

The Absence of the Will of the State in Face of Domestic Violence "Necessitate the Intervention of International Law"

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Abstract:

Trying to stand up when this problem which related to the diagnosis of who can exercise domestic violence as well as I am trying through my thesis or dissertation to show violence governments and authorities against woman through the enactment of laws which is benefit to whom exercising the violence. This case is witnessed in third world countries, especially in Saudi Arabia through the enactment of a law to prevent woman to leadership. Moreover, I try to focus on violence against children which he is important part of the human entity by stopping harmful and abusive practices again him. Also in my study I will determine the problems that lead to domestic violence. First is enable woman herself for a men. Second is cultural reasons, represented by ignorance and lack of knowledge of a good method with others. Third is socialization factor which basic parenting factor to take care of human being. another problem which is important for international organizations is different customs and traditions among spouses. Finally environmental reasons.

Keywords : (International law United Nations, CEDAW Committee, human rights, and domestic violence, Women's, and child).

I. Introduction

First of all I would like to show the concept of "Domestic violence" because audience thinks domestic violence cannot focused woman or child but the reality domestic violence is any assault against the human being, whether a child or a man or woman or even assault by the government against the citizen which causes cause harm or pain physical, sexual or psychological. Through this paper, I would like to introduce the meaning of domestic violence and explain that violence is not necessarily practicing against woman or the child, but the violence can be from woman against the child or against the spouse or may be by government authorities against the family for reasons of religious tenets may be as is the case in Iraq, especially Iraq includes multiple communities.

Surely, this topic is familiar to you and there are many researchers have written about it, but problem is still exists without remedy, thus it needs to be updated and find another analyze and eradication remedy of this phenomenon. This thesis

considers the strong interface between child, woman protection and family and domestic violence and the international law's role as the lead agency for the development and implementation of family and domestic violence policy, in particular supporting a statewide integrated response.

II. The Concept of domestic violence

An overview of the current environment of community in which the department for family Protection is operating in relation to family and domestic violence and sets out key issues for consideration in informing protection policy between members of family and practice responses to family and domestic violence. The word "domestic" means "within the realm or the territory of house"⁽¹⁾. And the word "violence" means "action

⁽¹⁾ Domestic Violence in Marriage: in the light of theories of Feminist Jurisprudence, <http://www.legalserviceindia.com/article/I263-Domestic-Violence-in-Marriage.html>.

using physical force and intended to hurt or kill someone to cause damage”⁽¹⁾. Domestic violence is recognized in international law as a violation of human rights. Write about the phenomenon of domestic violence, means writing about it in whole entire world especially Arab countries, with comparative study between both communities east and west finding strong and weak points.

No doubt that in our countries, there is a violation of human rights by both genders especially by man against woman. After ignoring the divine laws, there is no solutions or substantive laws provide by government to respect human dignity. This requires an intervention of international system represented of diplomatic missions. However, when the United Nations enacted laws about human rights, it did not specially mention violence against women. "The term „domestic“ includes violence by an intimate partner and by other family members, wherever this violence takes place and in whatever form"⁽²⁾.

Pepole think domestic violence can be focused on woman or child but the reality domestic violence is any assault against the human being, whether a child or a man or woman or even assault by the government against the citizen which causes cause harm or pain physical, sexual or psychological. “a pattern of assaultive and/or coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners”⁽³⁾ .

Violence is not necessarily practicing against woman or child, but violence can be happen from woman against child or against spouse or may be by government authorities against the family for reasons of religious

⁽¹⁾ Little Oxford English Dictionary, 6 th impression 2007, Oxford university press, p.785.

⁽²⁾ See Mehr Khan Director, UNICEF Innocenti Research Centre. P.1.

⁽³⁾ Susan Schechter and Jeffrey Edelson, Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice (Reno, NV: National Council of Juvenile and Family Court Judges. 1999. pp. 122–123.

tenets, like the case in Iraq because Iraq includes multiple communities. But usually I see which is the fact. Throughout entire the world, especially in west communities women are victims and subjected to extreme acts of physical violence, which take place within the beguiling safety of domesticity.

III. Harm of Domestic violence

The violence is severe, harmful, humiliating, and debilitating. And it is common. It is a phenomenon that stretches across borders, nationalities, cultures, and race. However, "evidence has accumulated which shows that structural violence, a concept introduced by Johan Galtung in 1969, may do more harm to a greater number of people than even armed conflict"⁽¹⁾. A binding characteristic of communities throughout the world, almost without exception, is the battering of women by men. Also, there is many contents can be included within phenomenon of domestic violence.

According to international charters, it includes marriage under age of eighteen⁽²⁾. More than 50 countries allow marriage at 16 or below with parental consent. Imposed instructions on freedom, dowry, and family mandate consider type of violence⁽³⁾. In our community especially Arab Gulf countries, men pay dowry for women to get sexual contact, and then this relationship ends with divorce which considers a type of violence. Some perpetrators sexually batter their victims. Sexual battering consists of a wide range of conduct that may include pressured sex when the victim does not want sex, coerced sex by manipulation or threat, physically forced sex, or sexual assault accompanied by violence. victims may be coerced or forced to perform a kind of sex they do not want.

⁽¹⁾ Cross, Karie, The Gendered Effects of Structural Violence. APSA 2013 Annual Meeting Paper, American Political Science Association. 2013. P.1. Available at SSRN: <https://ssrn.com/abstract=2300717>.

⁽²⁾ Benninger-Budel C. and Lacroix A. Violence against Women: A Report. Geneva: World Organisation Against Torture. 1999.

⁽³⁾ See Mehr Khan. Previous source , P.4.

Other harm of violence which is some times comes from practicing of governments and authorities against woman through enacting laws which is benefit to whom exercising the violence "men". This case is witnessed usually in third world countries, especially in Saudi Arabia through the enactment of a law that prevent woman to leadership. Moreover, there is other kind of violence that is focusing on violence against children which is important part of the human entity by stopping harmful and abusive practices again them.

Lastly, After examining the definition of domestic violence, it has since been confirmed that the violence term does not have to be of a physical nature. Violence against women can be searched for female feticide, selective abortion, dowry harassment, deaths, physical abuse, physical violence, public humiliation and social degradation. It harms or causes the victim to experience or expect to experience the victim's physical, mental or emotional well-being⁽¹⁾.

IV. Reasons of Domestic Violence

There are many reasons may lead to violence. Hoivik's and Galtung refer to term of "starvation"⁽²⁾ as basic a factor for violence, Also there are other factors affect on stable life, first is enable woman herself for a man, second is cultural reasons represented by ignorance and lack of knowledge of a good method with others, third is socialization factor which is basic parenting factor to take care of human being. Another problem which is different customs and traditions among spouses. Finally economical reasons⁽³⁾. All of them may lead to domestic violence.

⁽¹⁾ Ahmad, Tabrez and Khandekar, Poorva and Ojha, Kundan Kumar and Mohanty, Ipsita and Biswas, Priyanka, Domestic Violence in India: Will Law Alone Change the Situation? (September 3, 2009). P.2. Available at SSRN: <https://ssrn.com/abstract=1467890>.

⁽²⁾ Cross, Karie, previous reference. P.4.

⁽³⁾ Schuler S.R., Hashemi S.M., Riley A.P., and Akhter S., Credit Programs, Patriarchy and Men's Violence against Women in Rural Bangladesh, Soc. Sci. Medicine Vol 43, No 12, 1996. pp 1729-1742. Also see Ahmad, Tabrez, previous reference. P.3.

Weakly drafted domestic violence laws perpetuate domestic violence, rather than reduce it. For example, India's Domestic Violence Act 2005 is poorly drafted. It lacks provisions to allow complaints when harassment happened⁽¹⁾. Moreover, Lack of religious motivation can play a decisive role specially in Arabs countries.

In Iraq, The Iraqi judiciary deals with cases of domestic violence in accordance with Article (41-1) of the Penal Code No. (111 of 1969), which states that "there is no crime if the act occurs in the exercise of a right established by law. The following are considered to be the exercise of a right: 1 - The husband's disciplining of his wife and the disciplining of minor children by parents, teachers, and those in their position within the limits of what is established by Sharia, law, or custom"⁽²⁾ Despite civil society campaigns, the government's efforts to address and reduce domestic violence crimes have been characterized by inadequacy. Despite the formation of the Family and Child Protection Directorate from Domestic Violence in the Ministry of Interior since 2009, medical and legal services, psychological and social counseling programs, and the expertise of service providers and workers in this field are still characterized by weakness.

V. Addressing of Domestic Violence by International Law

It is necessary to present the most important implications of affirming by the international conventions on domestic violence, including the United Nations General Assembly, UNICEF organization and the Universal Declaration on the Elimination of domestic violence. Domestic violence became universality and that need to activate some of international law internally through proposals of (CEDAW) treaty to change local laws and

⁽¹⁾ Ahmad, Tabrez, previous, revrence. P.13.

⁽²⁾ See Article (41-1) of Iraqi Penal Code No. (111 of 1969).

abolishing of some class differences between the genders⁽¹⁾ . Taking into consideration of the holy divine laws. Moreover, this dissertation reviews some of the divine laws that give a man his dignity, as well as do the laws of positivism, such as CEDAW, and other international conventions⁽²⁾ .

"The Committee identified the need for adoption of comprehensive laws on domestic violence with proper definition of domestic violence , which would allow women to realize their right to access to justice on an equal basis. It requires protection through criminal law and criminal public prosecution in order to effectively respond to the problem of domestic violence"⁽³⁾ .

Also, the role of audio and international media raising awareness,⁽⁴⁾ as well as the establishing of international institutions that are effective inside the countries working as observers where the spreading phenomenon of domestic violence. Our communities are in risk and break-up. Divorce rates are beyond imagination, therefore it is necessary through this research to put an end to the phenomenon of violence and family disintegration, which cast its effect over the international community as a whole. Clear example on this situation is emigration. Most of emigrants searches on countries that respect their right and dignity. To make world more safe, we need an international law to take its role to make of those countries more prosperous thus ending on illegal emigration. In this study, it is to show the responsibility of State to face the problem of

⁽¹⁾ See Mehr Khan. Previous source , P.3.

⁽²⁾) Fernández Rodríguez de Liévana, Gema, Los Estereotipos De Género En Los Procedimientos Judiciales Por Violencia De Género: El Papel Del Comité CEDAW En La Eliminación De La Discriminación Y De La Estereotipación (Gender Stereotypes in Gender-Based Violence Court Proceedings: The CEDAW Committee's Role on the Elimination of Discrimination and Stereotyping) (May 28, 2015). p.505. Available at SSRN: <https://ssrn.com/abstract=2611539>.

⁽³⁾) Concept and scope of protection against domestic violence _as GBV under the CEDAW Convention, GR 35 and CEDAW Optional Protocol, and in the practice of the UN SR VAW - Main issues identified, recommendations and guidance to SPs, good practices. P.4.

⁽⁴⁾)Poppe P. Partnerships with the Media to Prevent Domestic Violence, in 'Too Close to Home: Domestic Violence in the Americas' op. Cit. (1999).

violence by making substantive laws.

VI. Responsibility of State toward International Law

There is a direct responsibility on State toward international law to modifying attitudes and negative behaviors of its citizens. "It is the responsibility of governments who have ratified international conventions and human rights instruments to harmonize their national laws in line with these instruments."⁽¹⁾ Most countries do not address the issue of domestic violence within their child abuse and neglect reporting laws, includes "commission of acts of violence against another person residing in the child's home" in its definition of psychological abuse or neglect⁽²⁾ . International agreements emphasize parties to address the patterns of behavior of social, cultural leading to violence and that the failure of the States is a violation of the rights of the victims.

"The role of the State in a democratic egalitarian society is to protect and promote the rights of its citizens regardless of their sex or social status. The International instruments, the national laws as well as the constitutional laws bind the state to promote the rights of women as citizens regardless of the fact that they are married or not"⁽³⁾. Most international human rights law is implemented by and through domestic courts⁽⁴⁾ . Where there is a supra-standard that criminalizes private torture, the tenets of such standard may be applied nationally through legislation and court decisions.

However, if there is no enunciated universal standard regarding private torture, the development of national legal systems loses a source of law

⁽¹⁾ See Mehr Khan. Previous source , P.17.

⁽²⁾ See Mont. Code Ann. § 41-3-102.

⁽³⁾ Nigam, Shalu, The Social and Legal Paradox Relating to Marital Rape in India: Addressing Structural Inequalities (June 2, 2015). P.7. Available at SSRN: <https://ssrn.com/abstract=2613447>.

⁽⁴⁾ Judge Edward D. Re, The Universal Declaration of Human Rights: Effective Remedies and the Domestic Courts, 33 CAL. W. INT'L L.J. (2003). Pp.137, 153-56.

that has become most relevant in the human rights context⁽¹⁾. It is for this reason turn this phenomena to international law as a supplement to domestic law for a possible solution to private torture⁽²⁾. International sanctions can be imposed in the case of lack of respect of the state to international law in respect of enacting laws that respect human dignity and preventing violence⁽³⁾. In this paper we shall demonstrate the effectiveness of State methods for enacting new laws which can be realized from observers reports.

The problem of domestic violence is focusing on the instances where domestic law is unable to protect victims and apprehend perpetrators of domestic violence. This is closely connected firstly, to the incorrect legal categorization of all forms of intimate violence under the rubric of „domestic violence. In understanding „domestic violence,“ it is necessary to consider the language used to describe both the acts of violence and those who suffer from its application.

Any deeper engagement with issue of violence should begin with Article 2 of the International Law Commission’s Draft on Responsibility of States for Internationally Wrongful Acts. This article states that “an internationally wrongful act of a State exists when conduct consisting of an action or omission is likely to produce grave consequences”⁽⁴⁾.

VII. Conclusion

To sum up, it is very Important to show the most important implications of affirming by the international conventions on domestic violence, including the United Nations General Assembly, UNICEF organization

⁽¹⁾ Daniel G. Partan, The International Law Process: Cases And Materials (1992). P.25.

⁽²⁾ Judith Resnik, Categorical Federalism: Jurisdiction, Gender, and the Globe, 111 YALE L.J. (2001).pp. 619, 623.

⁽³⁾ Farrior, Stephanie, The Due Diligence Standard and Violence Against Women. Interights Bulletin, Vol. 14, No. 4, 26, Jan, 2011. P1. Available at SSRN: <https://ssrn.com/abstract=1747936>.

⁽⁴⁾ ILC Commentary. P.35.

and the Universal Declaration on the Elimination of domestic violence. Also my thesis draw up the ways of treatment of domestic violence phenomenon which is became universality through proposals that CEDAW treaty to change local laws to abolish some of the class differences between the sexes.

Thus, it reviews some of the divine laws that give a man his dignity, as well as do the laws of positivism, such as CEDAW, and other international conventions. Also, the role of audio and printing media raising awareness as well as the establishing of international institutions that are effective in inside the countries working as observers where the spreading phenomenon of domestic violence.

lastly, Chosing this topic comes in time of the miserable situation in Arab community in general and the Iraqi society especially, where these communities are living a disintegration of family as a result of domestic violence, which has the dimensions of a negative future dangerous to society.

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