



A CRITICAL ASSESSMENT OF THE CURRENT LAW OF DOMESTIC VIOLENCE
REVIEW IN MAURITIUS

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ABSTRACT

This study provides a critical analysis of the provisions contained in the Protection from Domestic Violence Act (PDVA) of 2004 in Mauritius. Focus group discussions held with members of the State Law Office and members of a pro bono committee set up to review the legislation on domestic violence reveal that some provisions of the PDVA have to be reviewed. The definition and the forms of abuse included under domestic violence, attending counseling for both parties whenever a protection order is issued, the protection to be provided by the police as well as the provisions under the remedial order and the affiliated orders have to be redefined. There is a need to combine social and legal sanctions to address domestic violence. The adoption of a differentiated approach to the analysis of domestic violence will provide for a targeted approach and, hence, more effective interventions for victims, perpetrators and children.

Keywords: Domestic Violence, civil and criminal remedies.

1. INTRODUCTION

Violence against women and girls is a universal phenomenon. Women as old as grandmothers and girls as young as toddlers suffer from physical, sexual, psychological and economic abuse. Worse, the most common form of violence experienced by women globally is physical violence inflicted by an intimate partner. Prevalence data on the extent of the violence show only one side of the problem as in most of the cases women do not report the offence. Women remain in the abusive relationship for several reasons; they have grown up in a social environment where domestic abuse is tolerated or ignored, prevailing social norms do not encourage them to leave an abusive relationship, they feel too frightened or embarrassed to leave as they have been socialized to take care of their partner. Some may have no money or insufficient financial resources to support themselves and their children. With the decrease in the number of extended families, it may be hard for the woman to rely on kinship ties and other family members to help her. Although intimate partner violence was once considered a private act it is now viewed as a human rights violation that states have a responsibility to address.

In 1984, Mauritius acceded to the Convention of the Elimination of all forms of Discrimination against Women (CEDAW) and ratified the Convention in 1985. The Optional Protocol to the CEDAW has been signed in November 2001. Mauritius has also signed the SADC Declaration on Gender and Development in 1997. Prior to 1997, violence against women was treated as any other case of assault. Wounds and blows accounted for 95 % of violence against women. Legal actions were possible under Section 230 of the Criminal Code and the abuser, if found guilty was liable to a fine of Rs 1,000 (approximately around 35 USD) and an imprisonment not exceeding 12 months. As a testimony to its commitment, Mauritius has enacted the Protection from Domestic Violence Act (PDVA) in 1997. The Act provides for the issue of Protection Order, Occupation Order and Tenancy Order. The Protection from Domestic Violence Act has then after being amended in 2004, 2007 and 2011 to make the legal provisions more responsive to the needs of victims of domestic violence, to increase the penalties inflicted to the perpetrators, the possibility of providing counseling to perpetrators and to ensure a better protection to the victim by providing for the aggrieved spouse and any child of the parties to whom a Protection Order has been granted the possibility to apply for alimony. However, the PDVA can still be improved to further protect victims of domestic abuse. How is the international community addressing domestic violence? And to what extent is the PDVA in line with the CEDAW convention concerning violence against women?

2. LITERATURE REVIEW

The Convention on the Elimination of Discrimination Against Women (CEDAW) adopted in 1979 by the United Nations General Assembly heralded the first “international bill of rights for women,” aiming to end discrimination toward women. During the mid-1980s, domestic violence grew more prominent as an issue of international concern and states were urged to develop action plans to address domestic violence. Two major developments in 1993, the issuance of the Declaration on the Elimination of Violence Against Women (DEVAW) by the U.N. General Assembly and the appointment of a Special Rapporteur on Violence Against Women promoted the fight against domestic violence. DEVAW declared that all U.N. member states have a duty to “pursue by all appropriate means and without delay a policy of eliminating violence against women,” including “due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetuated by the State or by private persons.”¹ Radhika Coomaraswamy, (1997) the Special Rapporteur on Violence Against Women, in her report in 1996 argue that (a) the role of State inaction in the perpetuation of the violence combined with the gender-specific nature of domestic violence requires that domestic violence be classified and treated as a human rights concern rather than merely as a domestic criminal justice concern and (b) a State that does not act against crimes of violence against women is as guilty as the perpetrators.

According to Coomaraswamy (1997) the Special Rapporteur on Violence Against Women domestic violence can be understood as a human rights violation: due diligence, equal protection, and torture. When a state fails to ensure that criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, it has not acted with due diligence to prevent, investigate and punish violations of women’s rights. States are required to provide all citizens with equal protection of the law. Should a state fail to provide individuals who are harmed by an intimate partner with the same protections it provides to those harmed by strangers, it fails to live up to this obligation. Coomaraswamy (1997) argues that domestic violence is a form of torture as the dynamics of domestic violence closely

¹ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 4, U.N. Doc. A/RES/48/104 (Feb. 23, 1994).

resemble the defining elements of torture: (a) it causes severe physical and or mental pain; it is (b) intentionally inflicted, (c) for specified purposes and (d) with some form of official involvement, whether active or passive.

While acknowledging that there is no universal model that would lead to the eradication of violence against women in all societies, Coomaraswamy (1997) identifies several key elements that should be adapted and included in any state action. She calls for a legal system that criminalizes domestic violence and effectively ensures that law enforcement and judicial officers actually investigate, prosecute, and punish perpetrators. In 2008, the UN Secretary-General launched a multi-year global campaign called UNiTE to End Violence against Women. One of its five key goals is for all countries to adopt and enforce, by 2015, national laws that address and punish all forms of such violence, in line with international human rights standards. In her statement at the 66th session of the UN General Assembly in 2011, Ms Rashida Manjoo (2011:9), the Special Rapporteur on Violence Against Women its Causes and Consequences, states that ‘At a minimum, States efforts should include legislative measures (...) institutional and policy measures, which will ensure the adequate investigation and prosecution of acts of violence against women; and capacity building activities, with an aim to eliminating discriminatory and stereotypical attitudes.’ In the wake of these calls a *Handbook for Legislation on Violence against Women* (2010) has been prepared by the Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW), to assist States and other stakeholders to enhance existing, or develop new laws to protect women.

3. MATERIALS AND METHOD

This study is utilised mainly secondary data. A quite extensive literature exists on addressing the issue of domestic violence both from researchers and United Nations (UN) bodies. Research articles and UN conventions and publications on domestic violence have been used as secondary data. Participation in a series of consultations with stakeholders engaged in the fight against domestic violence in Mauritius and discussions held with members of the State Law Office and members of a pro bono committee set up to review the legislation on domestic violence have provided insights on what needs to be reviewed in the PDVA legislation in Mauritius.

4. DISCUSSIONS

4.1 The Definition Of Domestic Violence

The relationship required between the offender and victim in order to constitute a domestic violence offence is not the same in different jurisdictions. Some jurisdictions provide a quite narrow definition in that the offender-victim relationship applies only to members of the same family living under the same roof. In Cambodia, ‘domestic violence’ is referred to as violence that happens and could happen towards: husband or wife; dependent children; and/or persons living under the roof of the house and who are dependant of the households.²

Section 5 of the Protection from Domestic Violence Act (PDVA) in Mauritius defines domestic violence in a similar way: “Domestic violence includes any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof.”

² Source: A landscape analysis of domestic violence laws (2013). Thomas Reuters Foundation, United Kingdom p. 14)

A wider approach is observed in some countries where the only requirement is that the offender and victim are cohabiting at the time of the abuse. For instance, in Germany the relationship required to characterize domestic violence is that the offender and the victim must live in a common household. It can occur outside of a formal legal relationship, i.e. outside of a marriage or civil partnership, where one party is a senior citizen inhabiting an assisted living facility and the other is a carer in the same facility. The gender, sexual orientation and age of the victim/offender are irrelevant. The only connection required is that the offender and the victim must live in a common household.

A broader definition of domestic violence can be found in some legislation whereby the victim either is or was previously in a domestic relationship with the offender. For instance, in South African law, the definition of domestic violence includes informal relationships between people who are not married. A “domestic relationship” is interpreted as a relationship between the complainant and the respondent (whether of the same sex or of the opposite sex) where they currently live or have lived together in a relationship of a marital nature and even if they are not married to each other or are unable to marry each other. The parties may be dating, engaged or in a customary relationship or an actual or perceived romantic, intimate or sexual relationship over any period of time or where they share or have recently shared the same residence.

It can be said that in the three ways of characterizing the relationship required between the offender and victim in order to constitute a domestic violence, the common denominator of the three definitions is the presence (or history of) a domestic context or shared dwelling between the offender and the victim. In this respect, a comprehensive definition of domestic violence should ensure that a broad definition similar to the legislation in South Africa be considered to include all possible scenarios of what type of relationship is covered by domestic violence.

4.2 Characterizing Domestic Violence

In the literature on domestic violence, forms of domestic violence often refer to any incident or pattern of incidents of controlling, coercive or threatening behavior. Controlling behavior includes a range of acts which are likely to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their daily behavior. Coercive behavior is defined as an act or a pattern of acts of assault, threats, humiliation and intimidation or other forms of abuse which can potentially harm, punish or frighten the victim.

Section 5 of the PDVA in Mauritius delineates what constitute domestic violence: the acts includes (i) Physical injury; (ii) Placing the spouse in fear; (iii) Intimidation, harassment, maltreatment; (iv) Brutality or cruelty; (v) Compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise from which the spouse has the right to abstain; (vi) Confining or detaining the spouse against her will; (vii) Any harm or threat to the child of the spouse; (viii) Causing or attempting to cause damage to the spouse’s property or a threat to commit any of these acts. This definition encompasses physical, emotional, sexual and psychological forms of abuse. However, while it might not be difficult to establish physical violence for survivors of domestic violence, there is the danger that a perpetrator claims that s/he has been psychologically and/or emotionally abused. More so, even when abusers do not turn claims of psychological and economic violence against their victims, it may be very difficult to prove these types of abuse in legal proceedings. This definition does not include economic forms of abuse. In definitions where the terms psychological and economic violence are included, UN Woman recommends that the drafters of legislation on domestic violence replace the terms psychological and economic violence with the term coercive control.

“Coercive control” includes psychological and economic violence, but does so in a way that links the concepts to a pattern of domination through intimidation, isolation, degradation, and deprivation as well as physical assault:

“Coercive control is defined *as* an act or pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish or frighten a victim. This control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.”³

In the definition of domestic violence in Mauritius, as of now, no mention is made on domestic violence as a course of conduct. The Domestic Violence Act (2007) of Sierra Leone can be used as it indicates that a single act or a number of acts that form a pattern of behavior may be considered as domestic violence. The interest of the legislation in Sierra Leone resides also in that (i) it contains provisions which characterizes harassment, which takes into account the latest forms of technology and (ii) it caters for violence outside the private sphere particularly when the spouse is in employment:

“Harassment means sexual contact without the consent of the person with whom the contact is made, repeatedly making unwanted sexual advances, repeatedly following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes- (a) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be; (b) repeatedly making telephone calls or inducing a third person to make telephone calls to the harassed person, whether or not conversation ensues; (c) repeatedly sending, delivering or causing the delivery of letters, telegram, packages, facsimiles, electronic mail or other objects or messages to the harassed person’s residence, school or workplace, or; (d) engaging in any other menacing behaviour”⁴

4.3 Types Of Domestic Violence And The Differentiation Approach

According to Johnson ‘it is no longer scientifically or ethically acceptable to speak of domestic violence without specifying, loudly and clearly, the type of violence to which we refer’ (Johnson 2005:1126). Research on differentiation has added critical dimensions to work on domestic violence, increasing our knowledge about the causes, nature and consequences of different forms of Intimate Partner Violence (Holtzworth-Munroe & Stuart, p. 1994). The key benefit that potentially flows from differentiation is the ability to move away from a ‘one size-fits-all’ approach and move towards targeted and, hence, more effective interventions for victims, perpetrators and children (Altobelli 2009, Pence & Dasgupta 2006). In his most recent work with Joan Kelly (Kelly & Johnson 2008), five distinct forms of IPV have been identified: (1) coercive controlling violence, (2) Violent resistance, (3) Situational couple violence, (4)

³Source: <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html?next=399>

⁴ Source: Serria Leone (2007). The Domestic Violence Act <http://www.sierra-leone.org/Laws/2007-20p.pdf>

Separation-instigated violence and (5) Mutual violent control. Coercive controlling violence describes the form of IPV that is most commonly covered by the term domestic violence, that is, violence primarily perpetrated by a man against his female partner in order to control her. It involves a 'pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence...' (Kelly & Johnson 2008, p. 476). Violent resistance occurs when a victim of intimate terrorism fights back. This is the violence of women trying to physically resist domination by abusive men. Situational couple violence is the most common form of intimate partner violence whereby upon a disagreement the partners enter a relationship which turns into an angry argument and might escalate into violence. The violence can be mild or severe, and often it is an isolated incident. However, some couples have a recurring pattern of such violence that is extremely dangerous. Separation-instigated violence reflects violence that has occurred in the context of separation. There might not be a history of violence, nor does it continue after separation, rather it is confined to the period of separation and reflects the trauma or context of that event. Mutual violent control describes relationships in which both partners use violence to control the other. Physical violence is present across all five types and the presence or absence of control is central to make the delineations among the five types. In simplistic terms, we can view Johnson's model as being about physical violence plus or minus coercive control.

It must be acknowledged that as of now there is no tool to distinguish between different types of IPV and there are also questions about how clearly defined the differences are and questions about violence that does not fit within any of the types that have been suggested. However, recognizing these differences is important to future legislation on domestic violence and that differentiation can lead to a range of potential benefits such as more appropriate policy formation and the setting up of better targeted services and programs for those that use violence, as well as for those that experience it. Nevertheless, it can be said that in cases where a battered women who retaliates with aggression, which results in the death of the batterer, the battered women's syndrome has been recognized in several legislations. This recognition is in line with the work of differentiation as proposed by Douglas. In the Mauritian context, there is a need to incorporate the battered women's syndrome in cases of domestic homicide and more attention should be given to adapt legislation on domestic violence on the nature of violence perpetrated.

4.4 An Application Of The Differentiation Approach

In Mauritius, as pointed out in Dalloz, *Repertoire de Droit Penal et de Procedure Penale*, on "Viol" at note 19 the law prohibits rape, including spousal rape, but according to the Human Rights Report 2013, police and the judicial system did not effectively enforce the law. Section 249 of the Criminal Code criminalizes the offence of rape. It is arguable that it is possible to prosecute for the offence of marital rape under that section of the Criminal Code as it stands. In a paper entitled 'Human Rights Dimension of Sexual Offences Bill No. VI of 2007' the Law Reform Commission of Mauritius (LRC) taking in consideration the General Comments Nos 12 [A/44/38] and 19 [A/47/38] regarding Violence against Women, adopted respectively in 1989 and 1992 made by the UN Committee on the Elimination of Discrimination against Women as regards the need for legislation to protect women against sexual violence and abuses within the family, recommended that it be expressly stated, in the interpretation section of the Bill, that rape includes marital rape.

However, this recommendation has not been taken in consideration and the Sexual Offences Bill has not been approved by parliament. Though there are international conventions that criminalise marital rape, nevertheless this act is still widely condoned or ignored by law and accepted as a spouse's prerogative. Marital rape, which is an unwanted sexual act between married partners whereby a husband might use force or threats, for example, or may engage in

sex with his wife without her consent is listed as one of the forms of domestic violence in the 1993 UN Declaration for the Elimination of Violence against Women (DEVAW) at Art. 2a. Mauritius has signed and ratified the CEDAW with no reservations and should delegitimize male control over female sexuality by criminalizing marital rape in the definition of domestic violence.

4.5 Combining Social Sanctions With Formal Legal Sanctions

Activists as well as police officers do acknowledge that women's experiences of the criminal justice system are often stressful and devastating. Getting involved with the criminal justice system in domestic violence matters may create distress; disadvantages and disillusionment for women often override any hope or protection and safety gained through the criminal justice process. It can be asked whether a focus on law only, might not cause some women victim of domestic violence to become sacrifices to public principles which are intent on showing that something is being done by the State rather than reflecting interest in the safety of the victimised women.

Evidence collected in a number of studies indicates the deterrence potential contained in the interaction between formal and informal sanctions. Bowman (1992) highlights that the framework of 'arrest or not arrest' or 'prosecute or not' is far too simplistic and do not do justice to the variety to the extremely complex interplay between women's decision-making, and the context and nature of the violence they are subject. An either or approach reduces the potential of measures and pathways contained in the criminal justice system and in the partnerships between formal and informal responses. According to surveys carried out by a number of researchers in five countries (McGibbon, et al. 1989; Mooney 1994; Dominy & Radford 1996) family and friends – as 'informal supporters are the source of support most frequently accessed by women who experience abuse. Family and friends rather government agencies are the first stakeholders' victims make disclosures of abuse. Similarly, Dutton et al. (1999) found that the role of informal support within the criminal justice system in Washington DC, is positively influential on victim 'follow-through' in domestic violence prosecutions. These studies suggest that a partnership approach between formal providers and informal supporters should be promoted to assist victims of domestic violence. In much the same way, studies (Schmidt and Sherman 1996) on perpetrators the impact of arrest on employed men tend to be more significant in reducing recidivism than for unemployed men. Zorza (1994) in a review of arrest experiments conclude that combining social sanctions with formal criminal sanctions enhance the deterrent effect expected.

Under section 3 of the PDVA, an application for a protection order is heard as a civil case between the parties. Furthermore, the Court may, subject to the consent of both parties, order, in addition to any order made under section 3 or 3A, request the parties to attend counseling sessions organised by the Ministry. Firstly, by treating an act of domestic violence as a civil case and secondly by subjecting the attendance to counseling sessions to a consensus of the parties concerned, the Court is not sending a strong message of condemnation about the seriousness the State considers domestic violence. Counseling should be made as a condition of the protection order whereby whenever, a protection order is granted it is mandatory for both parties to attend counseling and failure to attend would constitute a criminal offence. In cases where the abuser committed the offence under the influence of alcohol or drugs or other psychotropic substances, mandatory substance rehabilitation should be imposed and failure to abide with, results in a criminal offence. Concerning the social sanction, provision should be made to send the message that every citizen is accountable for his/her acts and the public has the right to know whether a person has had a history of being a perpetrator of domestic

violence. The intention is to challenge the behavior and attitude of a potential perpetrator by making the history of a perpetrator of domestic violence accessible to the public.

In the Mauritian legislation this would imply that upon the report of an act of domestic violence, when a protection order is issued, the legislation should also strong a strong message to the perpetrator. This could be achieved by adopting the newly introduced Domestic Violence Disclosure Scheme (DVDS) known as Clare’s law (2014) in the UK. This scheme provides a formal method of making inquiries about an individual with whom one is in a relationship with or who is in a relationship with someone they know. It works in two ways: (1) Victims (potential and actual), third parties (parents, neighbours and friends) and agencies have the right to ask for information and can all make requests under the scheme.(2) The police can make a proactive decision to disclose details when they receive information to suggest a person could be at risk. The Ministry of Gender Equality, Child Development and Family Welfare which are primarily involved in processing cases of domestic violence is setting up an electronic tracking system known as DOVIS (Domestic Violence Information System) to capture data on both the victim and the perpetrator. As soon as a protection order is issued, the name of the perpetrator will be in the data base of the DOVIS system. This information can be disseminated to all localities through police stations and police officers as well as third parties can have access to this information. To ensure a proper tracking of the perpetrator, section 10 (2a) of the PDVA Act, which refers to ‘Registry should be amended to include the National Identity Number (ID) of the perpetrator in particular:

“Registry

(1) The Registry of the Court shall maintain a record of all applications filed pursuant to this Act and of all protection, occupation and tenancy orders issued by the Court.

(2) The record shall contain—

(a) the names, address, age, sex and relationship of the parties”⁵

4.6 Implementing Legal Measures Specified By The CEDAW Committee

Under Article 2 (e) of the CEDAW convention the state has an obligation to address domestic violence and the CEDAW Committee in General Recommendation 19 specifies that States may undertake the following:

- (i) Effective legal measures, including criminal and civil remedies and compensatory provisions to protect women from all kinds of violence, including violence and abuse in the family,
- (ii) Protective measures, including refuge, counseling, rehabilitation action and support services for women who are at risk of violence, and
- (iii) Preventive measures, including public information and education programs, to change attitudes concerning the roles and status of men and women.
- (iv) Let us analyse the legal measures contained in the PVDA Act in Mauritius and examine to what extent they are in line with the CEDAW convention. According to General Recommendation 19 of the CEDAW Committee, the civil remedies include (i) injunctive orders, (ii) remedial orders and (iii) Other affiliated orders. Injunctive orders in the PDVA Act comprise of protection order, occupation order and tenancy order.

Section 7 of the PDVA establishes that where the Court is satisfied that there is a serious risk of harm being caused to the aggrieved spouse before the application may be heard and that the circumstances revealed in the application are such as to warrant the intervention of

⁵ Mauritius (2004) Protection from Domestic Violence Act

the Court even before the respondent spouse is heard, the Court may order the Commissioner of Police to provide police protection to the aggrieved spouse until such time as the interim order is served on the respondent spouse or for such time as the particular circumstances of the case may justify. The nature of the protection to be provided by the police is not specified and to ensure a proper enforcement of that provision the measures ensuring the protection of the aggrieved must be clearly established and provide for a comprehensive protection.

The protection contained under the remedial order is quite narrow. Section 13 of the PDVA refers to the Ancillary order for household effects:

(1) On or after making an occupation or tenancy order, the Court may, subject to subsection (2) (a) make an order granting to the aggrieved spouse the use, for such period and on such terms and conditions as the Court thinks fit, of all or any furniture, appliances and other household effects in the residence to which the order relates; and (b) where appropriate, order the aggrieved spouse, the respondent spouse or both of them, to contribute to the:

- (i) loan or mortgage repayments;
- (ii) repairs or maintenance, of the residence.'

Other costs incurred, such as medical expenses, impact on mental health, loss of earnings, etc. are not covered. Remedial orders require that the complainant be compensated for her loss and they are also important in achieving goals of retributive justice and deterrence. There is a need to include such remedial orders in the PDVA Act. Furthermore, under the other affiliated orders there is a need to provide in respect of the privacy of victims.

The Criminal remedies include (i) criminal provisions deeming domestic violence as an offence (ii) mandatory arrest and "no drop" prosecution policies and (iii) measures to encourage complainant participation in criminal proceedings. The PDVA Act is a mix of both civil and criminal law, but the act stipulates that an application for a protection order shall be heard as a civil case between the parties while breach will constitute an offence under the criminal law: According to Section 13 (2) Any person who commits an offence under subsection (1) may be arrested by the Police.

Since the 1970's domestic violence activists have stressed, that domestic violence should be understood as criminal assault not just a private or civil matter. Recognising such violence as criminal are claimed to be both substantive and symbolic: it will both improve victim safety and secure community denunciation. However, there is a need to ask whether victims of violence are looking for a positive change in the nature of the relationship with their partner, are they for the arrest and prosecution of the perpetrator? What legal actions would serve best the interest of victims? There is a need to understand the complexities of violent relationships. The context of an on-going relationship and the victim's right to desire to continue a relationship for its positive and affective dimensions despite its darker side have to be respected (Thornton 1991). Most of the victims are embedded in a network of common social ties, have emotional and economic ties, moments of calm, and shared histories which they experience in the course of their relationship with violent partners (Ferraro and Pope 1993). Separated parties may re-unite. Morris (1993) suggests, these women who are victims very often want the violence to stop, to be protected and to feel safe, to have access to information, support and assistance – but there is no clear evidence to suggest that arrest and punishment is what all women want. Indeed, one study estimates that only one in five women desire arrest (Smith and Klein 1984). Furthermore, criminal prosecution and conviction of domestic violence offences need to meet the high standard of proof of 'beyond reasonable doubt' that is required for the conviction of criminal matters.

Criminalising domestic violence addresses the offence committed that is the symptoms of a greater social ill rather than attempting to eradicate the "root" causes of violent behavior towards the victim. Smart (1989) highlights the dangers of using the law to achieve social change as its primary function is social control. Focusing on the criminalization of domestic

violence reinforces the myth that violence is about abnormal individuals and ignores the socialization practices in a patriarchal society. In view of promoting the concerns of victims and bearing in mind the complexities of the relationship with the perpetrator, domestic violence should be considered as a civil matter through domestic violence protection order legislation rather than as a criminal matter. Indeed, the development of protection order legislation grew, to some extent, out of frustration with the failure of the criminal justice system. What needs to be ensured is that the protection orders provide the required protection not simply the illusion of protection. A Protection orders intend to stop the violence, but at the same time provide a public statement to the perpetrator that some specific behavior will be sanctioned by the law. It also puts the perpetrator 'on notice' to the police, but the effectiveness of a protection order in preventing further abuse often relies, at least in part, on the threat of the consequences for breach. This can be done by criminalizing breach of protection orders whereby in such cases a mandatory arrest and no drop cases can be envisaged. The mix of civil and criminal remedies presently contained in the PDVA needs to be reinforced and the amendments to be brought discussed above may be reinforced by the criminalization of the breach of the protection order.

5. CONCLUSION

Both men and women can be victims of domestic violence. However, throughout the world women are the ones who suffer the most from this scourge. Violence against women constitutes a violation of the rights and fundamental freedoms of women. As per the CEDAW convention, States parties should take legal (criminal and civil remedies) and other measures to prevent further acts of violence and provide services to victims. Mauritius has ratified the CEDAW convention and the Protection from Domestic Violence Act (PDVA) was enacted in 1997. Amendments have been brought in this legislation, but quite a number of modifications have still to be made to adequately protect women from domestic violence. These amendments have been discussed in line with research carried out by researchers, CEDAW recommendations on domestic violence and existing legislations in different countries. Domestic violence is not a private issue and the State needs to legislate to ensure that human rights are respected for both men and women.

6. RECOMMENDATIONS

There are three main types of definitions of domestic violence in different jurisdictions. However, a comprehensive definition of domestic violence should be adopted to ensure that all possible scenarios of domestic relationships are covered by the law on domestic violence. A broad definition similar to the legislation in South Africa can be adopted in the Mauritian law. The definition of aggrieved spouse in the PDVA Act (2004) Section 2 where 'aggrieved spouse' is defined as the spouse for whose benefit a domestic violence order is sought or is in force, should be amended and extended to protect a larger category of victims.

By substituting the term "coercive control" for "psychological violence" and "economic violence" states can target truly harmful behavior and avoid the unintended consequence of turning an imprecise definition of violence against the true victim. The way domestic violence has been defined in India in the Protection of Women from Domestic Violence Act (2005) can be appropriate for the Mauritian context.

The Domestic Violence Act (2007) of Sierra Leone can be used as it indicates that a single act or a number of acts that form a pattern of behavior may be considered as domestic violence. The interest of the legislation in Sierra Leone resides also in that (i) it contains provisions which characterizes harassment, which takes into account the latest forms of

technology and (ii) it caters for violence outside the private sphere particularly when the spouse is in employment.

The key benefit that potentially flows from the differentiation approach to domestic violence is the ability to move away from a 'one size- fits-all' approach and move towards targeted and, hence, more effective interventions for victims, perpetrators and children. An application of the differentiation approach in the Mauritian context is the incorporation in the law on domestic violence of the battered women's syndrome in cases of domestic homicide.

Combining social sanctions with formal legal sanctions can be achieved through by (i): by subjecting the attendance to counseling sessions to a consensus by the parties concerned, the Court is not sending a strong message of condemnation about the seriousness the State considers domestic violence. Counseling should be made as a condition of the protection order whereby whenever, a protection order is granted it is mandatory for both parties to attend counseling and failure to attend would constitute a criminal offence. (ii) The data or part of the data set on the DOVIS (Domestic Violence Information System) on both the victim and the perpetrator system can be shared with police stations in different localities where any citizen can exert their right to ask and the right to know. This will amount to a policy of name and shame and can act as a strong deterrent to perpetrators of domestic violence. (iii) To ensure a proper tracking of the perpetrator, the data set in the DOVIS should also contain the National Identity Number (ID) of the perpetrator.

In terms of the civil remedies, the protection to be provided by the police is too vague. The nature of the protection to be provided by the police has to be specified. The provisions under the remedial order and the affiliated orders have to be redefined. The remedial order is quite narrow and other costs incurred, such as medical expenses, impact on mental health, loss of earnings, etc. which are not covered now have to be included. Under the other affiliated orders, legal provisions on restrictions on media reporting should ensure that no information published might lead to the identification of the victim.

Concerning the criminal remedies, it should be noted that the development of protection order legislation grew, to some extent, out of frustration with the failure of the criminal justice system. Protection orders intend to stop the violence, but at the same time provide a public statement to the perpetrator that some specific behavior will be sanctioned by the law. This can be done by criminalizing breach of protection orders whereby in such cases mandatory arrest and no drop cases can be envisaged.

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