



COMPARATIVE PERSPECTIVES OF LAW PREVENTING DOMESTIC VIOLENCE

Ms. Karishma Pushkar Patil

**Ph.D Research Scholar and Assistant Professor, Bharati Vidyapeeth (Deemed to be University),
New Law College, Pune, India**

ABSTRACT

It is very essential to understand the legal system of different countries for the comparative study with Indian law. India perhaps is a country under the common law family in addition to having given rights for rights to individual religion. For the comparative method of legal study and research, it is very essential to understand and study the legal systems of different countries which helps to understand the loopholes of our legal system in country and improvement is done accordingly by studying the legal system of various countries it highlights the functioning and mechanism of legal activities of various countries. This helps us to understand the lacunas of our legal system, improves our knowledge by knowing the legal system of various countries.

1. INTRODUCTION –

The world consists of approximately 250 countries and every country has its own legal system which is based on various factors of each country such as social, political and economic factors which are present in these countries. Out of all the legal system, the major legal systems are divided into following four families: - Romano Germanic Family, Family of common law, family of Socialist Law, and Traditional and Religious Law. In this world each country has its own different legal system. Some or the other legal terms differ from each other.

We shall study the system of USA and UK compared to India because the system in USA differs from each state and the legal system in UK is based on common law similar to India, but with developed approach and conclude in this chapter of what India can adopt from these two developed countries.

According to Prof Gutteridge “*The common law system/Anglo American legal system and civil law/continental legal system are different from each other.*” In his study, the Common law is the final result of slow historical growth and it also reflects some qualities of feudalism and are all based on common law. Common law precedent is one of the important source and civil law is not considered as its primary source. It is always considered to be the secondary source. The common law understands the individual problems and gives the decision and also develops the principle as soon as possible, but civil law is totally different it starts from general rules to individual decisions.’

There are three basic approaches for the laws relating to domestic violence globally. The normative model of UN's human rights conventions, the educational model applied by the European Union and the legalistic, prosecutorial model of United States. The PWDVA, 2005, is reflection of the total study of the three approaches. So let us study what these approaches are.

UN MODEL OF DOMESTIC VIOLENCE

The UN model is the reflection of the system of regulation of violence against women. It initiated through the formation of human rights in general without targeting any specific sex or gender. The movement later focused on gender specific problems in the International community. The fact is that the human rights were judged and assumed as per the western culture and not by any specific country value and the women were also counted in this same rights for around three decades beginning at the end of World War II. It is in the early 20th century that the UN included the forgotten part of the globe such as the rights of indigenous people, ethnic minorities and women. The UN documents are certainly the guidelines for emerging democracies in drafting their laws and constitutions with gender rights.

THE EUROPEAN MODEL

This model is known as the educational consciousness raising model. The main advantage is that although it begins in west, the solutions to problems of domestic violence are indigenous. The study is intense and they are reluctant to include other study works as their efforts in solving the disputes through harmonizing solutions. The approach is both legal and soft and usually embarrassed by the population and political pressures. The concept is simple to study and get in touch with the women through the soft cell for women. The belief is simple that the rights of women is equivalent to that of man. There exists many NGOs who are funded by the EU for the same purpose.

PROSECUTIONAL AND LEGAL MODEL OF US

The model is famous for criminal prosecutions and criminal punishments. The message is crystal clear and meant for the abusers that the world shall not bend down to the domestic violence at any cost. The model although fails as the rights of victims are taken over by the police and state machinery. The model is criticized for the more than required police interference which sometimes is unhealthy for the relationship of abuser and the victim.

The models mentioned above are only the sort of three important approaches in the world available for the women victims. It cannot be taken as the whole and sole savior of the domestic violence victims. But it is only a study that may benefit the law makers.

2. LEGAL SYSTEMS IN OTHER COUNTRIES

UNITED STATES -

The violence against women act was authorized in 1995 followed by in 2005. The act defines domestic violence as "it includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grants, or by any other person against an adult or youth victim who is protected from that person's act under the domestic or family violence laws of the jurisdiction." To improve the plight of women, the act was provided with over three billion dollars.

The United States system provides a support trained staff to the women victims who provide legal aid, knowledge about the procedure, help them in the procedure, provide advocates, assist in getting the maintenance, ensure them their rights and provides service with regards to economic security, protection, housing, counselling, and post-conviction services.

The trained staff provided by the United States system has similar resemblance to the protection officer under the PWDVA, 2005 compared to India. However, the latter is made on the systems of United States. The trained staff and the lawyers provided to the victims have a soft approach and the relief although depending upon the conviction, the interim reliefs to the victims are guaranteed. Also, the trained staff is present in courthouses for the mental support of the victims. In the Indian system, the protection officer is however not allowed in the court or most of the times do not show up to support the women victims. Also, the approach towards the women victims is harsh and in most cited examples, this approach is why the women refrain from approaching the legal help.

A system known as the OVW, office of violence against women, administers the governments funds for the family justice center and brings together NGO's, victim service providers, medical forensic professionals, lawyers, staff support, community organizations etc. under one roof to make the victims justice more efficient and effective. The system in India perhaps lacks this type of approach. It is because of the apathetic approach from within the society that has laid back the effectiveness of such a wonderful system. India can really benefit in this area, if it adopts this system.

The US systems also gives scope to protection orders and interim reliefs to the victims and interesting any gender victim can seek relief. The process is made keeping in mind the same sex marriages and also extends to the victims who haven't stayed in the same household but have a dating relationship. In Indian system, the cloud over same sex marriages is yet not cleared and the laws shall follow later. More interestingly, the orders are binding in such a way on the abuser that, even if the order is breached by the abuser in a location far away from the jurisdiction of the court which passed the order, the women can call the support staff and police machinery and can seek help and the response is pretty effective and quick. This guarantees the full faith and credibility of a trustworthy system which India has lacked for many years immemorial.

Apart from most of the given facilities, the US also provide the victims with helpful interventions by providing facilities of transportation, providing shelter homes, giving them hotline numbers for help and etc.

The US laws regardless of the gravity of offence makes it mandatory for the arrest of the perpetrator. Many women victims from the past and in the present as also the community organizations have raised their voice to keep the condition of arrest intact in cases of domestic violence. The US is clear in its implementation too, however, the arrest comes at many errors at the hands of US laws and its management is utterly questionable. The situation sometimes which could have been sorted through amicable settlement ways, is given a new fuel in fire by arresting the perpetrator giving rise to his ego problem and further worsening the situation with the victim. The US law however, is confident of a better way, the grant relief and program system under the VAWA 2005 act makes it clear that to be credible and active against the domestic violence, the state should take into consideration the organizations, service providers, lawyers, medical officers, the support staff and the independent private NGO's for the betterment and future of the victim that also involves the legal guidance and protection from the perpetrator until the disposal of the matter. The arrest is thereby mandatory in around 21 states of the USA. The Indian counterpart legal system is slightly lenient at the perpetrators by making the arrest not compulsory but with permission of the Magistrate, according to the latest judgment of Arnesh Kumar.

Since USA is a country most of the people want to live in. It is common that the number of immigrants would be very high. The situation in our research context is limited to the immigrant women, who marry men having authorized right to live in the state, whereas the women are dependent and on temporary visas in the USA. But what if the situation extends to those immigrants women and they become victim of domestic violence. The situation would make very difficult for the immigrant women as she is already on temporary visa having no guarantee of its being permanent. Also, she is dependent on the perpetrator, who is himself the offender. Such women usually don't want the interference of the legal system. In addition, the US system is strict and makes the arrest compulsory, therefore in such a case, the immediate future of such women is uncertain as deportation would lead them to ample of hardships and mental torture. The US VAWA, 2005 also includes such women in need. It gives them the equal rights as that of what it gives to its citizens. The act also gives the same status of fighting a legal battle as well as it protects the immigrant children if any by providing them proper home, food, legal facility, medical care etc. The situation in India is not as developed as that of the USA. The one basic thing in India which is hugely ignored is, the immigrants can easily fake the citizenship, also, the illegal migrants make the case worse because although they have the legal rights for fighting for their justice, they are themselves offenders in the first place as, without appropriate legal permissions they enter India. Secondly, the facilities aren't provided by the Indian law and the historical rhetoric reason given for the same is lack of funds to manage the same. Rightly so, the population of India is so much so, that if all facilities will be provided, more people will fake the domestic violence cases to gain the legal benefits. India needs to develop this area for a strong battle that includes fair trials and equal treatments.

In many countries and in many states of the America, the offences of marital rape are not punishable. Very few states and countries in this world have made it illegal. The view of one famous case of the New York Judgment 'People v. Liberta' states that marriage is not a license to the husband to use physical force on his wife for the purpose of sex and amounts to rape. Hence the marital rape is a crime in New York and is not yet globally accepted as yet.

UNITED KINGDOM –

The UK law to overcome the issues related to domestic violence and the victimization of women, have by far introduced many acts and laws such as; The Domestic Violence, Crime and Victims, Act 2004, Family Law Act 1996, the protection of harassment Act 1997, the protection from harassment (Northern Ireland), Order, 1997.

To counter the issues of domestic violence and Honor crimes, the definition of the domestic violence under the UK law has been widened to incorporate violence by family members as well as between adults who are, or were intimate partners. The exact definition of UK is "any incident of threatening behavior, violence or abuse (psychological, physical, sexual, financial or emotional) between adults; who are or have been intimate partners or family members regardless of gender or sexuality" is termed as Domestic violence.

The PWDVA, 2005 is adopted from the DVCV 2004 of the UK. The definition mentioned in PWDVA is however not wide enough and is very gender specific. The PWDVA is limited to women whereas the DVCV extends to the same sex marriage partners and includes even those who have or were in intimate relation. As late as 2008, the PWDVA has also included victims who stay in live-in relationships. The DVCV act is unique in nature as compared to the Indian law in cases where it passes an order of anti-molestation whose breach can end up the offender for imprisonment of 5 years. Whereas, India does not have any specific law regarding the same and the PWDV act itself in most of the sections is bailable in nature, any orders with regards to interim, if passed, are mostly related to monetary compensation alone.

The right of victims of UK are mentioned in Part III of DVCV act, 2004 and other salient feature of the legislation in UK is regarding the appointment of commissioner of victim and witnesses, victims advisory panel, grants of assisting victims, criminal injuries compensation from offenders etc.

Much before passing of the DVCV act, UK was active in tackling the situations of domestic violence. The London domestic violence forum which existed much before the act has been active the United Kingdom. The forum is open to all and the members are usually private or community based in nature. There are certain other groups who are equally active such as the Alliance against domestic violence, and many NGO's etc.

To protect the interest of the complainants, England is very strict in terms of interrogating and arresting the abusers. This actions existed much before the law was introduced. UK and its government is actively involved in curbing the domestic violence since many decades. Citing the judgment of Patel v. Patel, the court had passed very harsh and lengthy imprisonment and order fines to the husband. The husband in this case argued and begged to reduce the punishment, however the court denied the same stating that the husband had no remorse for his actions and giving of a slighter punishment will only strengthen the abusers guts and weaken the hopes of the victims. This clearly shows that the view of UK on domestic violence is very strict. In another judgment in Botswana, Sekoto v. Director of Public Prosecutors, the judge was pleased to pass an imprisonment of 12 years to the offender for murdering his live-in girlfriend stating that such offences are growing regularly and it shall only grow if no harsh steps and precedents are followed. The judicial strict view and its activeness is evident from the judgments passed.

In most of the cases of domestic violence, the children are the first eye-witnesses. It is thus necessary to protect them and the UK is considerate to safe guards the interests of the victims of Domestic violence and hence they do have laws in place for the protection of the children. As also, often the result of such cases ends up parents to lose the custody of the children which further gives a mental impact on them. In such situations, the court at the earliest, take the statement of the children witness and establish the nature of the offender and later decide about the custody. Unlike India, the custody of the children is mostly given to the mother. However, since the PWDVA only makes the women as victim, the custody is bound to go to the victim. In DVCV however, any spouse can be the victim and hence it is necessary to decide about the custody of child depending upon the mental behavior of either of the spouses with the children and in general.

The United Kingdom has made the marital rape as unconstitutional and the offenders are punished with the same laws as it would treat a rapist with. The series of judgments passed by the courts in UK is sufficient to show that the UK courts and its government has taken the issues of domestic violence too seriously and are active in providing speedy justice to the victims. The system however similar to that of India is much more advanced and active than the Indian system.

3. CONCLUSION

The overall comparative study between USA, UK and India will show one thing in common and that is the interference of the Government. Where USA has topped the lists with serious and proactive laws, the UK is no lesser active than USA. However, India falls short when it comes to being politically active. The US approach to handling the cases with arrest and subsequent harshness and involvement of communities often creates rift between the abuser and victim because sometimes the cases could have been solved with simple counselling. The Indian system wins in this area as it gives adequate opportunity to the abusers and gives a

lot of scope for showing innocence. The UK whereas, is a middle-man, it gives opportunity to the defender but with certain seriousness to the strictness in its approach.

From the overall study of the legal systems in the three countries, it is clear that not all countries have the same approach, the approach depends on the societal impact and the importance it gets politically as well as depends upon the response of the victims. The USA is strong at laws, but weak at executions, the UK is strong in approach and good at political interference, whereas India is good at giving adequate opportunities to the defenders but does very less for the safeguarding of victims and is also politically less active than the others.

References :

- Laxminath et al, Comparative Law and Select Legal Systems,4 (Hind Law Pub,2011)
- People v. Liberta 64 N.Y.2d 567,485, N.Y.S2d207(1984)
- Patel v. Patel (2007) EWCA Civ 384.
- Sekoto v. Director of Public Prosecution CLCB-037-06(2007) BWCH 12 (25TH January 2007).

Bibliography

- WOMEN AND LAW – DR.S.R. MYNENI
- JUSTICE FOR WOMEN (2ND EDITION, UNIVERSAL LAW PUBLISHING) – A.S.ANAND C.J.
- LAW RELATING TO PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE – SUMAN RAI
- THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – S.R. BHANSALI

