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Problems Of Alternative Dispute Resolution Mechanisms And Proposals For Improvement: A Study In Bangladesh

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ABSTRACT

Alternative Dispute Resolution (ADR) is an alternative to a full-scale court proceeding and is applied in different situations in different ways, both formally and informally, mostly in civil cases in Bangladesh. Traditionally, people in rural areas have preferred to settle their disputes by the ADR process particularly, negotiation, mediation, conciliation and arbitration because this process is less time consuming and cheaper as well. An ADR process is very popular in Bangladesh as both the plaintiff and the defendant get their benefits from this process and as a matter of fact, the ADR reduces the work load of a formal judicial system in Bangladesh to a great extent. However, the laws relevant to the ADR processes are inadequate in various legal and litigative aspects and perspectives and there is no uniform law for the ADR in Bangladesh. Therefore, this research will critically analyze the existing laws relevant to the ADR and will suggest some guidelines to improve the existing process in Bangladesh by adopting qualitative research method.

Keywords: ADR, Alternative, Bangladesh Court, Dispute, Resolution.

1. Introduction

ADR is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their dispute in a way that is less formal and often more consensual than is done in the courts.[1] While the most common forms of ADR are mediation and arbitration, there are also many other forms, in particular, judicial settlement conferences, fact-finding, ombudsmen, special masters and others.[2] Albeit often voluntary, the ADR is sometimes mandated by the competent courts. An ADR can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look and feel very much like a courtroom process. Processes designed to manage a community tension or to facilitate community development issues can also be included within the rubric of the ADR, the systems of which may be generally categorized as negotiation, conciliation, mediation, or arbitration systems.[3] Negotiation systems create a structure to encourage and facilitate a direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their

relationship.[4] Mediators and conciliators may simply facilitate communicative interchange, or may help direct a speedy structure settlement, but they do not have the authority to decide or rule on a settlement. Arbitration systems authorize a third party to decide on how a dispute should be amicably resolved without recourse to further litigation.[5]

It is important to distinguish between the binding and the non-binding forms of the ADR. Negotiation, mediation, and conciliation programs are non-binding, and scrupulously depend on the willingness of the parties to reach a voluntary agreement. Arbitration programs may be either binding or non-binding.[6] A binding arbitration produces a third party decision that the disputants must follow even if they disagree with the result, similar to a judicial decision. A non-binding arbitration produces a third party decision that the parties may reject. It is also important to distinguish between the mandatory processes and the voluntary processes wherein some judicial systems require litigants to negotiate, conciliate, mediate, or arbitrate prior to a court action. ADR processes may also be required as part of a prior contractual agreement between the parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.[7]

Existing Laws Related To ADR In Bangladesh

Amendments Of Civil Procedure Code 1908

Sections 89A and 89B of the Code of Civil Procedure, 1908, deal with the provision for mediation. The application for a mediation may be submitted by both parties at any stage after filing the written statement that they will mediate the dispute after which the court would adjourn the proceeding for mediation. The Judge himself can mediate on the dispute under this section. The fee of the mediator shall be fixed by the parties and if the court mediates the dispute itself, the judge cannot claim any fee or charge for it. Within ten days after the order for mediation, both parties will serve notice in writing to the court on the progress of initiation for mediation and the mediation procedure will have to be completed within 60 days which can be extended to a further 30 days if necessary. If the mediation becomes successful, the mediator will draft an agreement on such terms and conditions as the parties have mutually agreed upon. The parties will sign on the established agreement after which the lawyers and representatives will then sign as witnesses. This agreement will be submitted to the court which will pass a decree. If the Judge mediates the dispute, he will also follow the same procedure as explained above. If the mediation procedure fails, the proceedings of the suit will start from the stage it has been stopped before mediation. If the mediation succeeds to adduce a statement, evidence or other statements made at the time of mediation, this can then be used at the time of trial of the suit.

Family Courts Ordinance 1985

When the written statement is filed by the defendant, the Family Court will fix a date normally not

more than thirty days from the date of filing the written statement for a pre-trial hearing of the suit. On the date fixed for the pre-trial hearing, the Court shall examine the written statement and documents filed by the parties and shall ascertain the points in issue between the parties. If no compromise or reconciliation is possible, the Court will frame the issues in the suit and fix a date for recording evidence.[8]

The Arbitration Act 2001

An arbitration in Bangladesh is governed by the Arbitration Act 2001. This Act repealed both the Arbitration (Protocol and Convention) Act 1937 and the Arbitration Act of 1940 and consolidates the domestic and international arbitration regime in Bangladesh. The Act provides that an arbitral tribunal may rule on its own jurisdiction that an arbitral tribunal will not be bound by the Code of Civil Procedure and Evidence Act of Bangladesh and that the arbitral tribunal shall follow the procedure to be agreed on by the parties.[9]

Disputes arising from contracts are usually settled through an arbitration in which these disputes are generally commercial in nature involving employment contracts, government contracts, contracts relating to business transactions, etc. The contracts must contain a clause, agreement or reference stating that the disputes will be resolved through an arbitration. As a result the arbitration must be conducted under the rules of the Arbitration Act 2001 and the rules of the Bangladesh Council for Arbitration. The arbitrations can take place where the parties choose or at the Bangladesh Council for Arbitration.[10]

The Village Courts Act 2006

On application of any party to any dispute or conflict, the chairman of the Union Parishad concerned can form a village court[11] which is composed of the Chairman of the Union Parishad and four representatives – two from each party one of whom must be a member of the Parishad.[12]Normally, the Chairman of the Union Parishad acts as the Chairman of the court, but whenever he is, for any reason, unable to act or his impartiality is questioned by any party to the dispute, any member of the Parishad can act as the Chairman.[13] The Village Courts have an exclusive jurisdiction to try all disputes that are enumerated in a schedule to the Act.[14]

The Conciliation of Disputes (Municipal Areas) Board Act, 2004

In every Paurashava, there is a dispute conciliation board. The Disputes Conciliation (Municipal Areas) Board Act, 2004 regulates the formation, jurisdiction and function of this adjudication body. The boards are structured and operated in the same way as the village courts, and have an exclusive jurisdiction to try all disputes specified in the schedule to the Act.[15] The list of offences is the same as that are tried by the village courts. However, commission of any of these offences by a person who had earlier been

convicted for any cognizable offence falls outside the jurisdiction of the boards.[16] Besides, if an offence amenable to the jurisdiction of a board is committed along with another offence not amenable to its jurisdiction then a joint trial becomes necessary and the board shall not exercise its jurisdiction to try the offence.[17] As in the case of the village courts, the boards cannot pass any order of imprisonment or fine. The only adjudication option is the order of compensation.[18]

The Artho Rin Adalat Ain 2003/ The Money Loan Court Act 2003

Sections 21 and 22 of the Artha Rin Adalat Ain, 2003 provide for the Settlement Conference after the filing of a written statement. The Judge may request the parties and their lawyers to remain present in Court to resolve the dispute. The Judge will convene the meeting and fix up the venue, procedure and function and the conference will be in camera in which the Judge will explain the matter in dispute before the parties or representatives, identifying their issues in dispute. If the parties or their representatives agree to resolve the dispute, they will sign the agreement and the lawyers and others will then sign as witnesses after which the Judge will pass a decree on the basis of the agreement and no appeal or revision can be filed from the decree passed on the settlement conference.[19]

Muslim Family Laws Ordinance, 1961

In family disputes, an alternative to the arbitration is also possible. The Muslim Family Laws Ordinance 1961 provides that the Arbitration Council can be set up by the Chairman of a local administrative Unit (otherwise known as Union Parishad) to resolve disputes relating to a divorce, for example. Polygamous marriages contracted without the permission of the relevant authorities are not rendered invalid, nor is there a penalty for failing to obtain the present wife's consent as long as the Council has permitted the polygamous marriage. In Jesmin Sultana v. Mohammad Elias[20] the Court ruled that section 6 of the Ordinance prohibiting the contracting of a polygamous marriage without the prior permission of the Arbitration Council is against the principles of the Islamic law.

The Code Of Criminal Procedure, 1898

Section 345 of the Code of Criminal Procedure provides for compounding of offences. Through Ordinance Nos. XLIX of 1978 and LX of 1982 some more offences of the Penal Code have been added in the list of compounding offences but the procedure provided therein being obsolete is required to be modified otherwise it will not give the parties a chance to avoid adversarial litigation altogether.[21]

The Bangladesh Labour Act 2006

The conciliation machinery is undoubtedly an important element of our industrial relation system. A conciliation in an industrial dispute becomes necessary mainly when the settlement of disputes fail at the bipartite negotiation level. In fact a conciliation can be taken as an extension of the function of a collective bargaining or simply as an "assisted collective bargaining" in which the conflicting parties

can have a fair chance of settlement of industrial disputes through the services of expert negotiators. If a bipartite negotiation fails, any of the parties concerned may request the conciliator[22] in writing to conciliate the dispute within 15 days from the date of the failure of collective bargaining.[23] The practice of conciliation is compulsory in Bangladesh before resorting to any industrial action. The role of the conciliator is to suggest solutions that can help find a compromise between the workers and the management, but he cannot impose a solution. The success of a conciliation depends on the willingness of the two sides to resolve their differences. If a settlement of the dispute is arrived at in the course of a conciliation, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute.[24] If the conciliation fails, the conciliator will try to persuade the parties to agree to refer the dispute to an Arbitrator for a settlement.[25] If the parties do not agree to refer the dispute to an Arbitrator for a settlement, the Conciliator shall, within three days of the failure of the conciliation proceedings, give a certificate thereof to the parties.[26] The conciliation proceedings may continue for more than thirty days if the parties agree.[27] The Director of Labour may, at any time, proceed with the conciliation proceedings, withdraw the same from a conciliator or transfer the same to any other conciliator, after which the other provisions of this section shall apply thereto.[28] An arbitration is a voluntary process for the settlement of an industrial dispute. When a conciliation fails, an arbitration may prove to be a satisfactory and most enlightened method of resolving an industrial dispute.[29] If the conciliation fails, the conciliator tries to persuade the parties to refer their dispute to an arbitrator.[30] If the parties agree to refer the dispute to an arbitrator for a settlement, they shall then make a joint request in writing to the arbitrator agreed upon by them. The arbitrator shall give his award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon by the parties to the dispute. After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government. The award of the arbitrator is final and no appeal shall lie against it. An award shall be valid for a period of not exceeding two years, as may be fixed by the arbitrator. In practice, no dispute is referred to the Arbitrator due to the fact that either the dispute is settled at the time of conciliation or if it fails the parties shall have the choice to go to the Labour Court rather than going for an arbitration.[31]

Existing Mechanisms Of ADR In Bangladesh

Arbitration

An arbitration is a private process where disputing parties agree that one or several individuals can make a decision on the dispute after receiving evidences and hearing arguments. An arbitration is different from a mediation because the neutral arbitrator has the authority to make a decision on the dispute. The arbitration process is similar to a trial in that the parties make opening statements and present evidences to the arbitrator. Compared to the traditional trials, an arbitration can usually be

completed more quickly and is less formal. For example, the parties often do not have to follow the state rules of evidence and, in some cases, the arbitrator is not required to apply the governing law. After a hearing, the arbitrator issues an award where some awards simply announce the decision (a "bare bones" award), and others give reasons (a "reasoned award").[32]

Mediation

A mediation is a private process where a neutral third person, called a mediator, helps the parties to discuss and try to resolve the dispute. The parties have the opportunity to describe the issues, discuss their interests, understandings, feelings, provide each other with information and explore ideas for the resolution of the dispute. While courts can mandate that certain cases go to a mediation, the process remains 'voluntary' in that parties are not required to come to any agreement. The mediator does not have the power to make a decision for the parties, but can help the parties to find a resolution that is mutually acceptable. It is indeed a litigative irony that the only people who can resolve the dispute in a mediation are the parties themselves. There are a number of different ways that a mediation can proceed. Most mediations start with the parties involving together in a joint session. The mediator will describe how the process works, will explain the mediator's role and will help to establish the ground rules and an agenda for the session. Generally, the parties then make opening statements. Some mediators conduct the entire process in a joint session. However, other mediators will move to separate sessions, shuttling back and forth between the parties. If the parties reach an agreement, the mediator can help reduce the agreement to a written contract which may be enforceable in court.[33]

Conciliation

A conciliation is a type of mediation whereby the parties to a dispute use a neutral third party, called conciliator, who meets with the parties separately in an attempt to resolve their differences. A conciliation differs from an arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek any evidence or call witnesses, usually writes no decision, and makes no award.[34] A conciliation differs from a mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes the parties' needs, takes feelings into account and frames representations. In conciliation, the parties seldom, if ever, actually face each other across the table in the presence of the conciliator, instead a conciliator meets with the parties separately. Such form of conciliation (mediation) that relies exclusively on caucusing is called "shuttle diplomacy".[35]

Negotiation

A negotiation is a voluntary and usually informal process in which parties identify issues of concern, explore options for the resolution of the issues, and search for a mutually acceptable agreement to resolve the issues raised. The disputing parties may be represented by attorneys in the negotiation. A

negotiation is different from a mediation in that there is no neutral individual to assist the parties to negotiate.[36]

Ombudsman

An ombudsman is a third party selected by an institution in particular university, hospital or governmental agency that investigates complaints by the employees, clients or constituents.

The ombudsman works within the institution to investigate the complaints independently and impartially. The process is voluntary, private and non-binding.[37]

Med-Arb.

It is considered as the blending of mediation and arbitration. Sometimes the mediator shall facilitate and on some cases he may decide on the disputed issues which will be binding upon the parties to follow.[38]

Settlement Conferences

A settlement conference is a meeting in which a judge or magistrate assigned to the case presides over the process. The purpose of the settlement conference is to try to settle a case before the hearing or trial. A settlement conferencing is similar to a mediation in that a neutral third party assists the parties in exploring the settlement options. Settlement conferences are different from a mediation in that settlement conferences are usually shorter and typically have fewer roles for participation of the parties or for consideration of non legal interests.[39]

Problems Of ADR In Bangladesh

A dispute resolution outside of courts is not new in Bangladesh; non-judicial and indigenous methods have been used by the societies for a very long time. But the main problem is that there is no uniform ADR law in Bangladesh. There are a lot of legislations which contain provisions relevant to the ADR process in Bangladesh and there are some well known ADR mechanisms in Bangladesh, such as, mediation, negotiation, conciliation, arbitration and so on.[40] Different legislation has prescribed different ADR mechanisms and different procedures to settle the dispute. This is a problem for the person who acts as a neutral mediator or conciliator because all procedures are different in different cases. Sometimes, the people who are involved in an ADR process are not properly trained and they do not have an adequate knowledge on how to manage and convince the disputants to settle the dispute. Sometimes, the decision of an ADR is biased and politically motivated. For this reason the vulnerable party is not getting a proper justice.

Conclusion & Proposals For Improvement

Although ADR programs can accomplish a great deal, however, no single program can accomplish all

these goals. They cannot replace formal judicial systems which are necessary to establish a legal code, redress fundamental social injustice, provide governmental sanction, or provide a court of last resort for disputes that cannot be resolved by voluntary, informal systems. Furthermore, even the best-designed ADR programs under ideal conditions are labour intensive and require extensive management.

In the development context, particular issues arise in considering the potential impacts of the ADR. Firstly, some are concerned that ADR programs will divert citizens from the traditional, community-based dispute resolution systems. This study has found a number of instances in which the ADR programs have been effectively designed to build upon, and in some cases, improve the traditional informal systems. Secondly, while the ADR programs cannot efficiently handle disputes between parties with greatly differing levels of power, they can be designed to mitigate class differences; in particular and third parties may be chosen to balance out inequalities among the disputants. Thirdly, there is no clear correlation between the national income distribution and the ADR effectiveness. ADR programs are serving important social functions in economies as diverse as of the Bangladesh. Finally, it is not clear from the evidence to date whether the ADR programs are more suitable for civil or common law jurisdictions. However, the ADR programs are operating effectively within both, but not enough data exists to compare the success rates under the two types of legal systems.

This Study is a first step in understanding the strengths and limitations of introducing the ADR within the rule of law programs. While past and present ADR projects have provided some significant insights into the ADR entity, there is still much to be learnt. More pragmatic analyses are needed on the range of possible strategies in using the ADR to support judicial reform, reduce power imbalances, and overcome discriminatory norms among disputants. Another important issue for study is how ADR programs may be replicated and expanded to the national level while maintaining sufficient human and financial resources.

These and other questions on the ADR's effectiveness can only be well answered by analyzing the evidences gathered from the ADR projects. Effective monitoring and evaluation of ADR systems are hard to find in developing and developed countries alike. Present and future ADR projects should have systematic monitoring and valuation processes in place to ensure not only effective programs, but also continued learning.

This study mentions the ADR's ability to advance development objectives other than the rule of law, such as facilitating economic, social and political change, reducing tension in a community, and managing conflicts hindering development initiatives. Further exploration of non-rule of law uses of the ADR is critical to complete the picture of the range of the ADR's applications. Before extension of

the frontiers of ADR in Bangladesh can be established, the article would propose the following:

a) There should be a harmonized uniform ADR legislation in Bangladesh which will be applicable for all types of the relevant cases.

b) An intensive training of concerned judges, lawyers and the court staff should be mandatory. The training will be on a continuous basis.

c) The ADR will have a smooth transition if it is introduced on a pilot court basis. The performances, results, reactions among pilot court judges, practicing lawyers and the litigants should be carefully monitored and recorded and suitable adjustments in the ADR project should be made at each stage of extension after an exhaustive study of the experiences gained.

d) The mediation or non-binding arbitration, in my opinion, may not be a suitable form of ADR in big commercial cases involving heavy amounts, such as, the Artha Rin Adalat cases, the applications before the District Judges in house building loan cases, the Bangladesh Shilpa Rin Shangstha and the Bangladesh Shilpa Rin cases as well as the insolvency cases under the Insolvency Act. I have suggested Early Neutral Evaluation or Settlement Conference as the proper result-yielding method of the ADR in such cases. I would advise an amendment to the special legislations covering these types of cases enabling trial judges to refer a case or part of a case at any stage of the suit for application of Settlement Conference, although the ideal time to start this process is after receiving the written statement.

e) The Government is the major litigant in this country, either as a plaintiff or as a defendant. Under P.D. No. 142 of 1972, the Government is a necessary party in all title suits, suits for specific performance of contract and so on. To make the ADR successful, P.D. No. 142 of 1972 should be amended providing that the Government does not enter appearance or after entering appearance do not file any written statement, or after filing a written statement do not contest the case, as any resolution of the dispute through the ADR or otherwise by the other parties to the dispute would be binding on the Government.

f) Labour Courts and Small Causes Court are the two areas where mediation should be introduced immediately on a priority basis, amending the two special legislations.

g) The Government should provide an adequate and sustainable fund for recruitment of judges and staffs for technical training.

h) It needs an adequate political support including mobilization and involvement of representatives/ advocates for disadvantaged groups.

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[20] *1997 (17) BLD 4,*
[21] *Ibid.*
[22] *Section 210(5) of the Bangladesh Labour Act, 2006 empowers the Government by notification in the official Gazette to appoint such number of persons as it consider necessary to be Conciliators for the purposes of the Act and shall specify in the notification the area within which, or class of establishments or industries in relation to which, each of them shall perform his function.*
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Power Rotation And Political Stability In Nigeria

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A B S T R A C T

This paper examines the concept of power rotation in Nigeria. It argues that the concept has become a popular cliché in the country and continually reflects in political discourse. It has also become a major cause of friction among the different ethnic groups and geo- political zones in the country. The paper concludes that power rotation is not particularly democratic and the proper mechanism is for power to rotate to the best candidate.

1. Introduction

Political stability forms the fulcrum upon which the society stands and all other things - developmental efforts, economic aspirations and human fulfillments - rotate round it. But one noticeable phenomenon inherent in the modern nation-states, especially in the third world, is political instability and this has continually stymied their social, economic and political developments. Giving the myriad of unending communal conflicts, civil strife, youth restiveness, leadership succession crisis, economic downturn, underdevelopment and insecurity plaguing it, the Nigerian state epitomizes a state under the throes of political instability. Perhaps, it would not be a misnomer to describe Nigeria as a ready case study in political instability.

Attempts to understand the spate of political instability in Nigeria have elicited divergent perspectives, with most of them subscribing to power configuration and/or arrangement as one of the causes. The point here is the belief of pattern of power configuration as a bane of political stability in the Nigerian state, which then suggests the very idea of power re-arrangement, referred to as power rotation. But this raises some key questions: why is power configuration a source of instability in the Nigerian state? What is the nexus between composing groups in a polity and power configuration? Has the idea of power rotation made much impact on political stability in Nigeria? This chapter attempts to answer these posers. It is divided into five segments. The first, the introductory, the second, the conceptual discourse, the third an interrogation of the historical antecedent of the struggle for power rotation, the fourth the rationale behind power rotation, the fifth a discourse of the idea of power rotation in the Nigerian polity and the sixth, the conclusion.

Power, State, and (In) Stability: A Conceptual Discourse

Embedded in the Weberian classical definition of the state is the imperative of power. Weber sees the sate as "a human community that successful claims the monopoly of the legitimate use of physical power within a given territory". Inherent in this perspective is the notion that the state is the only entity that is conferred with exercising power over the people. In other words, a state justifies its raison detre by the ability to exercise power over the people within a specified jurisdiction and the people are compelled to obey. This is premised on the fact that state power is seen as legitimate with the availability of necessary apparatuses of enforcement. Specifically therefore, power is central to the state without which its ability to discharge the basic duties expected of it becomes effete. Suffice is to say that power is central to the state and by this nature, the most sought after.

But the state is never a human form. In reality, it is an abstract entity (Johari, 1989:63) that exists only in the consciousness of the people. It is some people that exercise power over other people on behalf of the state. Therefore, and as argued by Richard Synder, the behaviour of the state is more or less the behaviour of the people put in charge of managing the state affairs (Synder, 1963:106-171). These people, who form what is referred to as the government, emerged out of the people that make up the state. So, when we say a state exercises power, what is meant is that some people exercise power over other people on behalf of the state. We can even stretch the argument further to say that the government is nothing but a group of people legally sanctioned to 'lord' it over other members of a polity.

The notion of "other members" of a polity leads us to the nature of the modern state. The contemporary state system has a major defining attribute in its multinational status (Otubanjo, 1988). With the exception of a few, most states are amalgams of assorted nationalities; differing in history, culture, orientation, temperament and idiosyncrasies. Some have emerged by design and most by accident; the former a product of deliberate coming together as evident in such countries as Trinidad and Tobago, Tanzania and the putative European Union; the latter a product of force as in the case of many African states, clobbered together by colonial powers. Apart from ethnic composition, the modern state is also characterised by duplicity of competing socio- political forces, which continually jostle and scramble for control of the state.

The poly-ethnic natures of the modern states, the competing social forces and the growing self-consciousness have made the concept of power even more imperative. Power is needed to enforce rules over the variegated human populace as well as allocate resources. Therefore, for being the major defining factor in human society, it is the case that groups and social forces in a polity would, naturally, want to have access to state power. But, at no time in history has all members of a polity ever directly held power at once. The convention is for power to pass from one group to the other. However,

contemporary realities have also shown that most groups or forces exercising state power, apparently out of the allure and perquisites associated with it, seldom want to let go of it easily; a development that has resulted in some groups and forces being excluded from power configuration. And these set of people, using their exclusion as trump cards, readily become the arrowhead of agitations, antagonism, rebellion, civil strife and sabotage, which are all indices of political instability, which invariably bear negatively on inter-group relations and development in all spheres. The reality that no group can hold power in perpetuity as well as the need to maintain peace among differing groups in a polity, for the purpose of achieving the all-important political stability, has necessitated the idea of power re-arrangement, also referred to as power rotation.

The Nigerian State, Power and (In) Stability

The Nigerian state epitomizes a state in perpetual flux, strife and agitations over power arrangement. Right from the days of colonial suzerainty to the present order, the clamour for access to power has been rife. Therefore, it is convenient to argue that the roots of power arrangement and or rearrangement are located within the interplay of forces operating at the realms of the socio-political and historical formation and operation of the Nigerian state.

That Nigeria is principally an external imposition is already a fait accompli. It is a colonial creation composing of different nationalities (Nwolise, 2005:117, Olowu, 1995:207) and its boundary, composition and nomenclature shaped by three personalities: Otto Von Bismarck, who presided over the Berlin Conference that partitioned Africa among the European powers in 1885, Sir Frederick Lord Lugard, who fleshed up the skeletal proposal of the Selborne Commission, which had in a 1898 report recommended the conjoining of the erstwhile two separate halves into one (Ballard, 1970: 333, Tamuno, 1989:4); and lastly, Lady Flora Shaw Lugard who, in what could be interpreted as an 'imperial pillow talk', coined the word Nigeria, and succeeded in influencing its adoption. The point here is that Nigeria is a conglomeration of variegated nationalities,imposed by foreign personalities and powers and such groups were held together by the power of force (Crowther, 1976:1), until a combination of external realities and internal struggles succeeded in putting an end to overt colonial system in the global milieu.

But before the departure of the colonial rule, a federal arrangement had been instituted. This was borne out of the exigencies of the time, what Arthur Richard described as creation along “natural divisions” of the country (Osaghae, 2002:7). In other words, the resort to federalism was not really a clamour for state power. As a matter of fact, the creation of regional government led to dispersal of power to the extent that some politicians prefer to remain in the regions. However, no sooner had the colonialists left the shores of Nigeria than the scramble for power ensued among the ethnic groups. This was essentially at

the behest of the nationalists who had fought the colonialists to a standstill but who, in the final analysis, were more interested in realizing their own personal desire for power.

However, the clamour for power has shifted to agitations for rearrangement, which now operates under the rubric of power rotation. The concept of power rotation connotes, as it implies, allowing state power percolates to all strata of ethnic or regional groups in the country, in such a way that state power will cease to be a an exclusive preserve of a particular or selected group (s). This simple definition presupposes the presence of a monopoly in the access to such, which has been found unacceptable to the Nigerian people.

From Transfer to Balancing and to Rotation: The Changing Stricture of Power Rearrangement Agitations in Nigeria

The clamour for power rearrangement has been a topical issue of discourse in Nigeria since the 1990s. However, this is not to be oblivion of the fact that it is a concept that is rooted in the distant past. In their epic struggle against the colonialists for independence, the nationalists had employed the usage of power transfer as a weapon of action and as a weapon of mobilisation. The transfer concept has assumed two forms: the transfer for involvement and a transfer for total control. The initial demand of the nationalists had been the opportunity to be involved in the colonial affairs (Onabamiro, 1983). Later, however, the request changed to a quest for transfer of power to the indigenes for total control of heir destinies. This was to play a dominant role in the struggles until independence was achieved.

The attainment of independence however changed the language to that of power balancing between the north and southern states. Then succeeding governments made it a convention to ensure ethno-regional and even religious balancing in their composition. In this wise, portfolios were shared based on the principle of balancing. Examples include the emergence of Nnamdi Azikiwe, a southern Christian as the partner to Sir Abubakar Tafawa Balewa, a Northern Muslim; the emergence of General Murtala Muhammed, a Muslim from the north and General Olusegun Obasanjo, a Christian from the south and later, General Olusegun Obasanjo and Genneral Shehu Yar'adua, a Muslim from the north. The emergence of Ibrahim Babangida as a Military President also led to the appointment of Commodore Ebitu Ukiwe and later Augustus Aikhomu, a Christian, as the second in command. Ditto for the government of General Sanni Abacha, a northern Muslim and General Oladipo Diya, a southern Christian as the deputy as well as that of General Abdusalaam Abubakar, a northern Muslim and Admiral Mike Akhighe, a Christian from the southern part.

However, towards the photo finish of the General Ibrahim Babangida's military presidency, the clamour had changed from power balancing to power rotation. This agitation eventually resulted in the emergence of Chief Olusegun Obasanjo, a Christian from the south and Atiku Abubakar, a Muslim

from the north. Perhaps, we may ask: why the clamour for power rotation? This answer shall be attempted presently.

Rationalizing the Quest for Power Rotation in Nigeria

Specifically, the clamour or struggle for power rearrangement had been fought on a number of reasons. The first is the perceived domination of a particular group and or region. Umaru Shinkafi alluded to this in his statement that Power shift arose from the notion that political power in Nigeria has remained in one section of the country for too long and to the exclusion of other sections of the country, hence the need to deliberately reserve the presidential slot for a section of the country perceived to be most politically marginalized (Shinkafi, 2003:1).

Specifically, the factor of perceived domination has an historical antecedent, which is located in colonialism. The colonial power, in their bid to maintain the stronghold over the people and prevent them from forming a united front, had resorted to the use of divide and rule tactic. This thrived in the propping up some groups as the most superior or dominant to others, and the making of others the underdogs (Gandu, 2004:72- 87). This situation, naturally, is a recipe for feelings of superiority in the propped up groups and feelings of resentment in the dominated groups. And this was to play out in the post independence political game plan, because, while the 'superior' groups wallow in the mentality of 'born rulers', the other groups also sought a stop, if not an outright reversal, to such. In other words, the feelings of 'master-servant' relationship, which the divide and rule had brought up, had to be resisted, which is epitomized in the clamour for power rotation.

The second factor is the spates of marginalization, oppression and injustice allegedly being perpetrated by the group controlling the levers of state power. It has continually been argued that the group, precisely the Hausa/Fulani ethnic group, had used power to fleece, as well as oppress, the rest. From this perspective therefore, the clamour for power rotation is a clamour for emancipation from alleged domination, economic privation and socio-political oppression in the hands of the 'oppressor' group. In many instances, this has been achieved with violence. In justifying the usage of violence in this instance, Dr Frederick Fasehun, the prime mover of the Oodua Peoples Congress (OPC) and a known agitator for power rotation argues that If the Yoruba people were involved in the struggle for independence of their nation and we achieved independence and we were relegated to the background so much that Chief Obafemi Awolowo, the most erudite Yoruba politician was denied power, the richest Yoruba man who was associated with the caliphate on everything, business, religion, mention it, he won an election equivocally and was prevented form attaining that position, that means no Yoruba person could have attained that position if we didn't fight (Personal interview, 2005).

The third factor, which is a corollary to the previous, has to do with the location of power. In the

Nigerian political environment, power is centralized in the number one position and all others, including the second in command, exercises power only at the discretion of the number one. Therefore, to be a partner may not necessarily translate to exercise of power. In that wise, the concept of partnering in power allocation has been found inadequate in assuaging the feelings of the agitators. This has made the quest for power rotation in such a way that the number one position would go round, a matter of intense struggle.

The fourth factor has to do with the fortunes of the Nigerian state after independence. The discovery of oil just at the twilight of colonial rule and its sudden importance in world economy, especially following the crisis in the Middle East in the 60s, had brought about a sudden fortune for the Nigerian state and the groups in charge have used it to advance their personal fortunes. Therefore, it became obvious that access to state power is synonymous with access to stupendous wealth. In interrogating this perspective, Claude Ake argues that The wealthiest people in Nigeria are generally people who have acquired wealth through state power: by political corruption, by access to state contracts, agency rates or concessions such as import licenses – which do not usually involve them in direct productive activity (Ake, 1996:29).

The realization of state power translating to easy wealth has therefore triggered quest for power rotation. It is the belief in this sense that once one's ethnic group is in power; it will facilitate one's access to the nation's till.

Added to the foregoing factors is the nature of the Nigerian federal practice, especially after the long rules of the military, which, following its capture by the military elites, has been reduced to a top-heavy arrangement in which power resides in the central government to the disadvantage of the states (Agbu, 2004). In such arrangement, there is the tendency for people to gravitate to the central government, where the power is. Adebayo Adedeji alluded to this as much when he argues that Thirty years of military government did succeed in turning Nigeria into a highly centralized polity. Whatever may be the theory of federalism and however federal Nigeria may formally be in its constitution, it is in operational reality far from being federal. The sharing of power and responsibility and the independence of action guaranteed to the state governments against an overbearing federal government have all but disappeared (Adedeji, 2003: 3).

As a result of centralisation of power, there arose the clamour for access to the state powers by the various groups and forces in the country, hence the struggle for power rotation.

But it is not at the federal level alone that power rotation is rife. In fact, it percolates to levels of the Nigerian state, i.e, state and local governments. The major factors adduced for its clamour at the federal

level also apply for the others; i.e., the variegated composition of the states and local government levels and the penchant for domination by particular groups and the desire for an end to continued domination and oppression.

Power Rotation and the Nigerian Polity

Discussions on the idea of power rotation in Nigeria can be subsumed under two major diametrically opposing perspectives: the inevitability of power rotation and the hollowness of power rotation, which fits into the realist-idealist debate. The first perspective, as the nomenclature implies, borders on the argument that the continued survival of the Nigerian state as an entity is hinged on power rotation. This argument is premised on the variegated nature of the Nigerian state in terms of population and contending social forces and the need to allow them have access to control of state power. The analysis here is that continued domination by one group, which translates to continued exclusion of others, will lead to crises that could consume the Nigerian state. The argument then is that power should rotate to the ethnic groups and social forces in turn. This is the most popular view amongst Nigerians.

From the idealist perspective, we see the idea of power rotation as hollow in the sense that it is undemocratic. In an ideal political system, the democratic process, not zoning or rotating, determines who wields power. In this wise, power should rotate to the best candidate on merit and not by excluding others on the basis of accidents of ethnic or geographical location. By all implications, the idea of power rotation smacks of inferiority complex as clamour for power rotation is an advertisement of relative weakness and helplessness, hence the need for the 'superior' groups to 'step down' for them. Since power conferment in not based on the logic of rigorous competition but on allocation, then power rotation, from this perspective, could breed incompetence. In capturing this sense of power rotation, Nafute Igho was of the opinion that Power rotation is a dynamic of social, economic and political process in a democratic polity. To legitimize this dynamic is to adulterate a fundamental tenet of democratic principles. We should allow the electoral process to determine the issue. The cry by a given ethnic group of marginalization under the Obasanjo presidency will not be resolved by itself, if that ethnic group is legislated to produce the next president. The cry is also noticeable in each of state of the polity, irrespective of its ethnic composition. E.g., the recent confirmation of Chief Onyema Ugochukwu as chairman of the Niger Delta Development Corporation was opposed by senators from his Abia state, who argued that their respected constituencies in the state had been marginalized by the government (Igho, 2000:5).

The strength of the two perspectives lies in the logic and plausibility of their propositions. Those who argue for power rotation on the basis of divergent and competing forces in the Nigerian polity are being realistic and in line with meeting the exigency of the moment while those who opposed it are applying

the democratic ideals, which tend to be universal. However, the fact must be made that democracy; though universal, has environmental imperatives, which dictate that each society must come up with its own ways of domesticating democracy according to its own experience and environmental dictates. The idea of power rotation is thus a response to environmental imperatives.

Therefore, giving the fact that Nigeria is a pot pouri of diverse groups and forces, with some relative weak in terms of size and strength, and with rivalry cum suspicions amongst them, it is likely that power rotation would help to restore sense of belonging, reduce restiveness and hence ensure stability.

Conclusion

This paper has been devoted to the analysis of power rotation and political stability, using Nigeria as a reference point. It has been demonstrated that political stability is central to any state system in its bid for development. Also, it has been established that the concept of power is central to any state, thus emphasizing the fact of its being the most sought after. A connection was made between group and the clamour for power in any political system, which made the quest for power a matter of intense struggle. This struggle, in Nigeria, resulted in the resort to power rotation as a way out of the quagmire. Most importantly, it was established that the Nigerian state is in a state of political instability as a result of faulty or unjust power rearrangement. This paper is in support of power rotation but with the proviso that merit must not be sacrificed.

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Marital Rape Under Indian Law: A Study

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A B S T R A C T

Marital rape violates the right of dignity of a married woman. It breaches the trust of wife. Even then, it is not criminalized as rape in India. It raises a question, is a married woman being considered an object or the property of the husband. It also raises the question, as to does a married woman has right to save her body from the lust of her husband. No doubt the purpose of the marriage is to provide right to have sex with wife. This paper points out whether this right can be coupled with force or right to have sex is only coupled with will or consent of wife. The purpose of the marriage in point of view of right to have sex should only be providing satisfaction of biological need without any check or burden of society and law. India has been a male dominated society and it is also a fact that Indian culture gives special status to the women. Today, we talk about women empowerment. Many rights have been provided to the women in India. But in a male dominated society, would women be empowered in real sense without criminalizing marital rape. The main purpose of this paper is to find out as to whether sex without the consent of wife should be considered as rape. Doctrinal method of research will be applied in this paper.

Key words: Marital Rape, Dignity, Consent, Constitutional Right

1. Introduction

"Happy marriages begin when we marry the ones we love and they blossom when we love the ones we marry"

Tom Mullen[1]

Marriage is an institution which admits men and women to family life. It generates love and trust. It is a stable relationship in which a man and a woman are socially permitted to have children implying the right to sexual relations.[2] Institution of marriage gives permission to a male and a female to live together under customary and statutory law. It is a special bond shared between two souls, who tie the wedding knot after promising to be companions for a lifetime. It is the physical, mental and spiritual unison of two souls.[3] When a male marries with a female, it means man is duty bound to give due respect to the dignity of wife. Now question arises whether marriage gives right to the husband to have sex with his wife forcefully or in other words, is marriage takes away the right of a lady to refuse to have sex with her husband. It is a debatable question in India in present scenario. Marriage generates confidence in wife that husband will provide safety and respect her dignity and when he commits unwanted/forcefully intercourse with his wife, it breaks this confidence and breaches the trust of the wife. In such circumstances, what is the need of providing immunity to the husband from committing

rape with his own wife?

This immunity has now been withdrawn in most major jurisdictions. In England and Wales, the House of Lords held in 1991 that the status of married women had changed beyond all recognition since Hale set out his proposition. Most importantly, Lord Keith, speaking for the Court, declared, 'marriage is in modern times regarded as a partnership of equals and no longer one in which the wife must be the subservient chattel of the husband.[4] " Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women.[5] Indian criminal law also demands changes and inclusion of marital rape in section 375 of Indian Penal Code. In the present scenario in India husband and wife both are having separate legal entity. Women in India are not only giving their major assistance in home but also outside the home. Marital rape breaches her trust on her husband.

1.2 Rape:

The dictionary meaning of word rape is "the ravishing or violation of a woman." The rape victim i.e. a woman as woman cannot commit rape due to biological reasons.[6] Rape is one of the most abhorrent crimes against a woman.[7] It is one of the most violent crimes on the earth.[8] It is a crime against humanity. It is the violation of Constitutional Right to Life of a woman. Rape is criminalized by Indian Penal Code except marital rape. Section 375 of the Indian Panel Code provides rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 16 years of age." According to this definition consent or will have great importance in deciding sexual intercourse as rape. It is the major parameter in rape to determine the liability of the accused.[9] A consent is not such a consent as is intended by any section of Indian Penal Code, if it is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or consent of insane person. Consent of insane person is the consent given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child. Consent of child is, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.[10] Section 375 rules out the possibility of marital rape when the age of wife is above fifteen years. On the other hand, if the girl is not the wife of the man, but is below sixteen, then the sexual intercourse even with the consent of the girl amounts to rape.[11] According to Section 375 unwanted intercourse with an unmarried lady or married lady except by her husband is rape but what about married lady if the unwanted intercourse is done by her husband. The concept of marital rape does not exist in India.[12] Here it appears that we are creating discrimination in rape committed with unmarried lady and rape committed with married women (15 years of age and

above) by her husband.

Exception to section 375 of Indian Penal Code provides that Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.[13] So, according to this exception, if the age of wife is under fifteen years then it will be rape. But punishment providedfor rape under Section 376 explains different position of marital rape. It provides that who commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Hence, punishment for marital rape shows the discrimination between, if the wife is under 12 years of age and if wife is more than 12 years but less than 15 years of age.

But there are no provisions to deal with the cases such as if rape is committed by her husband in collusion with third person or if rape is committed by both husband and third person. What will happen in such circumstances? Whether the third person will only be punished for rape or being husband, husband will not be punished for marital rape.

1.3 Marital Rape or Spousal Rape:

Marital or spousal rape is rape committed by one spouse against the other.[14] Now the question that arises is, whether to have sex with wife without consent is to be considered as rape or rape by male spouse will only be non-consensual sex with wife and not rape. Indian law does not criminalize marital rape. It also raises a question why it is not rape. Why it cannot be criminalized under section 375 of Indian Penal Code. It is a debatable issue. Under Indian penal code it is marital rape if the wife is below 15 years of age. The view of the Indian society regarding marital rape is shown in this example when a lady confided to her parents that she was being sexually abused by her husband, who forced her into violent intercourse with him, she was castigated for not giving the marriage her best.[15] The court in a case said "Defence counsel rightly argued that IPC does not recognise concept of martial rape. If complainant was a legally- wedded wife of accused, the sexual intercourse with her by accused would not constitute offence of rape even if it was by force or against her wishes". [16]

According to the UN Population Fund, more than two-thirds of married women in India, aged 15 to 49, have been beaten, or forced to provide sex. In 2011, the International Men and Gender Equality Survey revealed that one in five has forced their wives or partner to have sex.[17] The United Nations published a report that stipulated that 69% of Indian women believe that occasional violence was justified, for instance when a meal hasn't been prepared in time or when sex has been refused. Further statistical research reveals that 9 to 15% of married women are subjected to rape by their husbands, a staggering

and sobering statistic.[18]

Marital rape is a common but it is only un-reported crime. A study conducted by the Joint Women Programme, an NGO found that one out of seven married women had been raped by their husband at least once. They frequently do not report these rapes because the law does not support them.[19]

When we look towards the constitution of India, we find Article 14 which provides equality before law for women or we can say that all are equal before law. Article 15 (i) mandates the state not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.[20] But regarding marital rape women in India are not being treated equal. Equal treatment of law is not being provided to the victims of marital rape. Section 375 of the Indian Penal Code, 1860 discriminates with a wife when it comes to protection from rape.[21] Article 21 of the Constitution of India provides right to live with dignity. But marital rape clearly breaches the right of a married woman to live with dignity. Or in other words we can say that section 375 of IPC violates article 21 of the constitution regarding marital rape. Today there are many States that have either enacted marital rape laws, repealed marital rape exceptions or have laws that do not distinguish between marital rape and ordinary rape. These States include Albania, Algeria, Australia, Belgium, Canada, China, Denmark, France, Germany, Hong Kong, Ireland, Italy, Japan, Mauritania, New Zealand, Norway, the Philippines, Scotland, South Africa, Sweden, Taiwan, Tunisia, the United Kingdom, the United States, and recently, Indonesia. Turkey criminalized marital rape in 2005, Mauritius and Thailand did so in 2007. The criminalization of marital rape in these countries both in Asia and around the world indicates that marital rape is now recognized as a violation of human rights. In 2006, it was estimated that marital rape is an offence punished under the criminal law in at least 100 countries and India is not one of them. Even though marital rape is prevalent in India, it is hidden behind the sacrosanct curtains of marriage.[22]

In India, no doubt, Hindu religion and conjugal life gives right to have sex with wife. However, Hindu religion and its literature stress on purity, cleanliness and behavior of good faith in conjugal life, it cannot be said that Hindu religion and traditions exempts the heinous act of rape to wife. Sexual intercourse in conjugal life is a normal course of behavior, which must be based on consent. No religion may ever take it as lawful because the aim of a good religion is not to hate or cause loss to anyone.[23] The Law Commission of India in its 172nd Report on 'Review of Rape Laws' as well the National Commission for Women have recommended for stringent punishment for the offence of rape. [24] Report proposed that the sexual intercourse by a man with own wife not being under sixteen years of age is not sexual assault.[25] The commission was also not in favour of deletion of exception to section 375. The Protection of Women from Domestic Violence Act, 2005 has only created a civil remedy for marital rape, without criminalizing the same.[26]

For strengthening anti-rape law, Indian government constituted Justice Verma Committee on December 23, 2012 after the rape of a twenty-three year old student in Delhi, comprising retired Justice J.S. Verma, retired Justice Leila Seth and Solicitor General Gopal Subramanium to look into the possible amendments in the criminal laws related to sexual violence against women.[27] In view of the significance and urgency of the task, the committee undertook to perform it within 30 days, which task has been completed. The Committee is conscious of the recommendations in respect of India made by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) in February 2007. The CEDAW Committee has recommended that the country should "widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape….."[28] The Verma committee report points out a 2010 study suggesting that 18.8 percent of women are raped by their partners on one or more occasion. Rate of reporting and conviction also remain low; aggravated by the prevalent beliefs that marital rape is acceptable or is less serious than other types of rape. [29] The recommendation of Justice Verma Committee regarding deleting exception of marital rape is not included in Criminal Law Amendment Bill, 2013 passed by the Lok Sabha on 19 March 2013 and by the Rajya Sabha on 21 March 2013. The Bill received Presidential assent on 2 April 2013 and deemed to come into force from 3 February 2013. The word rape has been replaced with sexual assault in Section 375.[30] Rashida Manjoo, the UN Special Rapporteur on violence against women said that Justice Verma committee's recommendation and subsequent legislation was a "golden moment for India" but recommendations on marital rape, age of consent for sex, etc. were not adopted in the legislation.[31] The government is hesitant to criminalize marital rape because it would require them to change laws based on religious practices, including the Hindu Marriage Act 1955, which says a wife is duty-bound to have sex with her husband.[32] The parliamentary panel examining the Criminal Law (Amendment) Bill, 2012, said that "In India, for ages, the family system has evolved ... Family is able to resolve the (marital) problems and there is also a provision under the law for cruelty against women, It was, therefore, felt that if marital rape is brought under the law, the entire family system will be under great stress and the committee may perhaps be doing more injustice".[33]

Conclusion and Suggestions

Rape is a most heinous crime committed on a woman. It is immaterial whether women are married or unmarried. Rape is rape irrespective of the fact that who commits it either husband or stranger. Marital rape also violates the human right of a married woman i.e. safety and integrity. Government of India is reluctant in making marital rape a crime. If a woman who is under 16 years of age and consensual intercourse is done with her it will be rape but if she is married and husband forcefully committed sex with her, it will not be rape. Why marital rape is not being covered under Indian penal code. This discrimination should be deleted. Moreover, on one hand there are talks of empowering women and at

the same time we are not protecting the dignity and right to life of married women.

Rape is rape either committed by her husband or committed by third person. Marital rape should be covered under anti-rape laws in India because she should be allowed to protect her dignity. The study points out that married women are being raped frequently by their husbands. While official data on marital rape is meager, activists and lawmakers maintain there is plethora of evidence to imply it is on the rise.

If a woman marries, it should not mean that she has lost her dignity against her husband. She cannot be considered as a property of the husband. She should be empowered to say no, if she is not willing to have sex with her husband. Husband should not be allowed to force his wife to have sex with him. Rape should be considered only rape without any exception of marital rape. Marriage should not be considered as a license of committing rape. Justice Verma Committee recommended criminalizing marital rape as rape but this recommendation was not considered. So, Section 375 of Indian Penal Code should be amended in light of recommendations of Justice Verma. Any type of excuse such as that it will be hard to prove marital rape or criminalizing marital rape would destroy the institution of marriage, should not give right to the husband to play with dignity and sentiments of his wife. When husband commits marital rape, he also breaches his promise made by him at the time of marriage. Majority of the Indian women mainly agree with the occasional domestic violence. This mentality is the reason of violence against this much widespread violence. As soon India's women achieve consensus that sexual abuse is not acceptable, the lawmakers can follow the track and revise India's backward laws.

Succinctly, it can be said the dissimilarity between marital rape and non-marital rape should be removed because marriage does not provide license for committing rape and the dignity of women either married or unmarried is alike.

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Crime Against Urban Women In NCR (National Capital Region, Delhi)

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ABSTRACT

The concept of crime is a relative one and it varies in accordance with the socio-economic development of the society and is reflected in the moral and social values of a community.

Crime against women is definitely on the rise in the India's national capital. It is very unfortunate that even in the urban areas as high as 18 per cent of crimes are committed against women who are basically related to dowry and harassment by husbands and in-laws. This also exhibits the poor status of Indian women even in the capital city. Among the 12 metropolitan cities, Delhi accounted for 30 per cent of rape cases and 46 per cent of kidnapping cases in 1990.On the whole crime against women has gone up by 75% in 15 years between 1998 and 2011. The majority of crimes against women are matrimonial crimes. The rate of increase in cases of domestic violence is highest at 140 %, followed by kidnapping at 117%, rape by 60 % and molestation at 40 % between 1998 and 2011. However, as an exception, there was a substantial increase in the number of rapes and acts of sexual violence reported after December 2012 till March 2013.

Key Words—Crime, Matrimonial Crimes, molestation, Rape

1. Introduction

Under the IPC (Indian Penal Code) crimes against women include rape, kidnapping and abduction, homicide for dowry, torture, molestation, sexual harassment, and the importation of girls.Violence against women has become now a common phenomenon. Crime, no doubt is a complex social problem but in the recent decades, it has achieved new dimensions and has brought within its teeth children, youth and women. With the advance of industrialization and urbanization criminality is gradually rearing its ugly head all over the world.[1]It has touched new heights and dimensions in the numbers and operational patterns. Use of violence, even fatal attacks has become more common than they were some time past. The modern scientific developments in technology have not been able to stem the tide of this social problem.[2] The most interesting aspect of crime is that in every age and almost in every society, it has been regarded as a problem peculiar to the contemporary society and has always existed in one form or the other.[3] Further, there is no apparent reason to expect that it will not remain so in the near future.[4]

Crime is as old as the mankind in itself, but in the recent years it has increased in its dimensions and has attained new heights. It is difficult to find a society without deviance. Almost the entire society is directly or indirectly affected by such violence. Women as a separate class are subjected to a greater criminal victimization both inside and outside their homes. This victimization of women as pointed out by Aiyisha, [5] is due to a variety of factors such as historical, cultural and social, there is no society without its quota of crimes against women. No doubt, the problem of crime against women particularly against young married women is on increase. This type of violence usually consists in the form of harassment, torture, abuses, sexual assaults, beating, burning alive and sometimes even death.

Now the victimization of women has taken new strides and has significantly increased in the number. The exploitation and victimization ranges from molestation, beating to murder and in some cases includes even burning alive. The indifferent attitude and discrimination against fair sex starts right from her birth but in many cases takes a serious turn immediately after marriage.The issue of crime against women in urban areas has drawn significant attention among national governments across the world, irrespective of their development stage, as well as among international agencies, as a part of their concern for human security and, more importantly, in the context of the larger issue of human rights. As it is, urban safety and security, as evinced from the reports of member countries across the world in successive World Urban Forums, is becoming a major concern of urbanization and the focus of discussions is on violence abating measures and the role of the society in it. The vulnerability of women to urban life has assumed special significance in the context of reported unsafe situations that they are exposed to in every day urban life, having far reaching consequences on the growth and development of the city and the country.

Safety is important for women to act as an equal partner in the society. Personal security is central to every woman's physical, intellectual, emotional, economic and spiritual sense of well being. Crime and sense of crime are two critical factors that greatly undermine a women's sense of security and prevents them from becoming equal partners in society.

The global awareness about the unequal status of women in enjoying urban facilities is however, not new. The first public voice raised on women's safety in urban environment was three decades ago in North America. Since then many countries and international organizations, including the OECD and the UNCHS (now UN-HABITAT) have focused on this issue, especially in the 1980s and 1990s. After the beijing Women Summit in 1994, several commitments were made in many countries for full participation of women in the decision making process and in sharing power and authority. The Huairou Commission was set up to monitor the progress in the full participation of women in development of cities and in implementation of gender-based approaches to planning, development

and In India, women have been victims of humiliation, torture and exploitation for as long as we have had written records of social organization and family life. "The custom of infanticide is similarly responsible even now for no small loss of human life. In India there has been since time immemorial a strong prejudice against the birth of girls. Sons are preferred to daughters. This prejudice has often resulted in the killing of girls. The Rajputs were the worst offendersin this respect; they never wanted to be the fathers-in-law (sasur) of anybody. Father-in-law or brother-in-law was a term of abuse to them. In 1856 special inquiries were instituted by the Government. The committee visited numerous Rajput villages and found in some not a single girl. Another committee was appointed in 1869 and submitted the following report about the villages they visited. In seven villages, 104 boys and 1 girl; and in twenty-three villages, 284 boys and 23 girls were found by them " Haikerwal (1934)[6]

Man and Woman are born equal and both play vital roles in the creation and development of their families in particular and the society in general. Woman is not only the bread distributor but she is also as bread winner. She is working shoulder to shoulder with men. The greatest contribution of the Indian women like her counterpart in other parts of the world is through home, husband and children.[7]The middle class wives in the four major cities Bombay, Colcutta, Chennai and Delhi constitute about 17 per cent of the total working class of urban population. The findings of a study conducted on 1,600 women, revealed that they formed 22 per cent of the working force in Bombay to a minimum of 9 per cent in Calcutta. They contributed about Rs. 1,500/- on an average to each family income in addition to their regular household chores and ended up working for almost 18 hours a day.[8]

The history of the mankind reveals that the woman is and has been the foundation stone of a family in particular and the society in general. She is spiritual and direct agent of life forces and if the foundation is not properly maintained, the whole building of the human life is bound to crack down and dismember.[9]Further, among the most wonderful mysteries of our nature is that of sex, therefore, the mother that bore us must have our reverence. The wife through whom we enter parentage must have our reverence. Sex which governs so much of our physical life and has so much influence on our emotional and higher nature, deserves not our fear or contempt or our amused indulgence, but our reverence in the highest sense of term.[10]

Woman has been given a position of pride in every religion. Under Christianity and Hinduism, they are respected and due importance is given to their rights and privileges. Woman enjoyed a position of high esteem in the Rig Vedic period. No function of significance could be completed without her participation.[11] In the Quran, a complete Sura has been devoted for the welfare, rights and duties of women.[12]

It has been rightly pointed out that women have been and will always be what men make them. However, no philosophical student of comparative religion can fail to observe that at the foundation of every spiritual faith stands a woman, whose sympathy blesses the work of infusing new life into humanity.[13] A number of laws have been enacted in almost all the civilized countries to restore, maintain and project the status and position of the women. Such laws have also received international recognition.

A total of 2,28,650 incidents of crimes against women were reported in the country during 2011. The north eastern city of Tripura recorded the highest rate of crimes against women at 37 percent, compared to the national crime rate of 18.9 percent.

Kidnapping and abductions are up by 19 percent and trafficking rose by 122 percent in the same period. Crimes that include the Indian term "eve-teasing" or harassment and heckling and sexual innuendoes against women in public places including streets, public transport, cinema halls, along with the rape of minors and women in tribal and villages often go unreported and unrecorded.

According to records, Madhya Pradesh, a state with a large population of tribes, has recorded 3406 rape cases, the highest number of incidents in the country in 2011.

India's profile as an emerging modern nation has taken a beating by the recent rape case, as widespread gender-based violence has been exposed.

Crime against women is definitely on the rise in the national capital. It is very unfortunate that even in the urban areas as high as 18 per cent of crimes are committed against women who are basically related to dowry and harassment by husbands and in-laws. This also exhibits the poor status of Indian women even in the capital city1[4]. Among the 12 metropolitan cities, Delhi accounted for 30 per cent of rape cases and 46 per cent of kidnapping cases in 1990. It is a paradox that in spite of these measures women are becoming an important partner in the city management, they still remain a major victim of the violence in urban areas[15]. The rate of increase in cases of domestic violence is highest at 140 %, followed by kidnapping at 117%, rape by 60 % and molestation at 40 % between 1998 and 2011.The nature of women-related crimes has too undergone change between this period with the share of rapes, sexual harassment and immoral trafficking gone down in comparison to increased cases of domestic violence reported from across the country, says the study. However, as an exception, there was an increase in the number of rapes and acts of sexual violence reported after December 2012 till March 2013. The number of cases being reported was seen rising after the brutal Delhi gang rape cum murder case of December [16].

Objectives

In the present study crime against urban women in NCR has been analysed .The study attempts to examine the increasing rate of crime in NCR and the reasons for such increase. It also attempts to understand the spatial variations.

Study Area

The National Capital Region (NCR) in India is a name for the conurbation or metropolitan area which encompasses the entire Delhi as well as urban areas surrounding it in neighboring states of Punjab, Haryana, Uttarakhand, Uttar Pradesh, and Rajasthan. With a total area of about 33,578 km2 (12,965 sq. miles), it is the world's second largest urban agglomeration by population behind Tokyo and the largest by area.

A total of 15 districts in three neighbouring states of Haryana, Uttar Pradesh and Rajasthan along with whole of the National Capital Territory of Delhi constitute the National Capital Region (NCR) of India as defined in National Capital Region Planning Board (NCRPB) Act of 1985.These are: -

Area-wise contribution of participating states in the NCR.			
State	**Area (in km^2)**	**Area (in miles^2)**	**Population (2011 Census)**
NCT of Delhi	1,483	573	16,753,265

Area-wise contribution of participating states in the NCR.			
State	**Area (in km^2)**	**Area (in miles^2)**	**Population (2011 Census)**
Haryana	13,413	5,179	25,353,081
Uttar Pradesh	10,853	4,190	19,95,81,477
Rajasthan	7,829	3,023	68,621,012
TOTAL	33,578	12,965	310,308,835

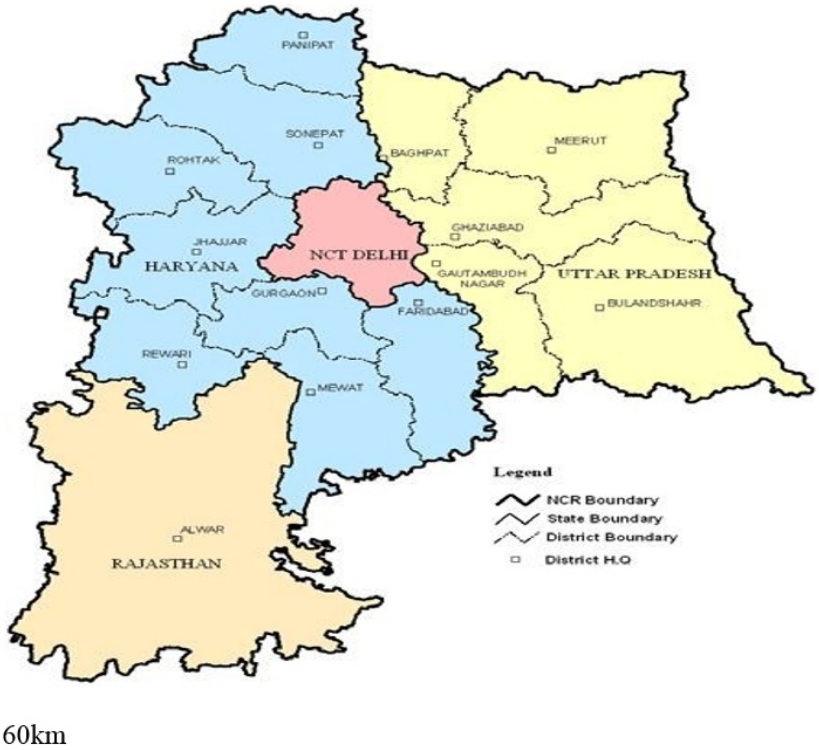

Figure 1: Map of NCR

The origin of NCR is traced to the recommendation of first ever Master Plan of Delhi, way back in the year 1962. The prime aim was to reduce the burden of increasing population in Delhi and the growing demand for more space owing to large scale industrialization. Therefore the neighbouring states like Rajasthan, Haryana and Uttar Pradesh came into consideration for developing satellite cities of Delhi. Gurgaon, Noida, Ghaziabad and Faridabad were the names that came up for developing the whole NCR region. The study used purposive sampling method to collect information from respondents belonging to diverse occupational categories spread across public places such as bus stands and market places of five cities of NCR (Delhi, Gurgaon, Noida, Ghaziabad and Faridabad).

Delhi comes under the governance of NCT, called the National Capital Territory. However, the Central Government does have some control over the administration and other departments. According to the census 2011, Delhi has a population of 11,007,835 persons, literacy rate of 87.60% and sex ratio of 875 females per 1000 males.

Methods And Material

Data has been generated from primary survey conducted in various strategic places of Delhi, Gurgaon, Faridabad, Ghaziabad and Noida. The study relies to a large extent, on primary sources. Secondary data have been examined to assess the situation at the macro level.

The key factors considered in the selection of locations for sample survey were places where safety of

women is likely to be endangered. These include public facilities, such as markets, parks, shopping malls, underground sub -ways and places below the fly-overs, educational institutions, cinema halls and restaurants, metro and bus terminus and railway stations, as well as work places like government and private office complexes.

The primary data were collected through canvassing of pre-tested questionnaires to 300 women. Secondary data were obtained from published and unpublished sources, data like violence and crime against women, nature of violence, predators characteristics etc provided by The National Crime Resource Bureau; National Commission for Women; Ministry of Women and Child Development, Government of India; Jagori, Delhi Commission for Women etc.

There were some critical constraints in obtaining genuine responses from select groups of women.

1. Many women were, in general, cautious in expressing their views and a sense of fear was visible on their face. Their response was guarded and they were careful in sharing their opinion and perspectives.

2. In case of government employees, the response was very slow.

The present study is based on primary as well as secondary sources. There are two types of data in secondary sources. One set gives detailed information regarding population and various socio-economic variables that have bearing upon crime pattern. Second set pertains to details regarding various aspects of crime. For the first set data was taken from census of India publication. For the second set data collected by NCRB (National Crime Record Bureau) was used. Secondary data was also collected from various literature available on crime against women. From all the available sources of information pertaining to crime against women it was very clear that such crimes are on the increase at national and international level. Thus a lot of hard work was put in for the collection and analysis of primary data.

The main aim of the primary survey was to unearth the problem of crime against women on the basis of the following two observations; It is a well-known fact that the reporting of crime against women is very less. But eve teasing, molestation, domestic violence and harassment at place of work are very common crimes confronting women of all walks of life. With this assumption a number of women were interviewed in an informal manner at various strategic points. Besides general questions pertaining to their socio-demographic profile they were asked to report about the above mentioned crimes. Major crimes against women such as rape, murder and kidnapping and abduction was not included in the survey for it is difficult for women to talk of such crimes in the public, but given a push they still would

share their experiences of minor crimes.

The study used purposive sampling method to collect information from respondents belonging to diverse occupational categories spread across public places such as bus stands and market places of five cities of NCR (Delhi, Gurgaon, Noida, Ghaziabad and Faridabad).The survey gathered and analysed information about the nature and forms of harassment faced by women. A total of 1132 females were questioned and it was possible to get a sample of 300 females who had been victims of eve teasing, molestation, domestic violence or harassment at place of work. The remaining may or may not been victims of crime. Some were not ready to respond and some were too much in a hurry to even think about the problem

It had not at all been easy task in making the victims of crime admit the fact. Thus, although the questionnaire was small, but to get information from each victim was time consuming for only after gaining the trust and confidence could it be possible to make them divulge the information required.

Following is the list of places where the interviews were conducted.

- Delhi-Bus Stands-Sarai Kale Khan, AnandVihar and Kashmere Gate
- Market Places-Jama Masjid, Rajiv Chowk, and Sarojini Nagar
- Gurgaon-Bus Stand
- Market Places-Sadar Bazar, Sector 14
- Faridabad-Main Bus Stand
- Market Places-Sector 15
- Noida-Bus Stand
- Market Place-Atta Market
- Ghaziabad-Old and New Bus Stand
- Market place-Navyug market

Results And Discussion

The issue of crime against women in urban areas has drawn significant attention among national governments across the world, irrespective of their development stage, as well as among international agencies, as a part of their concern for human security and, more importantly, in the context of the larger issue of human rights. It is a paradox that in spite of these measures women still remains a major victim of the violence in urban areas. Law enforcing and other related agencies have no idea of the actual volume and magnitude ofthe problem.

It was in this context, that this study was undertaken to find out the scenario of crime committed against urban women in the national capital region of Delhi. The focus of this study is to find out the various

types of crime committed and the legislations pertaining to such crimes. The study is a mix of literature search and a survey of women across age, economic and social groups in the city. The survey sample included 300 respondents.

Table 1-Profile of Victims- By Crime 2012

Cities	Delhi	Gurgaon	Noida	Ghaziabad	Faridabad	Total
Base	100	50	50	50	50	300
Figures in %						
Eve teasing	80	76	70	82	82	79
Molestation	9	12	-	6	10	8
Harassment	15	14	12	10	16	14
Domestic Violence	21	22	16	14	10	17

Source: - field survey by authors

On the whole it can be seen that out 300 victims surveyed 79 % have been victims of eve teasing at one time or the other in their life's , 8% were molested 14 % harassment at work and 17 % suffered domestic violence..

There is a considerable amount of legislative provisions at the national, state and city level.Crimes against women are broadly classified under two categories. The first category includes crimes identified under the Indian Penal Code (IPC), such as, rape, kidnapping and abductio n, dowry homicides, torture-physical and mental, molestation, eve -teasing or sexual harassment, importation of girls, and murder (other than dowry homicides). The second category covers crimes identified under the special laws (SL), such as immoral trafficking, demanding dowry, and indecent representation of women.

The environment of a city depends, to a considerable extent, on the socio- cultural and economic mix of the city population, its spatial distribution of income opportunities andliving habitats, access to key urban services for movements within the city and undertaking all activities. The quality and strength of the protective services like the policeand the laws to provide protection are other critical components that determine the safety dynamics of the city. As such, protection of women is a function of several interacting activities, which require being equally efficient in delivery of their services. All service providers have to interact positively among themselves to become an effective team that would ensure the safety of women.

The causative factors of a low level of safety environment in Delhi emerge from the city's population dynamics. Rapid urbanization and development become a magnetic pull factor for

continuingmigration, resulting in strong competitive environment for living and work space. This trend contributes to the expansion of the unsafe city environment, both for men and women, though the first target invariably becomes the women.

A large migrant population is always considered to place an additional burden on the safety environment. Ignorance of laws and behavior practices in a fast moving urban situation, along with competition among the migrants to find a foothold in a new environment, both for habitat and income activities, invariably results in conflicts and brings to the fore the safety issue.

Density of population is another component of the population dynamics that has to be addressed. Delhi has the highest density among all states/UTs in the country. Higher density results in congestion, which is an important contributing factor for facilitating the growth of crime against women.

Spatial dynamics adds to the problem of safety. Delhi is a classic example of integration of rural and urban lifestyles, upsetting expected urban behavior modes in modern cities. The city's area is also continuingly expanding, resulting in large spatial distribution of living and workplaces and substantial travel across the spatial spread. The comparatively inadequate public transport facilities, a priori, has an impact on the safety situation, due to congestion, overcrowding, and jostling to access to public services, among other factors. Women become a soft target in this process.

Economic dynamics further accentuates the situation. The economic growth has been considerably stimulated and sustained by the tertiary sector that contributes 71% to Delhi's GDP. This sector operates to a considerable extent through the informal economy, with levels of safety environment and practices which are lower than may be desirable in the context of safety of women. But the role of these economic activities cannot be overlooked in the context of Delhi's sustainability.

The final component of the city safety dynamics is the social dynamics. Two critical social dynamic parameters are the literacy rate and the sex ratio. Women are at a clear disadvantage in Delhi in terms of these parameters. A low sex ratio, from the safety perspective, is a factor that enhances the level of insecurity for women.

Delhi occupies the top place for reported crimes among 35 cities in India with million plus population, the share being 16.2%, as also in the rate of crime against women (27.6 per 100,000, compared to national average rate of 14.1). The crime mix includes rape, kidnapping, abduction, dowry deaths, cruelty, immoral traffic, molestation, sexual harassment, and eveteasing.

The following conclusions were drawn from the primary survey of victims in NCR in the year 2012.

The highest percentage (31%) of victims was from the age-group 25-35.

Table 2-Profile of Victims-Age wise

Cities	Delhi	Gurgaon	Noida	Ghaziabad	Faridabad	Total
Base	100	50	50	50	50	300
Figures in %						
15-25	11	10	16	22	28	16
25-35	33	24	28	34	36	31
35-45	37	30	24	24	14	28
45-55	14	36	26	18	8	19
55 and above	5	0	6	2	14	6

Source: - field survey by authors

At an overall level, majority of the people were literate with the minimum level of education being, Primary education. The percentage of post graduate is maximum in Delhi and Noida. Around half of the victims (47%) have an annual income between one lakh and three lakhs.About one third of the victims have annual income of less than one lakh. Across the cities it has been found that the birth place of victims was mainly rural. Across the cities, women have a nuclear family setup. In Gurgaon 34% of the victims have a joint family setup. On the whole it can be seen that out 300 victims surveyed 79 % have been victims of eve teasing at one time or the other in their life's , 8% were molested 14 % harassment at work and 17 % suffered domestic violence. Urban women of age group 25-35 more vulnerable to being victims of crime.

- Urban literate women are equally vulnerable to being victims of crime.
- Both rich and poor women are susceptible to being victims of crime.
- Eve teasing followed by domestic violence and harassment at workplace are very common crimes in the NCR region.

An important concern of women in Delhi is that the common factor in crimes against women is that these take place in public domain except for domestic violence, indicating absence of measures for safety of women in public places as well as lack of awareness or enlightenment among people to intervene when an incident takes place.

Even from a cursory view of the study area it is very much evident that the cities of the Delhi, Gurgaon, Faridabad, Noida and Ghaziabad are all coming up with the best of amenities and infrastructure. And over the years literacy rates and sex ratio of these cities too have come up remarkably well. Now there are two facts related to crime. Firstly crime against women has risen over

the years. Secondly such crimes are now affecting both rich and poor urban women. So now it is not possible to blame shabby environmental conditions are low literacy rate and low sex ratio for occurrence of such crimes. Thus it is not just the living conditions that are responsible for the making of the criminals but mind set of the peoples that have created an environment that is unsafe for women. And this typical mind set is now permeating the whole environment of NCR. And thus crimes against women are on the rise with increasing population.

Recommendations

Respect of women to be inculcated from childhood and schools and colleges need to include it in their syllabi of moral science or environmental science. Doing this wouldimprove the status of women and create a friendlier environment for women to work and travel.

Effective security has to be provided after 7 pm in the transport vehicles and work places and the journey terminals have to have a strong presence of security personnel, proper lighting, public amenities, and strict supervision of road vendors and service providers.

It is vital to reduce density and congestion, in the work areas and informal economic activity zones. Ensure some minimal standards of security with respect to working women and amenities for them in their work place.

Social awareness and sensitization should be a high priority program. It should cover the police personnel, citizens of Delhi, migrants to Delhi and the victims/prospective victims of crimes against women. Apart from providing knowledge and information, a component of training to face situations of crime has to be included. Training in self-defense techniques is another important requirement.

Mere laws are not enough, but it is important to have proper and effective machinery for enforcement of such laws. Moreover, the co-operation of the people is also essential for the effective implementation of the social welfare legislations for which awareness about such laws should be created among the masses.

Last, but not the least is to improve trust in the police so as the reporting of crime is not hampered.

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