



HUMAN RIGHTS AND VIOLENCE AGAINST WOMEN

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Abstract

Violence against women is a gender issue and subject to human rights violations. Human rights are essential for the individual to be a human being and to lead a decent and dignified life. Women are deprived from their basic human rights and treated as a commodity. Violence against women is manifestation of 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 the full advancement of women. She has been abused at the time of birth and; and no one wants a girl child. As she grows up, she becomes victim of violence both at home and at work place. Their life becomes a cycle of abuse manifested in many forms. In spite of the plethora of protective laws, crime against women is touching dizzying heights. There is need to take stringent steps in collective manner in order to protect human rights of women and prevent violence against women.

Keywords: *Human Rights, The Universal Declaration of Human Rights, Gender-Based Violence, Female Foeticide, Honour Killing, Laws.*

Introduction

The entire gamut of human rights has been included in the Universal Declaration of Human Rights (UDHR) by United Nations in 1948. UDHR envisages equal rights for everyone regardless to one's sex, origin, ethnicity, class, colour, religion or political opinion. Article 1 of the UDHR states that, "All human beings are born free and equal in dignity and rights." Thereafter in order to make them more specific, two conventions one on civil and political rights and the other on economic, social and cultural rights was passed by the UN in 1966. These rights constitute 'Second-Generation Human Rights' because they were recognised later than civil and political rights. The government must undertake gradually strive for their full realisation, using all resources at their command.

After the independence, Indian constitution bears the impact of the UDHR by which affirms the dignity and rights of all human beings. As a matter of fact, India was a party to the Universal Declaration of Human Rights and that declaration describes some fundamental rights as inalienable.¹ These rights are, therefore, enshrined in the constitution of the countries.

Human rights

The Universal Declaration of Human Rights does not define the term 'human rights'. It refers to them as '*the equal and inalienable rights of the all members of the human family.*'ⁱⁱ

Human rights are the rights that human being must enjoy to be human. In general terms, Human Rights are those rights which are inherent in every human being by virtue of being a member of the human family. They are based on the concept that every man and women, irrespective of caste, creed, colour, race or nationality is born with certain fundamental rights. These are nothing but what had been traditionally known as natural rights.ⁱⁱⁱ Human Rights are based on mankind's increasing demand for decent civilized life in which inherent dignity of human beings is well respected and protected.^{iv} Human Rights are fundamental to our very existence without which we cannot live as human beings. They occur and flow naturally which means that they can neither be earned nor denied on the basis of race, colour, ethnicity, gender or any other consideration.^v They are protected by rule of law. The conduct of the democratic government, its armed forces and law enforcing agencies, must comply with and conform to these standards.

Threats to human rights are always from the fellow human beings. It is human being who stops the fellow human beings to realise what called inherent human rights.^{vi} The problem of human rights is that people and countries have a different understanding of the term and its protection. In some countries political and civil rights are not given or guaranteed to all its citizens. In some other countries, economic and social rights are not enforced. Today, violation of human rights is seriously taken note by the international bodies and by the champions of democracy. It is in this background that most countries have set up their own independent National Human Rights Commission. The basic idea behind stressing human rights is that all governments should try to maintain these fundamental rights and see that all types of discrimination in this respect are rooted out.

United Nations Convention on the Elimination of All Forms of Discriminations against Women was adopted in 1979 by the UN General Assembly. The Convention may be described as the Magna Carta of women's human rights as it



essentially constitutes the international Bill of rights for women. The preamble of this Convention declares that discrimination against women violates the principle of equality of rights and respect for human dignity and as result it hampers the growth of prosperity and the family. State parties are required by the Conventions to eliminate discrimination in the exercise and enjoyment of all civil, political, economic, social and cultural rights.

Provisions Human Rights of women in the Indian Constitution

The principal of gender equality is enshrined in the constitution of India. Almost all the provisions contained in the United Nations Conventions on the Elimination of All Forms of Discriminations against women are there in the Fundamental Rights Part III of the constitution of India. Article 15(1) specifically prohibit discrimination on the basis of sex and there is special provision for 'positive discrimination' in favour of women which is clearly manifested in Article 15(3) of constitution of India. Several other articles underline the basic equality between men and women. Article 14 provides all Indian women equality before law. Article 16 of the constitution mentions the equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex. Article 23 of the Indian constitution guarantees right against exploitation, prohibit traffic in human being and forced labour and make their practice punishable under law.^{vii} So, women enjoy all fundamental rights without any discrimination, if these rights are violated by others, she can go to courts for their implementation.

The directive principles of state policy mentioned in Part IV of the Constitution direct the state to protect women human rights including right to equal pay for equal works, the right to health and work in hygienic condition, right to maternity benefit etc. Article 38(a) states that the state shall direct its policy towards securing equally to men and women the right to adequate means of livelihood and Article 39(a) state that the state shall direct its policy towards securing equally to men and women the right to an adequate liveihood and 39 (b) enjoins state to direct its policies towards securing equal pay for equal work for both men and women. Article 42 provides for securing just and humane conditions of work and for maternity relief and Article 51(e) renounces practices derogatory to the dignity of women. These principles are not justiciable but the Supreme Court of India, through its judicial activism can issue direction to the state for their implementation. Under Article 51-A a fundamental duty is to renounce practices derogatory to the dignity of women.^{viii}

The Constitution not only grants equality to women but also empowers the States to adopt measure of positive discrimination in favour of women. All professions are open equally to both of them with merit as the only criterion of selection. Indian women have distinguished themselves in various spheres of life as politicians, orators, lawyers, doctors, administrators and diplomats. They are not to only entrust with work of responsibility but also they perform their duties very honestly and sincerely. There is hardly any sphere of life in which Indian women have not taken part and shown their worth. Women exercise their right to vote, contest for parliament and assembly, seek appointment in public office and compete in other spheres of life with men. This shows women in India enjoy today more liberty and equality with men in shaping their future and choosing responsibilities for themselves their family and their country.

By considering the above said provision of the Indian constitution, Indian Parliament legislated many acts like the immoral Traffic (Prevention) Act, 1956, the Maternity Benefit Act, 1961, the Dowry Prohibition Act, 1961, the Equal Remuneration Act, 1976, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Sexual Offences Act 2003, Domestic Violence Act 2005, Criminal Law Amendment Act 2013 etc. These laws aim to safeguard the rights and interests of women. Besides these provisions, gender based discrimination still exists in Indian society and implementation of these provisions has not been satisfactory. The greatest protection of human rights grounded in the rule of law and the independence of judiciary. The founding fathers of the Indian Constitution have laid down for the judiciary as a mechanism for the protection of rights and liberties of the people. The independence of Indian Judiciary has played a valiant role in the protection and promotion of human rights.^{ix} Right to life is secured by the Indian constitution by the judicial protection of Habeas Corpus Article 32 and 226. For example the Supreme Court in its interpretation has expanded Article 21 scope to cover a range of rights relating to health, education, clean environment, speedy trial, privacy etc. necessary for leading a life with dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter.^x The judges of Supreme Court have said in many instances that the right to development is one of the most important basic human rights and it constitutes the culminating point of the evolution of the concept of human rights. Another institution which may help in the promotion of human rights is the press.

Violence against women

Living free from violence is a human right, yet millions of women and girls suffer disproportionately from violence at the hands of the state, in the home and in the community. Gender-based violence (GBV) stems from the failure of state, societies and individual to recognise the human rights of women.



Gender-based violence is violence that is directed against a person on the basis of gender. It constitutes a breach of human rights like right to life, liberty, security and dignity, equality between women and men, non-discrimination and physical and mental integrity. Gender based violence reflect and reinforces inequalities between men and women.^{xi} The Council of Europe defines crime against women as 'all acts of gender based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.'^{xii} Gender based violence includes: domestic violence, sexual harassment, rape, sexual violence during conflict and harmful customary or traditional practices such as female genital mutilation, forced marriages and honour crimes; trafficking in women, forced prostitution and violations of human rights in armed conflict; forced sterilisation, forced abortion, coercive use of contraceptives, female infanticide and prenatal sex selection is further compounded by discrimination on ground of race, ethnicity, sexual identity, social status, class and age.^{xiii}

Violence against women is manifestation of 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 the full advancement of women. She has been abused at the time of birth and; and no one wants a girl child. As she grows up, she becomes a victim of crime both at home and at work place. Their life becomes a cycle of abuse manifested in many forms i.e. child marriage, eve teasing, female foeticide, dowry abuse, forced pregnancies, honour killing, domestic violence, rapes, sexual assault, trafficking, acid throwing, wife beating, verbal abuse so on and on. The family is often equated with sanctuary, but evidence shows that family is a place that imperils lives and some of the most drastic forms of crime perpetrated against women.

Gender-based violence against women is becoming most serious social problem in India which need to be addressed immediately. It is increasing day by day. Despite the efforts and steps have been taken by governments to tackle and stop it, unfortunately the problem is still rising. In Delhi alone, a 15 per cent rise in crime against women was observed as against 2013.^{xiv}

The Delhi Uber taxi rape case once again after Nirbhaya and Shakti Mill case made realise the vulnerability of women in India. In Shakti Mill gangrape case, where a 22 years old photo-journalist was raped, resulted in a Mumbai Session court convicting all five adult accused; awarding death penalty to three and life imprisonment to the other two. Death penalty for rape is not working as a deterrent and minors accused of rape in both Nirbhaya and Shakti Mill case continued to challenge the legal system of India. The hanging of two teen aged girls in UP triggered protests across India. The image nagged and haunted the conscience of the nation for months till the CBI silenced it. The CBI concluded absolving the tangled web of caste, class, patriarchy and political muscles that breeds against women.

A series of studies by the World Health Organisation show that between 100 and 140 million women are victims of genital mutilation and around 70 million girls are married before the age of 18, often against their will. And 7 per cent of women risk being raped in their life times.^{xv} According to a study by the United Nations World Population Fund and the Washington based International Centre for Research on Women, six out of ten Indian men admit to domestic violence.^{xvi} Many women not only tend to condone the despicable acts of their husband but also go to ridiculous extents to hide it. Not surprisingly, fewer women report the crime as compared to men.

Various forms of violence committed against women are :

Domestic Violence

Domestic violence in India is endemic. It is one of the most common forms of crime against women that is performed by a husband or his relative. Domestic violence is frequently invisible since it happens behind closed doors and cultural norms do not treat as a crime, but rather a private family matter. Domestic violence has been largely hidden and widely denied by the communities for fear that a reporting of these incidents will effect the dignity and integrity of the family.^{xvii}

Domestic violence is not a trivial domestic issue but a serious crime which can have disastrous consequences. While in extreme cases physical violence can lead to murder, verbal and emotional abuse which has many psychological and damaging ramifications.^{xviii}

The Protection of Women from Domestic Violence Act, 2005 Section 3 defines domestic violence as an act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-(a) harm or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes



causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harm, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her to meet any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.^{xix}

A report published by World Economic Forum (WEF) titled “10 worst Countries for women in the World” added that around 70 per cent women in India are victim of domestic violence. Every five minutes an incident of domestic violence is reported in India. National Crime Records Bureau reveal that a crime against a women is committed every three minutes, a woman is raped every 29 minutes, a dowry death occurs every 77 minutes, and one case of cruelty committed by either the husband or relative of the husband occur every 9 minutes.^{xx} This all occurs despite the fact that women in India are legally protected from domestic abuse under the Protection of Women from Domestic Violence Act.

According to the UN Children’s Fund (UNICEF) report titled “Hidden in Plain Sight” 77per cent Indian girls aged 15 to 19 in India have been subjected to sexual violence by their partners.^{xxi} No doubt sexual crimes are not specific to India alone. But the shameless manner in which crime continue to be committed and the impunity with which the culprits invariably get away finds few parallels. It’s is not as if India is sitting tight and has not taken any initiatives. In the wake of the barbaric 2012 gang-rape in Delhi, the Justice Verma Committee made recommendations for a stringent rape law and Parliament passed the Criminal Law Amendment Act, 2013, which also brought acid attacks, stalking and voyeurism under its purview.^{xxii} But all who believed that tougher laws would help check the rising graph of sexual crimes stand dismayed. While efforts must be initiated to make more women aware of the far-reaching provisions of the Protection of Women from Domestic Violence Act 2005.

Dowry system

Dowry system is also considered one of the main categories of violence against women. Dowry system is responsible to a great extent for the neglect of daughters, sex selective abortion, female infanticide, child marriage, bride burning, harssement and abuse etc. The Dowry Prohibition Act 1961^{xxiii} declare giving and taking dowry a crime.

Dowry Prohibition Act 1961 was amended in 1984 and 1986. A new Section 498A was inserted in the IPC by which cruelty on women was made a substantive offence. Under this section harassment of the women with the view of extracting dowry also amounts to the cruelty which includes both the physical as well as mental cruelty. Under Section 304B if a woman dies within seven years of her marriage in unnatural circumstances it will be presumed as dowry death committed by husband and relatives. But the extraction of dowry from the bride’s family prior to marriage still occurs. This abuse can escalate to the point where the husband or his family burn the bride.

Female foeticide

Today, girl child is denied the right to born. It is matter of great concern that gender based sex selectionis continuing in many parts of India. This is violations of human rights and of the right to life guaranteed in the Indian Constitution.

Female foeticideis the act of aborting a foetus because it is female. A female foetus is terminated or if a girl is born she is discarded, abandoned and even killed. It has been prohibited by law since 1961. Female foeticide continued to occur due to several loopholes in the law. Due to increasing number of female foeticide the Pre-Natal Diagnostic Techniques Act was enacted in 1994 which was later amended in 2002. The act was enacted with the objective of prohibition of sex selection before or after the conception and also to regulate the pre-natal diagnostic technique. The practice of female foeticide has led to sex imbalance in Indian society.

Prime Minister Narendra Modi on 22nd January, 2015 launched “Beti Bachao-Beti Padhao” Scheme at Panipat Haryana with a clarion call to the society to value girlchild. The PM called it a mental illness that leads to the killing of unborn daughters. One of the objectives of scheme is to prevent gender biased sex selective elimination. The initial focus of the new campaign is on 100 worst sex ratio districts of the country.

Rape

Rape is the most heinous crime committed against women by men. Rape is the crudest and sure mode of destroying a women honour and dignity. Rape is defined as sexual intercourse with a woman against her will or without her consent. It may involve physical force, the threat of force, or it may be done against someone who is unable to give consent. The word



rape is legally defined u/s 375 of Indian Penal Code of 1860. The rape law under IPC had gone through a lot of amendments.

In 1983 an amendment was made and Section 376(2) i.e. Custodial rape Section 376 (A) i.e. marital rape and Section 376 (B to D) i.e. Sexual Intercourse not amounting to rape were added/s 228A of Indian Penal Code, no person can disclose the name of the rape victim and if anybody discloses the name, he shall be punished with either description for a term which may extend to two years and shall be liable for fine. Under Section 327(2) of Code of Criminal Procedure, there should be in camera trial for all rape victims.^{xxiv}

In the new rape law, The criminal law (Amendment) Act, 2013 important Sections dealing with acid attacks, stalking,^{xxv} voyeurism^{xxvi} and trafficking have been included as sexual offences against women.^{xxvii} These amendments have been done to prevent this heinous crime from the Indian society. In spite of laws cases of rape are still daily occurrence.

In Indian society females in a family have always been considered as the honour of the family. When women goes against the family especially when she marries or elope with the partner belonging to different caste or community, the member of the family or the community kill them for the sake of defending their honour.

Eve-teasing

In India eve-teasing is the most common form of sexual harassment.^{xxviii} It refers to sexual harassment of women in public places such as streets, public, transportation, park and places of social meetings. In the Indian society women has become victims to eve-teasing irrespective of caste, race or creed, age, education, professional and marital status. About 40 to 60 per cent women becomes victims of eve-teasing, yet the conviction rate is just 5 per cent in such cases.^{xxix} Previously, three Sections 509, 294 and 354 of Indian Penal Code deals with crime related to eve-teasing. The criminal law (Amendment) Act, 2013 provided for amendment of the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. This Act has recognised certain acts like acid attack, stalking, voyeurism and trafficking as offences.

Both society and law have to work in tandem to ensure that women get due regard and position within the social structure in which home is starting point.^{xxx} Several cases involving crime against women proved that law alone can't bring about change till the society harmonise the women's space. Charlotte Watts, Professor at the London School of Hygiene and Tropical Medicine rightly observed, "No magic wand will eliminate crime against women. Changes in the attitudes and behaviour are possible and can be achieved within less than a generation."^{xxxi}

Concluding observations

Despite the efforts and various steps that have been taken by the Centre and State governments to tackle and stop gender based violence against women, unfortunately the crimes are still maintaining their upward trend. Following are some suggestions to curb violence against women's from Indian society.

To curb it, Indian society needs to be improved economically and socially. Restructuring so as to develop a society where both men and women are equal. So, unless social definition are changed and women are allowed to have egalitarian way of life, crime against women is likely to persist. Several cases involving violence against women proved that rights and laws can't bring about change till the society harmonise the women's space. As state has failed to offer a physically safe environment, the need of the hour is to deconstruct the old beliefs and shift the community norms to respect women's physical integrity and right to live freely. Strict action against the accused can be the only real justice to the victims. Serious implementation of the existing laws, review of the present laws are also required to curb violence against women. There is need to change the mindset of the people on such issues. The Judicial process should be such that justice was meted out to the victim within a stipulated period. The government should act to make the police gender sensitive, so that victim can approach it fearlessly.

Elimination of violence against women and protections of human rights of women requires a comprehensive, sustained and coordinated effort. So, Individuals, families, organisations, educational institutions and governments have to join hands to stop violence against women and to protect human rights of women.



Notes and References

- I. Shiv Kumar Dogra (2007), *Human Rights and the India Constitution*, in Suresh Kumar Soni (ed.) *Human Rights: Concept-Issues-Emerging Problems*, Regal Publications, New Delhi.
- II. N. C. Jain (2005), "Protecting Human Rights," *The Tribune*, Chandigarh, 10 December.
- III. Suresh Kumar Soni (ed.), (2007), *Human Rights: Concept-Issues-Emerging Problems*, Regal Publications, New Delhi.
- IV. T. R. Sharma, (2007), "Women and Human Rights," in Suresh Kumar Soni (ed.), *Human Rights: Concept-Issues-Emerging Problems*, Regal Publications, New Delhi.
- V. N. C. Jain (2005), "Protecting Human Rights," *The Tribune*, Chandigarh, 10 December.
- VI. Ronki Ram, Department of Political Science, Panjab University Chandigarh, stated in his keynote Address at UGC sponsored National Seminar held at DAV College, Abhoar on 20 January, 2011.
- VII. Basu, D.D (1992) *Introduction to the Constitution of India*, New Delhi, Prentice Hall of India, Pvt. Limited.
- VIII. *Ibid.*
- IX. Maya Chada, "Human Rights and Democracy in India's Emerging Role in Asia" accessed on 1, January, 2014.
- X. Conference of NHRIs of South Asian Countries on, "Human Rights Awareness and National Capacity Building" New Delhi. 16-18 April, 2009.
- XI. <http://eige.europa.eu/content/what-is-gender-based-violence>, accessed on 15 April, 2015.
- XII. *Ibid.*
- XIII. *Ibid.*
- XIV. [www.ncrb.gov.in/cd/c112013/chapter 5 Crime% -against% women.pdf](http://www.ncrb.gov.in/cd/c112013/chapter%205%20Crime%20-%20against%20women.pdf).
- XV. A Series of Studies by the World Health Organisation authored by Claudia Garcia Moreno, published on 21 November, 2014 in Geneva. A report published in *The Tribune*, 22 November 2014.
- XVI. *Ibid.*
- XVII. Nazmul Hussain Laskar, (2013), "Domestic Violence in India" *South Asia Politics*, August, p.42.
- XVIII. *The Tribune* (2014), "Wife-beating quite Common" (editorial) 17 November.
- XIX. <http://India.gov.in/protection-women-domestic-violence-act-2005>.
- XX. <http://www.msn.com/en/10worstcountries-for-women/ss>.
- XXI. www.unicef.org/emerge/files/women_insecure_world.pdf, 5 September, 2014.
- XXII. *The Tribune* (2014), "Rising Sexual Crimes" (editorial), 10 September.
- XXIII. [http://wcd.nic.in/dowryprohibition act.htm](http://wcd.nic.in/dowryprohibition%20act.htm).
- XXIV. T.V. Rajeswar, (2013), "Atrocities against women: A serious threat to society in India" *The Tribune* 18 January.
- XXV. Section 354D is about the stalking. It provides that (1) Any man who-(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or (ii) monitors the use by woman of the internet, email or any other form of electronic communication commit the offence of stalking.
- XXVI. Section 354C is about Voyeurism which provides that Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectations not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminate such image shall be punished on first conviction with imprisonment of either description or a term which shall not be less than one year, but which may extend to three years, but which may extend to seven years and shall also be liable to fine.
- XXVII. Reicha Tanwar (2014), "Not draconian but much-needed law" *The Tribune*, 14 March..
- XXVIII. Section 354A is about Sexual harassment which provides that a man committing any of the following acts- physical contact and advances, a demand or request for sexual favours, making sexual coloured remarks, showing pornography and any other welcome physical, verbal, non verbal conduct of a sexual nature. The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, included within its ambit domestic workers and agriculture labour from the organized and unorganized sectors. Now, a humiliating treatment of women will tantamount to sexual harassment.
- XXIX. *The Tribune* (2014), "Sexual harassment" (editorial), 25 November.
- XXX. *The Tribune* (2014), "Wife-beating quite Common" (editorial) 17 November.
- XXXI. A Series of Studies by the World Health Organisation authored by Claudia Garcia Moreno, *op.cit.*