
GENDER-BASED VIOLENCE: A SOCIO-LEGAL STUDY OF ZAMBIA AND INDIA

Kombe Mumba & Dr. Basant Singh, 5th Year Law Student of Lovely Professional University & Assistant Professor of Law, Lovely Professional University

ABSTRACT

Gender-based violence is not a new issue, it has been happening since time and memorial but has only recently been identified as a crime by more modern jurists, and they say contemporary ones at most. This goes to show how commonplace the practice had become in society since the hunter-gatherer ages men have been recognized as patriarchs of the family hence making others like women inferior by this very virtue and for the longest (hunter-gatherer era to nearly halfway through the twenty century) men have been main perpetrators of this very issue, inflicting not only physical but also psychological injury on their female counterparts. It is only recently (mid-twentieth century) that women's rights have become more prevalent and thus has enabled women the opportunity to not only rise to the equal levels of importance in-home/family set up as well as society as their male counterparts which has not only affected the stereotypical notion of Gender-Based Violence but has completely changed it, from age-old "male committed violence over female" meaning to something entirely different requiring a more contemporary definition to better help jurist preserve the rights of all human beings both male and female. This is not to say the old stereotype does not continue to persist as in less developed countries i.e Zambia it still holds water and what about developing nations i.e India which are grappling with the forced coexistence of the old and the new and lastly what does this new holistic view of the problem Gender-Based Violence mean for the jurist trying to progress the law? As well as its effect on the law itself, fundamentally the true question is whether modern law is adequate to Address Gender-Based Violence in India and Zambia?. In this research paper, the objective is not only accurately grasp the progression of Gender-Based Violence its source, growth and effects, but also its modern-day forms and how the law has only gradually improved in two separate but also culturally diverse countries like India and Zambia. So, Gender-Based Violence comes in many more different and varied forms today than ever before and the law must be ready to adapt.

INTRODUCTION

Gender-based violence is violence that targets an individual or a group of individuals based on their gender, which results in physical, sexual, or psychological harm. It is rooted in gender inequality, the abuse of power, and oppressive gender norms. Gender-based violence is a serious violation of human rights and is an issue that threatens the health, life, protection, and socio-political security of individuals. In most cases, gender-based violence disproportionately affects women and other gender minorities.

This paper contains three main themes. The first theme establishes the progression of Gender-Based Violence, its source, growth and effects as a result of the impact of western and European legal values on traditional Indian and Zambian customs, which provided ideological justification for its practice. Further, it demonstrates that there was and remains, a basic link, between the ideas espoused by both laws and traditional patriarchy to the actual violence towards women. Through discussion and case study, the second theme demonstrates how Gender-based violence adapted itself and comes in different forms. These provide concrete illustrations that the current legal paradigm surrounding gender-based violence is heavily influenced by more outdated values. Finally, the third theme introduces and provides some analysis that the law has only gradually improved and not keeping up with modern-day issues. In my conclusion, I assert that the new legal disconnect from society has initiated a cultural shift by failing to adapt to modern times and allowing individuals acting in bad faith to abuse the law so that violence towards not only women but men remains.

BRIEF HISTORY

The majority of human civilization has been spent hunting and gathering and during that time man has been the de facto head of society thus it was not surprising that this system had stood the test of time until recently(20th century) with the rise of women's rights in the west, however, this would not affect Zambia and India for a long time because even though India was a major British colony it population remained largely rural traditionalist and Zambia important British mining colony was grappling with independence and high illiteracy rates, women's rights would come to prominence in these countries in the eighties, nineties and two thousand as both nation were growing into full-fledged democracies.

Both nations experienced rapid societal change as compared to the west, women's rights can be traced back to as early as 1915 and since then western countries have had time to adjust

while most Asian and African have only had the last two decades which has been one of the few reasons for the societal-legal disconnect another being education gap between lawmakers and community resulting in-laws that were ahead of their time in the twenty-tens and backward today. Even though India and Zambia were both British colonies they are very different customs wise an example would be in a marriage while in prominent Indian tradition brides present dowry while in Zambian tradition the opposite is true. Because of tradition most people were reluctant to change and gender-based violence against women persisted, gender-based violence remained a silent issue until the late 2010s when lawmakers in both countries began enacting gender-based violence specific laws. Gender-based violence laws have been pushed back against because the change was quick, and tradition has been around longer than the law.

Due to the patriarchal nature of Zambian traditional culture and Indian tradition and religion, men were put on a higher standard than their female counterparts as they were the leaders of their families and communities, protectors as well as providers, and women were only complementary to this. This meant that most positions of power, were held by men in these societies and why gender-based violence mainly affected women as men ABUSED their positions of power and oppressed women, it is why early laws were less than adequate to protect women. This was the status quo for the longest time and only when women's literacy and safety increased did also the agency for gender-based violence legislation, by the early 2000s lawmakers had already started to strike down outdated gender-based laws and finally in 2008 and 2011 India and Zambia enacted gender-based violence specific law to combat its spread the problem was that the world was a very different place at this point, two working parent households became more common than not and in some circumstances, women made more money than their fellow male workmates so for rural areas the laws worked but enforcing them didn't, in urban areas the opposite is true to expect in very classical circumstances. The legislation was behind the times again as most of these laws were very women-centric i.e a provision granting temporary sole custody— (i) of a child of the applicant to any appropriate custodian other than the respondent.¹ this Zambian law has been sighted numerous times as being 'women centric' by allowing them to separate fathers from their children in a GBV dispute. The law was lacking not only was it somewhat outdated and biased which lead to a lot of pushback in both countries and most of these laws remain present to date which is frightening as the rise of the LGBTQ communities in recent years has forced lawmakers to re-evaluate

¹ Anti-gender based violence Act sec15(e)(i)

what the very definition of gender means in the legal sense of the word. The law is lagging behind today as it was in the 2000s.

Culture, tradition and religion have played the biggest roles in the development of gender-based violence laws, the patriarchal biased nature of these ideologies was firstly adopted which led to the abuses of the 20th century and is now hindering the adoption of new laws in the 21st century.

GENDER-BASED VIOLENCE & THE LAW

Both India and Zambia tackled the problem of gender-based violence with unique perspectives firstly was India which had arguably one of the biggest women's rights issues in Asia so that was their area of focus when the protection of women from domestic violence act, of 2005 was enacted this law heavily focused on women's rights so as solve this huge social issue, the legislation was still lacking in many aspects i.e marital rape which was criminalized only recently in 2021. The legislation does however tackle other issues like dowry and abuses happening inside the home. The protection of women from the Domestic Violence Act 2005 and Section 498A of the Indian Penal Code (IPC)² about dowry are the effectual mechanisms which can at minimum be used by women to demand justice. Similar laws for honour killing do not exist, this allows for arbitrary justice to prevail which often falls into the trap of patriarchal norms and ideals, and these are the few shortcomings of the law specifically addressing women's issues, Indian law is still pretty much silent on the new forms of Gender-based violence which affects men, as well as minority groups i.e Section 377³ pertaining to sexual minorities even after decriminalizing sexual intercourse between people of the same sex, did not result in the inclusion and acceptance of sexual minorities. Crimes against homosexual women and men, transgender men and women persist with police officers acting with impunity in such matters. Gender-based violence continues to persist in various forms in India despite awareness efforts as the laws are yet to address modern-day issues.

Zambia on the other hand enacted THE ANTI-GENDER-BASED VIOLENCE ACT, 2011 which aimed at solving many of the gender-based violence issues Zambia was facing as well as being modern enough to be inclusive of men this is exhibited by the broad nature of terminology used in the Act i.e unless the context otherwise requires " abuse " means conduct

² Indian penal code

³ Indian penal code

that harms or is likely to cause harm to the safety, health or wellbeing of a person⁴ the act does not define what gender-based violence is but it does define abuse and is broad in its interpretation of it i.e A single act may amount to gender-based violence.⁵ the legislation was also designed to be future proof if Zambia legalized minority rights the legislation would still be easily applicable. However the act is not without its flaws, the Act has on many occasions been cited as women-centric whilst failing to address modern issues of women resulting in favouring foreign women more⁶ the law also suffered from awareness issues as well as lack of sensitization among young people, and yes the act is future proof but it doesn't address minority issues as of the writing of this paper and therefore lacking in addressing modern societal issues given this due to Zambia's highly traditional values.

Both Zambia and India have tried to enact laws that address gender-based violence and both have succeeded in tackling many issues in their respective fields of interest but have still several lacunas in vital issues and emerging ones as well. The legal disconnect from gender-based violence is creating huge cracks in the respective legal systems that a lot of people are falling through and society is not oblivious to this as the research survey below shows.

OBSERVATION

Through research conducted via a survey of a group of 50 people consisting of Zambians and Indians which had 49% men, 48% women and 3% others, between the ages of 13 to 55 of varying backgrounds and education levels on the topic of gender-based violence the results conform to the hypothesis that the law is currently inadequate at handling modern-day gender-based violence issues.

96% of participants were aware of gender-based violence signalling that gender-based violence is still very common in Zambian and Indian communities. 90% of participants agreed that men are still the main perpetrator of gender-based violence given that both laws were enacted 11 and 17 years ago, the law did little to hinder the main culprits. 90% of participants also believed women to be gender-based violence enablers highlighting the big role women who are the main victims, play in the problem of gender-based violence. 58% of the participants have witnessed gender-based violence personally and have first-hand accounts of its harm and the inability of the law to protect individuals with 59% having known someone close to them to be

⁴ The anti-gender based violence act, 2011 section 3(i)

⁵ The anti-gender based violence act, 2011 section 4

⁶ Avocats Sans Frontieres, *Challenges of implementation of the anti-gender based violence act 2011*

a victim of gender-based violence. Awareness doesn't seem to be the problem as 72% of participants are aware of laws governing gender-based violence, this was expected as the laws have been in existence for some time now but even if they are known 61% still believe the law to be inadequate. Many of the participants cited that the laws were outdated and poorly enforced as the reason for the current state of gender-based violence.

From careful observation of the results of the survey, it is clear to see that gender-based violence is still common today, that many people have either been a victim of or witnessed an act of gender-based violence and that the law is not adequate enough to address modern gender-based violence confirming my hypothesis.

COMPARISON BETWEEN INDIA & ZAMBIA

When it comes to gender-based violence both countries take different approaches to solving the problem, India opted to make separate legislation for specific circumstances having several legislations i.e The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013, The Immoral Traffic (Prevention) Act, 1956, The Commission of Sati (Prevention) Act, 1987 (3 of 1988), The Dowry Prohibition Act, 1961, Protection of Women from Domestic Violence Act, 2005, The Criminal Law (Amendment) Act, 2013, The Indecent Representation of Women (Prohibition) Act, 1986 whilst Zambia decided to make a single body of legislation i.e THE ANTI-GENDER-BASED VIOLENCE ACT, 2011 to address the issue.

India's approach allows the law to be more specific depending on the various situations in which gender-based violence may occur e.g home and/or workplace allowing specific legal relief for victims and appropriate punishment for the offenders while Zambia takes a different perspective, a broader approach to the problem of gender-based violence by living the definition of what constitutes gender-based violence open to interpretation allowing it to cover a broader spectrum of gender-based violence offences. The problem with the Indian approach is that legal progress of gender-based violence is limited to specific types i.e domestic or workplace while Zambia's approach leaves room for the court to interpret the law on a case by case bases.

Zambia's use of legal terminology makes it more inclusive as it is not only women-specific but instead inclusive of any person and this also future proves the legislation, while India's only

specifically adheres to women. Despite this, both legislations have been cited as women-centric.

Both countries have done well when it comes to awareness of the law but are having difficulties with enforcing the law in their respective jurisdictions as many people believe the law to be unsatisfactory and poorly enforced

Finally, both countries' sets of laws do not address the issues of minorities, despite the efforts of Indian law makes attempts to decriminalize homosexuality heavy discrimination still exists most of it is practised by the police.

SUGGESTIONS AND CONCLUSION

In this humble authours opinion, change is needed to the laws that govern these two different countries. One of the major stand out issues was enforcement, the law has to do more in terms of how it's being enforced at all levels from the neighbourhood we live in through better police education to the courtrooms with fewer women-centric views of gender-based violence by judges and lawyers. The law also needs to be more inclusive of gender minorities and their grievances by enacting laws recognising them as citizens and addressing their specific issues. Zambia specifically has huge lacunas in terms of gender inclusivity of minorities while India does not broadly cover the problem of gender-based violence but limits its scope to particular circumstances

In conclusion, the current state of the law in both India and Zambia are lacking in many respects but are also helping in addressing several abuse cases and highlighting the areas in which it is lacking this allows modern jurist to recognize the cracks in the foundation of society which is the law enabling them to address the problems as they come adhering to the dynamic nature of the law.