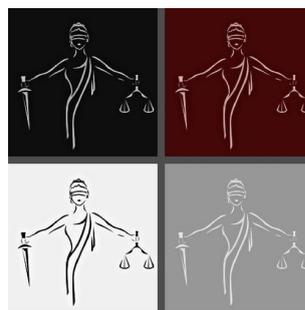




The Women's Rights Movement and the Resistance against GBV in India

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The Women's Rights Movement and the Resistance against GBV in India

Abstract

This report aims to give an overview on the women's rights movement in India, starting from the 20th century and the issue of intimate partner violence and gender-based violence. It aims to point out weaknesses in the current legal system such as the lack of recognition of marital rape as a crime and examines prevailing societal structures and factors which increase the risk of violence occurring in the first place. It aims to stress an inclusive and comprehensive approach to the problem of gender-based violence and point out possible areas for action.

Introduction

“Every woman and every girl has the right to a life free of violence. Yet this rupture of human rights occurs in a variety of ways in every community, particularly affecting those who are most marginalised and vulnerable. [A]round the world, more than 1 in 3 women face violence throughout their lifetime; 750 million women were married before age 18, and more than 250 million have undergone Female Genital Mutilation [...] It is time for united action from all of us, so that women and girls around the world can live free from all forms of violence.”

Remarks by UN Secretary-General António Guterres on the International Day for the Elimination of Violence against Women, 25 November 2017

To rephrase the above message by the UN Secretary-General: Time’s up. The recent #MeToo and Time’s Up movements, the Women’s Marches worldwide and the annual 8 March International Women’s Day have put the issues surrounding gender equality and women’s rights back into the public focus. Although these movements happen on a global scale their thematic area of concentration tends to vary by region. In this report I would like to focus on India. With the second largest population worldwide- making up nearly 18 per cent of the world population, it is home to a wide variety of cultures and languages, as well as a rich history and is currently the seventh largest economy worldwide,¹ with a strong growth rate of currently around six per cent²

As is the case with many developing countries, socio-cultural change tends to take a longer time than economic development. The lingering patriarchal structures lay a fertile ground for gender inequality and gender-based violence (GBV). It would be wrong to assume that Indian society and Indian women are lacking awareness of these issues though, and to think that little attention and effort has been put into overturning these structures. In this report I would like

¹ Joseph Chamie and Barry Mirkin, ‘India’s Population: Becoming Number One’ (2017)
<<https://yaleglobal.yale.edu/content/indias-population-becoming-number-one>> accessed 22 May 2018.

² *The Economic Times*, ‘India’s December quarter GDP growth likely to be 7%’ (2018)
<<https://economictimes.indiatimes.com/news/economy/indicators/indias-december-quarter-gdp-growth-likely-to-be-7/articleshow/63077722.cms>> accessed 22 May 2018.

to start with an overview of the development of the women's rights movement in India,³ before continuing to the current challenges of GBV, focusing on domestic and intimate partner violence in particular.

The Early Women's Rights Movement

As scholars such as Krishnaraj point out, the women's rights movement in India can be traced back to even Pre-Independence India when some of the major women's rights organisations were founded in the 1920s, advocating for reforms in marriage and property rights, as well as the right to vote. The movement was pushed somewhat into the background though, amid the rising calls for independence within the country. We witness its re-emergence into the public domain from the 1970s onward, when publications showed the harsh prevalence of inequality in sectors such as education and health, as well as political participation. Women's rights groups were one of the leading forces resulting in India signing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1980, although the ratification happened much later, in 1993. One area which is quite specific to India, is the existence of caste systems in addition to the patriarchal structures we can identify in many countries, which is why the All India Women's Association called it a triple oppression by class, politics and gender. The preference of boys over girls, due to traditions such as giving dowries, has led to abortions of female fetuses until the passing of a law to ban the practice in 1990. The effects are still visible in the imbalanced ratio between boys and girls. The 2005 Amendment of the Hindu Succession Act,⁴ allowing men and women the same rights in inheriting property led to a significant increase in girls' education and empowered women to gain their financial independence.⁵

³ Compare Maithreyi Krishnaraj, 'The Women's Movement in India: A Hundred Year History' (2012) 42(3) *Social Change* 325 <<http://journals.sagepub.com/doi/pdf/10.1177/0049085712454052>> and Samita Sen, 'Toward a Feminist Politics?: The Indian Women's Movement in Historical Perspective' (2000) 1(20781) Policy research report on gender and development working paper <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan051009.pdf>> accessed 22 May 2018.

⁴ Hindu Succession (Amendment) Act 2005 <http://www.hrln.org/admin/issue/subpdf/HSA_Amendment_2005.pdf> accessed 22 May 2018.

⁵ Bina Agarwal, 'Landmark step to gender equality' *The Hindu* (25 September 2005) <<http://www.thehindu.com/thehindu/mag/2005/09/25/stories/2005092500050100.htm>> accessed 22 May 2018.

The effect of the women's rights movement is quantitatively tangible. Simister and Metha compared and analysed the data from multiple comparable Indian household and demographic surveys from the 1990s until 2007 and the results are staggering. The percentage of male participants stating they have "a great deal" of confidence in the women's movement increased from 15 per cent in 1995 to 27 per cent in 2006, with female participants' responses increasing from 16 per cent to 38 per cent in the same time.⁶

Unfortunately, not all developments portrayed through the surveys are positive. Indian women still face a high prevalence of gender-based violence. Before I continue, there is an obvious question which first needs to be addressed: what does gender-based violence mean and what does it encompass?

Gender-based Violence in Marriage

The 1993 Declaration on the Elimination of Violence against Women (DEVAW) defines the term 'violence against women' as:

"[A]ny 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."⁷

For the sake of this report we will also adapt this definition. It refers to not only physical violence but recognises the diverse nature of violence, by encompassing sexual and psychological harm as well. Furthermore, it does not matter whether the violence is committed in private or in public. This report will mainly focus on the private scope of GBV. Why am I stressing this one facet of GBV? Are not the other forms of GBV just as noteworthy? The answer is yes absolutely, of course there are many facets to GBV and all of them are equally concerning. But, aside from the limitations in this report's length, the private

⁶ John Simister and Parnika S Mehta, 'Gender-based violence in India: Long-term trends' (2010) 25(9) *Journal of Interpersonal Violence* 1594 <<http://journals.sagepub.com/doi/abs/10.1177/0886260509354577>> accessed 25 May 2018.

⁷ UN General Assembly, 'Declaration on the Elimination of Violence against Women' (1993) <<http://www.un.org/documents/ga/res/48/a48r104.htm>> accessed 22 May 2018.

face of GBV and its high prevalence in India due to lacking legal frameworks and socio-cultural environment, calls for a more in depth examination.

Each statistic and survey I consulted showed a shockingly high percentage of domestic violence in India. The 2010 study and analysis by Simister and Metha suggests a rapid increase of GBV, with cruelties committed by husbands having doubled until 2007. The Demographic and Health Surveys (DHS) reaffirm this trend with the percentage of wives stating experiencing violence by their husbands within the last 12 months increasing from nine per cent in 1999 to 16 per cent in 2006.⁸ Although there seems to be a slow change in attitude, the majority of respondents also still agree that “a wife should always obey her husband” even in the survey of 2007. Noticeably the percentage of female respondents agreeing with this statement is decreasing.⁹ Furthermore, the study suggests the husbands of women who are less accepting of a subordinate role or whose wife is employed tend to resort to violence against their wives. The 2014 International Center for Research on Women (ICRW) study, *Masculinity, Intimate Partner Violence and Son Preference in India*, reaffirms these views.¹⁰ Although we cannot prove causality through these surveys, the correlations are significant and highly worrying.

Studies by the World Health Organization (WHO) further support the trends reported in the aforementioned surveys and analysis. Estimates in South and East Asia show the lifetime prevalence of physical and/or sexual intimate partner violence (IPV) among women to be 37.7 per cent.¹¹ The effects of this violence can range from physical trauma to a life controlled by fear and psychological stress which in turn can lead to an array of adverse health effects.¹²

⁸ Ibid 1601.

⁹ Ibid 1603.

¹⁰ Nanda Priya and others, *Masculinity, Intimate Partner Violence and Son Preference in India: A Study* (2014) International Center for Research on Women
<https://www.icrw.org/wp-content/uploads/2016/10/Masculinity-Book_Inside_final_6th-Nov.pdf> accessed 23 May 2018.

¹¹ *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (2013), World Health Organization 18.

¹² Ibid 15.

Other than the devastating effects that GBV has on the victims directly, it would be wrong to assume its adverse effects end there. The previously mentioned 2014 ICRW study shows there is a direct relationship between having witnessed or experienced discrimination or harassment during childhood and IPV. Of the men who witnessed discrimination or harassment ‘sometimes’ or ‘often’, over 75 per cent reported perpetrating IPV. Only under 14 per cent of those who ‘never’ witnessed or experienced discrimination or harassment perpetrated IPV in the past year.¹³ Similarly less than 10 per cent of the women who had not experienced any of the above were still victims of domestic violence in the past 12 months.¹⁴

This relationship is highly significant. It shows that bearing witness or experiencing violence or discrimination paved the way for further violence to happen. Yet, even though the situation is alarming and has existed in this form for a considerable time, Indian law is still lacking.

The Background Paper of the 2017 World Development Report surmises that while the Indian Constitution of 1950 prohibits discrimination on the grounds of sex as well as derogatory practices on women’s dignity, the Indian penal code does not penalise marital rape and presumes consent through marriage. It therefore turns a blind eye on the prevalence of domestic violence as well as denying women their bodily autonomy after marriage.

The 2006 Protection of Women from Domestic Violence Act (PWDVA) in India has expanded the definition of violence to include not only physical but also sexual, verbal, emotional and economic abuse as well as the threat thereof. It is a commendable effort and certainly a step in the right direction as it covers both married women as well as de facto partners, ex-partners, sisters, daughters and mothers.

The remaining issue though, is that marital rape has a civil character and is not criminalised. This concretely means that, due to it being a civil and not a criminal affair, courts can only order remedies such as protection orders, compensation orders or monetary relief with charges only being possible if the perpetrator violates above orders.¹⁵

¹³ Nanda Priya and others, 84.

¹⁴ Ibid 47.

¹⁵ Jeni Klugman, *Gender Based Violence and the Law* (2017) World Bank 34f
<<https://openknowledge.worldbank.org/bitstream/10986/26198/1/112914-WP-PUBLIC-WDR17BPGenderbasedviolenceandthelaw.pdf>> accessed 25 May 2018.

Furthermore, the Council on Foreign Relations notes other studies have shown women to be either unaware of their rights and see GBV as something ‘normal’, which matches the answers recorded in the aforementioned 2014 ICRW study. The studies also show a lack of legal enforcement and implementation.¹⁶ Another example is given by Sujata Gadkar-Wilcox when the author describes that even after the 2005 PWDVA was passed, three years later the Indian Supreme Court judged in *Dilip Premnarayan Tiwari & Anr. v. State of Maharashtra* that sentencing the perpetrators to death after they committed multiple homicides due to caste issues was an error as the Mumbai High Court had “failed to account for mitigating circumstances, including the violation of family honor in the case of unsanctioned intercaste marriage”¹⁷ and continued to put the blame on the woman Sushma Tiwari for not only marrying into a different caste, but also becoming pregnant.¹⁸ The author, Gadkar-Wilcox, further states that regional or local officials are often reluctant to get involved and prosecute domestic violence offences.¹⁹

If the Supreme Court or the police cannot be relied upon to enforce its laws and sees traditional norms to be the higher prerogative it is unsurprising that such factors contribute toward many women’s reluctance to seek out legal help in the first instance.²⁰

As has been highlighted above, the situation is highly problematic. Although India has made improvements according to the 2017 Global Gender Gap Report, real change has been slow in arriving, with vast gaps remaining and in need of redress.²¹

¹⁶ Beina Xu, ‘Governance in India: Women’s Rights’ (2013) *Council on Foreign Relations* <<https://www.cfr.org/background/governance-india-womens-rights>> accessed 25 May 2018.

¹⁷ Sujata Gadkar-Wilcox, ‘Intersectionality and the Under-Enforcement of Domestic Violence Laws in India’ (2012) 15 *Univ. of Pennsylvania Journal of Law and Social Change* 9 <<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1120&context=jlasc>> accessed 25 May 2018.

¹⁸ *Ibid* 9.

¹⁹ *Ibid* 10.

²⁰ Klugman (n 14) 36.

²¹ World Economic Forum, *The Global Gender Gap Report 2017* (2017) 22f <<https://www.weforum.org/reports/the-global-gender-gap-report-2017>> accessed 24 May 2018.

If we look at the picture the surveys, studies and reports paint and combine it with recent *Guardian* reports on rape and sexual assault in India in light of the fifth anniversary of the bus gang rape and death of Jyoti Singh,²² with the interviewed women all agreeing that nothing has changed for them since this time, we can only reach the conclusion that extensive and comprehensive measures are in dire need.

Gender-based Violence as a Societal Issue

Apart from legal reform, eliminating gaps such as the previous lack of recognition of marital rape, ensuring reproductive autonomy and strengthening the enforcement of existing laws, through e.g. specialised training of the personnel in charge of law enforcement and judicial procedures, we need to look at GBV with a much broader scope. Men in Indian society need to be included in the very broad but necessary discussion on gender equality as a whole. Concerning gender-based violence more specifically, we should not only focus on protecting victims after they have been hurt, but rather lessen the number of perpetrators and violations happening in the first place. In short, India needs sustainable societal change. Patriarchal structures are still deeply embedded in Indian society and continue to affect not only male perceptions of women, but also some women's perception of themselves.

Although we were not able to touch on the issue of masculinity in great detail, in the 2014 ICRW study the men's perception of dominance and toughness, as well as entitlement over their intimate partner's body, is nothing but toxic.²³ The analysis by Simister and Mehta shows an increase in IPV if either or both husband and wife are employed with an even higher prevalence if the wife is the only one employed in the household.²⁴ They point out their study supports previous research suggesting changes in values, such as increasing autonomy and independence of women, can lead to increased conflict potential and GBV.²⁵ In our case the

²² Laurence Topham and others, 'Fearless: five years after Delhi gang-rape, has anything changed for women in India? – video' (2018) *The Guardian* <<https://www.theguardian.com/world/video/2018/feb/07/fearless-five-years-after-delhi-gang-rape-has-anything-changed-for-women-in-india-video>> accessed 24 May 2018.

²³ Nanda Priya and others (n 10).

²⁴ Simister and Mehta (n 6) 1607.

²⁵ Ibid 1608.

prevailing rigid perceptions of masculinity in India on the one side and the Indian women's awareness of their right to economic and socio-political autonomy can be seen to create the heightened conflict potential outlined above. Yet, evidence in studies such as the 2014 ICRW report also reaffirms that increasing levels of education and wealth, alongside an urban residence have a significant influence on lowering the likelihood of experiencing violence by intimate partners.²⁶

Therefore we can identify the need to decrease the conflict potential through breaking down the rigid perceptions on what masculinity and being a husband 'is' and further strengthening these factors which can decrease violence.

India has a high potential for change as the majority of its population is young with the median age as of 2017, estimated to be 27.9 years²⁷, yet less than 30 per cent of women participate in the labour force.²⁸ Both urban, and to a greater extent, rural communities need to be involved in any educational measures implemented to lessen the residential disparity in GBV prevalence. More specifically the gap between rural and urban India in areas such as education, literacy rates and household income match the higher risk factors of violence against women and must be taken into consideration.²⁹

While rural men state economic activities and women domestic activities as the main reason to drop-out of school, the majority of rural drop-outs also happen in the age group of five- to 15-year-olds as opposed to 16- to 24-year-olds in the case of the urban population.³⁰

²⁶ Nanda Priya and others (n 10) 48f.

²⁷ "The World Factbook" (2018) *Central Intelligence Agency*
<<https://www.cia.gov/library/publications/the-world-factbook/fields/2177.html>> accessed 24 May 2018.

²⁸ *Women, Business and the Law* (2016) World Bank 146f
<<http://wbl.worldbank.org/~media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf>> accessed 22 May 2018.

²⁹ Dr. Dinesh Das & Minakshee Pathak, 'The Growing Rural-Urban Disparity in India: Some Issues' (2012) 1(5) *International Journal of Advancements in Research & Technology*
<<http://www.ijoart.org/docs/The-Growing-Rural-Urban-Disparity-in-India-Some-Issues.pdf>> accessed 25 May 2018.

³⁰ "11% of rural, 6% of urban people under 30 never went to schools" (2015) *What's Moving India*
<<http://www.whatsmovingindia.com/content/%E2%80%9811-rural-6-urban-people-under-30-never-went-schools%E2%80%99>> accessed 25 May 2018.

Furthermore, the 2017 Annual Status of Education Report (ASER) shows that while many rural youth in the age group of 14- to 18-year-olds complete primary education they still lack foundational skills, such as reading and arithmetic competencies.³¹

While a change of mindset and cultural views will only be possible in the long term, strengthening the commitment to and implementing policies and programs for both men and women in accordance with the UN Sustainable Development Goals can bring significant change. This will help India's socio-economic development as a whole, but also directly and positively impact the lives of this young and forward-looking population.

Empowering rural women through schemes such as the UNDP's Neem Project has led to an increase in household income, increased investment in the communities' health and education, and a decrease in domestic violence.³² Including boys and young men in the dialogue on gender equality, violence, and what it means to be a man help address rigid traditional norms both in the private, as well as institutional sphere. This latter sphere includes the workplace, religious communities and schools where identifying discriminatory practices and ideals should be another priority. Engaging and empowering men to distance themselves from rigid notions of masculinity and including them in awareness programs on GBV, IPV, reproductive health and sexuality is crucial. There are programs such as the Men's Action for Stopping Violence Against Women (MASVAW), organized through the national Centre for Health and Social Justice (CHSJ)³³ or the Men As Partners (MAP) program, organized by the global EngenderHealth network.³⁴ These programs aim to include men and boys as agents and to educate on the issues touched upon above. These kinds of projects need to be conducted on a state-wide and national scale in India in both urban and rural regions in order to show a

³¹ *Annual Status of Education Report (Rural): Beyond Basics* (2017) ASER 3
<http://palnetwork.org/aser2017_beyond_basics/> accessed 25 May 2018.

³² 'The Neem Project' (2017) *UNDP India*
<<http://www.in.undp.org/content/india/en/home/library/poverty/the-neem-project.html>> accessed 25 May 2018.

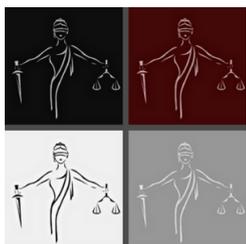
³³ *Centre for Health and Social Justice* <<http://www.chsj.org/>> accessed 25 May 2018.

³⁴ 'MAP Digital Stories: India' (2018) *EngenderHealth*
<<https://www.EngenderHealth.org/our-work/gender/digital-stories-india/>> accessed 25 May 2018.

significant impact. This is also the area where more field research with measurable outcomes is necessary to identify effective ways of engagement, realistic time frames and long-term effects on the people in question.

Conclusion

I believe India needs to approach the issue of gender-based violence as both a legal and a societal issue. The remaining discriminatory laws and frameworks need to be addressed creating an equal footing for men and women. Yet in order to reduce the risk of violence occurring in the first place the broader societal issue needs to be addressed as well, by empowering both sexes to stand up for the cause of equality and thereby consciously recognising and involving men and their perceptions as an important piece of the issue which is therefore also integral to its solution.



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