

The Recognition of Violence against Women as a Violation of Human Rights in the United Nations System

Shazia Qureshi

University of Punjab, Lahore

ABSTRACT

This paper seeks to capture the gradual process of acceptance and recognition of violence-against-women-issue as a human right violation in the International human rights discourses. It discusses the role of four World Conferences on women and the Convention on Elimination of All forms of Discrimination against Women (CEDAW) in bringing the issue under International spotlight. While so doing it reflects on the silence, regarding the issue of violence against women, in CEDAW and the compensation of this omission in the form of General Recommendation 19 (interpretive procedure established by the Committee for Elimination of discrimination against women). It also illuminates some of the landmark developments in the United Nations human rights system to combat violence against women. These developments include, inter alia, the Declaration on Elimination of Violence Against Women (DEVAW), gender mainstreaming in the United Nations human rights mechanism and the appointment of Special Rapporteur on violence against women its causes and consequences. The final remarks include some considerations about large number of reservations attached to the CEDAW, which minimise its efficacy, and the lack of willingness of the state parties to withdraw these reservations.

KEY WORDS: Violence against Women, General Recommendations, DEVAW, Gender Discrimination, Human Rights

Introduction

Despite the magnitude and systematic nature of the problem, International Human Rights Law (HRL) had failed to recognize violence against women (VAW), particularly in the domestic context, as a violation of women's human rights and a priority matter for international action, until recently (Wing, Adrien, Katherine, 1997 & Onyango, Oloka, J. 1995, 94) As a result the widespread phenomenon of violence against women remained in precarious positions in the international law and policy. World Conference of the International Women's Year 1975¹, the first in a series of global Women's Conferences, recognised and made references to violence against women in various contexts and urged governments to implement

effective legislation to protect women from different forms of violence (Report of the World Conference of the International Women's Year 1976, pp 77, 93, 124, 133). However, it did not particularly focus on the issue of violence against women or passed any resolution to that effect. The Second Women's Conference (World Conference of the United Nations Decade for Women: Equality, Development and Peace 1980)² touched the issue of violence against women by adopting the resolution on 'battered women and violence in the family' and referred to violence in home in its final report.³ Nevertheless, the effects of the resolution continued to be minimal in terms of transforming the issue of domestic violence from a private matter to a problem deserving of sustained and priority international attention. The Convention on Elimination of Discrimination against Women (CEDAW hereinafter) came into being not very long after first Women's World Conference, however, its original text is silent over the issue of VAW (Edwards: 8 & Byrnes, 2008: 519). It did not spell out the issue of VAW as violation of their human rights, except the reference to women trafficking/prostitution (Kelly p. 477: 477). This omission was especially significant for the Convention that had addressed hosts of issues relating to women's inequality and had dealt elaborately with a wide range of women's human rights. However, backed by the intensified efforts of the women's movement the issue emerged as a serious international concern at the Third Women Conference (World Conference to review and appraise the achievements of the United Nations Decade for Women: Equality, Development and Peace 1985)⁴. The Forward Looking strategies adopted by the Conference linked the promotion and maintenance of peace to the eradication of violence against women both in public and private sphere⁵. Also the textual gap of the Convention was subsequently amended to some extent by 'creative interpretation' of its provisions in the form of General Recommendation 12 (GR 12) 1989 of the Committee, and later more exhaustively by General Recommendation 19 (GR 19) of 1992 (McQuigg, 2007: 461). The Committee's General Recommendation 12 urged state parties to take steps to eradicate violence against women and to include in their periodic reports all the measures taken, along with statistical data on incidence of such violence (<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>)⁶.

The Committee's General Recommendation 19 is important, not only because it addressed the issue of VAW more comprehensively but also because, while interpreting article 1 of the CEDAW for the first time, it identified the discriminatory pattern of VAW which constitute a form of gender-based violence, thereby impairing women's enjoyment of human rights⁷. The Committee's interpretative General Recommendation 19 clarified and finally encompassed gender-based violence in CEDAW's definition of discrimination against women. By so doing it reconciled the previously existing gap between the Convention's description of discrimination and the issue of violence against women (Meyersfeld, 2010: 6 & 34). The adoption of General Recommendation 19 by the

Committee was a critical step as it moved the issue of VAW from the periphery to the center of international focus. Consequently, the very next year the issue of VAW rose to the agenda of World Conference on Human Rights 1993⁸. The concerted activism that had build up around the issue of VAW culminated in the Declaration on Elimination of Violence against Women 1993 (DEVAW hereinafter)(<http://www.un.org/documents/ga/res/48/a48r104.htm>) (Bunch ,2000 : 48 & Erturk, 2007: 12 & Evatt, 2002: 2 & Meyersfeld, 2010: 291)⁹. The Vienna Declaration and Program of Action called upon the General Assembly to adopt a (resolution) Declaration on Elimination of Violence against Women, which it did the same year, noting that violence against women is a ‘manifestation of historically unequal power relations between men and women’¹⁰. The text of the Declaration had reinforced the views contained in General Recommendation 19 by largely incorporating its principles (Byrnes, 2008: 519 & Hasselbacher, 2010: 193). DEVAW led the Former Commission on Human Rights (CHR) to adopt the resolution calling for the integration of Women’s human rights into UN’s human rights mechanism, elimination of VAW, and appointment of Special Rapporteur on Violence Against Women (SRVAW)¹¹. The United Nations SRVAW has a mandate to collect and analyse comprehensive data and to recommend measures aimed at eliminating VAW at international, regional and national level. DEVAW 1993 was followed by the resolutions for ‘intensification of efforts to eliminate all forms’ of VAW, calling for increased efforts to end VAW (Meyersfeld, 2010: 66). The issue of VAW as a human rights violation was also widely discussed in the fourth Conference on Women (Action for Equality, Development and Peace 1995)¹². It was identified as one of the twelve critical areas of concern requiring urgent action in Beijing Platform for Action¹³ (<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>) which has been described as ‘benchmark and a point of leverage for government action against violence against women’(Kelly, 2005: 481).

Analysis of the Aforementioned Developements Within Un System

After briefly surveying the progressive development of women’s human rights and recognition of VAW as a human rights violation in International human rights law in roughly the past two decades, this section will examine the strengths and weaknesses of these developments.

It is generally contended that human rights are typically conceptualised as mainly applicable to the public sphere of the market and state (Elson: 23). Within this understanding, the identification of women as primarily dependents of male providers, limit their claim to socio-economic rights (Peterson & parisi: 23). Arguably the current International human rights structures as well as the content of various human rights norms, fundamentally benefit men. This is so because the

public/private divide continues to maintain legal privileges along gender lines (Romany, Celina, 1994: 97). The human rights regime predominantly acts in the public sphere and overlooks what occurs in the private sphere, where women's human rights abuses actually take place (Romany, Celina, 1994: 88). Therefore most feminist critiques reject such human rights narratives which construe civil/political rights corresponding to individual's public life while ignore to check violation of those rights in the private sphere of familial relationship (Romany, Celina, 1994: 88). Accordingly, the primacy accorded to civil/political rights in human rights law (In International Covenant on Civil and political Rights 1966). provides safeguards for men in the public sphere. As Beasley argue 'men exist as public, legal entities in all countries, participate in public life and enjoy the full extent of whatever civil and political rights exist..' Since most women need protection from harms in the private sphere, it is argued that rereading of the International Covenant on Civil and Political Rights 1966 from women's perspective will help remove the dichotomies and will make these rights more meaningful. Charlesworth not only disapproves of the prioritizing civil/political rights and their gendered nature, she equally criticizes the discriminatory approach of the International Covenant on Economic, Social and Cultural Rights 1966 (Charlesworth cited in William, 2010: 180). She maintains that the said treaty has little relevance for women in factual/material terms as it has failed to transcend the public/private division of human rights law. She argues that

It does not touch on the economic, social and cultural contexts in which most women live, since the crucial economic, social and cultural power relationship for most women is not one directly with the state but with men –fathers, husbands and brothers-whose authority is supported by patriarchal state structures (Charlesworth cited in William, 2010: 180).

Romany identifies an inextricable nexus between VAW and their socio-economic status. She argues that the patriarchal fiction separates the public framework from the private and this has serious implications in women's lives. In her critique she rejects the popular notion that civil/political rights belong to public life, she rather emphasizes the inseparability of both categories of rights in women's life. According to Romany a woman experiencing violence in her personal life could not lend her energies in the economic realm (Romany, 1993: 123). This will further exacerbate her chances of emancipation, violence therefore, is both the cause and consequence of women's economic subordination. She argues that

..the right to be free from violence is a lowest common denominator that must inform a dialogue about the links existing between violence and social and economic development (Romany, 1993: 124).

Unsurprisingly, this systematic pattern of public/private dichotomy, integral to human rights discourses, had replicated in the CEDAW as well. The CEDAW has identified gender discrimination in a range of fields and suggested measures to

eliminate it, yet the primary focus of the treaty was originally on the issues of discrimination that emerged in the public sphere of women's lives. The private sphere has not given much consideration in the basic text of the CEDAW. However for women, this division between rights to economic security and rights to personal liberty as already argued is particularly crucial. In the circumstances of women who have abusive male partners, for example, the indivisibility of economic issues from violence issues is quite obvious. Therefore, dealing with the problem of domestic violence against women is central to the notion of substantive gender equality, which requires that the status of women within the private sphere should also be addressed.

In this regard the dynamic aspect of the CEDAW is one of its useful features. It has a capability to positively respond and embrace the developments of International human rights law and to integrate new approaches into its work¹⁴ (Neubauer, 2011: 8). Also on the basis of the information received by the state parties, it has been continually evolved and updated to include new insights and trends. For instance to address the problem of domestic violence, Committee's General recommendation 19 is regarded an important step in the positive direction (McQuigg, 2007: 463). The General Recommendation 19 is the most widely cited of the Committee's recommendations with reference to the issues of gender based violence (Byrnes, Andrew, Bath, Eleanor, 2008: 519). The DEVAW 1993, supported by CEDAW, further brought the issue of VAW under the umbrella of human rights protection by creating uniform message that declare VAW as a violation of human rights (2006, California Statewide Policy Recommendations for the Prevention of Violence against Women: A Final Report to the National Center for Disease Control and Prevention. June. P.6)¹⁵. Following the adoption of DEVAW, the focus on VAW in the domestic sphere, significantly increased in the International arena. The VAW have been a prominent theme across wide range of UN activities¹⁶. In 2006 the UN Secretary General's office issued a cutting edge report on domestic violence¹⁷. In 2008 the Secretary General launched a multi-year global campaign¹⁸. These developments tend to suggest that the issue of VAW (and domestic violence against women) has been lifted out of its previous secondary or 'special status' sphere, within human rights considerations, and placed in the mainstream agenda (Evatt, 1991-92: 444).

It is commonplace to link violence against women to gender discrimination, partly because evidence suggests, that VAW is closely associated with women's subordinate/inferior status compared to men in many societies, (Copelon, 2003, 872) and partly as a matter of convenience. According to the former approach violence against women is viewed as a form of gender discrimination which underpins the cause of gender violence. Accordingly, women's lack of access to education and economic resources in developing societies are being perceived as major contributing factors to unequal power relationship between men and women, which in turn may lead to cycle of violence. VAW inhibits equality, inequality facilitate the perpetuation of VAW. Hence, to successfully combat

VAW, it is contended that equal attention should be paid to the causes and impacts of gender discrimination. The latter view indicates that the idea of defining VAW from the perspective of gender discrimination and thereby inserting it in the pre-existing treaty regime was comparatively expedient. Arguably, when the International Institutions finally decided to address the issue of VAW, basically in response to the demands of feminist activists, it was considered feasible to subsume the said issue in an already established treaty framework, i.e, CEDAW. It would have taken much more time and efforts to create a fresh instrument that would exclusively address the right of women to have a violence free life. Instead the strategy to combat VAW by making it a part of obligations set out in the, already widely ratified, Women's Convention, was seen more appropriate to avoid likely resistance from member states. Therefore in the first phase of this process General Recommendation 19, while interpreting article 1 of the CEDAW, attempted to establish a connection between VAW and gender discrimination. It stipulate VAW as a gender-based violence, therefore systematic in nature, and describe it as a kind of violence 'that is directed against a woman because she is a woman'¹⁹. This approach led some writers to argue that 'gender violence is one directional, and risk factor is being female'(Heise, 1993-94: 330 & McGuckin, 1998: 56). It is to be noted that General Recommendations does not enjoy binding legal status, states are only asked to include VAW in their reports, they are not oblige to take measures regarding that (Evatt, 1991-92: 14 Global Justice Report, 2007: 21 Culliton, 1993: 507, Handbook on the Individual Complaints Procedures of the UN Treaty Bodies: 244. Hainsfurther, 2008: 17). Therefore the Committee can only use political persuasion to urge states to follow General Recommendations' provisions and reporting requirements (Culliton, 1993: 9). In the second phase of recognition of VAW as a women's human rights violation, the United Nations General Assembly adopted the Declaration on Elimination of Violence Against Women (DEVAW) 1993, (UN Declaration on Elimination of Violence Against Women (DEVAW) 1993, A/RES/48/104) which derived much of its substance from General Recommendation 19. Although DEVAW is the only international instruments relating to domestic violence as of yet,(Meyersfeld, 2010: 37) however, akin in approach to General Recommendation 19,(Byrnes, 2008, 519) it does not recognise directly such violence as a violation of human rights. Instead violence against women 'is understood as a 'barrier' to women's enjoyment of human rights (Edwards, 2011: 22). DEVAW therefore, rather than characterising violence against women as a human rights violation, chose to describe a series of rights which were adversely affected by such violence (Lambert, Caroline & Pickering). This strategy, compared to mainstream human rights instruments arguably less emphatic, therefore lacks normative strength. Treaties such as International Convention on Elimination of All Forms of Racial Discrimination (ICERD) 1965, on the other hand, possess norm creating ability partly because it forthrightly prohibit racial violence, (Edwards, 2011: 22) Furthermore, discrimination is a less strong concept compared to oppression or

domination as used in some other treaties,²⁰ however, the employment of the latter conceptions is seemingly avoided in the Women's Convention as well as in the DEVAW (Kelly, 2005, 479). Rosenblum argues that CEDAW misdiagnosis

'women's' suffering as discrimination, rather than a pervasive set of oppressive social relations; one that surpasses the confines of any specific group of victims'...it 'allows mainstream 'human rights' law to remove gender justice projects from its scope.(Rosenblum :40)

He contends that although the Convention's in its definition section initially follows ICERD's approach but then later erred by emphasizing on women and creating minoritarian and identitarian focus (Rosenblum :27 & 38). He argues that the Convention is mistakenly built on an anti- discrimination model that frames women's issue distinct from human rights issues, therefore, if the Convention has to gain place in mainstream human rights law, it has to be 'unsexed'((Rosenblum :39 & 35). Moreover, it is argued that violence against women is not just a matter of inequality of treatment, rather a human rights violation in itself (Holtmaat, 2008: 70). It is further argued that connecting violence against women to gender discrimination may not always be the most effective approach in international law from political and practical point of view (Meyersfeld, 37). It is quite possible that a country might have all the gender equality laws in place and still have failed to combat violence against women. One such example is the USA, where feminist activism had generated considerable pressure to bring major changes in the theory and practice of gender related issues. Consequently significant achievements have been made in the area of substantive gender equality law/policy, yet statistic demonstrates that in the US society VAW including female intimate partner violence is still rife (Charlesworth, 1993: 71, Bettinger: 187 & Macmillan, 2005 Final Report). Conversely in another scenario it is possible that a certain country might be following some gender discriminatory practices but at the same time strive to end violence against women, (Meyersfeld, 2010: 37) or such violence is altogether not a part of its social fabric. In this regard Oman's reference would be useful to illustrate such type of society. For instance Wikkan in her detailed anthropological account of Omani culture has noted a women friendly atmosphere of the society (Wikkan, 1983). Wikkan has made several observations throughout her work arguing that despite adherence to gender stereotypical practices, domestic violence against women is not a common feature of Omani culture. Moreover, in most societies where Honour Related Crimes are prevalent (HRC), sexual choices of men and women are equally regulated by social censure²¹ (<http://www.asianewsnet.net/home/news.php?id=26228>). And in case of any transgression both are vulnerable to violence from the family/community. However, because men are mostly independent (economically/socially), they stand better chances to escape the punishment (Bovarnick, 2007: 69). In the light of these observations it is argued that approaching the problem of violence against women in terms of discrimination is a weak strategy, violence against women is

not just a matter of inequality of treatment, rather a human rights violation itself. (Holtmaat, 2008: 70) The seriousness of the issue demands that it should be dealt with in a forthright manner. However, prevailing approaches to human rights law tend to reinforce some of the feminists' argument that the concept of liberal state is 'male jurisprudentially', a state that adopt male point of view in 'the relation between law and society' (Romany, 1994: 93). It is, therefore, desirable to remove the standard of 'male comparator' from legal theory and practice in order to make it truly responsive to the women's needs and requirements.

Concluding Remarks

In conclusion it is argued that violence against women is a human right violation and not just a matter of inequality (Holtmaat, 2008: 69). Hence, it is suggested that violence against women should be a matter of serious concern in its own right, regardless of discrimination standard, and be addressed directly as a violation of women's human rights rather than being viewed as an obstacle to the enjoyment of such rights. It is further suggested that women's right to have a life free from violence should be recognized as an entitlement and their status in the male-designed human rights discourses as a 'supplicant and seeker of charity' be seriously reviewed to achieve gender justice in the real sense. (Smart, 1989: 152) The enforcement mechanism of Women Convention would be strengthened if the number of states ratifying its Optional Protocol is increased. However, despite containing flexible provision allowing for revocation of consent from the Protocol, the number of states opting for it remains low, less than half of the state parties have ratified it²² (http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en). It is also relevant here to point out that the United States remains one of only a handful of countries that has not ratified the Women's Convention²³ (http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en). There is no denying the fact that women in the USA enjoy a higher standard of rights and freedoms compared to the women in many of the countries which have ratified the Convention (Benshoof, 2009). However, the refusal to ratify the Convention by the most influential global power sends a negative/unsupportive message to the world thereby detrimentally affecting the progressive development of 'non-discrimination principle' (on the basis of sex) initially as customary norm and ultimately as *jus cogen*. These features together with enormous number of reservations by several states results in limiting the efficacy of the Convention and arguably reducing its function to merely reporting. Consequent lack of serious commitment on the part of state parties further dilute the necessary *opinio juris* element of the Convention thereby seriously effecting its hard law status. Sohn's opinion is quite relevant here, he while commenting on reservation phenomenon, argue that 'it is not the law that is

soft, but the government...states find difficult to declare punishable an act that they may someday wish to commit. (Sohn, 1982-83: 13).

Notes

1. Held in (19 June-2 July 1975) Mexico city
2. Held in (14-30 July 1980) Copenhagen
3. Copenhagen Forward looking Strategies
4. Held (15-26 July 1985) in Nairobi
5. Nairobi Forward Looking Strategies
6. General Recommendation 12 made by CEDAW (eighth session) 1989, available at (GR not binding see sen
7. CEDAW General Recommendation 19 A/47/38 (General Comments) 11the Session. Yakin,
8. Held in (14-25 June 1993) Vienna
9. UN General Assembly Declaration on Elimination of Violence against Women, A/Res/48/104 of 20 December, 1993.
10. Declaration on Elimination of Violence Against Women (DEVAW) Resolution 48/104 of December 1993
11. The Human Rights Commission (Human Rights Council since 2006) at its 56th meeting adopted resolution of March 1994/45 titled" Question of Integrating the Rights of Women into the Human Rights Mechanism of United Nations and the Elimination of Violence Against Women" .
12. Held in (4-15 September 1995) Beijing
13. The Outcome Document of Fourth Women World Conference, Beijing 1995
14. Basically by adopting General Recommendations CEDAW continue to update and amend itself.
15. 2006, California Statewide Policy Recommendations for the Prevention of Violence against Women: A Final Report to the National Center for Disease Control and Prevention. June. P.6
16. The Convention Against Torture in 2008 & World Health Organisation in 2002 had considered violence against women as a human rights violation in their reports. Among others are the United Nations Development Program's Report 2000, United Nations Commission on Human Rights 1998, Security Council Resolution 1325 on VAW. Also UN passed series of resolutions addressing the phenomenon of HRC, in 2000, 2002, 2004 entitled 'Working Towards Elimination of Crimes against Women Committed in the Name of Honour'.
17. 2006 Report of the Secretary-General UN, In-depth study on all form of violence against women. A/61/122/Add.1 . Also co-ordinated data base established.
18. The title of campaign is 'say NO—UNiTE to End Violence Against Women'
19. Committee on Elimination of Discrimination Against Women (CEDAW) General Recommendation 19
20. Such as Convention on the Elimination of All forms of Racial Discrimination 1965.

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21. The latest incident (11/1/2012) discussed in the Pakistan's Parliament involves the punishment of both boy and the girl, who, having allegedly committed adultery, were caught for so called honour killing.
<http://www.asianewsnet.net/home/news.php?id=26228> last visited 12/1/2012
22. 104 out of 187 state parties have ratified Op. Protocol, Article 19 of Optional Protocol allows states to denounce it any time. Last visited on 25/2/2012, details of ratifying parties
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en
23. Status as at 26/2/2012,
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Biographical Note

Shazia Qureshi is Assistant Professor at the Punjab University Law College, University of the Punjab, Lahore-Pakistan. Currently she is conducting doctoral research on Human Rights Law.