

Chapter 13

Gender-Based Violence and Legal Frameworks

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ABSTRACT

Gender-based violence (GBV) has grown into a pandemic. It has spread its tentacles so far and wide that no country or community in the 21st century is immune from it. There are, of course, laws to prevent GBV and punish the perpetrators of GBV. But, the laws, in general, pathetically fail to yield the desired result and fail to play the role of an effective deterrent as lawmakers themselves, most often, become lawbreakers. It is well known that patriarchy has a vested interest in gender inequality, which is the root cause of GBV. The dominant gender, male, uses violence against all other genders, including female and third gender, as a lethal weapon to prove their muscle-power, pseudo-superiority, and enjoy what is not morally and ethically and legally right. GBV is undoubtedly a human right violation. However, in the land of nonviolence, India, marital rape, among others, is still legal. Things are slowly changing, and it gives hope.

INTRODUCTION

Gender Based Violence (GBV) is a universal problem taking place in every country, culture and social group. GBV, in a nutshell, is violence against any person belonging to any gender: men, women and other genders, based on the subordinate status of that person in society. The most visible and rampant form of GBV in the world is violence against women and the term is often used synonymously with violence against women. Violence against women (VAW) is 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 (UN General Assembly, 1993). Around the world, one-third of women fall victim to GBV during her lifetime (UN WOMEN, 2013). 1 in 3 women have experienced physical or sexual violence at some point in their lives, while psychological abuse has still not received sufficient attention. However, in most countries,

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less than 40% women who experience violence seek any kind of help, and less than 10% seek help from the police(UNESCO, 2015).

The perpetrators of the crime include someone she knows closely, including a member of her family, a friend, a colleague and strangers. Violence against women has been described as the “most shameful human rights violation” by former UN Secretary General, Kofi Annan. It endangers women’s lives, body and freedom and the traumatic experience of GBV haunt them throughout their lives. That is why the Second World Conference on Human Rights in Vienna in 1993 and the Fourth World Conference on Women in 1994 gave importance to this vital issue affecting the lives of women, who have every right to half of the sky under which we all live.

GBV is multidimensional. It is applicable to male, female and the third gender and includes various forms of physical, financial, sexual and psychological violence inside and outside home, in private places and public spaces. The World Health Organization (WHO) defines sexual violence as “any sexual act or an attempt to obtain a sexual act, unwanted sexual comments, or advances, acts to traffic or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim in any setting, including but not limited to home and work”(WHO, 2013).

Domestic violence, which takes place within the four walls of a home, is the most heinous of GBV. It is a veritable hell, where spouses are raped, children are sexually abused by family members, forced pregnancy are inflicted upon unwilling wives, in dowry-related cases wives are burnt, barbaric practice of genital mutilations are committed (Misra, 2006), exploiting the helplessness of children, and honor killing are carried out to name a few. Outside the home, GBV encompasses trafficking, acid-attack, abusive language, sexual harassment and intimidation, among others.

India is a country that prides itself on its five-thousand-year-old rich culture, which upholds the lofty ideals of nonviolence, plurality, tolerance, and accommodation. It is the land of Mahatma Gandhi, who freed India from the British with the noble weapon of nonviolence and became the embodiment of nonviolence, for which he is admired even this day throughout the civilized world. It is the land of the compassionate Buddha and the birthplace of four major religions of the world such as Hinduism, Buddhism, Jainism, and Sikhism. It is a country that wholeheartedly welcomed Christianity, Islam and Judaism and a host of other religions. It is a land with 415 living languages and 23 constitutionally recognized official languages. It is a multi-lingual, multi-cultural, multi-religious country where women were worshipped and *Hijaras*, the third gender of the country was respected by the society at large. India is a land where unity in diversity is celebrated as the people of different faith and culture live in enviable harmony. In a sense, it is a picture-perfect country for an outsider when looked through the lens of gender equality and gender justice, though the reality is different.

It is the age-old belief in India that if women are worshipped then the Gods would rejoice. It is not just a belief of the bygone era, but a belief put into practice even in the twenty-first century in this country of 1.3 billion people and 33 million Gods! In Kerala, one of the 28 states in the country, popularly known as God’s own country, women are literally worshipped like Gods and Goddesses with various rituals and ceremonies (Pillai, 2017). The three-century-old *Chakkulathukavu Sree Baghavathy temple* in Alappuzha district, in Kerala, is famous for the worship of women as Goddess. In the month of November/December, male priests wash the feet of women seated on the specially arranged seat in the Sree Baghavathy temple as part of “*Naree Pooja*” which literally means worship of women (Dailyhunt, 2015). Later women are garlanded and they will be offered flowers. Naree Pooja is a unique one in this temple as nowhere else in the whole country such a ceremony exists. Thousands of women are worshipped on the day of Naree Pooja regardless of caste, creed, and religion. Thousands of women participate in the function and become

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