



Human rights and domestic violence in India

Dr. Shambunath

Guest Lecturer, Department of Women's Studies, PG Center Halahalli Bidar, Gulbarga University, Kalaburagi, Karnataka, India

Abstract

Domestic violence is a global problem. It undermines the value of women as an individual and denies her the dignity of a human being. It, therefore, is a serious human rights violation. Domestic violence is a series of repeated abusive behavior which affects women's participation in public and private spheres. It also harms a woman's physical, mental, psychological and sexual well being. Taking serious note of it, countries worldwide, irrespective of their social, economic and political status are formulating legislative solutions to curb the menace. Though domestic violence and human rights are independent topics, they are closely related and impact one another in a very serious manner. Domestic violence, until few years back, was a limited area of study and was seen purely in the light of marital discord between husband and wife in a household. However, with international agencies like UN and State agencies coming into picture, the perception of domestic violence has undergone a change and now it is being widely considered as a serious gender and human rights issue. Sincere effort is needed to build sensitivity and create awareness among individuals and agencies about it. Along with formulating legislations and policies in this regard, nations should pay equal attention towards effective implementation. The paper is based on theoretical research and begins by introducing the concepts of human rights, domestic violence and important players involved in it. The paper mainly focuses on various facets of domestic violence, human rights instruments made available by United Nations and on legislative measures developed by select countries to counter domestic violence. The paper concludes by discussing briefly the contribution and role played by civil society groups in India towards the issue.

Keywords: domestic violence, human rights, women, legislation, human right instruments, and civil society groups

Introduction

The concept of human rights evolved largely from ideas of western political theory about rights of individuals to autonomy and freedom. Thus the international human rights law evolved to protect individuals' autonomy vis-à-vis the state. And, it held states responsible for individual rights and accountable for abuse of those rights. The development of human rights has been expressed in terms of 'generations': The civil and political rights, as the first generation rights; economic, social and cultural rights as the second generation rights; and the group or people's rights, which are recently defined as the third generation rights. Indeed the development of human rights movement, right from the Universal Declaration of Human Rights (1948), and the three generations of rights show that rights are defined as 'belonging to all human beings' irrespective of gender. However, though international law is gender neutral in theory, in practice it constituted men and women into separate spheres of existence-public and private, respectively. Thus men exist as public, legal entities that enjoy civil and political rights and in a way define the nature of rights discourse. Women's existence, on the other hand, is "privatized", thus, seen as existing outside the purview of the state's obligation. Often women's exclusion from the human rights practice and discourse, their relegation to the private, has been justified on grounds of social and cultural specificity of region or a group. Thus, social and cultural norms, which become grounds for respective states' consistent relegation of women to private sphere, results in international law being either reinforcing or replicating exclusion of women's human rights abuses from

the public sphere. The effects of this public/private divide in the international law are more evident in domestic violence, which literally happens in the private. Many laws are gender neutral, however, their application is gender biased. (Agnes, 1988) ^[9] Moreover the economic and social context of its (laws) application had not been considered seriously by both the governmental and at the same time non-governmental organizations, all over the world. Harms suffered by women at the hands of private individuals or within the family had been placed outside of the conceptual framework of international human rights. Feminists have argued that a failing of international human rights norms is in not recognizing the 'gendered' consequences of their application they render invisible particular problems suffered by women.

Methodology

Theoretical research methodology has been adopted in the preparation of the Article. With the help of primary sources and published records like books, journals, magazines, newspaper articles, reports along with internet resources, important terms and concepts related to domestic violence has been examined. As domestic violence is an important socio-legal issue concerning women, study has been done to understand the terms and related issues from human rights perspective. The role of State and civil society too has been highlighted in the study.

Forms of domestic violence

Domestic violence gets manifested in following four ways: Physical violence, Psychological- emotional violence, Sexual

violence and Economic violence.

Physical Violence

As mentioned earlier it is the most visible form of domestic violence. It is an act wherein physical force is deliberately used by the inflictor with an intention of causing grave harm to the victim. Physical violence includes actions like pushing, throwing, hair-pulling, slapping, punching, hitting and use of a weapon³. It also includes encouraging other people to do the same.

Psychological and Emotional violence

It has a huge and deep impact on a women's psyche. As the impact of this violence cannot be quantified, it is difficult to recognize its presence and the extent of damage it causes. The Service de police de la Ville de Montréal (SPVM) explains that psychological violence has three aspects to it: Intimidation, Harassment and Threat⁴. Psychological violence leads to social and emotional problems like depression, suicide and suicide attempts.

Sexual Violence

It is one of the most invisible forms of domestic violence and can be equated to sexual harassment. Equal Employment Opportunity Commission (EEOC) defines sexual harassment as "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature..."⁵. Sexual violence happens more frequently in marital relationship through marital rape and other forced sexual activities. Many a time, sexual violence goes unnoticed as victims tend to hide it due to fear and belief that marital relationship gives unlimited sexual access to a husband over his wife. However, various agencies have now realized the serious implications associated with the problem and countries like Australia, Canada, Finland, Poland, Spain, UK, USA have been successful in introducing legislations to counter marital rape and other forms of sexual violence. EEOC also provides a list of acts which can be considered as sexual violence/harassment. These acts include actual or attempted rape or sexual assault, unwanted deliberate touching, leaning over, cornering, or pinching, unwanted sexual looks or gestures, unwanted sexual teasing, jokes, remarks, or questions, personal questions about social or sexual life and making sexual gestures with hands or through body movements.

Economic Violence

It broadly means denying the available economic opportunities and facilities to women. Olufunmilayo I. Fawole in her paper titled '*Economic Violence To Women and Girls : Is It Receiving the Necessary Attention?*' mentions that economic violence has gross impact on women's health and it leads to gross poverty and other forms of violence⁶. She also explains that economic violence includes exclusion from financial decision making, unequal pay pattern, prohibition on working and denial of property rights. Domestic violence is generally inflicted by close relatives of the victim. Domestic Violence Act 2005 considers husband, father-in-law, mother-in-law and siblings of the husband as 'respondents' and questions them directly in case of domestic violence complaint. Parents of female child are held responsible in case of sex determination test or female infanticide. Domestic violence impacts women's self confidence; an important

component of her personality. A woman undergoes physical injury, unwanted pregnancies, miscarriage, disability, depression, fear, self injurious behaviors and sexually transmitted diseases⁷. Due to it, women's role in both public and private spheres gets hampered and effects her effective contribution towards the state and society.

Human rights instruments

United Nations through its various platforms has declared domestic violence to be a serious human rights concern. The organization has come out with important decisions in this regard. Important among them being, Beijing Conference and its '*Platform of Action*' Appointing of Special Rapporteur on violence against women; Universal Declaration of Human rights (UDHR); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Declaration on elimination of violence against Women.

The Beijing conference and platform of action (1995)

It stated that violence against women was a universal issue and around 17-38% of women around the globe suffered physical assault at least once during their lifetime. Platform of action, therefore, declared that "Violence against women constitutes a violation of basic human right and is an obstacle to the achievement of the objectives of equality, development and peace".

Special rapporteur on violence against women (1994)

According to an International NGO, 'The Advocates for Human Rights', the Special Rapporteur on violence against women, collects and analyzes data on violence against women in order to recommend measures to be taken at the international, regional and national level. The rapporteur works on socio-economic policies and reproductive rights of women along with three important aspects related to violence. They being, violence within the family (domestic violence and marital rape), violence in the community (sexual assault and sexual harassment in the workplace) and violence perpetrated or condoned by the State (custodial violence, violence against refugee women.

The declaration on the elimination of violence against women (1993)

It works closely with CEDAW, UDHR and Vienna declaration and Programme of Action. Due to the declaration, 25 November is celebrated as "International day for the Elimination of Violence against Women". The main aim of the declaration is to create awareness among the States about violence against women being much more than just a private-domestic matter. The declaration, therefore, calls for active State intervention and reiterates United Nation's role in promotion and protection of women's rights around the globe.

Important legislative solutions worldwide

Keeping in terms with these declarations, countries worldwide are formulating legislations to proactively investigate domestic violence cases and do justice to the victims.

In India, Domestic Violence Act came into being in 2005 (DVA-2005). It has been landmark legislation as it made domestic violence a punishable offense. It covers violence against both women and children. Before the Act came into being, the only options available to victims of domestic violence was to either opt for divorce from spouse or take the

support of section 498A of IPC (Indian Penal Code). Due to procedural delays involved in these options, justice got both delayed and denied to the victims. This led to formulation of DVA, 2005.

DVA along with providing support to married women also addresses the concerns of women who are in live-in relationships. Even a single act of harassment or violence can be reported under this Act. Thus, DVA, 2005 provides a comprehensive opportunity to all the victims of domestic violence, who otherwise undergo humiliation for longer period.

Of time before reporting. It is a liberal and forward looking Act and gives women the right to continue living in shared household even when the dispute is on. The Act therefore, has tried to protect the physical, psychological as well as financial Well being of the women complainant. Legal redress is ensured to women through this Act and the needy ones are to be provided with medical aid, security as well as shelter facility.

In United States of America, Violence against Women Act (VAWA) a federal legislation came into operation in 1994. It came into being after series of efforts in early 1990's. It works closely with other state agencies and is a legislation specifically designed to address domestic violence. It tries to coordinate and emphasize upon 'coordinated community response' at both State and local levels. It provides support to 'community based organizations, groups that provide culturally and linguistically specific services and tribal organizations'. The act undergoes Regular reauthorization to keep itself well updated.

Another important agency working in the US towards domestic violence is the 'Office on Violence Against Women' (OVW) which was established in 1995. The office aims to "administer financial and technical assistance to communities across the country that are developing programs, policies and practices aimed at ending domestic violence...". To implement and carry out its objectives, it has launched partnerships with various agencies like police, health care providers, prosecutors, victim advocates and others. The office claims to have awarded \$4 billion in grants as part of its relief work and works closely with the Violence against Women's Act (VAWA).

In Pakistan, the bill outlawing domestic violence came into being in August 2009. It readily got approval from both the Parliament as well as the President. The guilty are jailed for 6 months and fine of 100,000 is levied. It was a welcome decision and leaders from all political background hailed it as 'milestone' and land mark event'. The Act also covers women and children who are adopted, employed and works as domestic helps. In Pakistan, a bill of this nature of was very much needed as women there suffer from discrimination and face horrors like 'honor killing'.

In Ghana, the Parliament passed the Domestic violence bill (DVB) in 2007. Demand for such legislation was being raised since 1997 by various NGO's under the leadership of Gender and Human rights documentation centre'. The first significant milestone in this regard was achieved with the establishment of WAJU (Women and juvenile unit) in 1998. After lot of discussion and deliberation, the DVB finally came through. The bill has been divided into three parts. Apart from Explaining the nature and meaning of domestic violence, it provides provision of police assistance to the victims. To help the victims facing financial difficulties, a fund has been

established by name, 'Victims of Domestic violence Support Fund'. The fund provides material support, rescue, rehabilitation and training to the victims. With the passage of the bill a huge milestone has been achieved in Ghana however, the civil society.

Conclusion

We can therefore conclude that domestic violence is indeed a serious human right issue and it can be eradicated from the society only when responsibility towards it is shared by all stakeholders, collectively. States should work towards strict implementation of legislations related to domestic violence and stringent punishment should to attach to any kind of violation. By doing so, women will be assured of effective and immediate remedy. Awareness about domestic violence is gradually increasing among people. Modification in the field of Education, Legal aid, Counseling, Rehabilitation and self regulatory guidelines will help the cause in a big way. By addressing the problem in an efficient manner, it will help in restoring the self esteem of women in the society. They can be assured of a more peaceful, successful and empowered life.

Reference

1. Davis L Richard. Domestic Violence: Facts and Fallacies, Praeger Publishers, United States of America, 1998.
2. Misra Preeti, Domestic Violence Against Women: Legal Control and Judicial Response, Deep and Deep Publishing Company, 2007.
3. Physical Violence, <http://education.qld.gov.au/actsmartbesafe/violence/physical.html>, 2013.
4. Psychological Violence, http://www.ssvm.qc.ca/en/service/1_3_1_1_violpsyho.asp#intimidation, 2013.
5. Facts about Sexual Harassment, the US Equal Employment Opportunity Commission, 2002.
6. Economic Violence to Women and Girls. Is It Receiving the Necessary Attention? Olufunmilayo I. Fawole, 2008, tva.sagepub.com/content/9/3/167.full.pdf.
7. Kenney Latchana Karen, Domestic Violence, ABDO Publishing Company, 2012.
8. Waghmode RH, Desai Bhavana, Kalyan JL. Domestic Violence against Women: An Analysis, International Research Journal of Social Sciences. 2013; 2(1):34-37.
9. Agnes Flavia. Our Fight against Wife beating in Rehana Ghadially Women in Indian Society-A Reader, Sage Publications, Delhi, 1988.
10. CWDS Crimes against Women: Bondage and Beyond Centre for Women's Development Studies, New Delhi, 2002.
11. Deoshali Padma, Purnima Maghnani, Dr. Seema Malik Establishing Dilaasa-Documenting the Challenges Cehat, 2005.
12. Ghaswala Bakula. Astitva Battles Domestic violence in Shirin Kudchedkar and Sabiha al-Issa Violence Against Women and Women Against Violence, Pencraft International, Delhi, 1998.