

## **PROTECTION AGAINST GENDER BASED VIOLENCE & ENSURING JUSTICE**

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### **Abstract**

Gender violence is a phenomenon which has been prevalent in all cultures surpassing all differences. All societies in the past and in present have witnessed gender inequality and its various forms i.e. discrimination, subjugation and suppression of the weaker sex. Domestic violence, trafficking, dowry deaths, female infanticide, female foeticide, and sexual harassment at work place are some of its offshoots. Some other forms of gender violence include forced pregnancy, abortion or sterilization, and dowry-related violence, sati and killings in the name of honour. Even in past, women have been a victim of rape, husband beating, murder, dowry, violence etc. The reason for the injustice can be traced in the patriarchal set up of Indian society where violence against women has been considered quite normal. Women battering is considered as a man's prerogative to deal with various family related situations and an answer to all kinds of frustrations. Although the state has come up with various legislations to control this crime but these have been more or less ineffective in dealing with the magnitude of the problem. Women in India have a long way to go to be free from all forms of abuse and violence. What is needed is economic independence, changing the mindset, spreading awareness, educating the public about the rights of women and ensuring gender justice is guaranteed.

This paper discusses the seriousness of the problem, reasons for its prevalence, its magnitude, steps taken by Indian state to deal with the problem and finally some recommendations to deal with the situation in an effort to ensure Gender justice in Indian society.

### **Keywords:**

Violence, Patriarchy, Battered women, Harassment, Gender Justice

### **Introduction**

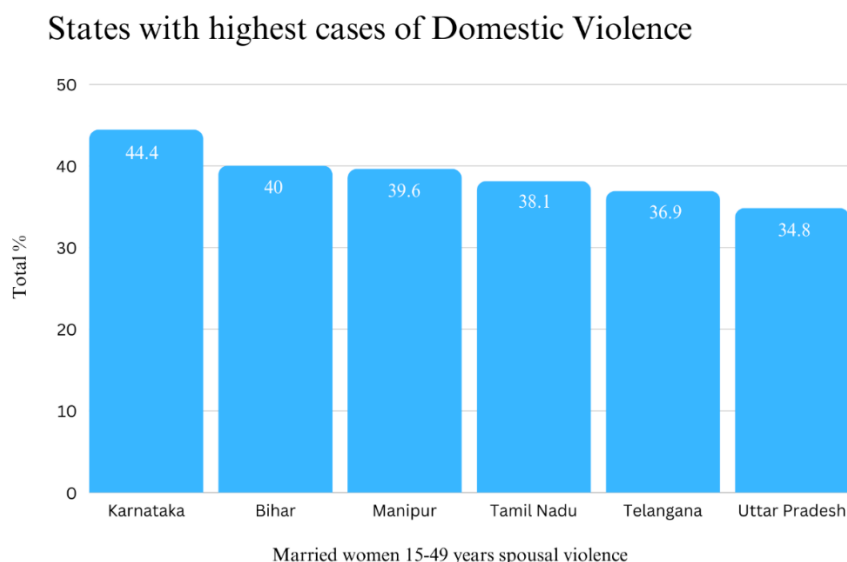
It is a harsh reality that even as we move in 21st century, violence against women is treated as a normal behavior, 'a largely accepted part of the family life in India.' On one hand Women is worshipped as shakti in Indian mythology but at the same time she is also a victim to cruelty and violence. She is not only looked upon as a commodity or a prey to men's needs by the outside world but also faces inequality and discrimination within the four walls of her own house. She plays diverse roles-sometimes as a daughter, sister, wife, mother -adding value contribution to the lives of all her near and dear ones but faces hostility at all levels. Many a times, a girl's birth is mourned. Some even resort to infanticide. Even if she survives, she is often considered as a burden & is constantly subjected to gender inequality. At times, this gender based violence has taken forms like Child marriage, Sati, atrocities committed against widows, dowry deaths, sexual harassment and denial of basic rights. This state of perpetual agony many a times pushes a women to commit suicide or she keeps facing a lifelong period of agony & discrimination for various reasons including that of dowry. Indian girls are often trained to remain silent & even to suppress incidences like molestation, sexual harassment, eve teasing, and even rape. This not only results in non reporting of many cases and paves the way for more crimes but also leads to negation of some very basic women rights. In this respect women rights have often been neglected or given secondary importance.

United Nations defines 'violence against women' as any action that leads or might lead to any kind of harm to women involving physical, mental or sexual sufferings, deprivation of liberty, in public or in

private life”<sup>1</sup> Gender based violence has increased in the past decade despite several measures been taken by Indian state to deal with the situation. Inability to deal with the situation highlights the weakness of state to provide protection and guarantee human rights to women of India.

### **Dynamics of concern**

In a study conducted by National Family Health Survey in India, 30 per cent of Indian women experienced physical violence from spouses during their lifetime. According to a latest report some states with high rate of crime against women are Karnataka 44%, Bihar 40% , Manipur 39% .Telangana 36% and Tamil Nadu 38%<sup>2</sup>



As per statistics of National Crime Records Bureau ,an Indian women witnesses a crime every three minutes. Sexual harassment, abuse, wife beating & driving women to suicide have become common feature of households. It is also recorded that 28.4 per cent of pregnant women suffer domestic violence<sup>3</sup>. As per data published by NCRB, total number of crimes against women during 2020 is 371503, out of which 496 cases were registered under the Protection of Women from Domestic Violence Act, 2005 (PWDVA).<sup>4</sup>

The National Crime Records Bureau recorded an 7.3% increase in gender based crimes in 2019 compared to 2018, of which 30.9% cases recorded were of domestic violence and 7.9% were of rape.<sup>5</sup> In this context, male female ratio too is an indicator. Census readings reveal that there were 972 females per 1000 males in 1901 whereas the figure is 933 females per 1000 males in 2001. What is more striking is that in the 0 - 6 age group there are only 927 girls per 1000 boys. In states like Punjab the female male ratio is as low as 793 girls per 1000 boys.<sup>6</sup>

While assessing such data as evidence pointing to gender based violence, we must remember that these cases are representative of only those sections of women who have reported about the crimes or injustice done against them. There exists a large section of unreported cases of Gender-based violence too. Thus, the actual figures of crime against women are far higher than the ones reported.

<sup>1</sup> Declaration on the Elimination of Violence against Women - UN Documents: Gathering a body of global agreements A/RES/48/104. [accessed on November 22, 2013]. Available from: <http://www.un-documents.net/a48r104.htm> .

<sup>2</sup> NFHS Survey 2019-2021.

<sup>3</sup> National Crime Record Bureau. [accessed on July 30, 2014]. Available from : <http://ncrb.gov.in/index.htm> .

<sup>4</sup> National Crime Record Bureau. [accessed upto 2020. Available from: <http://ncrb.gov.in/index.htm>

<sup>5</sup> Priyanka Garodia, *Gender-Based Violence in India: A Human Rights Approach* ,SEP1, 2021 , Peace For Asia . Available from <https://peaceforasia.org/gender-based-violence-in-india-a-human-rights-approach/>

<sup>6</sup> Sharma BR, Viji K, Gautam CS. (2001) *Murdered in the womb*. *Social welfare* 48 (8): 25- 26

### **Reasons responsible for violence against women**

In his article Dr B.R. Sharma discusses in detail the atrocities committed on women while dividing them into five broad categories of violence, namely: *Physical violence*, which may include assault, battery, serious injuries or burns etc. *Sexual violence*, which involves indecent sexual behaviour, rape, Female genital mutilation (FGM) etc. *Verbal violence*, which means use of abusive and indecent language against a woman. *Social violence*, which includes abusing, humiliating and harassing a woman or her near & dear ones. *Emotional violence*, which includes depriving a woman of love, affection, concern, sympathy and care, it also includes depriving her custody of children. *Financial violence*, which means denying a woman the financial assets or means to earn her livelihood and meet the bare necessities of life. *Intellectual violence*, means denial of rights to take part in discussions, decision making and debates pertaining to important agendas. Some *other forms of violence* include denial of education, access to health facilities, reproductive rights etc. (Sharma & Gupta, 2022)

Perhaps the chief cause of gender inequality can be traced in the institution of patriarchy. Religion, customs, age-old prejudices, etc. have influenced the lives of most women who do not even see anything wrong about their subservient and exploitable position. Lack of education, economic independence, value biases operating against them, etc, have resulted in the women being dependent on men folk and other institutions of authority like the family, neighbourhood and the society. Most women usually are not aware of their rights but what becomes more problematic is that they do not have easy access to justice.<sup>7</sup> When male domination is threatened, they feel deprived, suffer psychic distress and in their uncontrollable rage they beat their wives for domestic domination. Indian women more or less seem to be convinced that men have legitimate rights over them & their bodies. Their rights as a woman seem to be subservient to their duties towards their male counterparts, be it husband, father or son. The phenomenon of violence against women arises from patriarchal notions of ownership over women's bodies, sexuality, labor, reproductive rights, mobility and level of autonomy. Patriarchal notions of male superiority enable men to freely exercise unlimited power & control over women.<sup>8</sup> Not only this, they even legitimize this misconception by making women feel that men are actually superior and control over them is somewhat necessary.

For ages, violence has been used as a tool by men in our social set up to control women, to enforce subordination and compliance. Violence against weaker sex is generally used as a vent to satisfy male frustration and male ego, proving that "might is right".

Infact, women are trained by the society to accept their inferior & subservient role in the household and also to discriminate against their own female child. This helps to establish the ideology of male superiority within the household and places the women under the control of men throughout her life. Women not only accept their subservient role in the household but even start treating their husbands as deities. Their words are treated as commands who needs to be honoured and obeyed under all circumstances. The ideology of pativrata ordains women to treat their husband like deities.<sup>9</sup> Our society even justifies beating of wife if she does not follow husband's orders. The worst part is that women do not feel victimized at all as they are socialised to accept being beaten as a normal behaviour. The culture of silence reinforces tremendous social and psychological pressure to maintain the marriage at any

cost, force them to adjust for themselves, and their children and parents until the matter gets out of control. (Ghosh, 2013)

Wife battering is the most common form of abuse which is actually the result of perpetual inequality among sexes, wherein men find some scrupulous reasons to blame women. What is more shocking is

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<sup>7</sup> Vijaykumar Harbishettar\* and Suresh Bada Math\*- *Violence against women in India: Comprehensive care for survivors*, *Indian J Med Res.* 2014 Aug; 140(2): 157–159.

<sup>8</sup> Sharma, B. R. and Gupta, Manisha (2004). *Gender Based Violence in India: A Never-ending Phenomenon*. *Journal of International Women's Studies*, 6(1), 114-123.

<sup>9</sup> Bhattacharya, M. (2000). *Iron bangles to iron shackles: A study of women's marriage and subordination within poor households in Calcutta*. *Man in India*, 80, 1-29.

the fact that women themselves do not perceive an incident as abusive unless the beatings are very serious. Perhaps some broader reasons can be attributed to alcoholism, unemployment and poverty. Another factor for gender based violence is dowry. In India, dowry related violence and subsequent deaths have become major issues of concern. According to a study, Dowry related killings follow two patterns, first, Either the young brides were murdered or forced to commit suicide (18.4%) when their parents refused to concede to continuing demands of dowry and second, the murders were committed on the pretext of 'complex family relations' or extra-marital relations (52.6%).<sup>10</sup>

Religion: our traditions & thinking too have contributed to the inferior status given to women in our society. One of the greatest examples which show the extent of dependence of women on their men is the performance of Sati Pratha- in which women would be burnt alive in the funeral pyre of their deceased husbands, either willingly or forcefully. It is alarming that even the family of women – her parents and other relatives readily accepted this patriarchal institution which sacrificed their daughters lives in order to satisfy this male dominated society. In ancient scriptures, Manu the law giver clearly ordains that it was the duty of women to be subservient to father, then husband and then her own son. He has equated women to a slave. In other words, women were meant to be controlled by men folk at all levels & perhaps violence was just a mechanism used by men to control weaker sex. In this sense, Women have always been considered weak, vulnerable and in a position to be exploited. Adhishankaracharya, the great founder of Hindu Philosophy called woman as “the gateway to hell and poison in the shape of nectar”. The churchman thought that Eve led Adam to sin and warned men “not to give thy soul to women”. Even the great thinker Aristotle deprived her of the right to citizenship because she lacks certain qualities; she is naturally defective.<sup>11</sup> It will not be wrong to say that although mankind is progressing but his thinking still remains backward. Consciously or unconsciously, we still consider women to be of weaker sex and thus propagate gender inequality.

In more recent times, there has been a change in lifestyle in the wake of liberalisation resulting in different expectations from women. There has been a change in thinking and behaviour of people due to an increase in consumerism, not so real picture portrayed by advertising industry. An increasingly growing gap is being witnessed between the aspirations and their fulfilment, which is reflected in an increased violence in human interactions.<sup>12</sup> In changed scenario, women are expected to manage both home front & also work outside to contribute to family income. This once again leads to a clash of interests leading to domestic violence. Not only this, women are also vulnerable at their work place. Bigamy or extramarital relationships are a major source of stress in family life these days. Women and their bodies are many times used in advertising industry to sell commodities. A substantial population is being influenced by underlying philosophy of instant self-gratification, trying to actualize their sexual fantasies.<sup>13</sup> Lately more & more teenaged girls are becoming sex workers to earn money. There are about 10 million commercially sexually exploited women in India, of which one fifth are under the age of 18 years.<sup>14</sup> In this changed scenario, Gender based violence has taken new forms in which women are often seen as objects of sexual gratification and harassment at work place has taken an ugly part of their exploitation. Women mostly work in the unorganized sector, where they are ill paid but

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<sup>10</sup> Nigam S. (2002) *Silent Enemy in the Home*. Social Welfare 49 (4) 12 - 16.

<sup>11</sup> <https://www.lawctopus.com/academike/violence-women-gender-justice/>

<sup>12</sup> Sharma BR., Harish D, Sharma V, (2002 a) Kitchen Accidents vis-à-vis dowry deaths *Burns* 28: 250-253.

Sharma BR., Harish D, Singh S. (2002 b) Poisoning Scenario in Northern India- Challenges and Suggestions *Journal of Mahatma Gandhi Institute of Medical Sciences* 7 (1): 37 - 42.

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<sup>13</sup> Sharma, B. R. and Gupta, Manisha (2004). Gender Based Violence in India: A Never-ending Phenomenon. *Journal of International Women's Studies*, 6(1), 114-123.

<sup>14</sup> Patnam V, Bagul M. (2002) Teenage sex workers-aspirations and interest. *Social Welfare* 49 (8): 8-14.

need to cling on to the jobs due to ever increasing unemployment. Their need to survive in this expensive world drives women into dangerous situations like rape.<sup>15</sup>

Women find themselves adjusting to the new age modern values but to our surprise they too are the victims to the increased violence resulting from changed circumstances. Khanna and Varghese (1978) wrote, "The independent outlook fostered by better education, improved status and greater opportunities brings about a change in women, and leads to conflicts with family members". Their role is not only limited to household activities but have in fact become partners in sharing the economic responsibility with their menfolk, leading to an increase in gender based violence. Such violence may be increasing because women reject patriarchal setup in which men control the women. The 21st century Indian woman is often financially independent and well educated, sometimes even better off than her husband; this might create insecurity in the mind of her spouse.<sup>16</sup>

### **State legislations**

A major role has been played by the Indian state to establish equality & irradicate discrimination towards women. In fact, the Preamble as well as section 14 of the constitution underline the principle of equality. Since Independence, the Indian state has framed more than 50 laws and acts under the Indian Penal Code (IPC) and Special & Local Laws (SLL), which have direct or indirect bearing on the life of women (Ghosh & Choudhuri, 2011). Many of these laws were amended later on to suit with the changing times. Numerous legislations have been passed by the state to make a better and violence free world for women in general.

Equal Remuneration Act, 1976 along with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are great leap forward in the direction of protecting the interests of working women & strengthening gender equality. Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 bans prenatal sex determination, guarding the right of female child to survive. Another significant act strengthening gender equality was Hindu Succession Act, 1956 which guaranteed same successor rights on ownership of property as were given to men.

Dowry Prohibition Act of 1961 made both taking or giving dowry a punishable offence. Any kind of violence, torture, miscarriage, suicide or death due to dowry have specific provisions in the Indian Penal Code. More recent is the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) which was a more comprehensive law<sup>17</sup> that addresses all issues related to women in the domestic sphere, namely a) physical, b) sexual, c) verbal and emotional, and d) economic violence. (Ghosh & Choudhuri, 2011).

The need for Legislation relating to sexual violence was highlighted by the nation wide protests & wide media coverage that followed the Nirbhaya gang rape case in early 2013. Justice Verma Committee was formed to suggest recommendations for laws pertaining to rape & sexual violence against women. The recommendations in the report were the driving force for the enactment of the Criminal Law (Amendment) Act of 2013.

Previously the definition of rape was limited to penile-vaginal penetration as defined in section 375 of the Indian Penal Code (IPC) but henceforth it included any kind of penetration in any female body part. Another important change was the introduction of Section 53A of the Indian Evidence Act that made evidence relating to the victim's previous sexual experience and her 'character' not admissible in cases of sexual assault. (Inoue, 2020)

Criminal law (Amendment) Act, 2013 also included certain sections of offences as crimes in the Indian Penal Code to protect women from increasing and diverge types of crimes, namely:

- Section 326A - Acid attack

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<sup>15</sup> Sharma, B. R. and Gupta, Manisha (2004). Gender Based Violence in India: A Never-ending Phenomenon. *Journal of International Women's Studies*, 6(1), 114-123.

<sup>16</sup> Khanna, G., & Varghese, M. A. (1978). *Indian women today*. New Delhi, India: Vikas.

<sup>17</sup> Earlier acts defined domestic violence narrowly to refer to only cruelty and harassment of one's wife, and the wife's murder under Sections 498A and 304B of the Indian Penal Code



- Section 326B - Attempt to acid attack
- Section 354A - Sexual harassment
- Section 354B - Disrobing a women
- Section 345C – Voyeurism
- Section 354D – Stalking

Another implication of Criminal Law (Amendment) Act of 2013 was the revival of Fast Track Courts (FTCs)<sup>18</sup> by the states to try cases involving crimes against women and children. After the passage of the Criminal Law (Amendment) Act of 2013, 73 FTCs were set up across the country. In Delhi itself, six fast-track courts were immediately set up to exclusively try cases of sexual assault among women. By 2016, this number had risen to 399 FTCs for specifically trying cases of crimes against women.<sup>19</sup>

The year 2018 again saw a wave of protests following rape cases of young girls and the angry protestors questioning the validity of earlier legislations, especially designed to address sexual violence in the country. Indian government was pressurised for quicker and harsher punishments for perpetrators of these crimes. The Narendra Modi government came up with the Criminal Law (Amendment) Act 2018 which increased the minimum sentence to 20 years, instead of 10 years, for perpetrators of rape against victims under 12 years old. In the case of a gang rape, perpetrators may face the death penalty and at least a life sentence, instead of the previous minimum of 20 years. It states that child rape cases should be tried in a FTC and that any appeal against a sentence by a trial court must be disposed of within six months (Inoue, 2020)

### **Legislative Loopholes and Problems in Implementation**

Pressure from public, women activists and media has been successful in forcing the government to undertake legislative reforms with the belief that law would be constructive in providing relief to women suffering from violence. The legal realm is increasingly recognised as a deterrent to social wrong and therefore laws are widely accepted as the best check on gender violence. However, enactment of laws does not guarantee a decline in the number of cases of women abuse and violence. An evident example of this is that dowry remains a common cultural practice in India despite laws passed to stop this practice. The number of cases of dowry deaths as well as cases of cruelty by husbands and other relatives have shown a rising trend. Besides the official statistics, many cases go unreported as wife battering in many Indian homes is considered as an acceptable phenomenon. Mere passing of laws in no ways guarantees any reduction in the crimes pertaining to gender based violence. The real problem lies in the partial implementation of these laws.

B.Ghosh goes on to explain why the laws pertaining to dowry have not been successful in accomplishing their objective. It seems that the Indian law does not want to eradicate dowry as the law exempts 'voluntary and customary gifts of love and affection' given by the bride's family to her or her husband from the definition of 'dowry'. This defect brings the question whether Indian law wants to prohibit dowry in the real sense? Another defect is that the law does not distinguish between the 'giver' and the 'taker' as both are treated equally as offenders under the Act. The fact that dowry is given by parents out of social compulsion to get their daughters married is often neglected. Another defect is the Low conviction rates, i.e., the number of cases convicted to the total cases tried by the judiciary. Poor conviction is mainly due to the lack of evidence that the victim's family could gather, police malfunctioning and apathy, lack of community support, delay in judgment, illiteracy and ignorance of the victims, and more importantly, poor financial condition of the victim's family to

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<sup>18</sup> First established in 2000, the central government provided grants that would fund FTCs to address the backlog of pending cases, caused in part by the low judge-to-population ratio, on general subject matters. A total of 1734 FTCs were established under this initiative and funds for its operations were made available until 2011. However, following this period, funding was cut and state governments became responsible for allocating necessary resources should they choose to continue the operation of FTCs in the region.

<sup>19</sup> In contrast, the original FTCs addressed the general backlog of cases and were not specific for any type of crime.

pursue a case for punishing the offender (Ghosh, 2013). The case of a rural women seeking legal help is even a more difficult dream as she has to face more hurdles.

In the words of B. Ghosh "The difficulty in distinguishing 'dowry' from 'gift', coercion from custom, homicide from natural death, and the inability of the bride's family to seek a properly signed list of articles given in marriage from the in-laws makes it difficult for the victims to prove their cases."<sup>20</sup>

It may be noted that Dowry Prohibition Officers (DPO) have not been appointed as promised by the administration. Also, it is not always that all women taking the help of dowry prohibition laws are always right. Many women unable to adjust with husbands family make false claims & misuse of dowry law, particularly Section 498A.

Some other loopholes in the way of effective implementation of laws is the unprofessional behaviour displayed by medical professionals, police officers, and judges, who are unable to fulfil their responsibilities under the law. It is a known fact that police is reluctant in filing the First Information Report (FIR), especially if the victim is from a poor socio economic background. Not only this, at times Police also misuses its authority to pressurise the victim's family to 'settle' or 'compromise'. There has been documented evidence of Human Rights Watch report about the usage of the two-finger test by medical professionals which is in violation to the guidelines issued by the Ministry of Health and Family Welfare 2014 for the proper treatment of victims of rape (Inoue, 2020)

Further the time frame set by the Criminal Law (Amendment) Act of 2013 to conduct inquiry and trial for rape cases was two months from the date of filing of the charge sheet. However, this was never achieved. It took no less than eight months before the perpetrators of the Nirbhaya gang rape case were convicted. There has been an enormous increase in the number of rape cases pending trial in Indian courts. In such panic scenario where the FTCs were to dispense the unrealistic target number of cases, judges were seen not evaluating the evidence properly, not allowing full cross-examinations and proceeding in the absence of lawyers in many cases (Inoue, 2020).

Although we have discussed the various legislative reforms and associated problems in their implementation, there remains some legislative gaps that need to be addressed. There is an urgent need to pass laws to protect victims and witnesses outside the courtroom. This need was highlighted in 2018 when the two persons accused of raping a 16-year-old girl in Jharkhand village resorted to beating the girls' parents and even burnt the girl.

Another legislative gap is the absence of any law criminalising marital rape. Absence of such a law justifies the sexual violence behind the closed doors and places women at the mercy of their male counterparts.

## **Conclusion**

Gender based violence has increased significantly in the past decade despite the measures taken at both national and international levels to eradicate this problem. It highlights the inability to guarantee and protect the basic rights of women. Laws have been amended from time to time but little success has been achieved in this respect. More than 50 laws and acts were enacted under the Indian Penal Code (IPC) and Special & Local Laws (SLL) intended to curb violence against women and girl child. (Ghosh & Choudhuri, 2011) It is implementation of these laws has remained partial. While laws have been passed to deal with domestic violence and dowry, not many effective laws have been passed to deal with instances of honour killing and acid attacks. Perhaps outdated family values, our customs, religious practices & the social structure of our country often outweigh laws passed to address violence faced by Indian women. Similarly, while laws have been passed to protect the interests of homosexuals, transgender men and women, yet these minorities are repeatedly subjected to various forms of discrimination and violence. For the laws to be effective, they need to be accepted by the society at large. Despite the prevalence of sophisticated laws, there seems to be absence of political will to

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<sup>20</sup> Ghosh B, *How does the legal framework protect victims of dowry and domestic violence in India? A critical review*, Aggression and Violent Behavior, 2013, vol. 18, 409-416

address issues relating to gender based violence and to implement these laws seriously. Political prowess entrenched in misguided notions of culture influence the state mechanism which in turn causes discrepancies, variations and outright denial of most cases of GBV justice.<sup>21</sup>

It is a shame that despite stringent laws having been passed to curb the menace of dowry, we have not been able to achieve much. The Dowry Prohibition Laws have been violated again and again. In fact the violators do not consider themselves as wrongdoers at all. This law is often regarded as an ornamental legislation, not meant to be seriously implemented or abided.

In a country where women are socialized to consider marriage as 'essential' and domestic violence as 'normal' for the sake of her own and children's interest, no law can help the majority who often fail to recognize even basic human rights (Ghosh, 2013). Women organizations are seen struggling and protesting against this gender based violence and denial of basic human rights to Indian women. Due to non observance of laws, either deliberately or unconsciously, the evil forms of violence against women manifests itself. Perhaps, laws alone is not the answer to this deep rooted problem. What is required is not only a sound legal setup but also favorable conditions for women upliftment which include creation of economic opportunities, education, awareness about rights of women & most important, bringing a change in the mindset of people, both men & women together. Restructuring the society with the aim to promote gender equality is the need of the hour.

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<sup>21</sup> G. Ipriyanka, *Gender-Based Violence in India: A Human Rights Approach*. SEP 1, 2021 Gender, India, Rape, Violence