

⑤ Gender based Violence in Sri Lanka

Camena Guneratne

[This presentation is based on a paper written for the Centre for Women's Research to be published as a book chapter]

Gender based violence is violence that a person may be subjected to by virtue of his or her gender. While this definition may apply to both men and women, the phenomenon of gender based violence is one that almost exclusively concerns violence directed at women, usually by men. For instance, Article 1 of the UN Declaration on the Elimination of Violence against Women says that "Violence against women means 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". This paper therefore addresses the issue of gender based violence as violence against women.

Violence against women has always been widespread in Sri Lanka, but it has been difficult to positively identify its prevalence, mainly due to the lack of systematic reporting on the issue. While police statistics are available as regards gender based crimes such as rape, child abuse and domestic violence, the available reports admittedly do not reflect the reality. On the one hand, incidents are often not reported in the first place. On the other, even when victims resort to appropriate State agencies for remedies and redress, the agencies in question (including the Police, courts and medical institutions) do not appear to have procedures in place to maintain statistics or comprehensive reports on the subject. Independent researchers who have conducted surveys on these areas have often produced data which differs widely from the official police and court records.

Against this background, this paper will analyse the issue of gender based violence in Sri Lanka as violence affecting women. It will provide an overview of the nature and prevalence of the problem, the legal framework surrounding it, a review of the institutional capacity to deal with the issue, the obstacles to overcoming this problem and to addressing it in a meaningful way and suggestions for further action

Sri Lankan women are the victims of many of the different manifestations of violence specified in the Vienna Declaration. The country is by and large free of such problems as dowry related violence, female genital mutilation, female infanticide and abortion of female fetuses. However, sexual abuse in all its forms and in all spheres, domestic violence, sexual harassment, abuse of female children, trafficking and "physical, sexual and psychological violence perpetrated or condoned by the State", have been increasing over time. Some of these forms of violence are discussed in this paper.

The legal framework relating to violence against women is quite comprehensive. While some of these laws directly address the issue, others are not concerned with violence per se, but have indirect impacts on the problem. These laws are discussed in this paper and include the fundamental rights provisions contained in the Constitution, the Penal Code and the Torture Act. In addition, Sri Lanka has ratified the main international human rights conventions including the International Covenant on Civil and Political Rights (ICCPR) of 1966 and its Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and the Convention against Torture and other Forms of Cruel, Inhuman and Degrading Treatment and Punishment (CAT) of 1984. Under the circumstances Sri Lanka has incurred international obligations to protect women from violence within the rights framework contained in these documents.

Subsequent to the ratification of CEDAW, the Sri Lankan government formulated the Women's Charter which sets out the policy framework relating to the status of women. Although this Charter has no legal force it is nevertheless a statement of principles which must be given due recognition.

Having discussed the legal framework relating to gender based violence, the paper next considers the shortcomings in the legislation. This includes deficiencies in the Penal Code provisions, the lack of legislation relating to domestic violence and the unsatisfactory laws relating to commercial sex workers.

There are shortcomings not only in the laws themselves, but also in the system by which they are implemented. Neither the Police nor the judiciary appear to acknowledge the gravity of violence against women and tend to treat such offences more as personal problems between the parties rather than as a serious social and legal issue. Women are often constrained to even make complaints of violence to the Police due to the negative reception they are given. Although separate Women's and Children's Desks have been established in police stations island wide it has been found that for various reasons these units do not function very effectively. Apathy, inefficiency, political and other pressures, prejudiced attitudes on the part of the Police also prevents the effective filing of cases.

There is also a lack of capacity in institutions which are required to provide support services to women, such as medical, counselling, legal aid and rehabilitation services. A study of State hospitals done in the context of domestic violence, showed that most medical institutions merely treat the physical injuries of the victim. There is no attempt to find out how those injuries were caused nor are psychiatric or counselling services provided. These services are provided only by a few non governmental organisations some of whom also provide shelter for victims of violence. However, these organisations do not have the capacity to have more than a minimal impact on the problem.

Finally the paper considers future challenges in the context of gender based violence. While there is now a fairly strong legal framework relating to such violence, many areas as discussed above need to be further strengthened and omissions in the law addressed. This applies to both the substantive law as well as its procedural aspects. It must be further ensured that the laws in question are properly implemented and perpetrators brought to justice.

The paper concludes by pointing out that it is clear that gender based violence is widely prevalent in Sri Lanka and there is an urgent need to address the issue at all levels and to protect women from this phenomenon. Two main issues arise in the context of doing so. The first relates to the nature of the legal framework and the second relates to proper implementation of the laws and the strengthening of the institutional infrastructure to do so. While there are laws that directly address the issue of violence, and specifically violence against women, there are lacunas and shortcomings in them which have to be remedied. Further, there are other laws that are not concerned with violence against women *per se*, but nevertheless have indirect and often negative impacts on women, as for example, the Vagrants Ordinance and the Brothels Ordinance. Laws such as those governing employment of women abroad ignore the realities of their situation and do not contain provisions to safeguard them. In the case of domestic violence, while the Penal Code provisions may be adequate in relation to the substantive aspects of the offence, there are no procedural provisions to ensure their security and welfare in the short term.

Apart from the adequacy of the laws themselves, as discussed in this paper, there are shortcomings in implementation and in providing support services to victims of violence. In this regard both arms of the law enforcement authorities, the Police and the judiciary, should be sensitised on the issue of gender based violence both in terms of bringing perpetrators to

justice and providing redress to victims. Institutional support to victims in regard to health, counselling, shelters, and other forms of assistance must also be strengthened. Society at large must be educated on the problem and its underlying social and cultural causes. Finally, it must be noted that since the prevalence of violence against women reflects the prevalence of violence in society as a whole, this fundamental issue cannot be overlooked.