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TABLE OF CONTENTS

COVER STORY: INVISIBLE VICTIMS OF SEXUAL VIOLENCE: ACCESS TO JUSTICE FOR WOMEN AND GIRLS WITH DISABILITIES IN INDIA	3-6
EQUALITY	7
DEMOCRATIC PARTICIPATION	8
GOVERNANCE	9
VIOLENCE AND SAFETY	10
CONTACT	11

COVER STORY

Invisible victims of sexual violence: Access to justice for women and girls with disabilities in India

Introduction

Indian society is going through turbulent times where women's safety is constantly at risk. News of the recent gang rapes in Kathua and Unnao and the impunity of the perpetrators have sent shockwaves throughout the country and have once again revealed the fault lines in our legislative and judicial systems as well as in the prevalent societal norms and beliefs. A report titled Access to Justice by Survivors of Sexual Abuse published in November 2017 by Human Rights Watch found that women and girls who survive rape and other sexual violence often suffer humiliation at police stations and hospitals and have to endure protracted trials. Police are frequently unwilling to register their complaints, victims and witnesses receive little protection. As can be witnessed in the slow judicial process and the lethargic functioning of the bureaucracy coupled with victim blaming and shaming, justice for victims of sexual violence is already a herculean task for most. This situation is worsened in cases of physically, mentally or emotionally disabled women and girls. A report published by Human Rights Watch in April 2018 on access to justice by women and girls with disabilities in India has focused on the additional challenges faced by disabled survivors of sexual violence in India.¹

The 61-page report, "Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India," details the challenges many women and girls with disabilities face throughout the justice process: reporting abuse to the police, obtaining appropriate medical care, having complaints investigated, navigating the court system, and getting adequate compensation.² Although the government had adopted significant legal reforms for sexual violence cases, but implementation loopholes have ensured that serious gaps and barriers remain in accessing the justice system.

Challenges faced by disabled victims

Indian women and girls with disabilities face a higher risk of sexual violence and the challenges faced by them are manifold. Women with physical disabilities may find it more difficult to escape from violent situations. As highlighted in the Report, their disabilities often restrict them from seeking or calling out for help while several women with intellectual disabilities have found it difficult to identify and report a case of non consensual sexual act. What makes the situation worse for such victims is the popular mindset and stereotypes about disabled persons in society. They are often perceived to be weak, unwanted or asexual, making them more vulnerable to sexual violence.³ Often,

¹<https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>

²<https://www.hrw.org/news/2018/04/03/india-remove-hurdles-justice-women-disabilities>

³<https://www.hrw.org/news/2012/05/21/women-disabilities-risk-rape>

after such an abuse takes place, the case goes unreported either due to the stigma attached to it or because of the physical and communication barriers which makes it more difficult for women and girls with disabilities to seek justice. The report classifies the primary challenges faced by a disabled victim under the following heads-

i) Lack of medical services:

In cases of sexual violence, immediate medical attention and examination can both identify urgent medical needs and facilitate timely evidence collection. However disabled women often have little or no access to medical service designed specifically for them. The failure of many medical professionals to adequately explain medical tests and procedures and ensure that women and girls with disabilities are comfortable with the process may add to the trauma of sexual violence. Absence of trained and sensitised nurses, police, legal counsel, and awareness of the rights results in low reporting and even lower conviction rates. Sexual abuse rehabilitation programs, shelters, other crisis programs, and police departments often don't have the capacity to adequately serve women with disabilities. Programs aimed at the prevention of violence against women and girls rarely explicitly include or reach out to women with disabilities, in particular those with mental or intellectual disabilities. In some cases, Human Rights Watch found that women and girls were excluded from accommodations on the basis of their inability to certify a disability.

ii) Interaction with untrained police officials

Women and girls with disabilities require special support and assistance and often communication might be difficult for them especially in an unfamiliar setting. Absence of a facilitator or sign language interpretation in most police stations compound the problems of these victims who find it difficult to interact with the police officers. Officers are also often not sensitised and display clear apathy and ignorance towards such victims and their conditions which further deters the victim from divulging details. At times the officers refuse to recognise the disability and dismisses the victim as 'confused'. Even in cases of obvious disabilities, the police have failed to include these specific details in the First Information Report (FIR). Lack of documentation in police reports precludes women and girls with disabilities from receiving specific need-based support from the police and judiciary. This also directly impacts the chances of similar cases getting reported in the future. An untrained police personnel remains the biggest barrier to reporting cases of such crimes, leading to low conviction rates.

iii) No awareness of legal rights

The judicial process in India is slow and protracted and for victims of sexual offences, this can be very traumatic. Moreover, unfamiliar and stressful court environments presents a heightened challenge for women and girls with disabilities, especially during lengthy legal cases. Lack of information among women and girls with disabilities and their families about their legal rights, including the right to legal representation, prevent many from advocating for their needs. Navigating the judicial system and its procedures is also an arduous task for many illiterate families.

iv) Difficulties obtaining compensation

The Report highlights that obtaining compensation is a cumbersome process for these victims and they often never receive the money despite court orders regarding the same. Lack of government

intervention and institutional mechanism to ensure the same has resulted in a lax implementation system. Even in cases of extreme violence, trauma and economic hardship (including due to childbirth following rape), women and girls with disabilities had difficulties in securing compensation.

The legal position

The Indian Constitution provides equal rights to every citizen and guarantees everyone the access to social justice and equality. But it was only in 1995 that the first law directly targeted at the disabled people was introduced. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was the principal and comprehensive legislation concerning disabled persons. The Act defined the responsibilities of the Central and State governments with regard to the services for disabled persons. Provisions had been made in this Act for the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of disabled persons. The Act also recommended creation of a barrier free environment by removing all type of discrimination against persons with disabilities where they can share the development benefits which a normal person enjoy.

In 2007, India ratified the Convention on the Rights of Persons with Disabilities (CRPD). Under the treaty, states are obligated to “ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”⁴

After the Nirbhaya case in Delhi in December 2012, sexual violence against women in India came under global spotlight. The government responded to the public outrage and civil society protests by passing an amendment to its criminal law—known as The Criminal Law (Amendment) Act, 2013 (the 2013 amendments)—to strengthen the provisions against sexual violence. The Verma Committee Report published in 2013, on the basis of which the amendment was framed suggested various reforms to safeguard the rights of women and girls, including those with disabilities, and facilitate their participation in the investigative and judicial processes. For example, women and girls with disabilities have the right to record their statement with police in their home or a place of their choice, and the right to assistance by an interpreter or support person when the complaint is recorded and during trial. The protections also apply to women who are seriously physically hurt or who have a temporary disability.⁵

In 2014, India’s Ministry of Health and Family Welfare issued Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence, which include requirements for the medical examination of women and girls with disabilities such as providing accommodations like a special educator to take consent and medical histories. In December 2016, the Indian parliament adopted the Rights of Persons with Disabilities Act which gave effect to the UN Convention. The stated objective of the Act was to “protect all persons with disabilities from abuse, violence and exploitation, and

⁴<https://www.cbm.org/United-Nations-CRPD-256097.php>

⁵<http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>

articulate specific measures to be taken by appropriate government officials, executive magistrates and the police.”⁶

Recommendations

Several pro-active steps have been taken by the government in the last decade to reform the criminal justice system and to make redressal mechanisms more accessible to women from all strata of society. But as this recent HRW Report points out, it has not been successfully able to include within its ambit disabled women. This is pertinent especially in today’s scenario as women’s safety and securing justice has become even more precarious. Despite strides made by the present government as well the previous ones in the field of disability law, poor implementation and lack of awareness has ensured that its effectiveness is largely limited. The Reports recommends certain measures that can be looked into by the government and implementing agencies for a better assessment of the needs of the disabled victims-

- a) Governments and service providers need to target efforts to include women with disabilities in sexual and gender-based violence prevention and treatment programs. This could involve providing transportation for women with disabilities to clinics, making services accessible for women with various disabilities, providing ramps for those in wheel chairs.
- b) Easy-to-understand information, basic training for health care workers and law enforcement officials, and developing programs to combat stigma, are improvements that would make a difference.
- c) No specific fund for persons with disabilities exists in India and women with disabilities are not explicitly mentioned in the Nirbhaya Fund. Prominent activists have suggested that a certain amount from the Nirbhaya Fund should be put aside for women with disabilities because accessibility and reasonable accommodation involves costs. Most of them have highlighted that these aspects of access to justice for women and girls with disabilities are mostly not been taken into consideration, resulting in the poor infrastructure available to such victims.
- d) Finally, steps must be taken to ensure that these cases no longer remain in the shadows and the victims are not ‘invisible’ to the law.

⁶<https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>

EQUALITY

Abortion has been legal in India since 1971 but it is still not a woman's right

Nozer Sheriar, The Print

According to studies published in The Lancet, an estimated 56 million abortions took place globally each year between 2010 and 2014, with 15.6 million induced abortions in India in 2015. Despite the fact that it is the woman who has to go through 9 months of pregnancy, it should be her decision as to whether she wants to continue or terminate. Unfortunately even with the presence of well intentioned laws such as the Medical Termination of Pregnancy (MTP) Act that legalises abortion or even the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, and the Protection of Children from Sexual Offences (POCSO) Act, 2012, aim eliminate the practice of sex selection and the increasing incidence of child sexual abuse in the country, issues beginning with the legal barriers, such as the blanket 20-week gestation limit, no mention of unmarried women in the clause of contraceptive failure and the need for physician's consent all end up denying women reproductive justice in India.

Read More: <https://theprint.in/opinion/abortion-has-been-legal-in-india-since-1971-but-it-is-still-not-a-womans-right/51634/>

Date Accessed: 26.04.2018

In Rural Manipur, Women Feel the Heat of Climate Change

India Climate Dialogue, The Quint

A team from the Rural Women Upliftment Society recently attempted to trace the lives of women in North east who are on the frontline of climate change while living in amidst protracted conflicts in these states. The traditional mode of slash and burn agriculture common in Manipur has been affected by frequent forest fires which destroys the soil and dries up natural reservoirs of water. The women now have to travel even further for both cultivation and collection of water. The summer season is interspersed with floods even without heavy rains as the dams inundate the whole river downstream. Rising temperatures and the drastic shift in the climate also means that it is more difficult to preserve seeds and despite the sufficient rainfall, potable water is increasingly becoming scarce. In all of this, it is mostly the rural women who bear the brunt of this climate change and are involved in preserving natural resources. Yet, the Society states that women still do not have sufficient say in the policy making of local bodeis.

Read more: <https://www.thequint.com/news/india/in-rural-manipur-women-feel-the-heat-of-climate-change>

Date Accessed: 26.04.2018



DEMOCRATIC PARTICIPATION

‘Casting couch’ controversy shows India needs to create safe workspaces for women

Shoaib Daniyal, Scroll.in

Sexual harassment is a widespread problem in India’s workplaces. It may persist due to weak or no policies at all to deal with sexual harassment in the Indian workplace. In fact, the 2013 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act too has been widely ignored and the Union government itself in the past, has pointed to serious flaws in the way the act is implemented. As a result, many surveys have found that sexual harassment is widespread in Indian workplaces. Recently this issue came in the limelight when veteran Hindi-film choreographer Saroj Khan made a curious statement seeming to defend the practice of exchanging sexual favours in return for roles in movies. Following this, Congress MP Renuka Chowdhury too joined the debate pointing out that the practice was not limited to the film industry. “This happens everywhere in workspaces. Don’t imagine that Parliament is immune or any other workspace is immune”.

Read More: <https://scroll.in/article/876802/the-daily-fix-casting-couch-controversy-shows-india-needs-to-create-safe-workspaces-for-women>

Date Accessed: 26.04.2018

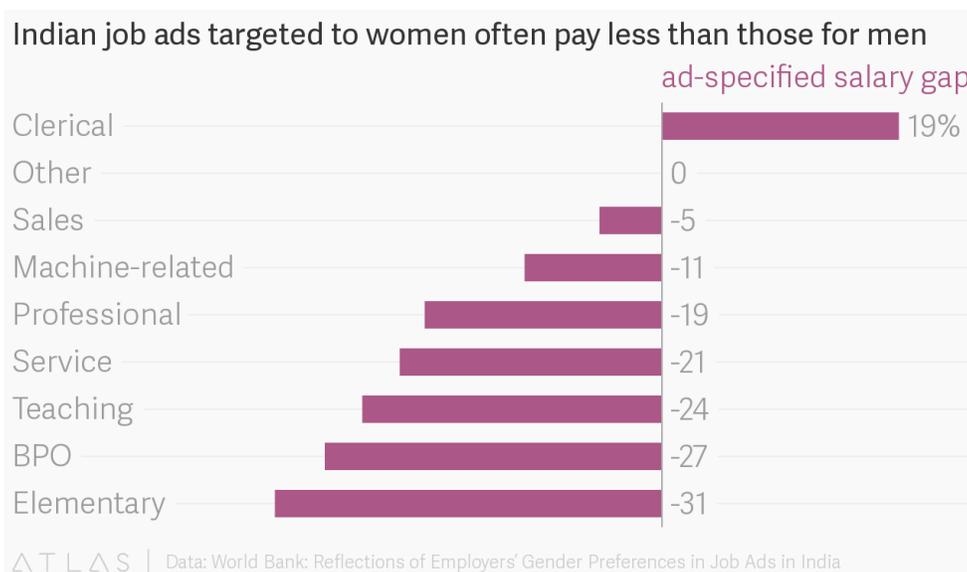
Large Number of Job Ads in India Explicitly Prefer Men: World Bank Study

Jahnvi Sen, The Wire

A World Bank study has revealed on the basis of job advertisements between 2011-1027 that 60% of the employers in India prefer a man for the job and advertisements often specify the preferred gender. This statistics, in the backdrop of an abysmal women labour force participation in the country, reinforces the demand side of this problem and the fact that men are still viewed as more competent. The authors of the study also found that the jobs ads that preferred women were “low-quality, low-status jobs, typically low-paid informal jobs” thus segregating the labour force. One of the concerning factors that researchers have pointed out in the past is that even though the educational level of girls is on the rise, this is not translating into a larger female labour force. The other confusing factor is that one-third of rural women and half of urban women who engage mainly in housework want a paying job. However, several societal restrictions and norms ensure that despite having the qualifications and willingness to do so, women cannot participate in the labour force.

Read more: <https://thewire.in/women/women-jobs-india-ads-prefer-men>

Date Accessed: 25.04.2018



Source: <https://www.theatlas.com/charts/SkTZk8ocf>

GOVERNANCE

Transgender community seeks welfare board in state

TNN, The Times of India

Despite the 2014 Supreme Court ruling on Transgenders Welfare Board in each state, Gujarat is yet to constitute a board which addresses the issues of transgenders. Recently, the Lakshya Trust and Voluntary Health Organization based in Chennai, made a representation before the state government seeking to form 'Transgender Welfare Board' in the state. To commemorate Transgender Day Event 2018, several pertinent issues like lack of access to basic facilities such as affordable housing, healthcare and employment opportunities were also discussed by the group. Community leaders stressed on the immediate need for a Board where all the parties are fairly represented and the transgender community is given a platform to voice their grievances.

Read more: <https://timesofindia.indiatimes.com/city/ahmedabad/transgender-community-seeks-welfare-board-in-state/articleshow/63851908.cms>

Date Accessed: 26.04.2-18



Source: <http://www.thehindu.com/news/national/other-states/maharashtra-to-set-up-transgender-welfare-board-soon/article22648943.ece>

VIOLENCE AND SAFETY

India: Remove Hurdles to Justice for Women with Disabilities

Human Rights Watch

According to a recent report titled, "Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India" by the Human Rights Watch, Women and girls with disabilities in India who survive sexual violence face high barriers to access the justice system despite significant legal reforms for sexual violence cases adopted by the government as a result of serious gaps in its implementation. The report goes on to explain the various challenges that these women and girls with disabilities face throughout the justice process starting from reporting abuse to the police to obtaining appropriate medical care, having complaints investigated, navigating the court system and finally getting adequate compensation.

Read More:

<https://www.hrw.org/news/2018/04/03/india-remove-hurdles-justice-women-disabilities>

Date Accessed: 26.04.2018

Study shows crimes against women are taken lightly by the Indian system

Afsana Rashid, The Milli Gazette Online

As per a recent report titled, "Analysis of MPs/MLAs with Declared Cases Related to Crimes against Women" done by the Association for Democratic Reforms (ADR) and National Election Watch (NEW). Out of 1,580 (33 percent) MPs/MLAs who have declared criminal cases, 48 (45 MLAs and three MPs) have declared cases related to crimes against women. The result is based on the analysis conducted for almost 4,845 out of 4,896 election affidavits of current MPs and MLAs that included 768 out of 776 affidavits of MPs and 4,077 out of 4,120 MLAs from all the states across the country. The report further observed that the BJP has the highest number of Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) facing cases of crime against women. Unfortunately the reports highlights that all the major political parties had given tickets to candidates with cases of crimes against women, especially rape, and therefore hindering the safety and dignity of women.

Read More

<http://www.milligazette.com/news/16232-study-shows-crimes-against-women-are-taken-lightly-by-the-indian-system>

Date Accessed: 26.04.2018

Transgenders protest against gender crimes

ENS, The Indian Express, 24 April 2018

The Academy of Fine Arts in Kolkata recently witnessed a demonstration by the transgender community, demanding safety and security for women as well as members of their own community. This was organised to protest against the alleged molestations that occurred during the celebrations for Transgenders Day in the same venue.

Read more: <http://indianexpress.com/article/cities/kolkata/transgenders-protest-against-gender-crimes-5149159/>

Date Accessed: 26.04.2018

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