

WOMEN'S HUMAN RIGHTS SHOVELLED IN THE DARK DURING THE PRESENT COVID-19 PANDEMIC

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ABSTRACT

The present COVID-19 Pandemic poses a great threat to the human rights of the most vulnerable sections of the society, one of them being women. Women are marred doubly, first owing to their gender and secondly due to the pandemic. This Article will throw light on the human rights of women from different walks of life pursuing different roles being undermined during the COVID-19 crisis and gendered impact of such pandemics drawing examples and case-studies from earlier ZIKA and EBOLA pandemics. It will also attempt to dig deeper into the social norms to find the reasons for the sheer disregard of women's human rights and investigate as to what renders women's human rights so readily dispensable even on the early hints of a humanitarian or other crisis.

INTRODUCTION

Pandemics have historically disproportionately affected the most vulnerable people, highlighting lines of disadvantage based on race, social class, and gender.¹

The Director-General of the World Health Organization (WHO) declared 2019-nCoV outbreak a Public Health Emergency of International Concernⁱⁱ on 30th January, 2020ⁱⁱⁱ even before the novel coronavirus disease became officially anointed as COVID-19 on 11th February, 2020. Post this declaration and fearing an unprecedented increase in cases of COVID -19 most of the countries including India resorted to locking down the entire country and spreading the word of physical distancing on the pretext of flattening the curve of spread. However, this has led to various repercussions, and the most vulnerable sections of society consisting of women, children, minorities, migrant labourers, etc., as always are bearing the brunt of this pandemic.

Maria Holtsberg, the Humanitarian and Disaster Risk Advisor at UN Women Asia and Pacific rightly stated that "Crisis always exacerbates gender inequality". Women are woefully bearing the wrath of inevitable negative consequences of this pandemic which are wide and deep. Gender blindness and disregard for human rights of women in policies and public health efforts has been witnessed during the ZIKA and Ebola epidemics too. Gender inequality is especially heightened during crisis due to the combination of pre-existing biological and socio-cultural factors which means that while the health status of populations as a whole deteriorates, women are especially vulnerable.^{iv}This article will throw light on the various ways through which human-rights of women from different walks of life pursuing different roles are being undermined during the COVID-19 crisis and gendered impact of such pandemics.

STEREOTYPED ROLE OF WOMEN AS CARE-GIVERS

Longstanding patriarchal social norms and cultural expectations have put the burden of caring for children, elderly, and household on Indian women, thus, necessitating engagement in unpaid caregiving responsibilities.^v The current Coronavirus outbreak necessitates maximum care for higher-risk groups like children and elderly resulting in social distancing measures like the closure of schools, creches, etc. This forces women to devote even more time to housework. Men in a majority of households do not share these responsibilities due to their patriarchal conditioning that these are essentially "women's work" and their looking down upon such works which is evident in the OECD^{vi} statistics that women perform 6 hours of unpaid work every day, while men spend a paltry 52 minutes.^{vii}This burden will increase amid the lockdown as Indian men continue to not help in the household.

Arbitrary distribution of majority of care-giving jobs at home to women is a violation of their human-rights as embodied in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)^{viii}. The third general thrust of the Convention gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Thus, preamble of the Convention stresses "that change in traditional role of men and

women in society and family is needed to achieve full equality of men and women". Article 5 of CEDAW obliges States parties to work towards modification of social and cultural patterns of individual conduct in order to eliminate "prejudices, customary and all other practices which are based on the idea of inferiority of one sex or on stereotyped roles for men and women"^{ix}.

It is evident that stereotyped role of women as primary care-givers and viewing their work as inferior which has increased manifold during current pandemic is also in violation of the Right to live a dignified life which is provided in the Preamble of United Declaration on Human Rights (UDHR)^x and Article 1 of UDHR^{xi}. The Indian Supreme Court has also interpreted Article 21 and widened the scope of Right to life to include right to live a dignified life^{xii}.

INCREASE IN VIOLENCE TOWARDS WOMEN

Pandemics compound existing gender inequalities and vulnerabilities leading to increase in risks of abuse. Therefore, one of the most horrific impacts of the COVID-19 outbreak and subsequent lockdown has been an uptick of Gender-based Violence, Domestic Violence, Intimate Partner Violence (IPV) cases around the globe from the US^{xiii} and UK^{xiv} to China^{xv} and India. The negative consequences have multiplied as services to support survivors are disrupted or made inaccessible.

In India, a woman is subjected to an act of domestic violence every 4.4 minutes, according to the 2018 Report of National Crime Records Bureau (NCRB) and that 1 in 3 women will experience IPV in their lifetimes. There is already an increase in these cases, the National Commission for Women (NCW) has seen more than twofold rise in gender-based violence during the lockdown in India; total complaints were 116 in first week of March,^{xvi} whereas between 23rd March and 16th April, NCW registered 587 domestic violence complaints, a 45% increase from previous 25 days^{xvii}. Factors compounding the situation include confinement, social and economic stress, unemployment, no accessibility/overdose of alcohol. Many women are being forced to 'lockdown' at home with their abusers leading to an exponential increase in gender-based violence^{xviii} owing to the NCRB data^{xix} showing that in almost 94 out of 100 rape cases, the survivors were known to the offenders, being either family members or relatives.

There are precedents showing an increase in Gender-based violence and IPV during times of crisis like natural disasters or Public Health Emergencies. Domestic Violence reports increased by 46% in Othello, Washington after the eruption of Mount St. Helens, along with increases in reported alcohol abuse and aggression. The economic impacts of the 2013-2016 Ebola outbreak, placed women at greater risk of sexual violence.^{xx} Increase in such violence during humanitarian emergencies cannot be detached and viewed as a separate phenomenon rather it has to be examined in the light of existing structural inequality. Structural inequality involves dependency, sexual stereotyping, socio-economic and disempowerment, this establishes the fact that women are the primary victims of emergencies.^{xxi} Pandemics increase social and economic insecurity which entails with it anger, fear and frustration. Men, unable to control these complex feelings, embroil these feelings into anger and spit it out on so-called 'weaker section', i.e., women due to their patriarchal conception of superiority. Therefore, increase in such violence needs to be viewed as a composite whole of age-old patriarchal conditioning and feeling of superiority.

T. v. Hungary^{xxii} decision was the first in which domestic violence was held to constitute gender-based discrimination. In line with its own General Recommendation No. 19, 77 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) committee affirmed that violence against women, insofar as it is "directed against a woman because she is a woman or [as it] affects women disproportionately," is gender-based violence and constitutes a form of discrimination.^{xxiii} The CEDAW Committee held that Domestic violence is gender-based in that it reflects an attitude toward women that subordinates them to men or forbids them to deviate from stereotyped gender roles.^{xxiv} Articles 5^{xxv} and 16^{xxvi} of CEDAW obliges states to take steps to root-out practices that are based on the idea of gender superiority, and to eliminate discrimination against women in family relations, thus, the Committee reiterated that traditional attitudes regarding women as inferior to men contribute to violence against women^{xxvii}. Domestic and gender-based violence also amounts to torture, cruel, inhuman degrading treatment which is in violation of Article 5 of the Universal Declaration of Human Rights^{xxviii}. Thus, gender-based violence is a violation of human-rights of women. Rise in domestic violence literally increases the risk to women's lives: as one curve gets flattened, the other one slopes upwards sharply.

IMPACT ON WOMEN HEALTHCARE-WORKERS AT THE FRONTLINE

The first responders in health crisis are nursing professionals. In India, the nurses, midwives and ASHA workers constitute 83.4% female health workforce^{xxxix} and are at the frontline of COVID-19 pandemic. During the 2014–16 west-African Ebola outbreak, gendered norms made women more likely to be infected by the virus, given their predominant roles as caregivers within families and as frontline healthcare workers.^{xxx} However, female care-workers, owing to their gender are largely ignored from the policies of government. There has been gender-biasness in providing equipment to protect them from being infected from coronavirus. Nurses of various hospitals are going on strike alleging that they are being treated “differently” at the hospital.^{xxxi} This neglect of healthcare workers is due to the fact that majority of them are female and their jobs are overlooked as an extension of gendered care roles and receive little attention in terms of fund allocation, fair pay, etc.^{xxxii}

Discrimination and ill-treatment of healthcare workers at the frontline, owing to their gender is a violation of the guarantees under Articles 2^{xxxiii} & 7^{xxxiv} of the UDHR which is also embodied in Articles 15 & 14 of Indian Constitution respectively. The discrimination meted out to them goes against the mandate of *Maneka Gandhi v. Union of India*^{xxxv} and *E.P. Royappa v. State of Tamil Nadu and Anr.*^{xxxvi} wherein, Justice Bhagwati pointed out that “arbitrariness and discrimination is antithesis of equality”^{xxxvii}

CONCLUSION

The inequalities of outcome are biological reflections of social fault lines.^{xxxviii}

It is true that Pandemics lay bare and also aggravate the existing gender inequities as has been revealed by past epidemics and humanitarian crisis. Since women bear unbalanced risk of exposure and negative outcomes of the outbreak, there is an urgent need for feminization of the COVID-19 outbreak preparedness. Also, the outbreak creates a huge dent on human rights of women as far as to endanger their first generation Right to Life.

If viewed in positive light, this pandemic serves as a great opportunity to address the age-old problem of gender inequities in a wholesome manner reflecting upon the patriarchal orientation which has denied women their human rights starting from the cradle to the grave. If not approached through a gendered lens, the COVID-19 outbreak could revert gender roles within the household to the 1950s and flattening the pandemic curve would flatten all gains made by women towards equality across the globe.

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ⁱ DeBruin D., J. Liaschenko & M.F. Marshall, *Social Justice in Pandemic Preparedness*, 102(4) AM JR. OF PUBLIC HEALTH 586 (2012).

ⁱⁱ A Public Health Emergency of International Concern (PHEIC) is defined in the International Health Regulations (2005) as, “an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response”. This definition implies a situation that is: (1) serious, sudden, unusual or unexpected; (2) carries implications for public health beyond the affected State’s national border; and (3) may require immediate international action. See *What are the International Health Regulations and Emergency Committees?* WORLD HEALTH ORGANIZATION, <https://www.who.int/news-room/q-a-detail/what-are-the-international-health-regulations-and-emergency-committees> (Last visited July 2, 2020).

ⁱⁱⁱ *Rolling updates on Coronavirus Disease (COVID-19)*, WORLD HEALTH ORGANIZATION <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> (Last visited July 2, 2020).

^{iv} Sara E. Davies & Belinda Bennett, *A gendered human rights analysis of Ebola and Zika: locating gender in global health emergencies*, 92(5) INTERNATIONAL AFFAIRS 1041, 1045 (2016).

^v Bansari Kamdar, *India’s COVID-19 Gender Blind Spot*, THE DIPLOMAT, (July 4, 2020) <https://thediplomat.com/2020/04/indias-covid-19-gender-blind-spot/>.

^{vi} Organization of Economic Cooperation and Development

^{vii} *Employment: Time spent in paid and unpaid work, by sex*, OECD.STAT <https://stats.oecd.org/index.aspx?queryid=54757> (Last visited July 4, 2020).

^{viii} The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), often described as an International Bill of Rights for Women adopted in 1979 by the UN General Assembly. India signed the Convention on 30 July 1980 and ratified it on 9 July 1993.

^{ix} *The Convention on the Elimination of All Forms of Discrimination against Women, Full text of the Convention in English*, UN WOMEN, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (Last visited July 4, 2020).

^x “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world....” Preamble to the Universal Declaration of Human Rights, 1948.

^{xi} Article I of the Universal Declaration of Human Rights, 1948: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

^{xii} *Olga Tellis v. Bombay Municipal Corporation and others* AIR 1986 SC 180; *Corlie Mullin v. Administrator and Union Territory of Delhi* AIR 1981 SC 746; *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

^{xiii} The U.S. National Domestic Violence Hotline, which typically receives up to 2,000 calls per day, counted 951 callers between 10 and 24 March who mentioned Covid-19 while reporting their abuse. See, *In quarantine with an abuser: surge in domestic violence reports linked to coronavirus*, THE GUARDIAN (April 3, 2020, 11:00 AM, BST), <https://www.theguardian.com/us-news/2020/apr/03/coronavirus-quarantine-abuse-domestic-violence>.

^{xiv} The UK’s largest domestic abuse charity, Refuge, has reported a 700% increase in calls to its helpline in a single day, while a separate helpline for perpetrators of domestic abuse seeking help to change their behaviour received 25% more calls after the start of the Covid-19 lockdown. See, *Revealed: surge in domestic violence during Covid-19 crisis*, THE GUARDIAN (April 12, 2020, 7:03 AM, BST), <https://www.theguardian.com/society/2020/apr/12/domestic-violence-surges-seven-hundred-per-cent-uk-coronavirus>.

^{xv} Jingzhou-based anti-domestic violence activist and retired police officer Wan Fei told on 2 March 2020 that the number of domestic violence cases reported to a nearby police station had tripled in February 2020 compared to February 2019. “According to our statistics, 90% of the causes of violence are related to the COVID-19 epidemic,” he said, citing quarantine anxiety, economic insecurity and weakened victim support networks as factors. See, Zhang Wanging, *Domestic Violence Cases Surge During COVID-19 Epidemic*, SIXTH TONE (March 2, 2020), <https://www.sixthtone.com/news/1005253/domestic-violence-cases-surge-during-covid-19-epidemic>.

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^{xxi} Fionnuala N. Aolain, *Women, Vulnerability, and Humanitarian Emergencies*, 18 MICH. J. GENDER & L. 1 (2011) at 5.

^{xxii} T. v. Hungary, 1 Communication No. 2/2003, views adopted by the CEDAW-Committee on Jan. 26, 2005, Report of the Committee on the Elimination of Discrimination against Women, 32' session, U.N. Doc. A/60/38 (Part I) 27 (2006).

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^{xxiv} *Id.* at para.11

^{xxv} Article 5 of CEDAW: States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

^{xxvi} Article 16 of CEDAW: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.....

^{xxvii} *A.T. v. Hungary*, *supra* note 21, at para. 9.4.

^{xxviii} Article 5 of Universal Declaration of Human Rights: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

^{xxix} Sudhir Anand and Victoria Fan, *The Health Workforce in India* Human Resources for Health Observer Series No. 16, WORLD HEALTH ORGANIZATION, https://www.who.int/hrh/resources/16058health_workforce_india.pdf, (May 13, 2020).

^{xxx} S. Harman, *Ebola, gender and conspicuously invisible women in global health governance*, 37 *THIRD WORLD QUART.* 524-541 (2016).

^{xxxi} Staff Reporter, *Baba Saheb Ambedkar Hospital Nurses to go on Strike Today*, *THE HINDU*, May 4, 2020 at 3: Baba Saheb Ambedkar Hospital nurses went on strike on May 4, 2020 after the administration failed to address their demand. A spokesperson of the nurses' union told that, "after a technician tested positive, doctors who came in contact with him, were quarantined but the nursing staff were posted back to duty without being tested negative or were being dumped at quarantine centres with no facilities".

^{xxxii} Srishti Gupta, *COVID-19: Can A Health Crisis Become A Breeding Site for Gender Inequality?* *FEMINISM IN INDIA* (March 24,2020), <https://feminisminindia.com/2020/03/24/covid-19-gender-should-matter-india/>.

^{xxxiii} Article 2 of the UDHR: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

^{xxxiv} Article 7 of the UDHR: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

^{xxxv} AIR 1978 SC 597.

^{xxxvi} AIR 1974 SC 130.

^{xxxvii} *Maneka Gandhi v. Union of India* (AIR 1978 SC 597): "... Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned which traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action (legislative or executive action) and ensures fairness and equality of treatment. The principle of reasonableness, is an essential element of equality and non-arbitrariness, pervades Article 14 like a brooding omnipresence.".

^{xxxviii} P. FARMER, *INFECTIONS AND INEQUALITIES: THE MODERN PLAGUES* (University of California Press 1999).