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# Gender-Based violence in India: Human Rights Approach

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## ABSTRACT

“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance”.

- U.N. Secretary General, Kofi Annan.

*Women make up the majority of the world's population and one-third of the working population. They earn one-tenth of the global income and possess less than 1% of the world's real estate, but they put in two-thirds of the labour hours. Human rights abuses against women continue to shock our conscience on a daily basis. A strategy like this provides "women with a constitutional platform to stand up to men, to raise their voices on issues of women's oppression, subjugation, and related issues," giving them a sense of identity in a "traditional male-dominated socio-political system" and a much-needed forum to demand solutions to issues that directly affect them. This is the true meaning of empowerment. The physiological and biological makeup of males and women differs. Gender refers to men's and women's socially constructed identities, features, and roles, in addition to “cultural, social, and biological distinctions” that result in hierarchical relationships between men and women and an unequal distribution of power and rights that favours men and disadvantages women. Gender-based violence includes acts such as “intimate relationship violence, non-partner sexual assault, female genital mutilation, sexual exploitation and abuse of minors, female infanticide, and child marriage”. Gender-based violence (GBV) is one of the "most oppressive forms of gender inequality" that keeps men and women from participating equally in social, economic, and political realms. Such violence undermines various development objectives, including gender equality. Gender-based violence, which affects women all around the world, includes “rape, domestic violence, mutilation, murder, and sexual abuse”. Despite the fact that it is rarely acknowledged as a public health issue, gender violence is a significant contributor to female illness and mortality. This study looks at how gender roles and characteristics are defined in relation to one another and through interactions between boys and girls, as well as between men and women. Sexuality and its biological functions are genetically predetermined, whereas gender roles and the power relations they reflect change through time and among cultures.*

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## I. INTRODUCTION

Women and sexual minorities continue to experience disproportionately high levels of violence. Even the most complex legislative and policy frameworks unable to contain it due to its pervasiveness. Despite enormous efforts being made at the international and national levels to address the issue, gender-based violence (GBV) has multiplied over the past ten years. GBV underlines the incapacity to provide people with even the most basic security and safety, as stated by the worldwide debate on human rights, and it is a sign of a profoundly unequal patriarchal social order. A serious "human rights violation that can result in long-term and life-threatening harm and suffering to victims and survivors" is gender-based violence (GBV). Gender-based violence must be eliminated and addressed as soon as there is an emergency, and victims and survivors must receive the correct care, treatment, and support. This requires a joint effort from all human rights and humanitarian actors. One in three women worldwide may experience gender-based violence at some time in their life. The elimination of such violence is increasingly being prioritised by the international community. Women's empowerment and gender equality are included in "Goal 5 of the Sustainable Development Goals", which includes a specific objective to "eradicate all kinds of violence against all women and girls in the public and private domain<sup>3</sup>."

## II. CONCEPT OF GENDER-BASED VIOLENCE

GBV is a complex problem that has implications for people on all societal echelons: economic, social, cultural, and political. To reduce it to one biological sex acting violently towards another biological sex is overly simplistic and leaves room for error. GBV urges that the structural "inequality and lack of access to power" that characterise the "social, economic, cultural, and political spheres of the majority of nations be given more focus".<sup>4</sup> Gender-based violence (GBV) shifts from being merely sex-based to being the outcome of disobeying gendered expectations that are expected to be upheld by a patriarchal social order. Gender-based violence refers to acts that inflict pain or suffering on a mental, physical, or sexual level as well as to threats of such conduct, coercion, and other types of liberty violations. Other types of violence include those

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<sup>3</sup> Goal 5: Achieve gender equality and empower all women and girls, <http://www.un.org/sustainabledevelopment/gender-equality/> (last visited July 23, 2023).

<sup>4</sup> Gender-Based Violence in India: A Human Rights Approach, <https://peaceforasia.org/gender-based-violence-in-india-a-human-rights-approach/> (last visited July 24, 2023).

committed or allowed by family members, the general populace, or the government and its institutions.<sup>5</sup> Due to the disproportionate impact gender-based violence has on women and the fact that men commit the bulk of violent acts against women, the terms "gender-based violence" and "violence against women" are occasionally used interchangeably.<sup>6</sup>

### **Defining gender-based violence against women**

The "UN Declaration on the Elimination of Violence against Women" 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*".<sup>7</sup>

*The terms "gender-based violence against women" and "violence against women" have been combined in certain more recent legal papers. As an illustration,*

*"Article 3 of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) of the Council of Europe defines gender-based violence against women as violence that is directed against a woman because she is a woman or that affects women disproportionately."*<sup>8</sup>

Using the definition of 'gender-based violence against women' from the Explanatory report to the Istanbul Convention<sup>9</sup> as a starting point we can say that: "*Gender-based violence refers to any type of harm that is perpetrated against a person or group of people because of their factual or perceived sex, gender, sexual orientation and/or gender identity*".

Gender-based violence tries to degrade and cultivate in a person or group of people a sense of inferiority and/or servitude. It is based on a power disparity. This kind of violence is frequently made possible by the social and cultural institutions, norms, and values that govern society through a climate of silence and denial. Both public and private settings are susceptible to gender-based violence, which disproportionately affects women.<sup>10</sup>

Gender-based violence occurs in a wide range of ways, including "rape, murder, verbal abuse, and hate speech online". Additionally, it could have "linguistic, psychological, economical, or

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<sup>5</sup> *Ibid.*

<sup>6</sup> What is gender-based violence?, available at: <https://www.coe.int/en/web/gender-matters/what-is-gender-based-violence> (Visited on July 25, 2023).

<sup>7</sup> The UN Declaration on the Elimination of Violence Against Women 1993, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women/> (Visited on July 26, 2023).

<sup>8</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 3

<sup>9</sup> The Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence

<sup>10</sup> *Ibid*

sexual roots”. Anyone can perpetrate it, including lovers, spouses, family members, coworkers, students, friends, strangers, or representatives of organisations from other cultures, beliefs, states, or intra-states. Gender-based violence is a “problem involving power dynamics, just like other types of violence”. It is driven by a sense of superiority and a need to prove that superiority to one's family, neighbours, coworkers, superiors at job, superiors at school, and superiors in general society.<sup>11</sup>

### **III. GENDER-BASED VIOLENCE AS A HUMAN RIGHTS VIOLATION**

Women have the same freedoms and rights as men, as well as autonomy, according to the “Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Discrimination Against Women”, along with upholding the rights mentioned in these texts, voices from all around Latin America and the Caribbean have been heard pleading for the acknowledgment of the particular, contextualised rights of women. For instance, in light of the rise in social inequality and crisis' effects, the social cost of structural adjustment measures, and the limitations of social programmes in mitigating the effects of economic change, they demand the right to be both agents of and beneficiaries of development. Additionally, they seek the right to engage in social and political issues within the framework of a just development paradigm that respects everyone's autonomy. Also demanded are reproductive rights, which are understood to include a woman's right to appropriate prenatal, postpartum, and puerperium care, as well as her access to legally recognised contraception and her choice to choose when and how many children to have. But most crucially, she has the right to be in charge of her own body.<sup>12</sup> Since the 1970s, women have actively participated in the battle for human rights, but they haven't always been successful in making their gender-specific demands the centre of that campaign. It wasn't until the late 1980s that women fully accepted their status as individuals with legal identities and began acting appropriately, rejecting the essentialist view of social structures and the "normality" of their subjection. Accordingly, their demands for new citizenship rights and their readiness to do so on an equal basis in line with the notion that the "right to have rights" (Lefort, 1987) is the most fundamental right are also a result of their demands for human rights. Therefore, crimes against women are viewed as such to the extent that they can be linked to events covered by

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<sup>11</sup> *Ibid*

<sup>12</sup> GENDER-BASED VIOLENCE: A HUMAN RIGHTS ISSUE Nieves Rico, available at: [https://www.cepal.org/sites/default/files/publication/files/5860/S9700545\\_en.pdf](https://www.cepal.org/sites/default/files/publication/files/5860/S9700545_en.pdf) (Visited on July 25, 2023).

laws and international agreements. Women began to fight for the redefining and enlarging of rights that were already universally acknowledged in order to make gender relations a framework in which inequity is reflected. Additionally, they talked on how the separation of the public and private realms has limited women's engagement in society and consequently the field of human rights.<sup>13</sup>

When gender-based violence takes place in the home, the principles of the Universal Declaration of Human Rights are flagrantly violated. In addition to other things, violence against women infringes on a number of human rights, such as the “right to life, liberty, and personal safety (article 3)”, the right to be “free from torture and cruel, inhuman, or degrading treatment or punishment (article 5)”, the right to “equality before the law and equal protection under the law (article 7)”, the right to a “fair trial (articles 8 and 10)”, the “freedom of movement (article 13)”, and the “right to freedom of assembly and association (article 18)”.<sup>14</sup>

According to a growing body of research, gender-based violence also violates a number of other rights, including the right to identify because it "maintains women's subordination to men and distorts what it means to be a human"; the right to affection because violence is the antithesis of any expression of that kind; the right to peace and fulfilling relationships because it is a destructive way to resolve conflicts; and the right to protection because it creates a hostile environment for victims, since it prevents its victims from engaging in activities outside the home (aside from the bare minimum of activities related to traditional roles), of the right to social and political participation because it limits activities outside the home, of the right to freedom of expression, and of the right to the best possible state of physical and mental health.<sup>15</sup>

The United Nations General Assembly decided in its "47th session (United Nations, 1994)" that governments shared “social and political responsibility” for actions committed by “third parties if they had not taken the required efforts to stop”, look into, and punish acts of violence. Human rights abuses against women were not only committed by or openly supported by governments.<sup>16</sup>

Human rights cannot be recognised or defended in isolation from one another since they are indivisible. Women's rights should be given equal consideration to all other rights and should be taken into account alongside those deemed to be the most urgent or significant. An integrated approach to human rights is the only way to ensure the observance of each and every one of

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<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

those rights and avoid them from becoming merely legal categories devoid of meaning.<sup>17</sup>

#### IV. HUMAN RIGHTS AND GENDER-BASED VIOLENCE

The premise underlying the “international human rights” regime is that people have certain rights just by virtue of being people. These rights are seen as being universal, unalienable, indivisible, equal, and non-discriminatory and were enshrined in the “Universal Declaration of Human Rights, which was signed in 1948”. Many nations around the world have ratified a number of treaties and covenants that safeguard them. Each state is required to maintain and implement human rights with assistance from the “Office of the High Commissioner for Human Rights”, despite the fact that they are outside the purview of national governments' legal authority. A broad network of international and humanitarian organisations seek to ensure that these rights are generally upheld in most jurisdictions.<sup>18</sup>

The “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)” focused for the first time on “mainstreaming women and their access to human rights”, whereas GVB was not acknowledged “as a major issue pertaining to gender justice globally until the Declaration on the Elimination of Violence Against Women (DEVAW) in 1993”. As a result, regional and national governments have attempted to remedy human rights violations, focusing especially on gender-based violence; examples include the “European Union, the African Charter, and the Dhaka Declaration”.<sup>19</sup>

GBV is a complicated problem that affects society on many different levels, including the “economic, social, cultural, and political” levels. It is overly basic and leaves space for error to characterise it as merely violence committed by one biological sex against another biological sex. The structural inequalities and access to power that permeate the “social, economic, cultural, and political realms” in most nations must receive more attention under GVB. Instead of just being violence based on a person's sex, GVB then becomes a result of not adhering to the gendered standards and norms as expected to be done by a patriarchal social order.<sup>20</sup>

#### V. GENDER-BASED VIOLENCE IN INDIA

India's situation on gender-based violence is really alarming. Its strongly patriarchal foundations and the state's poor strategy for limiting its impact across the country are concerning. India typically responds to GBV in a disorganised and exaggerated manner. The legislative and policy

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<sup>17</sup> *Ibid*

<sup>18</sup> Gender-Based Violence in India: A Human Rights Approach, available at: <https://peaceforasia.org/gender-based-violence-in-india-a-human-rights-approach/> (Visited on July 25, 2023).

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

framework in place to address the disproportionate quantity of violence experienced by women is outclassed by the cultural and social characteristics of the country. This violence extends much more along the lines of class, caste, religion, and ethnicity. In India, “gender-based violence” can manifest itself in a variety of ways, including as severe “domestic abuse, dowry killings, human trafficking, sexual assaults, strange crimes, and honour killings”. The gender-based institutions that underpin India's cultural and social environment are directly responsible for these atrocities. These crimes arise from the lack of access to “social, cultural, and political resources in patriarchal societies” as a result of the imbalance of power.

The National Crime Records Bureau found a 7.3% increase in crimes against women from 2018 to 2019 in its Crimes in India Report. An amazing 30.9% of all cases involved domestic abuse, and 7.9% involved rape. The study found that crimes against women were committed 33.2% more frequently than those against men. This substantial number is supported by the general perception that “35% of women have experienced physical or sexual assault at the hands of an intimate or non-intimate partner”. Gender-based violence affects one in three women.

Women who are members of minorities, such as Dalit and Muslim women, frequently and severely endure violence threats. It is a well-known fact that the state cannot defend the rights of minorities, regardless of their caste, ethnicity, or religion. Examples of GBV that are typical of South Asian societies include dowry-related fatalities and violence, acid attacks, honour killings, and sex assaults. While addressing some issues of GVB, the Indian legislative framework ignores others. To put it another way, while there are significant laws in existence to combat domestic violence and dowry-related crimes, honour killings and acid assaults do not have any significant legislation being implemented to serve justice. Legislative actions turn into a tool for conceptualising human rights accessibility.

It is challenging for survivors to receive justice and for persons to even get violations of policies and regulations to be acknowledged. The “Domestic Violence Act of 2005 and the dowry-related Section 498A of the Indian Penal Code (IPC) are effective mechanisms” that women can at least employ to demand justice. The lack of comparable rules for honour killings enables for arbitrary justice to prevail, which frequently falls prey to patriarchal values and norms—exactly the region from which these crimes need to be reclaimed. The Chhattisgarh court's decision that a husband can have forced sexual contact with his wife and it will not be declared rape as late as 2021 demonstrates the significance of legislation in the struggle for human rights. This decision nullifies the IPC's definition of marital rape found in section 375. Legal action



alone cannot end gender-based violence or its impacts, though. Section 377<sup>21</sup> pertaining to sexual minorities even after “decriminalising sexual intercourse between people of the same sex did not result in the inclusion and acceptance of sexual minorities”. Crimes against homosexual men and women, as well as transgender men and women, continue, and police personnel often commit these crimes while going unpunished. Human rights are still not fully realised in India due to the cultural stigma attached to homosexuality and gender-deviance. Legal safeguards are crucial, but they are ineffective without the support of societal attitudes and norms.

## VI. THE INDIAN STATE, HUMAN RIGHTS AND GENDER-BASED VIOLENCE

When it comes to maintaining domestic and international laws pertaining to human rights, the Indian State has a difficult time doing so. Although the Indian state struggles with “non-implementation and a lack of political will to uphold these laws and standards”, it is acknowledged that there are many complex laws to “combat violence against women and people of colour”. Political shrewdness based on false cultural presumptions influences the state process, resulting in differences, discrepancies, and outright denial of the majority of GBV justice cases. Although the right-wing “Hindu nationalist administration in power has deliberately attempted to undermine these rights”, minorities in the country are guaranteed certain political, economic, and social privileges. Indian minorities are increasingly experiencing high degrees of insecurity as a result of widespread limitations on free speech and the press, arbitrary detentions of human rights activists, funding restrictions for non-governmental organisations, overtly xenophobic and sexist media campaigns, and other causes. Increasing numbers of Dalit, ethnic, and religious minority women are being abused. Under the “Unlawful Activities (Prevention) Act”, nine well-known human rights defenders were jailed just in 2020, delaying the delivery of justice for gender-based crimes. Leaders of the ruling party were accused of rape, but the charges were swiftly rejected and no sanctions were imposed.<sup>22</sup>

## VII. CONCLUSION

While concluding, it should be noted that addressing gender-based violence is a challenging

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<sup>21</sup> *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, W. P. (CrI.) No. 76 of 2016 (Supreme Court of India) (“21. CONCLUSION i. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution. It is, however, clarified that such consent must be free consent, which is completely voluntary in nature, and devoid of any duress or coercion.”)

<sup>22</sup> Gender-Based Violence in India: A Human Rights Approach, available at: <https://peaceforasia.org/gender-based-violence-in-india-a-human-rights-approach/> (Visited on July 28, 2023).

undertaking at the outset because it has taken years for the law to recognise the gravity and harm that violence against ascriptive gender roles creates and to develop processes to remedy it. Regarding the “social and cultural normalisation of violence against women” as well as the denial of women's rights in India, the situation is still terrible and unpleasant. It seems that the deeply embedded patriarchal principles supporting the present ruling party give some immunity when dealing with issues that do not meet the Hindu nationalist image of India that is continually pushed and advertised in the current political setting.<sup>23</sup>

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<sup>23</sup> *Ibid*