Original Article

Supporting Female Victims of Domestic Violence in Criminal Justice System

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A B S T R A C T

Domestic violence persists as one of the most pervasive and complex challenges confronting contemporary human societies. The mentioned phenomenon is increasing in various forms and its negative effects are observed on society and family. Domestic violence is caused by several factors such as gender roles, type of marriage, cultural, political, legal and economic factors, social pressures, educational and socialization methods, patriarchal system, and inappropriate distribution of power in the family. The private nature of domestic violence creates significant methodological challenges for its systematic study. The concealed character of these offenses - compounded by limited access to reliable data and underreporting - renders comprehensive analysis particularly problematic for researchers and policymakers alike. The particular situation in which they live makes them more vulnerable to crime than others. The absence of specific legal provisions addressing domestic violence in Iran's penal system forces reliance on generic criminal statutes, which prove inadequate for preventing or effectively addressing such offenses. This legislative gap necessitates adopting a differential criminal policy specifically designed to protect women and children victims of domestic violence, as current laws fail to respond to domestic violence and protect women victims of domestic violence, and the existing discrimination laws do not play a role in the form of violence

Introduction

Violence is a behavior used by someone to harm another person, and its scope is wide ranging from humiliation, insult, rape, assault to destruction of property and even murder. The most common type of it is family violence, which occurs in a private environment and often occurs between people who are connected to each other due to intimacy and blood or legal relationship, and most of it occurs against women and children [1].

Violence in the family is a phenomenon dated back to the history of the family, women and children for various reasons, including less physical ability, economic and emotional dependencies, cultural and social, political and legal factors that lead to the establishment of unequal status become the largest percentage of victims of this violence. Domestic violence with its different dimensions can lead to consequences that ultimately cause instability and weakening of various elements of society. Domestic violence in Iran was not considered as a social phenomenon until a few years ago, and

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although some cases were reflected in newspapers, it was usually regarded as abnormal individual behavior. However, in recent years, it has attracted the attention of organizations and scientific circles, and specialized meetings have been held to deal with this sinister phenomenon. Although the research in the field of violence faces many issues, in Iran due to the lack of statistical information, the uncertainty of the victimized population and the difficulty of reaching the victims, these issues are more severe, and this emphasizes the need for more research. Violence against women is by no means unique to backward societies or Muslim societies, and in developed countries of the world, women and children suffer from the consequences and complications of violence, especially in family life, and physical, sexual and mental abuses not only affect health, but also mental health. It endangers their emotional and mental balance, but also harms the society [2].

In general, between 30 and 35 percent of American women are physically abused by their husbands, and between 15 and 25 percent of them are beaten during pregnancy, and three out of per 10 female victims are killed by their husbands or other men. In Chile, 63% of women are physically abused, 41% of Indian women commit suicide due to physical abuse by their husbands. In Bangladesh, more than 50% of murders are caused by male's violence. Unfortunately, accurate and specific statistics about violence against women at home have never been published in Iran, as nowadays there is no operational definition of misbehavior or violence against women. On the other hand, patriarchal beliefs consider this violence to be the nature of men and try to justify it [3].

While in traditional societies, family restrictions, long-standing social customs, and traditions, even in the worst conditions, prevent women from suing. In most societies, a certain amount of violence is ignored; even sometimes the laws of some countries approve the harassment of women and give it a legal face. In a report from the United Nations (UN) in the field of violence against children in 2006, it was mentioned that most of the acts of violence against children are committed by

their acquaintances and confidants, including their parents, which are socially accepted and tolerable, and sometimes allowed by the laws of the countries. In spite of the fact that the law is a basic tool to eliminate domestic violence, the way the legal systems deal with this problem in different times and countries has not been the same. The pervasive phenomenon of gender-based domestic violence across all societies has perpetually challenged legal systems, generating enduring debates about the adequacy of criminal justice frameworks. This has historically produced two competing paradigms: the first perspective emphasized on compromise and mediation or treatment and service methods instead of dealing with misbehavior against women and children by resorting to criminal laws and has rejected the intervention of the law through arrest, prosecution and punishment. The second viewpoint considers family conflict as a crime. Advocates of the uniform treatment theory argue for addressing gender-based violence through standardized criminal justice mechanisms used for conventional offenses, and these two views are the bases of all kinds of legal responses to family violence. [4]

Practically, intense debates have been raised against the use of criminal laws in the field of family issues with the argument that criminal laws are mostly punitive and rarely contain educational programs. The effectiveness of criminal laws depends on the factors involved in the criminal system, the police forces, prosecutors and judges, which have failed to deal with the issue of "mistreatment of women as a criminal issue" and, therefore, have been arrested. Consequently, opponents of criminal intervention advocate against prosecuting domestic violence perpetrators through traditional legal channels. Even when domestic violence perpetrators face conviction, the prevailing sentencing patterns reveal systemic limitations, and any type of punishment usually affects his family and the victim. Because the breadwinner of the family is in prison or may lose his job [5].

On the other hand, the proponents of the criminal point of view claim that criminal investigation in the field of misconduct as it is currently done may be incomplete. According to

their belief, this is merely a reflection of those social values that have caused violence against women in the home environment to be hidden or considered to be of little importance. The arrest, prosecution, conviction, and punishment are documented processes that clearly show society condemns the behavior of a guilty person and emphasizes his personal responsibility for his actions. Such encounters will show that the occurrence of crime at home is not only a social problem, but also it is a crime like other ones. Centralizing interests of crime victims (women and children), it is emphasized that the family support should not be overshadowed by the issue of preserving the family foundation or existing relationships. In addition, the impartiality of the justice system is currently considered to encourage the aggressor and unfairly accuses the victims of the attack for engaging in violent behavior. [6]

Since the criminal procedure method, which comes from the coercive power of governments, is the only way to guarantee immediate security for the victims of misconduct and is able to rehabilitate criminals and, as a result, reduce their crime [7].

Based on the evidence and the ever-increasing statistics of domestic violence, if measures are not taken by exercising control through the specific criminalization of domestic violence against women and children, as well as increasing the punishment in the field of these crimes, such behaviors will exist due to the victimization that exists unintentionally from the existing criminal laws and also the small price that perpetrator pays for committing it daily increases [8]

Definition of Violence

Although many articles and books have been published on the issue of violence in recent decades, and many studies have been conducted in this field, there are still many problems regarding this phenomenon, and naturally, over time, people involved in the study of violence have tried to solve theoretical problems and eliminate it. However, one of its main problems is the definition of violence. The first definition was given by Golzovastros about violence, as follow: "Violence is a behavior with an overt intention or a behavior with a hidden but understandable intention to cause physical harm to another person" [9]

One of the important features of this definition is that, the emphasis is firstly on the intention of the person to cause harm to another, but the severity of the injuries is not intended, and secondly, the emphasis of this definition is on physical violence and does not include other types. In 1983, another violence researcher, Plouke [10], defined violence as follows: "Behavioral violence is considered consciously, the possible results of which are causing physical damage or pain to another person." According to Megarghi's definition: "Violence means extreme forms of aggressiveness that probably cause specific injuries to the victim" or "violence is considered as an intentional act whose purpose is to cause social harm to others" (Farjad, 2014) according to Mehrdad Darvishpour's definition: "Violence can be considered as a harmful act that a person does to advance his goals, and it does not have only a physical (physical) aspect, but it may have the dimensions of obscenity, mental humiliation, isolating a person, yelling, sexual dimensions, harassment, and sexual harassment and rape, and also take economic dimensions, breaking the means of living, etc.[11]

Types of Violence Based on its Subject

The types of violence based on the subjects include individual violence, collective violence, violence towards oneself, and violence against the others, which are briefly explained as follow:

Individual Violence

It is the realm of individual behavior as a mental and spiritual movement that makes a person to break the law or break norms, aggressiveness and violence. According to the opinion of some psychologists, seeking superiority, affection, and seclusion, which are all disordered and abnormal behaviors and regarded as the general mechanism for behavior analysis and their behavioral classification. A historical and Quranic instance of this type of violence can be found in the

action of one of Adam's children to kill his brother and the action of Prophet Moses to kill one of his enemies in Egypt, before his prophethood. These two events are mentioned 27 of Surah Ma'idah (verse 27) and Surah Qass (verses 15&16).[12]

Collective Violence

The domain of the community sometimes involves the violent behavior of the society on a wide level and it causes challenges and tensions in the relations and social balance in the field of actions and speech - speech and listening interaction. In this assumption, these are not psychopathic and violent people who commit acts against tradition, custom, culture, and laws, but criminal and violent groups and gangs are formed that disrupt most levels of balance and social relations and in some cases, due to cultural or political discontinuity or factors of this kind, the peaceful, rational and orderly coexistence of the inhabitants of a cultural or political sphere is subject to violence and lawlessness, in which case it is called a social crisis. It is unforgettable. The aforementioned violent social situation may be related to intra-group relations and social classes; whether in complex societies, different social groups may be in conflict with each other and each of them aims to spread their values and norms to the whole society, examples of such situations can be seen in conflicts between social classes, between religious groups and between groups, ethnic or inter-nationality [10-12].

Violence Towards Oneself

One of the most obvious examples of this type of violence is suicide or various crimes against oneself.
Durkheim's definition of suicide in his book is one of the best definitions of suicide that most scientists have used as the basis of their definitions. According to Durkheim, suicide is "Death caused directly or indirectly by the positive or negative action of the victim." "The act is committed intentionally, with the victim being fully aware that the action would lead to this specific outcome". Durkheim defines direct death as an action that immediately causes a

person's death, such as hanging by a noose. Indirect death refers to an action that leads to death secondarily, such as refusing to leave a burning house. Positive actions are those carried out through specific physical acts, like shooting oneself, while negative actions involve deliberate inaction, such as a hunger strike that results in death [13].

Types of Violence Based on the Type of Damage to Women

Physical violence: Physical violence is done in various ways and includes beating, torture, and murder. This violence also refers to any antisocial behavior that starts from touching a woman's body and sometimes up to the stage of rape, harassing a woman's body. Examples of physical violence include broken limbs, lacerations, wounds, cuts, bruises, internal injuries, concussions, genital injuries, inability to conceive, abortion, sexually transmitted diseases, unwanted pregnancies, illegal abortions, or being dead of physical injuries [14].

Sexual violence: Sexual violence refers to any antisocial behavior that includes touching to rape. This type of violence can occur in the sphere of private, marital and family life, and is applied to a woman as an obligation to provide for her husband or incest with each other in the kinship circle. In Iran, the degree of acceptance of sexual violence in marital life is very high and women usually do not reveal it in family circles because they are accustomed to tolerating this type of violence and consider it normal [15].
They also feel ashamed. Women who are subjected to sexual violence suffer psychological, nervous, and emotional trauma that affects their overall behavior towards men. Sometimes victimized women suffer from coldness and depression in sexual life and never forget the hatred and fear of men in their family and social life. Examples of sexual violence include forced use without a woman's consent, coercion in non-traditional marital relations, not being allowed to use contraceptives and neglecting women's sexual need [15].
Psychological violence: It is the violent behavior that undermines a woman's dignity, honor and

self-esteem. This behavior takes the form of unfair criticism, humiliation, verbal abuse, ridicule, insult, abuse, possession, and constant threats of divorce or remarriage.

In Iran, there are cases of psychological violence that violate women's dignity, pride, and self-confidence. Unfortunately, the damage has not yet been assessed. for psychological violence perceptual dysfunction; lack of self-confidence, various depressions, women's incompetence in family management, reduced ambition in the workplace, avoidance of participation in social affairs, reconstruction of violent behavior in children, children's failure in education, women's inefficiency in the workplace (which sometimes it leads to his expulsion), resorting to alcohol and drugs, resorting to gambling, divination and divination, losing women's potential talents, committing suicide, losing social and family credibility [2].

The Etiology of Domestic Violence

Social scientists have offered various explanations for domestic violence: social and individual pathologies, interaction, situational, and family dynamics, as well as institutional, cultural, and ideological coercion. Sociology, criminology, and psychology have devoted the most research to this subject. Recently, anthropology, evolutionary psychology, medicine and nursing have also begun to investigate this phenomenon to find new explanations or to correct or challenge existing explanations [6].

Of course, biological explanations have always been the focus of attention. The issue of domestic violence, like other women's issues, has involved feminist thinkers more than any other field, and we will mention these theories in explaining the various factors. This study aims to examine the factors affecting domestic violence against women and children in three factors: individual, social, and exchange. We will then provide a model of the impact of different factors on violence.

Biological Aspects

To examine the causes of violence, perhaps the first and foremost explanation is the biological

issues of man and the difference between men and women in this regard. The concept of body politics, which refers to both physical relations of power and indirect forms of violence against women, has been used by feminists to describe violence against women. Radical feminism considers one of the manifestations of psychological power of men to be sexual violence against women. In any case, since the concept of violence is a form of force, it can be said that physical power can be more of a ground for men to express violence against women. In Islamic texts, there are also interpretations that refer to the physical weakness of women and its role in expressing violence against them. [2]. Indeed, the best of you are those who treat their families the best. Another biological factor is the male hormone testosterone, which psychologists have identified as an effective factor in men's aggressive behavior. Research on fatigue reveals that testosterone plays a key role in aggression. The study also examined physical and verbal aggression and found that high blood testosterone levels were positively associated with aggression in men and negatively associated with aggression in women [8]

Psychological Factors and Character

Another individual context of violence is the psychological aspects of the perpetrator and the victim. The psychological approach looks for the source of domestic violence in personality or mental disorders. Bernard *et al.* conducted the MMPI test on 46 men who abused their spouses and listed the following characteristics on them: anger and irritability, impulsivity, and unpredictability, suspicion, insecurity, confusion and indifference. Of course, research has not proven that spouses of abusers are more likely to have personality disorders than other people, but there are similarities between the two groups and have difficulty maintaining interpersonal relationships. Kaplan lists the personality traits of abusive spouses as follows: immaturity, nervousness, lack of self-esteem, inability to solve problems, inability in social skills, ineffective coping styles, impulsivity, and dependence[2]. . In his report on violence,

Perfit defines the violent personality by raising the following characteristics: passive state, dependence, instinctive reactions and inability to understand and absorb prohibitions [6].Mafi and Akbarzad, in a study have determined the cognitive period characteristics of domestic violence perpetrators and concluded that there is a significant relationship between men's personality characteristics and their violence against their wives These authors examined the correlation of the subsets of the MMPI test with the factors of the questionnaire measuring violence against women and found a positive correlation of eight factors in this test (which measures personality disorder) with marital violence; with 99 percent certainty, the two groups of violent and normal men differ in all factors. These factors are as follow [4]:

1. *Hypochondriacs (self-morbidity):* Those who score high on this factor are dissatisfied with their physical condition; are self-controlled; they think of nothing but their own interests and their own needs and they are also stubborn, pessimist and narcissist.

2. *Depression*: The results of this study are in line with the research of Ammerman and Hersen, showed that depression was an important factor in the occurrence of violence between men and wives.

3. *Psychopathic (anti-social)*: The results of this study and the research of Barratt and Costello are in the same page, showed that antisocial personality symptoms have a significant relationship with spousal violence.

4. *Paranoia*: According to this study, paranoid thoughts, suspicion and pessimism are associated with violent behavior in men.

5. *Pschasthenia* (mental weakness): Anxiety, fear, etc., which are signs of this factor, is related to violent behavior in men. Gavazi's research is in line with this issue.

6. *Schizophrenia*: This study, in line with other studies such as Hall, Hamburger, and Hastinger found that violent men in the family have schizophrenia.

7. *Hypomania (mild mania)*: People who score high in this factor are active mal-adjusters: they have poor concentration and jumpy thoughts, they feel very important; they have little ability to control their impulses: they are aroused against both partial hesitation and others

consider them restless and excited. This factor has a positive correlation with marital violence. In his research, Mohammad Khani has also looked at the two general factors of personality traits and communication factors, and the results of his work show that abusive husbands show significantly more symptoms of physical abuse, obsession, depression, anxiety, violence, phobic anxiety, paranoid thoughts, and psychosis. By examining research on the personality profiles of domestic violence perpetrators, he notes - citing Dowton and Gandoff - that while preliminary studies characterize assailants as having excitable, stereotyped, and flexible personalities with low self-confidence and frequent substance abuse issues. However, it is still not possible to provide a definite profile of the assailants and a significant majority of the perpetrators cannot be distinguished from ordinary people. Of course, Sugarman emphasizes the two factors of antisocial and borderline personality in the perpetrators. In any case, this research believes in a different personality and communication profile for violent people than non-criminals. Carlson, Gandolf and Russell, in presenting one of the most famous typology models of aggressive people, placed them in three classes such as antisocial bully, antisocial bully, and typical attackers. They declared the first category as the most dangerous [8]

Appleford also considers features such as the need for power and dominance, low self-confidence, cognitive, and belief inflexibility as distinguishing features of abusive spouses from other men (Appleford, 1989). The psychological process during which a man commits violence with his wife, besides the above-mentioned features, depends on his impulsiveness in terms of controlling emotions, including intelligence. In this regard, Start *et al.* presented a model for husbands' violence and variables affecting it. Impulsivity is a characteristic of men's marital violence that little empirical research has been done about it. The characteristics of an impulsive person are as follow:

1. Being overly sensitive to rewards

2. Low ability to control reactions against possible punishment

3. Little ability to search for new feelings and experiences

Communicative and Interactive Causes of Violence

Part of the causes and contexts of violence in the family goes back to the way of relationships and interactions between men and women, in general, and their special relationships in the family as husband and wife. Since man is a social being and has a relationship with others, and the phenomenon of violence is also a relational matter. It is better to place the unit of analysis instead of individuals, the interaction between them, including the interaction between husband and wife or parent and child. Here we discuss the interactive aspects of violence against women and children [12].

Gender

One of the important and effective factors in the relationship between men and women is their gender differences. Some researchers, especially feminists, look for the roots of violence against women in male attitudes and male roles. First of all, the roughness of the male body has been accepted as a desirable model in many societies; while for women, such a pattern is not accepted and violence is not expected from her. In a survey, it became clear that one out of every four husband and wife believes that the husband can have a valid reason for his violence, and a smaller percentage believes that the opposite is also true. Secondly, men's violence is a tool to restrain the behavior of the female gender and create subordination and dependence of women. In patriarchal culture, women are considered irrational and natural beings. Therefore, men are encouraged to resort to violence in case of failure of reasoning for the education of women. They have also said that violence is specifically used to control women's sexual feelings and reproductive roles. Belief in the inherent superiority of the male sex and the values that cause men to acquire possessive rights over women is also a type of gender explanation for the expression of men's violence against women (Mertos, 2012). Thirdly, feminists consider the marriage of a man and a woman in the family as a source of forced heterosexuality to control women's sexual feelings and work at home, which is the main source of women's oppression and violence against them. Men's violence against women is due to the possibility that their right to own their wives and the power they have in marriage will be jeopardized [15].

Conclusion

Domestic violence has always been an integral part of human life, and today we are witnessing an increase in the rate of domestic violence in different ways. Due to the fact that domestic violence occurs in the private sanctuary and it is difficult to enter this sanctuary, and on the other hand, the victims of the incident usually prefer to hide and deny their injuries, making it difficult to study and investigate this problem. Violence against women and children is one of the most widespread violations of human rights, which manifests itself in various forms. Domestic violence, sexual assault, sexual slavery, mutilation, assault and battery, honor killings, insults and systematic sexual assaults in international and internal armed conflicts are only examples of violence. This has attracted the attention and sensitivity of governments and international organizations, and many international conventions and documents have been approved in order to prohibit various types of violence against women and children.

Despite these documents and the efforts of international organizations, especially the lack of effective enforcement guarantee in the international criminal system, and on the other hand, the lack of effective cooperation of governments for various reasons, has hindered the implementation of the provisions of international documents and ultimately prevented the effective elimination of violence against women and children. Although it is impossible to ignore the significant effects of the mentioned documents, in any case, paying attention to the current situation of women and children in the world community leads us to the bitter reality that the international rules of human rights have not been able to completely eliminate discrimination and violence against women and children to eradicate from their lives.

In Iran's internal laws, although there are more or less legal protections for women and children, it does not respond to the severity of the crimes committed against women and children by the family or society. As an example, despite the undeniable existence of domestic violence in Iran, especially in traditionalist families, there is no special legal support even in defining and stating examples of domestic violence.

It is very clear that criminal dispersal materials cannot properly prevent or reduce violence, but support mechanisms will be effective only in the light of a consistent and differentiated criminal policy. Since criminological and victimology findings have shown that some people are more exposed to victimization than others due to specific biological, psychological and social characteristics, and potential victims are considered more vulnerable to potential criminals.

Women and children are placed in this framework due to their weak physical strength and their special social situation. Positive deviation from the principle of equality of people before the criminal law by providing more and more differential criminal protection for women and children through special criminalization mechanisms for certain behaviors and intensifying the punishment of criminals whose victim is a woman is one of the ways that the criminal legislators have to raise. They have adopted the price of these crimes and reducing the possibility of victimization. From a legal and criminological point of view, there are factors and contexts that fuel the emergence or at least the continuation of violence.

One of the most important factors is the legal acceptance of domestic violence and considering family disputes as private. Ambiguity in the legal definition of domestic violence causes its acceptance, for example, "to what extent is physical punishment of a woman permissible for her husband" or "is a man's forced sexual relationship with his wife that leads to mental and physical harm to her an example of domestic violence or not?" It has not yet been answered in the laws of many countries. The basis of these legal ambiguities goes back to the scope of government institutions' supervision over the family. If we emphasize from the legal point of view that the family is a perfectly private environment, institutions such as the police force and the court will not have the right to supervise the family in this situation, violence in the family will be facilitated, without a doubt, to preserve the sanctity and integrity of family life to protect people against interference.

While limited government intervention is generally desirable, the specific case of domestic violence presents two significant negative consequences that demand attention: First, individuals face strong societal pressure to seek external assistance, as doing so constitutes an implicit admission that the family has failed to provide security, harmony, and proper upbringing - representing a fundamental breakdown in achieving its core objectives. Second, it is inappropriate for others to interfere in the relationships of family members, even if there is an obvious disorder in it. In this way, domestic violence is generally ignored or given little importance. The second legal factor is the existence of discriminatory laws that give a man absolute freedom to use any undesirable method in his relationship with his wife, laws through which covert violence is applied to women. Iranian laws do not control violence against women, but also provide necessary permits.

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