

# Gender Violence in India and the Laws: An Analysis

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**ABSTRACT:** Understanding the varying dimensions of violence against women and the impact of juridical and legal modes of reparation on their well-being is the main theme of the present paper. The primary objective of this paper is to study and analyse if the stereotypical legal remedies provided to Indian women have been able to yield the desired result of enhancing equality and harmony in society by mitigating violence against women or not. Are these conventional and typecast legal solutions enough to eliminate gender violence from Indian society? Is there any need to rephrase or overhaul Indian laws or remedies to satiate the need for peace and dignity to all women? Can there be some piecemeal or problem-based solutions to women issues, especially related to violence? Are available ready-made legal solutions capable of ensuring 'justice' to women to all kinds of their problems emanating from 'violence' inside and outside the house, when we all know that 'violence' affects and shatters anyone not only physically, but emotionally, psychologically and often, permanently. Laws and legal remedies evolve and shape with the passage of time, as a process, which can never be only juridical, but should be social and political also. 'Gender violence' is a transnational subject, and more importantly during present times of pandemic, stress and anxiety. There is an urgent need to create and innovate workable solutions with full active participation of women therein. A new zero violence society is the urgent need of the hour.

**KEYWORDS:** Gender Violence, Legal, Juridical, Institutional, Remedies, Women, Reparation, Laws, Justice

## Introduction

Gender violence is said to be 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, which includes threats of violence, coercion or arbitrary deprivation of liberty, whether public or private. This kind of violence covers a broad range of acts occurring in the family, workplace or any other place including battering, beating, assaulting, sexual abuse or dowry-related violence etc. (UNECE 2020). It is a violation of human rights of women, a cause and consequence of gender inequality and discrimination against women in general and impacting women's adversely and severely. It is very difficult to track the history of violence against women, but it is quite clear that much of the violence is accepted, condoned and even legally sanctioned by women themselves, due to their vulnerabilities or social conditioning. The historical view of women as property and a gender role of subservience in patriarchal society, in almost all world systems in which gender inequalities exist and are perpetuated.

## Kinds of Gender Violence

Gender based violence is violence directed against a person due to that person's gender and vulnerability thereof. It may be of various forms:

- **Physical:** Act or conduct which causes bodily pain, harm or danger to life etc. It also results in injuries, distress and health problems. Typical forms of physical violence are beating, strangling, pushing, with or without the use of weapons. It also includes assault, criminal intimidation and criminal force.

- **Sexual:** It includes sexual acts, acts to traffic, or acts otherwise directed against a person's sexuality without the person's consent or knowledge, which '*abuses, humiliates, degrades or otherwise violates the dignity of a woman.*'
- **Psychological:** It includes psychologically abusive behaviours, such as controlling, coercion, economic violence and blackmail. It may be verbal, physical or other non-verbal conduct, which may result into mental distress, anxiety issues and various other mental and physical disorders.
- **Economic:** Scarcity of basic resources or lack of money to ensure basic needs can be called as economic violence. Deprivation of financial resources required for survival of the victim and her children, the disposing of any assets which the victim has an interest/stake in and prohibition/restriction of use of financial resources etc. are included in economic violence.
- **Female Genital Mutilation (FGM)** is the ritual cutting or removal of some or all of the external female genitalia. It violates women's bodies and often damages their sexuality, mental health, well-being and participation in their community. It may even lead to death.
- **Forced marriage** refers to a marriage concluded under force or coercion which may either be physical pressure or emotional and psychological coercion.
- **Online violence** includes all sorts of illegal or harmful behaviours against women in the online space. It may be linked to experiences of violence in real life, or be limited to the online environment including illegal threats, stalking or incitement to violence, unwanted, offensive or sexually explicit emails or messages, sharing of private images or videos without consent, or inappropriate advances on social networking sites.

## Causes of Gender Violence

Gender violence or gender-based violence (hereinafter GV or GBV) is taken primarily as violence against women which is often considered as a mechanism to subjugate women generally or in interpersonal relationships. This kind of violence usually arises from the sense of entitlement, superiority, misogyny or similar attitudes of the perpetrator or motivated by aggression, revenge or competition, due to which women feel threatened and become vulnerable and weak. They are forced into a subordinate position and become susceptible as compared to men. At least one out of every three women around the world is beaten, coerced into sex, or otherwise abused in her lifetime and many a times, the abuser is someone known to her.

## International Legal Regime

Many international legal instruments aim to eliminate violence against women such as the UN Declaration on the Elimination of Violence against Women, 1993 states, 'violence against women is a 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, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.' The Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence) of the Council of Europe, which describes violence against women (VAW) 'as a violation of human rights and a form of discrimination against women' and includes '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' (European Commission 2016). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW,

1979, UN General Assembly), also made recommendations relating to equality and non-discrimination against women in all spheres of life. Vienna Declaration and Programme of Action 1993 specifically mentions that gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated (Article 18, Also see, Declaration on the Elimination of Violence Against Women, 1993). In 1996, the World Health Assembly (WHA) declared violence a major public health issue, and included in the subtypes recognized were intimate partner violence and sexual violence, two kinds of violence often perpetrated as violence against women. In 1994, the Violence Against Women Act or VAWA, legislation was passed which required a strengthened community response to crimes of domestic violence and sexual assault and strengthened federal penalties for repeat sex offenders. Later this Act was further strengthened and extended to immigrant victims, elderly victims, victims with disabilities, and victims of dating violence, youth victims etc.

Beijing Declaration and Platform for Action (1995, paragraphs 112-130) *inter alia*, states that the violence or abuse against women and their widespread exclusion from institutions of power and governance, violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The UN also created the Trust Fund to Support Actions to Eliminate Violence Against Women. In 2013, the United Nations Commission on the Status of Women (CSW) adopted, by consensus, Agreed Conclusions on the elimination and prevention of all forms of violence against women and girls.

### **Indian Legal Regime**

There is a plethora of legislations enacted to safeguard women from violence and ensure dignity and equality in society. Most of the enactments provide similar kinds of institutional or administrative remedies. The basic hypothesis of this paper is to study whether these stereotypical remedies are sufficient enough to provide relief to the violated women or not. Are these conventional and typecast legal solutions enough to eliminate gender violence from Indian society? Is there any need to rephrase or overhaul Indian laws or remedies to satiate the need for peace and dignity to all women? Can there be some piece-meal or problem-based solutions to women issues, especially related to violence? Are available ready-made legal solutions capable of ensuring ‘justice’ to women to all kinds of their problems emanating from ‘violence’ in and out of the house, when we all know that ‘violence’ affects and shatters anyone not only physically, but emotionally, psychologically and permanently. To understand the practical implications of available legal remedies, the author takes up two legislations *viz.* the Protection of Women from Domestic Violence Act, 2005 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2015) to analyse the remedies available thereunder.

**The Protection of Women from Domestic Violence Act, 2005 (hereinafter DV Act)** has expanded the definition of domestic violence to include any act (omission or commission) which harms, injures, or endangers the physical or mental well-being of a woman, and includes physical, verbal, emotional, sexual or economic abuse. The ‘domestic relationship’ has also been defined as a relationship between two persons who have lived together in a shared household at one point of time, and are related by blood, marriage, relationship in the nature of marriage (including live-in relationships), adoption, or are family members. Thus, this Act covers all women who may be mother, sister, wife, widow or partner living in a shared household under any kind of relationship, may it be marriage, adoption or live-in etc., who is or has been subjected to any act of violence. Any aggrieved person or any other person or the Protection officer on behalf of the aggrieved person may file a complaint against any adult male or female member, relatives of husband or the male partner etc. to the Magistrate seeking one or more reliefs provided under this Act. The complaint must

contain facts of the case and the reliefs sought along with all the personal details of the parties. After scrutiny of the complaint by the court, it orders to the PO for preparation of 'Domestic Incident Report' (DIR) which is then entertained by the court and decided after hearing the parties.

As per the provisions of the DV Act, Protection officers, preferably women act as a liaison between the aggrieved women and the system, and are empowered to provide first-hand assistance to an aggrieved woman by informing her of her rights, making a domestic incident report or submitting an application, and ensuring that facilities such as legal aid, shelter homes, medical facilities etc. are provided to her. The reliefs sought by the aggrieved person may include a relief for issuance of an order for payment of compensation or damages for the injuries suffered due to the acts of domestic violence, including mental torture and emotional distress (The Protection of Women from Domestic Violence Act, 2003, Sections 12 and 22) monetary reliefs to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to the loss of earnings, medical expenses, the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person apart from the maintenance for the aggrieved person as well as her children etc. Mediator may also be appointed by the Court who may try to solve the matter through conciliation or if it is not possible, the framing of charges and the adjudication is done to resolve the whole matter.

**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2015 (hereinafter PoSH Act)** is a relatively new piece of legislation. Due to its jargonic text, it is not easy to understand its intent and application in various scenarios in real-life situations. But it is amply clear that the sexual harassment of women at workplace violates their fundamental rights enshrined under Articles 14,15,19 and 21 of the Constitution of India. The Act lays down guidelines, norms and procedures to be observed which are mandated for all kinds of employers and institutions, whether public or private sector. All complaints regarding sexual harassment of a woman employee must be dealt by the **Internal Complaints Committee (ICC)**, which is required to be headed by a woman employee with minimum half of its members comprised of, only women (The Sexual Harassment of Women at Workplace - Prevention, Prohibition and Redressal - Act, 2015, section 4). **ICC may** initiate an investigation, in case a complaint is received/ forwarded by any source of authority, but as long as the complainant agrees to take the matter forward with them (Ibid., section 9). There is no bar to continue with any other kind of parallel proceedings with any other forum as this Act provides supplemental remedies for the women (*Shital Prasad Sharma v. State of Rajasthan and Ors. 2018 SCC OnLine Raj 1676*). ICC conducts an independent inquiry or investigation in accordance with the principles of natural justice, in accordance with the provisions of the Act (The Sexual Harassment of Women at Workplace - Prevention, Prohibition and Redressal - Act, 2015; Sarita Verma v. New Delhi Municipal Corporation & Ors.).

The final report of ICC must be detailed and well-reasoned, providing a complete basis and rationale for arriving at the concluded decision (*Ashok Kumar Singh v. University of Delhi*, Delhi High Court WP 7371 of 2016). Any person aggrieved by the report may file an appeal to the employer or to the appellate authority as envisaged under the Act or may go the Judicial court for the appropriate relief.

## Concluding Remarks and Suggestions

Gender violence is a transnational subject, and has been aggravated during present times of pandemic, stress and anxiety. Structural violence precipitate due to deep seated inequalities, more so because women are conditioned to grant others power over them and often condone its abuse. Violence power play required to be altered by systematic creation of support infrastructure,

Awareness and intervention at societal level, sensitization of major stakeholders and of administration. Merely punishing the offender after the abuse or violent act seems an expression of reaction of helplessness and frustration and serves no useful purpose or ensure mitigation of violence. The emphasis must shift from punishment to prevention. Legislative, administrative or judicial interventions may not suffice because violence against women is a deep-rooted social problem. Men, women and the whole society has to understand the problem and dilemmas connected with it and faced by women. All have to work earnestly to eradicate this menace.

We know that women tend to face greater risks during emergencies, including health disasters such as pandemics. There is an increase in violent, abusive, impulsive, compulsive, and controlling behaviour and aggression directed towards cohabiting partners and women. Fuelled by mandatory stay-at-home rules, physical distancing, economic uncertainties, and anxieties caused by the pandemic, domestic violence has increased globally. In India too, in the present 'Shadow Pandemic' (Statement by Phumzile Mlambo-Ngcuka, Executive Director of UN Women on April 6, 2020: Violence against women and girls is a human rights violation and is intensified during Covid-19) the number of domestic violence complaints received by the National Commission for Women has doubled during the last around six months. Despite various sensitization programmes, webinars, campaigns, constitution of special cells for women and children and other quick response mechanisms innovated by the Ministry of Women and Child Development to assist victims of domestic violence during the lockdown, signaling intolerance regarding domestic violence across the country has been quite evident but did not yield encouraging results.

**By improving status of women in society, ensuring self-identity and financial independence with the help of skill enhancement and education, gender-based violence may be minimized or eliminated from the patriarchal society.** Emphasis must be on prevention rather than punishment. Women must be made aware of their rights and empowered enough to speak otherwise no institutional remedy can provide the required solace. As domestic violence is often shrouded in silence, owing to pervasive shame and fear, women must be provided with courage to come out, with the help of awareness, education and independence. Moreover, domestic violence is intergenerational, women whose mothers faced domestic violence, are twice as likely to have themselves experienced spousal violence. There is thus, a clear need to break the cycle of violence. Apart from imparting awareness, societal or bystander intervention to help or assist women may provide some relief to them so that they may have someone to confide to, which will encourage them to speak up, share their stories and condemn domestic violence.

Based upon two legislations, legislative and institutional mechanisms provided to women have been discussed above, which shows the inaccessibility and insensitivity of these legalistic, formal and stereotypical approach of the government, yielding much less than desired. Any measure or mechanism to solve this problem must be ingrained in the given social set-up, to impart confidence and to ensure confidentiality. For this purpose, cooperation needs to be there between community based organisations, government agencies or institutions and the individuals living in that society, as no single person or organization can ensure to curb violence in society.

In a country with deep-rooted patriarchal morals, where the women are supposed to tolerate each and everything that is thrown in their way, there needs to be an equitable way out. Fighting these abusers who prey upon the fragility of women, is urgently required. The administration and law enforcement agencies need to understand the severity of the issue and assist in doing substantial at the societal level.

There is an urgent need to create and innovate workable solutions with full active participation of women therein. A new zero violence society is an urgent need of the hour. It is worth quoting late Prime Minister, Jawaharlal Nehru, who remarked:

“Legislation cannot by itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential and hence that it may give that push and have educative factors, as well as the legal sanctions behind it, which help public opinion to be given a certain shape” (Sharma 2015).

## References

- Ashok Kumar Singh v. University of Delhi* (Delhi High Court WP 7371 of 2016).
- Beijing Declaration and Platform for Action, 1995, paragraphs 112-130, Available at: [https://www.un.org/en/events/pastevents/pdfs/Beijing\\_Declaration\\_and\\_Platform\\_for\\_Action.pdf](https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf).
- Declaration on the Elimination of Violence Against Women, Proclaimed by UN General Assembly resolution 48/104 of 20 December 1993. *Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>.
- European Commission. 2016. “Istanbul Convention: combatting violence against women.” Accessed November 28, 2020. Available at: [https://ec.europa.eu/info/sites/info/files/factsheet-istanbul-convention-16032016\\_en.pdf](https://ec.europa.eu/info/sites/info/files/factsheet-istanbul-convention-16032016_en.pdf).
- Sarita Verma v. New Delhi Municipal Corporation & Ors*, (2016 LLR 785 (2)).
- Sharma, Indira. 2015. “Violence against women: Where are the solutions?” *Indian J Psychiatry*, Apr-Jun; 57(2): 131–139. Doi: 10.4103/0019-5545.158133. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4462781/>.
- Shital Prasad Sharma v. State of Rajasthan and Ors.* (2018 SCC OnLine Raj 1676).
- Statement by Phumzile Mlambo-Ngcuka, Executive Director of UN Women on April 6, 2020: Violence against women and girls is a human rights violation and is intensified during Covid-19.
- The Protection of Women from Domestic Violence Act, 2003, for details see, Sections 12 and 22. Available at:
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2015, <https://www.indiacode.nic.in/bitstream/123456789/2104/1/201314.pdf>.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2015, section 4.
- UN General Assembly. 1979. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which recognizes violence as a part of discrimination against women in recommendations 12 and 19. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.
- UNECE. 2020. “Gender based violence.” Accessed November 27, 2020. Available at: <https://www.unece.org/stats/video/violence.html#:~:text=Gender%2DBased%20Violence%20is%20any,occurring%20in%20public%20or%20private>.