

MEDIATING DOMESTIC VIOLENCE DISPUTES IN THE COMMUNITY MEDIATION PROGRAMME IN SRI LANKA: ISSUES OF WOMEN'S EQUALITY AND EQUITY

In 1999 the UN Rapporteur on Violence Against Women stated that more than 60% of Sri Lankan women is subject to some form of domestic violence¹. This acceptance that domestic violence is a widespread problem in Sri Lanka resulted in a concentrated effort by government and civil society organizations to have domestic violence recognized as a crime. In 2005 a new law² was enacted to provide protective relief to victims of domestic violence. With the enactment of the law came a widespread recognition that domestic violence is a crime, and gradually brought into the public a previously hidden issue in society. Despite this recognition domestic violence continues to be seen as a private family dispute and carries with it —the burden of stigma on women, social and economic vulnerabilities faced by women, lack of supportive access to justice and formal protection systems and socialization processes that minimize the gravity of domestic violence as preventing women recognizing, reporting and taking action on domestic violence³. Those women who have the strength to break the silence on domestic violence or take the issue outside the private sphere are treated in diverse ways by the justice system in Sri Lanka. The formal courts of law offer protection for victims and punitive action can be taken against perpetrators. This however is for those who access the formal justice system which is not preferred by many. Instead, domestic violence disputes are sent to community mediation boards.

Community mediation boards are mandated by law⁴ to look into domestic violence disputes with the aim of facilitating a negotiated settlement where both parties to the dispute amicably agree to a settlement that would end the dispute. They are popular and widely accessed but mediation boards have not paid much regard to women's equality and has marginalized women in certain situations. Thus in mediating domestic violence disputes where the majority of victims is women, the implications of the process on women's equality are serious, if gender equality and gender equity standards that the country prescribes to are to be respected.

Based on a background of the principles of gender equality that Sri Lanka ascribes to, and within socio cultural norms, attitudes and practices that often create unequal situations for men and women in Sri Lanka, understanding implications on women's equality and equity in domestic violence mediation involves the study of how women's equality is affected (denied or not) within the community mediation process in its addressing of domestic violence disputes.

The theory pertaining to this straddles two disciplines; feminist legal theory and the approaches to equality set out in feminist legal theory, and mediation theory. Literature that combines feminist legal theory and mediation approaches is scarce but literature available on each individual theory provides an opportunity to make deductions on an approach that straddles both theories.

Feminist legal theory⁵ is based on the belief that the law and legal processes have been a key sphere in women's historical subordination. Feminist legal theorists see law and the implementation of the law as reflecting the male view of the world and thus incorporate everything that subordinates and discriminates against women. Feminist legal theory or feminist jurisprudence as it is also known seeks to

understand and explain the ways in which law and legal processes play a role in women's subordination. It also works towards changing women's status by reworking law and its approach to gender.

In mediation discourse, the implications of mediating domestic violence disputes are identified as many. Different schools of thought have expressed views on mediating disputes of domestic violence viewing the process as beneficial or as extensively detrimental. There are arguments in favour of mediating domestic violence disputes on the basis that the mediation process is more empowering and more effective for victims than engaging in court proceedings while opponents of mediating domestic violence issues have long argued that mediation is inherently unfair and potentially unsafe for victims. There is still a third school of thought that argues that the mediation process may be helpful but that a case-by-case determination of appropriateness must be made.

While feminist legal theory concludes that the sphere of law (including legal processes and dispute resolution processes) is male centric and contributes to the denial of women's equality and equity, literature on mediating domestic violence disputes is divided on the issue. One school of thought by opponents⁶ of mediation as a process for addressing domestic violence disputes states that women's equality and equity is compromised and thus denied through mediation. The other school of thought comprising proponents⁷ of mediation as a suitable process for mediating disputes of domestic violence are of the view that women's equality and equity is assured in the mediation process.

The review of existing literature on mediation shows the debate between proponents and opponents of mediation as an acceptable dispute resolution process for disputes where domestic violence is a factor. The literature also discusses the possibilities (ways and methods) of mediating domestic violence disputes keeping the interests of parties safe and the implications of power, impartiality, neutrality and external factors such as culture on mediating domestic violence disputes. The literature is explicit on factors that impact on the position of women in such mediation processes.

However there is a gap in understanding women's equality and equity as postulated in feminist legal theory and its approaches to equality in the context of mediating domestic violence disputes. The existing literature on mediating domestic violence disputes does not clearly highlight the impact of bringing domestic violence disputes to the semi private sphere of mediation boards and how this impacts on women's equality and equity. Furthermore, the literature on the same is exceedingly scarce on the situation in Sri Lanka.

1 E/CN.4/1999/98, 1999 p.16

2 Prevention of Domestic Violence Act No. 34 of 2005

3 Hussein, A. 2000. Sometimes there is no blood: Domestic Violence and Rape in Rural Sri Lanka. International Centre for Ethnic Studies. Colombo.

4 Mediation Boards Act No. 72 of 1988

5 Kapur, R. and Cossman, B.1996. Subversive Sites: Feminist Engagements with law in India. Sage Publications. New Delhi.

6 Felstiner and Williams (1978), Menard and Salius(1990), Grillo (1991), Stamato (1992), Chance and

Gerencser (1996), Lechtenstein (2000), Tishler et al (2004)
7 Cobb (1997), Fineman and Mykitiuk (1994)