

Some Reflections on Violence Against Women

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Cet article étudie l'obligation qu'a l'état d'assurer que toutes les femmes aient l'opportunité d'être indépendantes et en contrôle sans être abusées. L'auteure propose une approche humanitaire pour contrer la violence, c'est-à-dire une approche

The core concept of the human rights approach centers around the issue of empowerment. Violence against women involves the use of force to prevent the necessary empowerment of women within society.

basée sur les droits de liberté et d'indépendance des individus, droits exempts de menaces, de force et de peur débiliteuse et ce, que cette violence soit engendrée par l'état, des gens de la communauté ou des membres de la famille. L'auteure insiste sur le fait que l'une des plus importantes contributions du mouvement des femmes pour les droits humains est la prise de position de l'état contre la violence sociale.

The following statistics indicate the extent of the problem of violence against women. In the United States a rape occurs every six minutes and violence occurs once in 2/3 of all marriages (Carillo 5). In Papua, New Guinea, 67 per cent of rural women and 56 per cent of urban women are victims of wife abuse (APDC 15). In Santiago, Chile, 80 per cent of women acknowledged being victims of violence in their homes (Carillo 6). In Canada, one in every four women can expect to be sexually assaulted at some point in her life (Carillo 5). In France 95 per cent of its victims of violence are women, 51 per cent of the above at the hands of a husband (Carillo 5).

In Bangladesh assassination of wives by husbands accounts for 50 per cent of all murders (Carillo 5). In India there have been 11,259 dowry-related murders in the last three years (APDC 15). In Pakistan 99 per cent of housewives and 77 per cent of working women are beaten by their husbands (Carillo 6). Given the number of men in India and China, there should be about 30 million more women in India and 38 million more women in China (Carillo 6). In Korea two thirds of all women are beaten periodically by their husbands (Carillo 6). According to the World Health Organization more than 80 million women have undergone sexual surgery (female circumcision) in Africa alone (Schuler 400). Every minute and a half a woman is raped in South Africa, totalling approximately 380,000 women raped each year (Schuler 322)

Violence against women is a latecomer to the world of international human rights. In the 1970s, women's issues focused on discrimination in political and economic benefits and an equitable development process for women of the Third World. The major international convention which dealt with women's rights, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which came into force in 1979, adopted the "non-discrimination" model; women's rights were violated only if women were denied the same benefits as men. Though there were sections on custom and traditional practices, the Convention was silent on the issue of violence against women. At the World Conference celebrating the Women's Decade in Nairobi in 1985, the problem of violence against women was raised but in a marginal manner, as an afterthought to the other provisions dealing with discrimination, health, economic, and social issues.

This neglect of the issue of violence against women generated a great deal of NGO activity in this regard, especially during the 80s and 90s. This activity struck a responsive chord within the UN system and the process culminated in the Declaration on the Elimination of Violence Against Women by the United Nations General Assembly in 1993 and the appointment of a Special Rapporteur on violence against women in 1994.

Approaches

There are in effect three approaches to the issue of violence against women (Omvedt). The radical feminist approach locates the discussion in an understanding of patriarchy. According to this approach violence is intrinsic in the relationship between men and women and manifests itself in sexuality as well as in the social and political institutions of society. This leads to a focus on problems of domestic violence, and rape as a manifestation of the initial inequality in the relationship between the sexes (Firestone). Violence is therefore pervasive and inherent in women's daily interaction with men (Brownmiller).

Socialist feminism approaches the question of violence against women in a fundamentally different way. Violence is seen as a part of the social and economic forces which operate in society, forces which make women one of many victims. The struggle against violence is therefore not a struggle against men and male domination alone but against systems of exploitation which disempower women. Violence is a result of economic exploitation and only secondarily a function of the male-female relationship. Third world socialist feminists see female workers in

certain industries as being victims of violence. There is also a concern with the commodification of women as sexual objects in prostitution and the international trafficking of women (Mitchell).

Eco-feminism also deals with violence against women in a significantly different way. It sees relationships between women and nature, between subsistence production engaged by certain women and violent accumulation engaged by certain men and the state. Violence is seen as part of the military industrial complex, an attempt to destroy both women and nature. As is often said in these circles, "There is no essential difference between the rape

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of a woman, the conquest of a country, and the destruction of the earth" (Omvedt 15). The issues that are relevant to these groups are a concern with the destruction of the lifestyles of women living in the rural areas of the Third World along with those who live in tribal homelands. Violence is seen as a by-product of the industrial age.

The human rights paradigm, on the other hand, privileges a certain type of human personality, namely, the free, independent woman as an individual endowed with rights and rational agency (Coomaraswamy 1992a:3). The core concept of the human rights approach centers around the issue of empowerment. Violence against women involves the use of force or the threat of the use of force to prevent the necessary empowerment of women within society. The state is therefore under an obligation to ensure that women are given full opportunity to be independent and empowered without being abused. In the past, the human rights approach has centred on empowering women through access to education, equal employment, adequate health care, and equal civil and political rights. CEDAW, for example, is structured along these lines. The more modern approach, however, is that the right to be free and independent includes the right to be free from fear and the right to be secure in the family and in the community.

In addition, violence was initially seen as an act of private individuals and the human rights model was not structured to hold states accountable for the acts of private citizens. But in recent times there is a growing understanding that state responsibility includes the duty to prevent the rights of individuals from being violated by private actors, whether they be individuals or corporations. The emergence of state responsibility for violence in society has been one of the most important contributions of the women's movement to the issue of human rights.

The human rights approach to violence, therefore, is

based on the rights of individuals to be free and independent without being threatened by the use of force. If force is not strictly construed to mean only the actual use of physical force, the mandate is a broad one. It implies the right to investigate all forms of action which disempower women because of the fear of violence, whether that fear is instilled by the state, by actors in the community or by members of the family. This broad approach appears to have been adopted by the General Assembly in its Declaration on the Elimination of Violence Against Women.

Categorization of violence

To be understood and confronted, violence has to be categorized. Gail Omvedt in her article on violence appears to believe that violence can be categorized in terms of violence and sexuality, violence and economic exploitation, and violence and culture. The first includes violence which is the result of the sexuality of the victim whether it be rape, sexual harassment, or domestic violence, although the latter does not completely fit the category. Violence and economic exploitation refers to aspects of a woman's life which are related to her labour. This includes labour in sweat shops as well as prostitution and trafficking. It also includes violence against women as bonded labour or agricultural workers. Finally, violence and culture refers to cultural practices devised by different societies, such as female circumcision.

One may also categorize violence in terms of women's relationships to men and society. Women are subject to violence because of being female. In this capacity, they are subject to rape, female circumcision, genital mutilation, and female infanticide. These relate again to the construction of female sexuality. A woman is also subject to violence because of her relationship to a man. These include domestic violence, dowry murder, *sati*. Finally a woman is subject to violence because of the social group to which she belongs. In times of war, riots or ethnic and caste violence a woman may be raped or brutalized as a means of humiliating the community to which she belongs (Coomaraswamy 1992b).

In recent times violence has been categorized by the location of the violence: violence in the family, in the community, and by the state. The UN Declaration on the Elimination of Violence Against Women categorizes violence in this manner and recent social science writing has also accepted this categorization (Schuler).

The General Assembly Declaration on the Elimination of Violence Against Women defines 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. (Article 2)

This definition appears to envision individual victims at

the receiving end of individual acts of violence. Women from the Third World would want to expand the interpretation of this section for a broader reading of violence. As Govind Kelkar has written:

A narrow definition of violence may define it as an act of criminal use of physical force. But this is an incomplete concept. Violence also includes exploitation, discrimination, unequal economic and social structures, the creation of an atmosphere of religious-cultural and political violence. While violence against women is part of general violence found in the social structures such as class, caste, religion and ethnicity, and in the way the state controls people, it also encompasses aspects of structural violence and forms of control and coercion exercised through hierarchical and patriarchal gender relationships in the family and society. (qtd. in Schuler)

For an international consensus on violence, it is important that a broader reading is accepted by the international community.

Causes of violence against women

A large majority of women writers appear to link violence against women with a lack of economic independence. Levinson studied 90 societies and found wife-

beating to be prevalent in 75 (Levinson). The four cultural factors that are strong predictors for wife abuse are sexual economic inequality, a pattern of using violence for conflict resolution, male authority and decision-making in the home, and divorce restrictions for women (Schuler). Omvedt writes:

the basic economic dependence of women, their propertylessness and resourcelessness, renders them fearfully weak in standing up and challenging violence and power that is used against them in society. (5)

Women's economic dependence disempowers them and makes them not only susceptible to violence but also unable to challenge and fight against violence.

Linked to the notion of economic dependency are other sorts of legal, political, and social dependency which make it difficult for women to assert their independence when confronted with violence. Legal systems which do not permit women to divorce, for example, or which do not support women when they are in a situation of violence aggravate the problem. Women are expected to remain in situations where violence is being used against them and therefore the nature and extent of the violence increases.

An undemocratic society which uses the military as the tool of repression is likely to have a great deal of violence directed against women. This militarization develops a culture of violence in society and violence against women is only one of the many manifestations of the resolution of conflict through the use of force.

Patterns of socialization which disempower women with regard to responsibility and decision-making whether in the home or in society also create an atmosphere where violence against women appears to be more legitimate. Patterns of conduct in the home and in educational institutions are extremely important in this regard, as is the media.

Violence against women is also the result of a society which wants to control the expression of female sexuality. Violence is often directed against women to ensure that she is "chaste" and virtuous. It is argued that this is to ensure that the children she gives birth to are the children of the correct father and therefore the lawful heirs to his property. Allegations of adultery were the major reason for wife beating in Papua, New Guinea (APDC 17). Sexual harassment of free trade zone workers is often excused by the fact that they dress "provocatively." And of course, it is always a defence for rape and harassment that the woman in her demeanor "asked for it." The fear of violence is an important part of women's reality and it conditions women's behaviour in many aspects of their day to day lives.

Male alcoholism is also one of the major reasons for violence in the family along with woman's refusal to perform her "wifely duties" a euphemism for sexual intercourse (APDC 17). Although social workers have to take



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these causes into consideration, it is imperative that the legal system not recognize any of these excuses for violence as legitimate. Whatever the causes for violence against women, they should not be understood as justifications for the use of violence against women. Women's right to be free from violence is an absolute right which cannot be mitigated by empirically discovered social causes.

The role of the state

In the past strict judicial interpretations of international law only held the state responsible for its own actions, for

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example, in relation to women in custody or detention and women during armed conflict. Domestic violence, rape, and sexual harassment, for example, were not seen as state action but only as the acts of individuals. This narrow interpretation has been recently challenged. A state which tolerates violence against women at the community and family level and which does not take effective measures to prevent this violence or hold accountable those who are responsible for the violence is as guilty as the individual perpetrators.

This gives rise to a debate as to whether violence in the family should be "criminalized" or whether the state should adopt measures of "conciliation" and "mediation." In my view, there are elements of criminality in the actions of private citizens when they engage in violence in the family and those elements have to be reflected in the law. The seriousness of these acts must also be acknowledged. The scope of the law should not prevent experimentation with new strategies that may be more effective in confronting this violence. The manner in which the "criminalization" of acts of violence is tempered by a "conciliation" process for effective results is up to individual states as long as there are good faith and meaningful efforts to ensure that violence against women in the family and in the community is eliminated.

International standards

Until recently, there has been no real set of international legal standards which relate to violence against women. The approach during the early stages was to make violence an aspect of discrimination and therefore central in spirit to CEDAW. Violence against women was seen to violate articles 2, 3, 5, 6, 11, 12, and 16 of CEDAW. These articles deal specifically with prohibition of discrimination by

public and private actors, the obligation to ensure full development and advancement of women, the need to eliminate traditional practices which discriminate against women, the need to eliminate trafficking in women, and the need to promote employment, health, and equality in the family (Sullivan). Though none of the provisions deal directly with the issue of violence, it was argued that the eliminating the problem of violence is part of the elimination of discrimination. The Committee in charge of implementing the CEDAW stated clearly in General Recommendation 19 that violence is a form of discrimination. The attempt to stretch the Convention to include violence has been somewhat successful but more specific international standards are necessary. Those standards have been clearly spelled out in the UN Declaration on the Elimination of Violence Against Women passed by the General Assembly in December 1993.

The preamble to the Declaration locates the problem of violence against women in unequal power and women's structural subordination. It also identifies particularly vulnerable groups of women who are at the receiving end of violence. These include minority women, indigenous groups, refugee women, migrant women, women living in rural or remote communities, destitute women, women in detention, female children, women with disabilities, elderly women, and women in situations of armed conflict.

The Declaration defines violence broadly to include physical, sexual, and psychological violence. It is categorized according to whether it occurs in the family, in the community, or by the state. Under each category the type of violence which is prevalent is enumerated. In the family, these include: battering, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation, traditional practices which are harmful to women, non-spousal violence, and violence relating to exploitation. In the general community, types of violence include rape, sexual abuse, sexual harassment, intimidation, trafficking, and forced prostitution. State violence is clearly defined not only as acts that are perpetrated but also those which are "condoned." The obligations of the State are further spelled out in Article 4. The state is obligated to condemn violence and cannot invoke custom, tradition, or religion to avoid the obligation. States are expected to pursue all "appropriate means" "without delay" to adopt a policy for eliminating violence against women.

Other specific state obligations outlined in Article 4 of the Declaration include the ratification of CEDAW, the exercise of due diligence in preventing and investigating violence against women, in accordance with national legislation, and the punishment of acts of violence by the state or by private persons. There are specific directives for developing legal and administrative mechanisms to ensure effective justice for victims of violence and to ensure that there is support and rehabilitation for women victims of violence. The Declaration recommends training judicial and police officials, reforming educational curricula, promoting research in this area, and engaging in full reporting

of the problem of violence against women to international human rights mechanisms.

The Declaration sees the international community as an essential actor in the process of eliminating violence against women. UN agencies are responsible for promoting awareness of the issues in their program, collecting data on the problem, periodically analyzing the trends, formulating guidelines and manuals on the issue, and cooperating with NGOs in addressing the issue. The UN Declaration is not a binding document but it sets out international standards in a clear and comprehensive manner. The Declaration should be an integral part of the mandate of the Special Rapporteur on Violence Against Women and provide her with guidance in her work.

The issues

The issue of violence in the family raises issues relating to the privacy of the home. Many will argue that the state should be cautious in invading the sanctity of the marital home. Dealing with violence in the family differently from other types of violence, however, is not in keeping with international standards. The doors of the family should be wide open for scrutiny if there is violence, but the strategies for dealing with this violence are left to national legislation as long as the legislation is in accordance with international norms.

Violence in the community raises different issues. Although the Declaration states that states should not invoke cultural or religious factors as an excuse for condoning violence against women, these identities are extremely powerful, especially in the Third World. A purely legalistic approach to these issues will not suffice and in fact may raise the argument that the Declaration is a "western" draft not related to the situation in the East or other parts of the Third World. If international action can link with NGOs in putting forward an argument that violence against women is never a part of an essentialist national "culture," only a man-made practice which distorts that culture, then the likelihood of making an impact in these societies is greater.

Violence by the state also raises particular issues. In repressive states, the problem of women in custody and detention is significant. In this context the thrust to make the state answerable for violence against women is part of the general struggle for human rights and democratization. In pursuing these issues it is important to work with NGOs and other groups who are interested in the general problems of democracy and human rights. The women's issue cannot be seen in isolation.

State responsibility for the general violence in society directed against women is perhaps the most important principle to emerge in this context. The assertion of this principle is perhaps the primary vehicle for making it clear to government that it is responsible if effective action is not taken to prevent, investigate, and to punish acts of violence directed against women.

In addition, states are responsible for ensuring that victims of violence are given humanitarian assistance. This humanitarian aspect should not be lost in a strict legal approach. It is an important component of any program aimed at eliminating violence against women. These social structures should be seen as part of the legal package—the positive duty to provide assistance. The UN Declaration has made it clear that this humanitarian concern is also part of international legal standards.

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