

MAPPING GENDER BASED VIOLENCE FROM THE LENS OF HUMAN RIGHTS FRAMEWORK IN INDIA

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Abstract

The gender based violence is not something new in the history of civilization. There has been violence in every part of the history of mankind. With the origin and growth of mankind, violence in one form or the other existed. The term gender based violence implies violence which is targeted at women. The violence against women stems from their weak and subordinate position in the society. The difference is also because of the power inequality between men and women. The society though conceives of equality but still the women are discriminated. The violence against women is a globalized problem and is recognized as a human rights violation. The women are easy targets of gender based violence because the women have always been exploited. The history is full of the cases where the human rights of the human beings have always been hailed as the basic rights of the human beings. But as far the women are concerned they have always shown the backseat whenever there is violation of women's rights. After the drastic effects of second world war that the need for universal human rights were felt. It was then that the Universal Declaration of Human Rights in 1948 was declared for providing basic human rights for all the humanity. Though the instrument talks about providing equal rights to men and women but there also discriminations against women as far their rights are concerned. As Janice Wood Wetzel observes that in these instruments of human rights, "The common reference to man or mankind implied, but the terms symbolically rendered women invisible and powerless. Men decided when the word man was generic and when it was exclusively male".¹ This reflects the discriminated attitude of the men against the women even at the international level. The Constitution of India is also at the heart of securing gender based equality for women.

Keywords : Human Rights, Violence, Gender, Constitution, UDHR

Introduction

Gender based violence is a form of violence in which women are the main victims. The GBV is specifically designed against the women due to their subordinate position in the society. Gender based violence includes any act or threat by men or male dominated institutions that inflict physical, sexual or psychological harm on a woman or girl because of their gender.² The gender based violence is an umbrella term which includes an exhaustive list of violence. The violence can be in the form of sexual abuse such as rape, marital rape, genital mutilation of girls and women. There are other types of violence like acid throwing, dowry related violence, honour killings, forced pregnancies, trafficking of women and girls for prostitution, sexual harassment at workplaces, forced marriages and sexual and physical violence in the families. The gender based violence is a serious crime is known from the fact that around the world at least one in every three women has been beaten, coerced into sex, or otherwise abused by a man in her lifetime. Approximately 60 million women, mostly in Asia are “missing”-killed by infanticide, selective abortion, deliberate under-nutrition or lack of access to health care. Each year 2 million girls between ages 5 and 15 are introduced into the commercial sex industry. Women who are victims of domestic violence are 12 times more likely to attempt suicide than those who do not experience such violence.³

Gender based Violence and Women

The women are the easy targets of violence as they are ruled by the male chauvinists in the society. The women are always in the subjugated position in the society. The term gender implies male or female and it is different from the term sex. The term sex implies the biological differences between men and women and the gender refer to their roles in the hierarchy of the society. Sex refers to physical differences between male and females where as gender refers to differently socially prescribed roles of male and females.⁴ The gender based violence is also because of the power inequality between men and women. The women always had a subordinate position in society and the marginalisation of women from the mainstream. The women do not have control over any material resources or any participation in the other societal or political front. Non-recognition of women as an entity/ identity has serious repercussions on women’s self-perceptions and on their evaluation of roles and statuses. The inability of women as well as their marginalization by which they have never been allowed to make their full and proper contribution ultimately creates an atmosphere of silent oppression and subordination on their individual psyches.⁵ The violence against

women is initiated even before their birth. The girl child even before her birth becomes the victim of female foeticide in the desire of parents for having a male child. Even if a girl is born she becomes the victim of female infanticide where the girl meets her death. This is not end of violence here only. Before girls attain the age of puberty they become the objects of sexual exploitation in their homes. The parents relieve themselves of their liabilities by marrying their daughters but again the problems of women are not limited. The women become the victims of forced sex, marital rape, forced pregnancies and dowry related violence. The women also suffer from their trafficking for the purpose of prostitution. The women are forced into prostitution against their wishes. Then there are the problems of widows and aged women who have nobody to look after them and become the victims of violence. Thus women are more secure outside their homes rather than being confined to the violence in the four corners of the home. The subordinated position of the women or the perpetuation of violence is justified in some cultures. In some cultures the violence against women is rooted in the old traditional laws thus relegating women to the condition of servitude. Gendered norms are embedded in social structures, operating to restrict the rights, opportunities and capabilities of women and girls causing significant burdens, discrimination, subordination and exploitation.⁶ The women do not raise their voice against such violence so they are the easy targets. The women out of the fear of economic dependence on men do not mug up courage to revolt against such violence. Also the women in the hope of protecting her family and with the belief that men will change their attitude continue to be the victims of gender based violence. Even if some women raise their voice against such violence they are pressurised to compromise with the perpetrator to keep the marriage bond intact.

Consequences of Gender based Violence

The gender based violence has many harmful effects on the women. The women for their entire life become the victims of violence and they have psychological impacts also. GBV is a profound health problem for women across the globe. Although a significant cause of female morbidity and mortality, gender violence is almost never seen as a public health issue.⁷ The health consequences of GBV range from physical injury and chronic pain to mental and emotional disorders such as anxiety and depression- to fatal outcomes such as suicide or homicide.⁸ The GBV thus have dire consequences putting a hindrance in the development of women. The violence against women makes them suffer them their entire life resulting in their physical and psychological change. In addition to facing physical and

psychological trauma and injury, women and girls who suffer violence are at risk of contracting sexually transmitted infections including HIV/AIDS. They may also face unintended pregnancies, adverse pregnancy outcomes and chronic health problems. Survivors of sexual violence often suffer from partners, family and community members due to the shame and stigma associated with such violence.⁹

Gender based Violence as a Human Rights Issue

The human rights are the inalienable and inherent rights which form the basic rights for the human beings. These rights are very essential for the growth of human beings. Basic to human rights is the concept of non-discrimination and equality of treatment.¹⁰ Thus the human rights are equally available to men and women without any discrimination. But still it took a long time for women to make their rights recognised as human rights. The movement for recognising the women's rights were initiated in the year 1970. It was not until the late 1980s that women became fully aware of their status as persons having a legal identity and began to act accordingly, questioning the essentialist view of social hierarchies and the "normality" of their subordination.¹¹ The women had to voice their concern themselves at the national and international level as most of the human rights instruments do not focus on the gender based violence against women. Most of the instruments are about protecting the rights of mankind without focussing on the rights of women. The three generations of the human rights focus on protecting different rights in at different periods of the history of human rights. The first generation of human rights focussed on providing rights to individuals in relationship to the state. The primacy traditionally given to civil and political rights by western international lawyers and philosophers is directed toward protection for men within public life, their relationship with government. But these are not the harms from which women most need protection.¹² Thus there was a dichotomy between private and public affairs. The focus of the human rights is about protecting humans in the public sphere. But the violence against women which is confined to the private affairs do not form part of the human rights instruments. The development of international human rights law generally has been partial and androcentric, privileging a masculine worldwide. Non-governmental organizations have recently begun to document abuse of women that falls within the traditional scope of human rights law.¹³ In the major human rights treaties, rights are defined according to what men fear will happen to them, those harms against which they seek guarantees. While a prohibition on sex discrimination, as racial discrimination is included in

every general human rights convention and is the subject of a specialized binding instrument, sexual equality has not been allocated the status of a fundamental and basic tenet of a communal world over.¹⁴ The human rights are framed for protecting the male dominance and pushing the women further down regarding their status in society. The feminist rethinking of jus cogens would give prominence to a range of other human rights: the right to sexual equality, to food, to reproductive freedom, to be free from fear of violence and oppression and to peace.¹⁵

The women's international movement was ushered in by the United Nations' International Women's Year, in 1975, to acknowledge the plight of women through the world. Women worldwide met in Mexico City in 1975, in Copenhagen in 1980 and in Nairobi in 1985. During the period of 1980 the women forged a Magna Carta for women's human rights, the Convention on the Elimination of All Forms of Discrimination against women. The CEDAW provided an extensive definition of gender based violence and also recognised that a violence against woman is committed in the private sphere also. The efforts of women making gender based violence as a human rights violation bore fruit in the second conference on Human Rights in Vienna in 1993 in which women achieved this goal. The need is for recognising the violation of women as human rights violation. The United Nations General Assembly, at its forty-seventh session agreed that the violation of human rights of women was not limited to acts perpetrated or directly condoned by governments but rather that Governments bore a social and political responsibility for acts committed by third parties if they had not taken the necessary measures to prevent, investigate and punish acts of violence. According to this criterion, the State becomes a de facto accomplice if it does not offer women the necessary protection from violations of their rights, or when it acts in discriminatory fashion by not preventing or punishing acts of gender-based violence, thereby denying women equal protection under the law.¹⁶

Thus the need is not to recognize gender based violation as a human rights violation but to procure women their share of the rights. To grant women human rights is simply attesting to the fact that women are human and therefore have human needs. But to advocate for human rights is more controversial than one might think. It means that the human rights of women are sacrosanct; they are just not civil rights that can be bent to the will of the powerful, whether that power resides in the home, the community, the courts or the pulpit.¹⁷

Conclusion

The gender based violence is entirely a issue woven around the violations directed against the women of all age groups. The belief in gender based violence is generally rooted in the cultural belief of the male chauvinism and patriarchal society recognising the power inequality between the men and women. The basic human rights instruments though provide for equality in enjoyment of the human rights of both the men and women but the stark reality is the deplorable position of women in the enjoyment of these rights. The need in the first place is to recognize women's rights as rights in the true spirit of the world. The protections of women's rights do not aim at lowering the position of men or of replacing masculinity with feminism. The rights of the women should be protected along with the most important rights. The women should also muster courage to combat against this violence by socializing with men. The women need to combat against the traditional patriarchal system and raise their voice against this violence in a peaceful way. The gender based violence is not confined to private sphere of a family but this is also prevalent in the community and state. So protecting the women from such violence is also the responsibility of the State. The State should shed of its role of not interfering in the private sphere or the private life of its citizens. The women should be made aware about their rights against such violence and should be given equal opportunities in comparison to men. The women should no more be treated as a commodity or a product but she is also a human being endowed with all the qualities of men. The need is for protecting the women from gender violence as they equally contribute to the growth of the family and the nation. The women needs protection in all spheres of life and for this codification of law is not enough but more steps should be taken for protecting the women from gender based violence.

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