to constitute such “cruel” conduct towards the women.

Definition of domestic violence under the protection of women from Domestic Violence Act, 2005 of Section 3 provides, Domestic Violence means an act, omission or commission or any conduct

⁷ SURBHI CHAUDHARY, DOWRY AND DOWRY DEATH ,timeofindia.indiatimes.com. (Last Visited on 10 April, 2024).

⁸ JANANI G.S. DR.S PANDIARAJ, HUMAN TRAFFICKING IN INDIA, <https://acadpubl.eu/hub/>. (Last Vlisted on 16 April, 2024).

⁹ Ibid.

of the respondent which: harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes physical abuse, verbal and emotional abuse and economic abuse etc¹⁰.

A relationship between two people who have shared a home at some point and are related by blood, marriage, adoption, a marriage-like relationship (including a live-in relationship), or blood relations is also referred to as a "domestic relationship." As a result, this Act protects all women who are or have been the victims of violent acts, whether they be mothers, sisters, wives, widows, or partners living in a shared home under any type of relationship, including marriage, adoption, or live-in.

The Constitutional Provisions against Gender-Based Violence

The Constitutional framers had included several provisions in it in the form of Directive Principles, Fundamental Duties, the Preamble, and Fundamental Rights in the fundamental law of our land in order to prevent gender-based violence. Here they not just included those provisions in the Constitution but they included to authorize the centre and states to take appropriate measures to avoid this type of violence.

Let's now talk about some of the laws that the Indian Constitution has to stop violence against women. The clauses of the Constitution are as follows:

Article 14:

This article authorizes the State to accept every person equally. "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 15(1):

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Here the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(3):

This article of the Constitution states: "Nothing in this article shall prevent the State from making any special provision for women and children." Based on this provision, the central legislatures have enacted the child Sexual Harassment Act, the Domestic Violence Act, Workplace Harassment Law, and the Hindu Succession Act and also made amendments to criminal law recently (Nirbhaya case).

Article 39(d):

¹⁰ INDIRA JAISING, LAW OF DOMESTIC VIOLENCE, Pg no. 3, MONICA SAKHRANI (2007).

Declares that no one shall mistreat or manipulate the health and strength of employees, regardless of gender. Furthermore, entering a profession that is inappropriate for a certain age or strength should not be motivated by financial need or circumstance.

Article 39(A):

According to Article 39A of the Indian constitution the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid.

Article 42 - Provision for just and humane conditions of work and maternity relief.¹¹

Legislation Against Gender Based Violence

Many laws have been passed in India to combat domestic abuse and give survivors legal protection. Important laws pertaining to domestic abuse include:

- *The 2005 Protection of Women from Domestic Abuse Act:* One important piece of law that aims to prevent and remedy domestic violence against women is the PWDVA. It includes verbal, physical, sexual, emotional, and financial abuse in its broad definition of domestic violence. The Act enables survivors to receive financial assistance, residency orders, and protection orders. Additionally, it creates protection agents and courts with specific jurisdiction over domestic abuse cases.
- *Bhartiya Nyaya Sahita (Indian Penal Code):* The old IPC /Bhartiya Nyaya Sahita the new code with 2013 and 2018 amendments contains several sections dealing with offenses related to domestic violence, such as cruelty by husband or relatives (Section 498A), dowry death (Section 304B), and outraging the modesty of a woman (Section 354) Trafficking offences, through electronic media cyber offences provisions are prescribe criminal penalties and also for offenses such as assault, harassment, cruelty, and sexual violence etc.The 2013 Act on the Prevention, Prohibition, and Redressal of Sexual Harassment of Women at Work: This Act requires internal complaints committees to be established in order to handle sexual harassment allegations at work. It offers survivors a

¹¹ MANU, A STUDY ON GENDER BASED VIOLENCE IN INDIA, <https://www.legalserviceindia.com>>(Visited on 30 March 2024).

secure and encouraging channel for reporting harassment events and pursuing compensation¹².

CONCLUSION

Gender violence is a global issue that has been made worse by the current epidemic, stress, and worry. Deeply ingrained inequality is the primary source of structural violence, especially among women who are socialized to give others control over them and frequently tolerate its abuse. The National Commission for Women has received twice as many complaints about domestic abuse in the previous six months. Abuse against women and girls is a human rights violation that is made worse by COVID-19. The Ministry of Women and Child Development established special cells for women and children, held webinars, ran campaigns, and implemented other quick response mechanisms to support victims of domestic abuse during the lockdown. Despite these efforts, the country's intolerance for domestic abuse has been quite apparent and has not produced encouraging results. It is necessary to change the violence power play by methodically building a support system, raising awareness and intervening at the social level, and sensitizing the administration and key players.

¹² NATIONAL COMMISSION FOR WOMEN, LAW RELATED TO WOMEN, <http://ncw.nic.in>. (Last Visited on 10 April, 2024).