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Violence Against Women: A Comparative Legal Study

Ahmad Bin Muhammad Husni, Abdul Basir Mohammad, Amir Husin Mohd Nor, Hayatullah Laluddin Mohd Al Adib Samuri

Fellow of Institute of West Asian Studies (IKRAB) & Lecturer at Department of Syariah, Faculty of Islamic Studies, UKM. Malaysia.

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ABSTRACT

Domestic violence is a phenomenon that is widespread in modern society. Although, no extensive study has been undertaken so far to highlight the extent and proportion of the domestic violence in the Muslim society, its traces began to emerge, indicating the rise in the rate of domestic violence in the Islamic society. Consequently, all parties in the community are required to act urgently in solving the issue of domestic violence before it is too late to stop it. Both conventional law and shari'ah are consulted to find the ground for adopting the harshest measures against those committing such a crime hence, deterring them from involvement in such violence. The study uses analytical and comparative approaches to elucidate the justifications of both systems for adopting certain measures for dealing with domestic violence and to highlight the dimensions of their differences in respect of dealing with the issue. The aim of this study is to provide an analytical discussion of domestic violence committed against women in a clear crystal manner. This is done in the light of relevant rules and provisions pertaining to human rights contained in both conventional and Islamic laws. The findings of the study show that domestic violence has severe repercussions for household as it results in disintegration of family, lack of confidence and the feeling of insecurity hence, leading to destruction of institution of family and the emergence of psychological problems with the resultant criminal behaviors.

Key word: domestic violence, criminality, psychological complication, human rights.

Introduction

Almighty Allah (swt) created Adam and Eve and made them reside in paradise as their first dwelling. Then by Allah’s willing, after being tempted by Satan and disobeying Allah’s command, they were descended to the earth and both of them along with their descendants were assigned with the responsibility of building civilized human society and the spread of justice and goodness. Allah guided them throughout the time by sending prophets and messengers to human societies. Allah sent the prophets and messengers with the sole purpose of providing guidance to humanity. The delivery of guidance to human society through the means of the prophets and messengers continued until it was concluded by the Holy Prophet Muhammad (saw). The purpose behind the divine missions brought by the prophets to the humanity was to achieve happiness in this world and the hereafter. Moreover, Allah blessed them with offspring (children) to complete their happiness.

Violence is not a new phenomenon; it existed in ancient human societies. However, it evolved and diversified through different epochs of history. Its evolution and diversification is clear from the emergence of political, religious, violence against women, children and elderly people. Moreover, its spread worldwide especially, in the Arab world has reached to an alarming degree. Domestic violence can be viewed as the main contributing factor of the instability in the society. For, it has far bearing effects on the heath of the individual members of the society especially the victims of the violence, thus, causing social ills and moral decadence.

Before exploring the issue of domestic violence in depth, it is imperative to define the institution of family and the relevant rights and duties among it’s the individual members. For, upholding these rights and observing them would to a great extent lead to the prevention of domestic violence in the society.

The Meaning of Domestic Violence:

Firstly: violence is the illegal use of physical force or causing moral harm to another person (Al-Mutairi, 2006).

Corresponding Author: DR. Ahmad Bin Muhammad Husni, Fellow of Institute of West Asian Studies (IKRAB) & Lecturer at Department of Syariah, Faculty of Islamic Studies, UKM. Malaysia.
E-mail: ahmedking25@gmail.comahmedking25@yahoo.com
Secondly: domestic violence includes violence caused by husband to his wife and vice versa. It also included violence committed by parents towards their children and vice versa. It take various forms, physical, sexual, social, verbal and intellectual the most dangerous of them all is what is know today as the honor killing.

Definition of Family:

Family is the social institution that comes into existence as a result of union, coming together, of a man and woman through the contract of marriage. Thus, family represents a building block of the constitution of the society. The most important pillars of the family are husband, wife and children (Chalabi, 2006).

Outline of Violence:

1. Domestic Violence: is the outcome of misuse of force against the weakest person within the family. This is the most prevalent type of violence which victims mostly comprises women and children within the family. According to some statistics obtained from many countries worldwide, 20-50% of women surveyed are victims of domestic violence, being subjected to beating by their husbands (Attair, 1997). In some circumstances the severity of such violence reaches to a level where the victims seek physical or mental treatment. Many American women, 22-35% (www.annabaa.org) being subjected to domestic violence claimed to have gone through emergency departments of hospitals for treatment due to injuries caused by their husbands (Abu Shama, 2004).

2. Social Violence: caused by inadequate view of women’s role and function in the society. The intolerance and prejudice towards women caused by some ideas, dominant incustoms and traditions, devalue women, hence, leading to women’s vulnerability to different forms of oppression and persecution. In some cases such perception of the role and function of womenhas led to their subjection by their superior or colleagues to violence. Such violence is manifested in terms of disrespect, abasement, reduction of payment and expulsion from work if her femininity is not utilized (Rashid, 2006).

3. Political Violence: caused by inherent perception of inferiority of women as a human being and denial of her national status in the modern state. This results in due to perception of woman as not having the right to actively participate in political life, hence, being robbed from freedom of expressing. Furthermore, under the influence of such perception, woman has been barred from actively participating in decision-making and holding key position in the state (Al-Mutairi, 2006).

Domestic Violence:

Domestic violence as a form of violence, that represents the most severe and dangerous forms of violence. Many researches have been conducted about this kind of violence, due to its having severe implications for family as the foundational block of the society. In fact, domestic violence is a pattern of aggressive behavior, manifested by stronger member of the society towards the weaker members, in order to achieve some personal goals by use of violent means be it physical, verbal or mental. A perpetrator of domestic violence does not necessarily mean either of the parents; it can be the strongest member in the family. It is not surprising that victim of domestic violence may be one of the parents when theyreached the age of disability and old age. Thus, domestic violence is one of the types of verbal or physical or sexual violence which is inflicted by the strongest in the family against the weakest member causing physical, psychological or social harm.

Manifestations of Violence:

Violence against women revolves around financial and moral issues (which consists of physical, psychological, and sexual violence). Amongst the physical manifestations of violence are: beatings, arson, murder, rape and deprivation of financial right and interest. Amongst the manifestations of moral violence are: deprivation from security and tranquility, degradation, exclusion from job and hence, upsetting the balance and parity in the social system. All the available means such as insults, humiliation and degradation, abuse and deprivation, threats and bullying, abuse and physical harm are used to achieve this.

Violence is of many kinds and types some have physical and tangible effects on the victim, whereas some have moral effects which are not visible and leave no apparent physical traces on the victim’s body. However, it inflict tremendous psychological harm on the victims which in most cases leave permanent effect on the victim’s state of mind.

Below are illustrations of some types of violence and their examples:

Physical Violence:
1. Physical abuse: It is anything that may harm the body as a result of violence inflicted on it regardless of the degree of damage caused.

2. Murder: Is one of the worst and severe kinds of violence. Perhaps, most of it is as a result of defense of honour. This type of violence is almost non-existent in the United Arab Emirates because of its conservative nature.

3. Sexual assault: If murder is considered as one of the worst kinds of violence, in our view rape or sexual assault when compared to the murder has much more severe consequence for the trauma caused will always hunt the victim for the rest of his/her life. This is because by murder the life of the victim will end after experiencing suffering and pain for a limited period, while the rape victim will suffer psychological and emotional difficulty throughout her life.

Moral Violence:

1. Verbal abuse: it is any utterance that hurts the feelings of the victim such as curse and insulting or any word that cause or imply defamation or ascribing miserable qualities to the victim hence, causing frustration and feeling of embarrassment.

2. House arrest or restriction of movement: subjecting some one to house arrest is not in line with the principle of freedom of human being, thus, is not an unacceptable act for its being in nature of slavery. Caliph Umar bin Al-Khattab was reported to have said “when did you enslave people after they were born free by their mothers?”

   This kind of violence is commonly used by some families in order to prevent evil of the victims as a result of some bad and disrespectful behavior committed by the victim. This kind of violence is mostly committed against women and girls without having any proper ground for its justification.

3. Expulsion from the house: If the above violence is committed against females member in the family this kind of violence is carried out against the male’s member in the family because of some social considerations that differentiate Arab societies from others. This kind of violence is considered as a last resort used by parents who fail to rectify and reform their son’s behavior by other means.

4. Violence as a means

   Violence is used as a means to subjugate women to achieve individual, collective, personal or official purposes. Observation has shown that many women have been exposed to different kinds of violence. This can be attributed to factors such as, identity, nationality, ethnicity and sectarian background, level of cultural and economic status, intellectual and political affiliation. Such violence take place especially, during wars and armed conflicts, it is often used against women as a weapon of war hence, stripping them of their humanity, persecuting them due to affiliation with certain sect, class or state. The women leaving their homes to escape violence or conflict or migrate in search of safety and a better life, often ends up in being subjected to exploitation without the slightest mercy or protection.

Causes of Violence:

Some of the causes of violence can be enumerated as:

1. Misconception of the status and personality of woman. Under the influence of such perception women are not seen as full human beings with specific rights and duties capable of performing their duties as their counterpart men. This has led to the marginalization and contempt for women.

2. Cultural backwardness and its resultant ignorance of the components of civilization. The evolution of human society is necessary for building a meaningful and advanced life. Both men and women play equal role in building such civilized life without the participation of women which constitute half or even more of the population of the world such objective cannot be achieved.

3. Abuse of power, whether within the family or social class or the state where the superiority of the stronger group and the crushing of weaker group is predominant.

4. Reevaluation and reform of the tradition and rectification of the misconceptions pertaining to the role and function of woman that prevents the growing role of women and creativity in society.

5. The lack of efforts on the part of women in reaffirming their human and national rights and working towards reclaiming their social, political and economic roles in the society.

6. Political oppression that hinder the development of the society a whole and the improvement of the status of women, in particular, as political actor in the modern set up of the state authority.

7. The absence of democracy, rule of law, institutions, pluralism and respect and acceptance of others as a culture and the lack of effective mechanism controlling society and the state. This is necessary for the development of the individual’s personality and hence, their respect as human being.
8. Severity of the economic crisis and their devastating effect in terms of various forms of violence which are caused by inflation, poverty and unemployment. In fact, the economic factor represents the major cause of the violence against women which constitute 45% of the total cases of such violence.

9. The repercussions of disastrous wars and their resultant culture of violence lead to the prevalence of murder, human right violation, and devastating economic consequences, lack of social security, cohesion and harmony in society.

10. The deteriorating state of education, health and environment paralyses the growth and development of all segments of society.

Ways of preventing Domestic Violence:

1- Religious Commitment:

Majority views commitment to the teachings of Islam and the adoption of its teachings in practice, as the important solution to the problem of domestic violence. Regardless, of whether it relate to choice of marriage partner or giving of name to children or their upbringing or dealing with them, or respect for parents. Islam as a complete way of life is not confined to ritual worship it includes all activities of human being provided that they are in line with its objectives. Therefore, it is necessary to explain the purposes of the shariah that underlie its textual sources Qur’an and the traditions of the Holy Prophet (saw). This is necessary to avoid misunderstanding of the textual evidence, for instance the real meaning of ‘beating’ mentioned therein order to avoid it misconception, hence, aversion of violence in the name of Islam.

2- Family:

The fact that family is the nucleus of the society responsible for upbringing the children and nurturing good attitudes in them, its members are duty bound from many aspects to protect the family members from violence. This can be materialized by undertaking the following measures:

- Devising conscious methods for dialogue between family members
- Treating children equally without any prejudice.
- Meeting their psychological, social, behavioral and materialistic needs.
- Mental and emotional participation with the children and cultivating self confidence in them.
- Reducing watching scenes of violence on television.
- Non-reliance on maid in the management of the affairs of the family.
- Limiting the phenomenon of polygamy especially with foreigners.
- Inculcating values, principles and ethics in the hearts of children since childhood.
- Follow-up of children and guiding their behavior.
- Enhancement of children hidden potential hence, developing their talent, creativity and living skill.
- Development of sense of belonging and love for the nation and society.
- Peaceful coexistence between parents and reducing the phenomenon of divorce.
- Developing the intellect of the housewife.

3-: Media:

Media plays an important role in guiding and educating children, hence, reforming and influencing their attitudes and behavior in positive manner. Therefore, media can influence the children behavior positively and can play a constructive role in the society in the following ways:

- Allocating channels for provision of counseling and advice to families in overcoming domestic violence.
- Spreading awareness among the audience about the effect of the domestic violence on wellbeing of the society through relevant ads.
- Dissemination of the culture of respect for the opposite sex among the family member, and awareness of their relevant rights and duties.
- Training on how to deal with family problems, hence the mothers should be thought to take into consideration the ages of the children in educating them, through certain programs.
- Pinpointing the causes of the violence and hence, the manner of their elimination.
- Highlighting domestic violence through some real life situations and explaining their negative psychological and social effects on the individual and the society as a whole.
- Providing pamphlets and books containing information about psychological effect of violence on children, hence educating the public on the severity of the effect of domestic violence.
4- School:

The role of school is no longer confined to teaching particularly in our contemporary time, for learning and excess to knowledge is made available through different means of communication. Hence, school must have a role in bringing awareness to the society and directing individual’s behavior through specific programs and projects. According to some survey the role of school in the prevention of domestic violence can be crystallized in the following:

- By educating parents about the domestic violence and discussing the social issues with them hence, finding effective solutions to the issues of concern to them collectively.
- Fighting against the indecency immoral behaviours in the society.
- Highlighting the importance of volunteer work.
- Contributing ideas and views to reduce unemployment.
- Giving concrete suggestions that will reduce the phenomenon of expatriate labour.

5- Governmental Institutions:

The governmental institutions can also play effective role in eradication of the domestic violence due to having specialized responsibilities. Therefore, the government institutions based on their specializations can play their role in the following manners:

- Allocation of sites on the internet to provide family counseling.
- Providing legal services.
- Enacting laws to protect the family members from domestic violence and ensure their implementation.
- Reducing the rate of unemployment and hence, eliminating its negative effect on the society.
- Exploiting the means of communication to educate families with the effect of domestic violence through short letters.
- Obliging those planning to get married to undergo training courses related to upbringing of children and marital and family relations.
- Equipping the spouses with necessary skills and expertise for problem solving and decision making.
- Establishing training courses for parents on how to control physical, psychological and verbal emotions.
- Establishing centers for the victims of domestic violence which provide them with special care and protection.
- Informing the perpetrator of domestic violence about the legal consequences of violence against children.
- Establishing child care centers at mothers’ working places, supervised by competent authorities.
- Having psychologist and social consultants to take care of the family issues.
- Correspondence with different centers for the exchange of experiences and energies.

As for the methods used to reduce domestic violence, the survey shows that religious, social intellectual and legal awareness, are some of the best ways of reducing this phenomenon. This awareness can be created by means of trainings, workshops, rehabilitation, lectures, booklets and publications. Moreover, other effective forms of enhancing awareness about the domestic violence are: holding conferences and seminars using all available modern means of communication, the governmental and non governmental institutions.

Proposed Solution?:

The phenomenon of violence against women has a long history. During the pre-Islamic period women were considered as a product that could be bought and sold; in many occasions women were sold and bought. The worst of all, they used to be buried in the dirt alive. Therefore, we cannot expect this phenomenon to be resolved within a short period of time, yet the search for solution should not be given up. Concerted efforts in this respect should be made to eradicate the domestic violence or at least to reduce it to the possible extent. These can be achieved through the following:

- Return to the divine law, Islam that give women their full rights and dignity, and provide them with full protection and immunity. Allah (swt) says: (And women shall have rights similar to the rights against them, according to what is equitable) (Al-Baqarah, 228) (live with them on a footing of kindness and equity.) (An-Nisai 19) and to be looked with honour like a man and equal to him in all provisions except where there is an authority (O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twin scattered (like seeds) countless men and women;- reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you.) (An-Nisai 1).
Experience has shown that man-made laws are unable to give women their rights and protection, although they raise empty slogans in their favour.

- The implementation of Islamic laws by the governments hence, penalizing those committed violence against women, so to create the feeling of security throughout the society; at home, working place, in the streets town etc.
- Social awareness by the women or the society as a whole about their respective rights and how to defend them or voice out their grievances, and not to keep silent or tolerate violation of their rights, and to establish an independent entity for the sake of women.
- The role played by the media such as television and radio to broadcast to all communities a positive culture and to eradicate the negative culture by highlighting its social and psychological problems it causes. Therefore, such awareness should extend to the people who are involved with the media, hence producing program that are conducive to the wellbeing of society and void of violent scenes.

These efforts must be extended to television to delete any scenes and passages that is conducive to committing violence against women.

- Establishing institutions that teach couples especially, those newly married how to deal with each other and how to respect their rights. The Holy Prophet (saw) was reported to have said: “Fear Allah in the rights of women; they are prisoners between your hands; you have taken them under Allah’s trust” He (saw) also said: “Angel Gabriel continued to caution me on wives until I thought divorce would be allowed against them”. And to teach them (men) not to expect full respect and implementation of their rights from women.

Finally, the commitment to tackle domestic violence will not bear fruits unless people’s perception of women is changed, and the woman attains her personal dignity, hence, reclaiming her proper role and rights in the society.

The lack of practical measures in the context of the domestic violence poses the most serious challenges to the protection of women against violence. The reason is the inconsistency between words and action in respect of the domestic violence. For, much has been said about the issue without being implemented in real life situations. Such attitude has lead to the persistence of the domestic violence with not glimpse of improvement. It is therefore, imperative that the talk corresponds to the practice in the treatment of women to achieve tangible result.

Findings:

1. Domestic violence results in psychological complication that worsens victim’s condition and gradually leads to the development of criminal behavior.
2. There is the likelihood that the victim might adopt violent reaction towards others.
3. The impacts of domestic violence are: the disintegration of family relations, lack of self confidence, loss of security and finally the destruction of family life.
4. The impact of domestic violence on society: since family is the nucleus of society, any threat posed by domestic violence is considered as a threat to the society as a whole.

Solutions:

The solutions for the problem of domestic violence can be sought through the following measures:

1. Providing intensive religious preaching and guidance to protect the community from the problems of domestic violence. This is necessary due to the nature of Islamic teachings illustrating the importance of compassion and family bond.
2. Providing psychological, social and family counseling to individuals who belong to families where violence is prevalent.
3. The necessity of state intervention to take away guardianship from the person in charge of the family in case of her/his incompetence, hence, assigning his/her custody to a competent relative and obliging the former (the guardian) to pay maintenance. In case such course of action is not effective, so called alternative families network could be set up for taking care of children who are victims of domestic violence.
4. Establishing link between the victims and the available advisory bodies and providing hotlines for these agencies through which they can provide the necessary advice and assistance.
5. Raising the awareness on the importance of consensus and understanding between parents and the importance of their role in the leadership of the family. Also to highlight the importance of using proper methods in the healthy growth of children psychologically and socially.
6. Improving schools teaching methods to enable students think critically and scientifically. Hence, developing their mental capacity to find solutions for the problems they are faced with.
7. Improving the living conditions of the families and creation of suitable jobs, provision health insurance and suitable accommodation for adults to avoid any kind of family problems.
8. Seeking the help of the media and public opinions as well as the leaders and grass-roots and non-governmental organizations in this respect to change the traditional concepts of control and blind obedience and their negative and adverse effect on the society.

Conclusion:

In dealing with the issue of domestic violence and seeking everlasting solution one can relying on the conventional law only. Therefore, in order to deal with the issue of domestic violence effectively hence, find comprehensive and everlasting solution, it is necessary to refer to the teaching of Islamic law. For, as a complete way of life it provides comprehensive solutions with multi-dimensional effects. Amongst the principles of Islamic law which provide a dynamic method for finding solutions to the new problems is the dynamic principle of the “purposes of Islamic law” which can be used as the base for the justification of adopting harshest measures for dealing with domestic violence. In view of the principle of the ‘purpose of the law’ suitable punishment for the violator of human rights including those of women and children can be adopted. However, there will be no benefit from all that has been said and written in the past and present about issue of violence against women and children if no practical measures have taken tackle the problem. The recommendations from this study are the key to moving forward in the process of eliminating violence against women. These recommendations are necessary to tackle the issue effectively.

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