

## OBLIGATIONS ON STATES FOR SOCIAL SUPPORT TOWARDS VICTIMS OF DOMESTIC VIOLENCE

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### **ABSTRACT**

It has been widely recognised that the victim is one of the pillars of the criminal justice system and that without the support of and for the victim, the system will be biased. Taking a worldwide perspective it is clear that the rights of defendants have taken preference over the rights of victims, especially in relation to gender based violence. This paper aims to investigate common biases and hurdles that exist for a woman victim of domestic violence, who may wish to leave an abusive home or relationship. It sets out to identify the developments in the International legal framework that has confirmed that victims' rights are based on human rights and states have a due obligation and therefore should establish a compulsory protocol to support victims. States have a duty to protect the physical and psychological integrity of an individual from the actions of others. This paper will describe how states have failed to fulfill their positive obligations to protect women from their partners' violence. Lack of social support and assistance causes failure for the victims of domestic violence in resolving the issue. This paper will emphasize the urgent need for national guidelines on social services that obliges states to support victims. It is hoped that each country will continue to seek a better victim support scheme, suitable for local circumstances. Unfortunately the low status of women in many areas of the world does not lead to confidence that this outcome will soon be achieved.

## INTRODUCTION

Domestic violence has finally been recognised as a human rights violation internationally, which has led to the enactment of the laws and legislations in different jurisdictions for combating this endemic social problem. Recognising the fact that offences of domestic violence often occur behind closed doors, it is very difficult to prove them beyond reasonable doubt required by the Criminal justice system (Tahira Karanjawala & Shivani Chugh, 2009), and that the majority of domestic violence cases are never reported to police.(MacQuiggRonagh J. A, June, 2011) The UN Committee on Economic, Social and Cultural Rights alarmed over the boost of domestic violence has recognised that domestic violence is one of the most prevalent human rights issues in the context of women's human rights. (Joint committee on Human rights report, 2002, Para, 43)

Familial violence includes fundamentals which make it endemic and disastrous for its victims such as emotional or physical harm, scales of violence including threats of violence, all committed within the ambit of personal relationships. Most of the victims are weaker members of the society who are more vulnerable to harm. Domestic violence is systematic in the sense it occurs in an area in which the state has neglected the standards to help to provide a remedy to its victims. For example in the UK, domestic violence has the highest rate of repeated victimisation among all other crimes reaching over fifty percent. The context is that just twelve percent of victims reported assaults to the police. (Richard W., Roger B., 2005:84)

As a result of a long and continuous struggle of human rights activists, when intimate partner violence was recognised as a social problem, the refuges and shelters or safe houses were funded in England and the USA in 1970s. (Edna Erez and Peter R. Ibarra, January, 2007) These places offer victims and their children a safe accommodation after leaving violent homes. The purposes of shelters and refuges are to ensure an immediate and round-the-clock access to safe accommodation for sufferers, especially women and children, when they are no longer safe in their homes. (Women's aid, 2015) After these initiatives, the schemes of social support were started such as providing medical care, psychological and legal counselling etc. It is important to understand that where women have no such access to social support and if they are totally dependent on their male partners, or belong to the poor families, it means that they will become even more vulnerable and they will be subjected intense cultural, religious and social pressure to return to an abusive relationship and face continuous emotional and sexual exploitation.

This Article begins with the introduction of domestic violence, along with some information regarding the establishment of refuges for the protection of women who lost their homes due to violence. Later on it examines that how lack of social support and assistance causes failure for the victims of domestic violence in resolving the issue.

In order to understand about the trend, this article is divided into four parts. Part I provides some key definitions regarding domestic violence and international legal framework for the protection of domestic violence victims and it confirms that the domestic violence is the business of the state and states have a due obligation and therefore shall establish a compulsory protocol to support victims. Part II will investigate common biases and hurdles that exist for a woman victim who may wish to leave an abusive home or relationship. Part III will highlight the role of NGOs for promoting human rights and establishing support services which are essential. Finally part IV will emphasis on the multi-agency responses and resources that victim's need, such as refuges, shelters and legal representation on every stage as to make it a real difference to the lives of women and girls who have suffered or are suffering from violence.

## **INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENC**

### **Some basic definitions**

The UN Declaration of the Elimination of Violence against Women defines violence against women is, “manifestation of historically unequal power relations between men and woman, which has led to domination over and discrimination against women by men and that ‘violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” (Amnesty International, 2004:05-06) The said instrument of *UN* taken up the words of ‘violence against women’, characterised by reference to ‘gender-based violence as: “Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”(Edwards A., 2011:20). In *Yemshaw v Lewisham Borough of London*, the Supreme Court of United Kingdom held that “domestic violence” was not limited to physical violence but comprehensively to: “threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm”, as well as psychological harm. (Supreme Court of UK, 2011) From March 31, 2013, the United Kingdom starting using the new definition adopting new additions in the previous form, therefore, “Domestic violence and abuse” is now defined: “Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or familymembers, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional.”(Home office UK, 2013)

### **Violence against women and domestic violence according to UN systems**

The Universal Declarations of Human Rights (UDHR) Article 5 provides, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (Edwards A. 2011: 20) One of the binding instruments of International bill of human rights the *ICCPR* in Article 7 indicates it "as *Jus cogens*. (Edwards, A. 2011:20) Highlighting the issue of intimate partners' violence through the General Assembly Resolution of 1993, the United Nations included "domestic violence" in their "Declaration on the Elimination of Violence against Women" and urged state parties to promote research, collect data and compile statistics, especially concerning domestic violence. (UN 48/104, 1993) In 1997 the *UN* emphasised all member states to ratify international agreements regarding the human rights of women, calling the domestic violence "a pattern of abusive and controlling behaviour through which the abuser seeks power over their victim." (NHS, 2015)

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) from its Article 2 (e) particularly obligatory states parties that to "take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise." (Amnesty International, 2004: 68) Later on, *CEDAW* has adopted the General Recommendation No. 19 that defines violence against women as a kind of discrimination and compelled states to take comprehensive action to restrain violence against women perpetuated by any person, organisation or enterprise and bind states to prevent violations of rights by any actor, punish these acts and provide compensation. (UN Women, 1992) The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressed state responsibility for acts of torture and ill-treatment by private individuals such as intimate partners and other family members if not succeeded to protect women against Torture. (Amnesty International, 2004:69-77) According to customary international law, "states are functioning consistently in failing to prevent domestic violence". The former UN Special Rapporteur on Torture Mr. Manfred Nowak has argued in his report on responsibilities of state against women oppression that "states have an obligation to protect women against torture in private committed by non-state actors. (UN, 2008)

### **Victim protection resolutions in United Nations**

The United Nations has adopted two General Assembly resolutions dealing with the rights of victims. The first resolution was taken on in 1985 through '*Declaration of Basic Principles of Justice for Victims of Crime*' and the second resolution of '*Abuse of Power and the Basic Principles and Guidelines on the Right 2006*' about Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian

Law.’(Bassiouni, C. M., 2006) The ‘Declaration of Basic Principles of Justice for Victims of Crime’ related to the rights of victims of intimate partners’ violence. Later in general focuses victim’s right more particularly, gross violations of international human rights law and serious violations of international humanitarian law. The International Covenant on Civil and Political Rights 1966 (ICCPR) expanded victims' rights. In *ICCPR* Article 2(3) states that each State Party to the *ICCPR* is to “ensure shall have an effective remedy if any person’s rights are violated.” (Bassiouni, C. M., 2006) The ‘World Conference on Human Rights’ held in 1993 highlighted the need for victim damages by stating that, “Every State should provide an effective framework of remedies to redress human rights grievances or violations.” (Bassiouni, C. M., 2006)

### **Victim’s safety in European set up**

In Europe, The Convention on preventing and combating violence against women and domestic violence which was known as *Istanbul convention* was adopted by the Council of Europe in 2011, came into force on 1<sup>st</sup> of August 2014 with emphasis lay in particular on the areas of legislation, police investigation and prosecution. This convention also shed lights on many remaining gaps to combat domestic violence especially in the provisions of support and services for victims of domestic violence where progress seems inadequate. (BBC, 2011) According to European Court of Human rights, there are two most important features of state responses to the domestic violence which are, criminal justice responses and secondly, the provision of measures of social support to victims of domestic violence. (MacQuiggRonagh J. A. 2011) The principles set out by *ECHR* clearly states that victims’ rights are based on human rights and that states obligations derived from the European Convention on Human Rights (*ECHR*). (Council of Europe, 2009) States should, in particular, respect the security, dignity of victim’s private and family life and recognise the negative effects of crime on victims. The key problem is that ‘states act continuously in failing to prevent domestic violence. (Chatham house, 2010) *ECtHR* raised many questions and set standards for domestic violence prevention in land mark *Opuz v Turkey* case. This case is important because it confirmed that domestic violence is the business of the state. As well as in *B v Republic of Moldova* highlighting under Article 8 of *ECHR*, the states have a duty to protect the physical and psychological integrity of an individual from the actions of others.

In *Eremia v. the Republic of Moldova* the European Court at Strasbourg briefed that through General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (*CEDAW/C/2010/47/GC.2*), the Committee on the Elimination of Discrimination against Women found that “States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender based violence.” In *B. v The republic of Moldova* the European

Court at Strasbourg held that states should classify all forms of violence within the family as criminal offences and to establish a compulsory protocol for operation by the police, medical and social services.

The European Court highlights in *B. v The republic of Moldova* that through the Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, and training for professionals confronted with violence against women and prevention. It is important to point out that the European Court of Human rights has not yet placed a duty on states regarding the measures for provision of social support to victims, but in new Council of Europe's convention on domestic violence has introduced a lot of sections requiring states to establish the shelters and refuges for vulnerable women, also to fund and support and encourage NGOs to continue their services for victims of domestic violence.

### **VAW & domestic violence in US Justice Systems**

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women recognised that every woman has the right to be free from violence in both public and private spheres, clearly stated that governments are under an obligation to take effective steps to end violence against women. Highlighting the issue in *Edigaroc* the American Court observed: "...violent attacks in domestic settings must be treated with real seriousness. ... Such conduct is brutal, cowardly and inexcusable, and the courts have a duty to ensure that it is adequately punished, and that sentences are handed out which have a strong element of personal and general deterrence."

### **DOMESTIC VIOLENCE VICTIMS' RIGHT TO LEAVE AN ABUSIVE HOME OR RELATIONSHIPS**

The victims of violence may concern about the consequences of reporting matters to the police and may not want their intimate partners to be prosecuted or imprisoned. (Stanley Yeo, Neil M., Chan W. C. 2007:309) Leaving an abusive relationship is not as easy as it may seem. Many victims are without much support, either financial or social. Victims in these situations confront two key barriers that are 'fear and finance', fear for her and her children's safety and lack of money to support themselves and their families. (Meadows, R. J. (2010:75) discusses that there is a fact there are not enough shelters to protect all the women and their children who need them on the time of leaving. Despite effective laws and co-operative authorities to enforce these laws, it is proved that the risk to an

abused woman's life is enormous. As the research shows, according to (Wilson & Daly, 1993), women are more likely to be killed after leaving their husbands than while living with them. (Daigle L. E., 2012:243) When a woman becomes a victim of domestic violence, she is by no means in a position to take decisions because usually she is not fully informed about her rights and it is the time when she has facing sufferings and unsupportive environment. Arguably, without effective social support to the victims of domestic violence [majority of them are women] have no greater options left to them than abandoning abusive relationships.

If the batterer has controls all of the economic and social livelihood, leaving for a women can cause additional problems. (Gosselin, D. K., 2002:118) It is clear that only with the guaranty that they will not have to return to their abusive partners, from fear of extreme poverty, hardships or separation from their children, can they be protected in the first instance, otherwise they will be forced to depend on family, friends and even strangers and under these circumstances, they may be left with no choice but to return to their abusive partners. Gosselin, D. K., (2002) more argued, even though, in many cases, it is dangerous for a woman to leave her abuser.

Davis, R. L. (2008) contended that once we are in agreement about the fact, it will be possible to begin to resolve the issue rather than continue to contest it. In fact, there may be practical reasons that why a victim of domestic violence may not leave battering, for instance, Gosselin, D. K., (2002:13) asserts perpetrator may become more violent and maybe even fatal for her if she attempts to leave; her family and friends may not support her leaving; she may not know where to go for safety and support; or she rationalises her abuser's behaviour by blaming stress, alcohol, problems at work, unemployment, or other factors. Daigle L. E., (2012:243) found that leaving from an abusive relationship could mean living in fear and losing child custody, losing financial support, and experiencing harassment at work, experience shame, embarrassment, and isolation.

In cases of abusive relationships, it is important to provide suitable and timely support that help victims to recover emotional, practical, administrative, and legal obstacles. Every victim of domestic violence should have access to protection, whatever her ethnic background, legal status, sexual orientation, marital status, economic situation or profession. Despite the work done by existing victim support services, such assistance is currently not always easily accessible, Reports have shown various facts that many shelters do not accept those women who cannot afford to pay rental expenses. Such women may find themselves having nowhere to go, or return to abusive relationships. CEDAW (2007) identified that "If shelters do accept such women, they have to fund the places themselves."

The UN committee on Elimination of Discrimination against women ("CEDAW" Committee) revealed during consideration of UK's fifth and sixth report in 2008, (MacQuiggRonagh J. A. 2011)

acknowledged that the UK has not giving adequate support and services to victims of domestic violence, also, and exposed the closure of a number of domestic violence shelters. Though, the measures taken by the UK to establish the networks of social support and for the welfare of vulnerable are reasonable until recent budget cuts, after unveiling of this *CEDAW* report one can argue that the situation of Asian and African countries where domestic violence still neither considered to be a human rights issue and nor the matter of interest for courts and other criminal justice institutions are even more severe and caused great sufferings for victims of domestic violence.

#### THE ROLES OF NGOS TO PROVIDE SOCIAL SERVICES TO THE VICTIMS OF DOMESTIC VIOLENCE

NGOs are independent bodies, so through having freedom of advocacy they can effectively influence governments. Arguably it has been found that there was improvement in the development of policies and services dedicated to victims where independent NGOs had been set ups and efficient. NGOs are representing their victims and lobbying for policy decisions that have been created in a number of jurisdictions and have proved to be a real asset for the development of human rights and victim services. As affirmed by a famous NGO the *Southall Black Sisters* (2004) based in London, "Every state administration must acknowledge that it has a duty to ensure the security of the victims who are attempting to leave a violent relationship, which is one of the most critical stages for victims of domestic violence, so they should have access to refuges, accommodation and services."

The *EU* convention on domestic violence (Istanbul convention, 2011) has directed the states to make it possible for the non-governmental organisations to effectively contribute to the continuing implementation of the said *EU* Convention. It urged the State parties to provide increased and sustained funding to non-governmental organisations as well as other civil society groups involved in the area of women's rights. It is the duty of the states to ensure the allocation of appropriate financial and human resources for the activities carried out by public authorities and those of relevant non-governmental and civil society organisations working in the field of victim support. (Istanbul Convention, 2011)

NGOs have a fundamental and very important role to play in bringing pressure on governments to ratify and implements the recommendations of the international human rights conventions. NGOs have played a critical role in monitoring implementation and has continued in its role for lobbying as a human rights advocate for legislation that protects the rights of vulnerable and deprived people. Many NGOs have a long tradition of carrying out successful awareness-raising activities at national and international levels. It is the duty of the



states that at first they should appreciate the work that NGOs been doing for decades, and they should also actively encourage and support the work of well known and recognised NGOs, civil society and human rights organisations. This means enabling them to carry out their work in the best possible way. In 2007 the Directorate General of Human Rights and Legal Affairs Council of Europe advocated measures “for ensuring legal status of non-governmental organisations in Europe and encouraged the state parties to formation of NGOs.” (Council of Europe, 2002) Another important feature of the proper functioning of an NGO is to its support and funding by the state.

The UN ‘CEDAW’ committee facilitated NGOs through Article 2, which allows individuals or groups of individuals submit complaints to the CEDAW Committee.’(CEDAW Op. Protocol, 2009) The Supreme Court of India has also permitted NGOs to engage in those cases in which the victim of human rights violations are unable to approach the Court due to lack of awareness, resources, or because of poverty. (MacQuiggRonagh J. A. 2011)

### **NEEDS FOR VICTIMS CENTRED APPROACH**

The objective of the criminal justice system is to find out the truth. Hence, the victim’s involvement becomes very important. The victim can assist the investigation in finding the offender and in collecting evidence to prove the commission of the offence by the criminal. (Mrinal Satish, 2013:163) The confidence of the public on the criminal justice system depends on how people perceive themselves, their family and friends, when they are treated as a victim of a crime. Tatsuya Ota (2013:140) mentioned that there is no comprehensive legislation to provide fundamental policies and principles regarding victim support. It has to be recognised that the victim is one of the institution of the criminal justice system and that without the cooperation of the victim the system will collapse. *The United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985* states that crime victims and their families are unjustly subjected to loss, damage, or injury and that they may suffer hardship when assisting in the prosecution of offenders. Keeping this in mind, the UN envisioned a more prominent role for victims. (UN GA A/RES/40/34, 1985)

Victims of spousal abuse are more likely to experience depression, anxiety, sleeping disorders, and PTSD (post-traumatic stress disorder). Some of the psychological consequences are quite severe. By definition it creates emotional and psychological harm. As in *R v. Dhaliwal* case there is a link between domestic violence and suicide. Physical wounds may heal much more quickly than mental ones; psychological wounds inflicted by domestic violence may last for years. (Hunter R., 2010:259) Many victims are abused again and again and many

offenders repeat the offence. (Daigle, L. E., 2010:242) Female victims of spousal abuse tend to experience more severe and more frequent violence than do male victims. In addition to injury and death, victims may also experience psychological and emotional consequences; all have been linked to domestic violence victimisation. (Daigle, L. E., 2010:248) In a 1998 study in USA (Meadows R. J., 2010:71), the Conference of Mayors found that domestic violence was a primary cause of homelessness.

Lynn, one of the victim of intimate partner violence share her story: "Please educate the police and hospitals that the psychological fear, shame and trauma that a victim experiences when she is repeatedly beaten may not be visible, but is much more damaging than the visible injuries she may sustain." (Woman's aid Organisation, 2011) Research has shown that (Meadows, R. J., 2010:72) children who exposed to domestic violence suffer a variety of psychological consequences from witnessing the violence and its effects, which may make them vulnerable to victimisation as a juvenile or later as an adult. The victim of violence may wish to see the perpetrator punished, which is the aim of criminal law, but often their aim is to gain protection. Bird, R., (2006:132) acknowledged that the ability to keep a person accused of domestic violence in custody until trial is limited which raises safety issues for women and children.

The Council of Europe's Convention on domestic violence which follows the "Three P structure" of "Prevention", "Protection", and "Prosecution" is the best example to tackle this prevalent phenomenon. A coherent strategy to support victims of domestic violence is required to which involving either a single organisation as the unique contact point for victims (help-centers, one stop shops), which will guide and direct a victim through the network of institutions, or relying instead on an existing network of several organisations to perform such services. We must have a vision in the society to which men and women have the same opportunities, rights and obligations wherever they may live. The most effective way of advancement of women is to see through awareness campaign to which victim's voices are properly and effectively heard.

Ward and Bird (2005:86) draw our attention to the matter of the fact that the states should give victims the right to consistent and guaranteed levels of advice, support and information from their perspective criminal justice agencies. In many parts of Asia, numerous private organisations have been active in providing a variety of support services to specific crime victims of sexual violence, domestic violence and juveniles, for Tatsuya Ota (2013) Women's Aid Organisation in Malaysia.

## CONCLUSION

The shifts and changes in current scenario of the human world advise a criminal justice process in a way that provides more support and safety to the victims and more suitable outcomes for all concerned when intimate partners' violence is prosecuted as a crime. (Tahira Karanjawala & Shivani Chugh, 2009) The causes and consequences of intimate partner violence are of course, extremely complex. Necessary measures for the sake of the victims need to be taken. South all Black Sisters (2015) suggested that victims should be provided adequate protection from further or secondary victimisation, and has to be given enough support and help for overcoming the consequences of familial violence and has a chance to reconstruct their lives. For this purpose, Marinal Satish (2013) concluded, it is important that each country shares its experiences and ideas on victim support, through a mutual exchange of information.

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