

International Journal of Judicial Law

Domestic violence also a risk of human rights

Dr. Rahul Varshney

Research Scholar, School of Law, Mvn University, Palwal, Haryana, India

* Corresponding Author: **Dr. Rahul Varshney**

Article Info

ISSN (online): xxxx-xxxx

Volume: 01

Issue: 03

May-June 2022

Received: 30-05-2022;

Accepted: 16-06-2022

Page No: 11-14

Keywords: Domestic Violence

Abstract

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to the domination and discrimination of women by men and to the prevention of women's full progress.

Introduction

Freedom not only from violence, but also from the threat of violence is the first indicator of the growth of women's ability to survive and strengthen their position. Violence against women is a universal reality, but at the same time it is invisible. The UNDP Gender Development Index ranks India 108th out of 174 countries in terms of gender equality. It is therefore no coincidence that the highest ranked country in this index ranks India 108th out of 174 countries in terms of gender equality. Gender equality and social development are inextricably linked. Apart from the above criteria, another important criterion required to create gender equality would be to eliminate the fact of violence against women, especially domestic violence, which is widespread in India but which, unlike most other forms of violence against women, is hardly recognized as widespread and hardly it is treated as a crime. Instead, Indian society makes domestic violence invisible. Domestic violence is one of the few phenomena that crosses all cultural, socio-economic, educational, ethnic and religious barriers. It seems that this type of violence not only increases with the increasing education of women, but also prevails among the elite layers of society. Violence by intimate family members is one of South Asia's darkest legacies. In a survey on violence against women in India, 94 percent of cases involved a perpetrator who was a family member.

The sex ratio in some states of India is very disturbing. In Punjab, there are 79.3 girls for every 100 boys and in Gujarat 87.8 girls for every boy. In the northeastern states, violence against women is highest among the kasi societies of Meghalaya, which is a matriarchal society where the status of women is higher than that of men. Women inherit all family property and whoever brings a husband into their home. However, another question that deserves further investigation is whether hypermasculinity or hyperfemininity is associated with more violence against women. Next to Meghalaya comes Mizoram which is a patriarchal society. MHIP (Mizo Hmeiche Inzawmkhawm Pawl), the most active women's organization in the state, strives to eradicate commercialization of bride price, dowry system, sexual exploitation of women of any kind and inequality between men and women. However, despite this movement started by MHIP, violence against women is still high and has become a matter of great concern. Laws to deal with domestic violence exist and include Section 113(a) of the Indian Evidence Act, Section 498(a) and 304(b) of the Indian Penal Code and the Dowry Prohibition Act, 1961 as amended by 1986.

However, the effect of such laws is very limited. For example, an Amnesty International report states: "An analysis of court decisions in one particular district of Maharashtra, for example Yavatmal, shows that only 2.2 percent of cases brought under 498A in the period 1990-96 resulted in Section 113(a) convictions. ", the Indian Evidence Act says: "If a married woman commits suicide within 7 years of her married life, and it is proved that her husband or his relatives treated her cruelly, the court would hold that her husband or relatives assisted her in the suicide."

Section 304(b) IPC says: "(1) If the death of a woman is caused by burns or bodily injury or occurs otherwise than in normal circumstances within seven years of her marriage and it is proved that shortly before her death she was subjected to cruelty or molestation from on the part of her husband or any relative of her husband or in connection with any demand for dowry, such death shall be called a "dowry death" and such husband or relative be d appeared to have caused her death. For the purposes of this subsection, "dowry" has the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term of at least seven years, but with imprisonment for up to life.

Problems with understanding domestic violence as a human rights issue

A. Scope of International Human Rights Law The concept of human rights has largely evolved from Western political theory of individual rights to autonomy and freedom. International human rights law has evolved to protect these individual rights from restrictions that might be imposed on them by states. States are bound by international law to respect the individual rights of every individual and are thus responsible for the abuse of these rights. The goal of the human rights movement is to enforce the obligations of states in this regard by condemning violations of their obligations under international law. The exclusive focus on the behavior of states limits the operation of international human rights law entirely in the public sphere.

B. Gender Neutral Law

Gender Biased Application International human rights law is facially gender neutral. The rights embodied in the Universal Declaration of Human Rights are defined as belonging to "all human beings, not just men." All major human rights instruments include sex as one of the grounds on which states may not discriminate in law enforcement. said rights.

Although international law is theoretically gender-neutral, in practice it interacts with gender-biased domestic laws and social structures that condemn women and men to separate spheres of existence: private and public. Men exist as public legal persons in all countries, and unless there is manifest abuse by the State, they participate in public life and enjoy in full all the civil and political rights that exist. However, in every country women are socially and economically disadvantaged in practice and in fact and in many places by law. Therefore, their ability to participate in public life is normally limited. This gender bias, if left unchallenged, becomes so embedded in the social fabric that it often takes the form of a social or cultural norm seemingly outside the scope of state responsibility, rather than a violation of women's human rights for which the state is responsible. In some cases, even violations of civil and political rights committed directly by state officials, were pushed aside as acceptable.

C. The concept of state responsibility

The concept of state responsibility defines the limits of government responsibility for human rights violations under international law. Of course, all actions are done by real people, individually or with others, and not by a fictitious "person" of the state. Liability is therefore generally understood to arise only if the act of an actual person or persons can be attributed to the State. Traditionally, the idea

of vicarious liability for acts is quite acceptable: such liability arises from the authorized acts of agents of the state or persons acting with the apparent authority or consent of the state. In traditional human rights practice, states are only responsible for what they do directly or by proxy, leaving the actions of purely private individuals – such as crimes of domestic violence – outside the scope of state responsibility. Recently, however, the concept of state responsibility has expanded to include not only acts directly committed by states, but also the systematic failure of states to prosecute acts committed by either low-level or para-state actors or private actors. In these situations, even if the state is not actually committing the primary abuse, its failure to prosecute the abuse constitutes complicity in it. For example, in three landmark cases, *Velasquez*, *Godiriez*, and *Fairen and Solis*, decided by the Inter-American Court of Human Rights in 1988-1989, the tribunal found the Honduran government responsible for a series of enforced disappearances. between 1981 and 1984 by members of the Honduran military acting as private individuals.

The test of state responsibility for an act differs depending on whether the actor is a state or a private person. For a state to be liable for the acts of state officials, one of two things must be proven: (1) the state expressly authorized the act (ie, a senior official committed or authorized it); or (2) the state has systematically failed to prosecute abuses committed by its agents, whether or not the acts were ordered by higher officials. In the latter case, it is usually necessary to demonstrate a pattern of non-prosecution of acts that violate human rights and that the state has agreed to enforce those human rights. For example, a state is responsible if it does not systematically prohibit or prosecute torture, as the right not to be tortured is guaranteed by international law. Governments agreed not to torture people themselves and pledged to ensure that no one else in the state did. If the state failed to prosecute the torturers, it would be in breach of its international obligations. The rehearsal is different when the actors are private. For example, the systematic non-enforcement of laws against armed robbery by private actors themselves is not a human rights issue; it merely indicates a serious common crime problem. Non-prosecution of crimes by private individuals becomes a human rights issue (assuming no state action or direct complicity) only if it can be shown that the state's reason for not prosecuting is rooted in discrimination along prohibited lines, such as those which are listed in Article 26 of the Covenant on Civil and Political Rights. In international human rights law, there are rights to bodily integrity that armed robbery appears to violate. However, they are rights vis-à-vis the state, not rights that states must enforce against all other persons. States cannot bear direct responsibility for this violent acts by all private individuals, because all violent crimes would then constitute human rights violations for which states could be held directly responsible under international law. The state's international obligation regarding the conduct of private persons is to ensure that, where it does protect the lives, liberty and security of people from private destruction, it does so without discrimination on prohibited grounds. Therefore, there would have to be systematic, discriminatory, no enforcement of national criminal law against domestic violence murder or assault to constitute a human rights issue, not merely showing that the victims were killed or their bodies mutilated.

The extension of state responsibility to include responsibility

for some acts of private individuals, as described above, is one of the factors necessary to be able to analyze domestic violence as a violation of human rights. However, in many cases it is also necessary to demonstrate a pattern of discriminatory non-prosecution, which amounts to a failure to guarantee equal protection of the law to the women who have become victims. The following section is an overview of new information about the extensive.

Indian scenario: Domestic violence and human rights issue
Domestic violence is undoubtedly a human rights issue and seriously frightening development. 1994 Vienna Agreement, Beijing Declaration and Platform for Action

(1995) acknowledged this fact. The Protection of Women from Domestic Violence Act, 2005, which was passed by the Lok Sabha on 24 August 2005 and the Rajya Sabha on 29 August 2005, received the assent of the President of India on 13 September 2005 and became a statute. book as the Protection of Women from Domestic Violence Act, 2005 (43 of 2005).[18] Highlights of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005):

- Any harm, injury to health, safety, life, limb or welfare or any other act or threat or coercion etc. by any adult family member constitutes domestic violence.
- Any woman who is or was in a domestic or family relationship can complain if she has been a victim of domestic violence.
- An injured or disabled woman can complain to the relevant protection officer, police officer, service provider or judge.
- The injured woman has the right to be informed about available services and free legal services, from a protection worker, etc.
- Shelter and medical facilities can be provided to the aggrieved woman.
- Temporary compensation may be provided to the aggrieved woman.
- Complaint proceedings may be closed to the public.
- Every injured woman has the right to live in a joint household.
- A Magistrate's Court protective order can be issued in favor of the aggrieved woman.
- Monetary relief can be given to the aggrieved woman to cover expenses or losses.
- An appeal can be filed with the Sessions Court within 30 days of the order of the competent Magistrate Court.
- Imprisonment up to 1 year or fine up to Rs. 20,000 or both for violation of the protective order by the other party.
- A protection officer can be prosecuted with imprisonment up to 1 year or fine up to Rs. 20,000 or both for defaulting on his duties.

Conclusion and Suggestions for Practical Issues Human rights practice is a method of reporting facts in order to promote change. The impact of human rights NGOs is closely linked to the rigor of their research methodology. A typical method of reporting human rights violations in specific countries is to investigate individual cases of human rights violations through interviews with victims and witnesses, supported by information about human rights violations from other credible sources. Analyzing domestic violence as a violation of human rights depends not only on demonstrating a pattern of violence, but also on demonstrating a systematic

failure on the part of the state to ensure equal legal protection for women against this violence. Without detailed statistical information regarding the incidence of spousal murder, assault, and rape, and the response of the criminal justice system to these crimes, it may be difficult to make a solid case against the government for its failure to guarantee equal protection of the law. . Studies have shown that nearly one-third of Indian women who have experienced domestic violence have thought about running away from that family, but are prevented from doing so by the fear of leaving their young children with nowhere to go. Community intervention is one way that could be useful. In some areas of West Bengal, for example, "shalishi" is used to deal with cases of domestic violence (and other problems). "Shalishi" is a word of Persian origin that involves mediation between disputing parties by impartial but powerful "shalishidaars". It has existed since pre-Mughal times, and due to its informal layout, many people find it more acceptable than the formal legal routes. It derives its legitimacy from traditional norms and value systems and seeks to ensure that the family remains intact in the administration of justice. In doing so, the "Shalishi" may compromise on punishing the guilty as a formal legal system would, but ultimately it seems to help improve the condition of women, and this is a kind of empowerment in itself. The social practice of Indian society is mentioned above, it may be possible to help find progressive ways to allow women to live in peace and dignity and without having to deal with violence and insecurity in their own homes. The media could help a lot in this if they become more sensitive to women's rights because fighting for women's rights is not about buying time. Official answers it also needs to be made more sensitive and progressive about women's rights. For example, it seems rather ridiculous to weaken one of the few laws that exist to combat domestic violence. However, this is exactly what the (all-male) Malimath Committee suggested when it recommended that complaints filed under the "callous provisions" of Section 498 (a), IPC should be made due and filed. The Malimath Committee produced a 600-page report that included, among other things, 16 research papers, but for some reason excluded not only any discussion of the issue of violence against women, but also excluded any contributions from victims of spousal abuse or those working in the field. . India needs to develop a comprehensive domestic violence policy so that at least the institutional response to the problem gives abused women, whether they choose to remain in a relationship with someone who has committed domestic violence, access to help in the form of health care. , childcare and shelter if nothing else. Responding to the recognition that there are many forms of domestic violence – not limited to life-threatening situations, but including emotional, physical, sexual, psychological and financial abuse – and therefore should be flexible enough to deal with this violence. the whole spectrum of violence. The distinction between civil and criminal law is fundamental in the Indian legal system, and although, as seen earlier, there are some laws that deal with domestic violence, the country has no comprehensive law on the issue, although attempts have been made to pass such a law in the past It is the fundamental right of all Indian citizens to enjoy life and liberty and it is the duty of the state to ensure that they can do so within the framework set by the Constitution of India and international obligations such as CEDAW which India has adopted. Law does not operate in a vacuum and must take into account social, economic and

cultural factors. Justice must be a central concern of women, even when dealing with abusers. A multifaceted approach to violence against women will lead to far-reaching changes, transforming attitudes and practices so that women and men can live equal and dignified lives.

References

1. Women and violence during the visit on September 16, 2010.
2. Domestic violence: the issue of violation of women's human rights, When visited on September 18, 2010.
3. Combating Domestic Violence: The State's Responsibility < <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>> Accessed on 17 September 2010.
4. Isaac L. Hmar, 'Violence Against Women', www.atimes.com.
5. "Domestic Violence: A Brief Legal Basis in a Breakthrough",
6. <http://www.breakthrough.tv/teach_detail.asp?teach.>
7. Saikia Nandita. Vision 2020 and Domestic Violence in India, published in Satpathy, Sachidananda (ed.) Youth Vision 2020: Towards Building an India of our Choice, Serials, New Delhi, 2007.
8. Dream of Srijoni, Ambast Sanhita. Domestic Violence Act, New Direction", 2005.
9. Lawyers' Collective, Domestic Violence, New Delhi, 1992.
10. Agnes Flavia, The Road to Justice, Majlis, Bombay, 1990.