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Critical Analysis of Rape Laws in Pakistan: Still Long Road to Seek Justice

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ABSTRACT: Rape is among the most committed felonies in Pakistan and is counted among the dismal league of such countries which have a daunting number of reported and unreported incidents of sexual crimes. According to the Human Rights Commission of Pakistan (HRCP)'s recent report, a minimum of 11 rape cases are reported daily and more than 22,000 were reported in the last six years, i.e., 2015-2021. Hudood Ordinance, 1979 was the first law to recognize Rape as an offence and later, laws have kept evolving. Lately, the Government of Pakistan, considering the growing inadequacy of the prevalent laws to deal with the raging situation, has enacted The Anti-Rape (Investigation and Trial) Act 2021 (the Act) which consolidated the previously scattered rape laws in the country. Although being the best effort, so far, to redress the rape victims, unfortunately, this Act is not only riddled with myriad of substantive and procedural flaws but is also facing enormous difficulties in implementation process. Lack of training of already burdened Police & Prosecution departments, no traces of establishment of Anti-rape crisis cells (ARCCs) and formation of Special Investigation Officers and Joint Investigation Teams yet to aid the victim, serious dearth of resources required to implement the Act, creation of multiple forums rather than building on the existing legal infrastructure and no mention of sexual molestation in the Act are to name a few. This paper shall discuss the remedies to overcome the shortcomings in substantive and procedural laws as well as in the implementation process of the Act.

KEYWORDS: rape, rape law, sexual violence

Introduction

Rape is among the most prevalent crimes in the world and unfortunately, Pakistan is not an exception. Rather, the figures depict that the sexual crimes atop the list of the most committed felonies in Pakistan. According to a report published by the Human Rights Commission of Pakistan in 2021, 11 rape cases were reported daily and 22,000 cases were reported in the span of six years, from 2015 to 2021 (Desk 2020). In 2021 in Punjab only, there were 4329 rape cases out of which 269 were cases of gang rape and 193 were cases of rape of minor victims (Zia 2022, 31). The legal response of the governments have been varied in approach and infrastructure establishment yet all aimed at curbing the ever-rising number of sexual crimes in the country. Some of the laws passed were either unsuccessful or inadequate in addressing the said issue, where some, contrary to the purpose of their formulation, hugely harmed the fair sex. Initially, the *Pakistan Penal Code (Act XLV of 1860)* (the PPC), the *Code of Criminal Procedure, 1898 (Act V of 1898)* (Cr.PC), the *Dissolution of Muslim Marriages Act, 1939* provided general protection against various issues the women of that times were facing. The specific response to sexual crimes may,

however, be traced back to 1979, when General Zia-ul-Haq, the then chief executive and martial law administrator of the country, enforced the *Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979* and the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979)* (the ‘Hudood Ordinances’) which, on one hand, raised a loud clamour from almost all sections of society and on the other, instead of providing protection and redressal to women, became a nightmare for them by putting the victims behind bars, instead of the offender, for not proving the offence, living up to the extraordinarily high threshold of rendering evidence.

From this point, until now, ranging from *The Protection of Women Act (Criminal Laws Amendment), 2006* (The PWA), *The Protection against Harassment of Women at the Workplace Act, 2010*, *The Benazir Income Support Programme Act, 2010*, *The Women in Distress and Detention Fund (Amendment) Act, 2011*, *The Hindu Marriage Act, 2017*, and *The Punjab Women Protection Authority Act 2017* to *The Domestic Violence (Prevention and Prevention) Bill, 2021*, many legislations have been enacted and enforced to prevent the commission of crimes against women, yet the ghastly instances like *Zainab Rape and Murder Case (2018)* and *Motorway Gang Rape Case (2020)* stripped the government off the credibility in providing safety and redressal to victimized women and casted a serious doubt on the sufficiency of legislative efforts on the subject matter. Therefore, the *Anti-Rape (Investigation and Trial) Act, 2021* (The Act) was passed by the Parliament on 3rd December, 2021. Although, the Act being the special and only law to deal with rape cases is a significant milestone towards evolving legal infrastructure yet, to this day, it has been unsuccessful in stemming the stalking rage of cases of rape and sexual abuse in Pakistan.

This paper will look into the efficacy of the laws before the Act in addressing the rape offences as well as sexual abuse crimes while also discussing the factors that warranted the legislative effort such as done and expressed in form of promulgation of the Act. Moreover, a critique as to the shortcomings in the substantive and procedural portions of the Act in addition to discussing lags and hurdles in its implementation will also be included. Concluding, the paper will discuss the recommendations that can help overcome the shortcomings in the Act to live up to its *raison d'être*.

A Critique on Efficacy of Laws before the Anti- Rape (Investigation and Trial) Act, 2021 (The Act)

Since 1947, the *Pakistan Penal Code (Act XLV of 1860)* (the PPC), the *Code of Criminal Procedure, 1898 (Act V of 1898)* (Cr.PC), and the *Dissolution of Muslim Marriages Act, 1939* provided general protection against various, multi-faceted issues the women of those times were facing. The specific response to sexual crimes may, however, be traced back to 1979, when General Zia-ul-Haq, the then chief executive and martial law administrator of the country added new criminal offences of adultery and fornication in his famed *the Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979* and the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979)* (the ‘Hudood Ordinances’) for which new punishments of whipping, amputation, and stoning to death were introduced. Being a part of General Zia-ul-Haq's “Islamisation” spree, the Hudood Ordinances were intended to implement Shari'a law to not only replace parts of the British-era PPC but also bring Pakistani law into “conformity with the injunctions of Islam”, by enforcing punishments mentioned in the Quran and Sunnah for Zina (extramarital sex), Qazf (false accusation of zina), theft, and consumption of alcohol. These efforts faced much criticism when hundreds of incidents where women subjected to rapes, or even gang rapes, were accused of Qazf and incarcerated as the Hudood ordinances made it exceptionally difficult to prove an allegation of rape. According to the Hudood Ordinances, the victimized woman was

required to produce four adult and male eye witnesses to prove the offence of rape and in case of failure to do so, she was to be jailed for false accusation of rape. The Hudood Ordinances failed to draw a distinction between adultery and rape, and the women were dealt as “*guilty until proven innocent*” (Saboor 2014, 77).

The controversy and censure regarding the Hudood Ordinances resulted into parts of the law being extensively revised in 2006 by *The Protection of Women Act (Criminal Laws Amendment), 2006* (The PWA) after twenty-seven long years. The PWA reinstated the PPC – adding the crimes of ‘fornication’¹ and ‘false fornication’² - as a legal instrument to redress the crimes of sexual nature, and formed entirely new procedures to conduct judicial proceedings for adultery and rape. Moreover, clauses regarding whipping and amputation as punishments and incarceration of women on inability to prove the rape offence were also removed. In the words of Martin Lau, complaints of rape would not be seen as confession of adultery anymore (Lau 2007, 1297). PWA stands to this day despite potent criticism from religious factions on allegedly being against the injunctions of Islam. Later, furthering the reform process, in 2016, at both Federal and Provincial levels, important legislations were made. Punjab Assembly unanimously passed the *Punjab Protection of Women against Violence Act (PPWVA) 2016* which bears remedies for women being victims of violence. Presently, PPWA is pending for review in Federal Shariat Court (FSC). On the specific subject of rape and honour killings, meanwhile, two important legislations were made i.e., *the Anti-Rape Laws (Criminal Laws Amendment) Bill, 2014*, and *Anti-Honour Killings Laws (Criminal Laws Amendment) Bill, 2014*, and *Criminal Law (Amendment) (Offense of Rape) Act 2016* (CLA), introducing stringent punishments for perpetrators of rape and honour killing. The CLA introduced, inter alia, modern technology into investigation and trial processes, making DNA testing mandatory in rape cases and permitting the recording of statements of victims and witnesses via video links. Meanwhile, on the sidelines, many bills and acts, unrelated or remotely related to the topic, were passed by federal and provincial legislatures, addressing the extensive range of multi-coloured issues related to women. A few such significant legislations are just mentioned ahead: *The Protection against Harassment of Women at the Workplace Act, 2010*, *The Benazir Income Support Programme Act, 2010*, *The Women in Distress and Detention Fund (Amendment) Act, 2011*, *The Hindu Marriage Act, 2017*, *The Punjab Women Protection Authority Act 2017* and *The Domestic Violence (Prevention and Prevention) Bill, 2021*.

Enactment of The Anti-Rape (Investigation and Trial) Act, 2021

However, all these laws proved to be ineffective not only in providing women with the required security, protection and stake but also in preventing or redressing the offences against them especially of Rape and other sexual crimes. Instead on filling the lacunae in the Criminal Justice System of Pakistan and ensuring the deserved punishment regimes for the offenders, unfilled gaps in the system caused acquittals in huge numbers (Hasan 2020, 16). *Figure 1 figuratively elaborates the situation.

In this wake, the *Anti-Rape (Investigation and Trial) Ordinance, 2020* (the Rape Ordinance) was promulgated amidst the chaos and public pressure for reforms when the earlier laws failed to provide protection to women and the horrendous cases of sexual assaults against women and children continued to increase. On the top of the list were *Zainab Rape and Murder Case (2018)* and *Motorway Gang Rape Case (2020)* which

¹ The Protection of Women Act, in section 496(b) defines fornication as “a man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.”

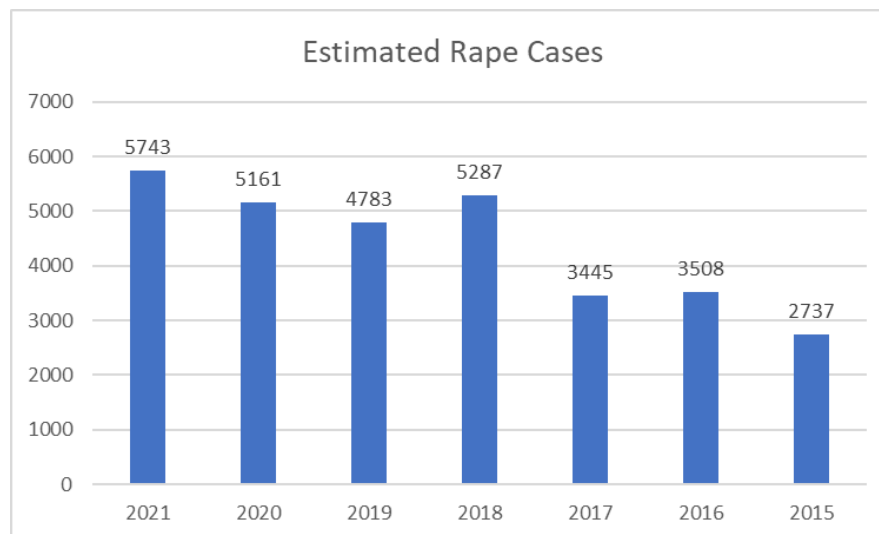
² The Protection of Women Act, in section 496(c) defines false fornication as “whoever brings or levels or gives evidence of false charge of fornication against any person.”

shook the whole nation and inspired a struggle in varied cross-sections of society for reformation in the legal infrastructure to deal with such crimes (BBC News 2018).

A brief elaboration of the two cases afore-mentioned is hereby given. Zainab Amin Ansari - a seven-year-old Pakistani girl - who was abducted in her hometown of Kasur, Punjab while she was on her way to Quran recitation classes on January 4th, 2018. Her body was found discarded five days later within a garbage disposal site near the city of Lahore on 9 January 2018; an autopsy report disclosed that she had been extensively raped and tortured before being strangled to death. Her rapist and murderer, 24-year-old Imran Ali, was arrested and identified as a serial killer responsible for at least seven previous rapes and murders of prepubescent girls in the region. Ansari's murder incited widespread protests and outrage throughout Pakistan, and ultimately led to the passage of Pakistan's first national child safety law, known as the *Zainab Alert Bill* also called *Zainab Alert, Response and Recovery Act 2019*. This Act defines the system of one window operations to notify the public and recover kidnapped children in Pakistan. The bill originated in Pakistan and defines its own comprehensive indigenous version of Amber Alert in United States. The bill creates a new federal agency called ZARRA, which shall be responsible to reduce child kidnapping, improve recovery and increase awareness against sexual abuse of children across Pakistan. Zainab Alert Act provides ease of use to the missing child's parents/guardians to notify the Police. The Act also provides a process for the local police department to issue an emergency alert using emergency broadcasting system on mobile phones within a 20 km region where the child was last seen. A major key feature of the Act is to establish a national database of missing and recovered children applicable across Pakistan and makes ZARRA agency accountable to submit quarterly reports to the National Assembly of Pakistan. It also directs that any individual found guilty of child abuse faces a minimum mandatory sentence of life imprisonment and also stipulates instigating legal action against law enforcement official who causes any unnecessary delay in investigating such cases within two hours of a child being reported as missing.

On 9 September 2020, a Pakistani-French woman was travelling along with her children and near Gujjarpura, her car ran out of fuel. She called her relative for help and upon him arriving, she was found awfully panicky and bore blood stains upon her apparel. Two armed men, broke her vehicle's windowpanes and took her and children out of the car to a nearby forest where she was gang-raped by those two-men in front of her children and later, she was robbed of her valuables. These terrible incidents initiated a debate on media and in policy making circles regarding rise of the cases of sexual violence in the country as well as the inability of the law enforcement mechanism to provide security to citizens as even a street outside home or a drive on a motorway can prove to be perilous for women as young as 7 years old. No women felt safe.

On 1st December, 2021, the Rape Ordinance was passed by the Parliament with the classic objective of protecting the general body of women and redressing the wronged, more precisely raped, but despite the series of the efforts done since long culminating into promulgation of the Act, statistics of rape cases in Pakistan, as referred in Figure 1, show, is on the continuous rise. The complete data for the year 2022 is not made available yet, however, according to the official websites of the Punjab Police and Sindh Police, 2461 rape and gang rape cases in Punjab and 238 rape and gang rape cases in Sindh are registered from January 01st 2022, till July 31st 2022, and it is an unfortunate trend in Pakistan that due to victim blaming and community shame, a large number of cases are never reported.



*Figure 1. Estimated Rape Cases in Pakistan

*Values taken from the annual reports by Human Rights Commission of Pakistan.

**Numbers include rapes/gangrapes of women and minor.

Critical Analysis of The Anti-Rape (Investigation and Trial) Act, 2021

The Act has not lived up to the expectations of the makers and public at large because of the shortcomings in procedural and substantive flaws and lack of vigor and other such halts in its implementation process.

Substantive Law Shortcomings

The Act lacks intellectual clarity which is obvious from its bare perusal. An example is indeterminate status of ‘unnatural offences’ in the Act, which include sodomy and other such offences committed against the males. It is dealt under section 377 of the Pakistan Penal Code, 1860. In this Act, the ambiguity is created by inconsistency between sections 2 (h)³ and 2 (k)⁴ wherein the former defining ‘sex offender’ mentioned the accused committing unnatural offences, but latter excluded adult male while defining the term ‘victim.’ Further, the transgender community which constitutes a fairly considerable number of the total population of Pakistan and which according to a recent press release conducted by the Williams Institute at UCLA School of Law is over four times more prone to be victims of sexual offences, aren’t the subject matter of the Act at all (2021). This not only exhibits lack of comprehensive understanding of offences related to violation of sexual privacy but also hints at the regressive approach with regards to gender awareness and the problems they encounter in Pakistan.

Section 5 of the Act (*Power, duties and functions etc. of the Anti-Rape Crisis Cell*), has enumerated certain tasks which the crisis cells are to undertake ‘expeditiously’. There is no time frame given in which the listed tasks are to be performed or completed. This loophole granting discretion to the people at the helm of affairs – be it staff at the Anti-Rape Crisis Cell or Police personnel, is bound to engender administrative anomalies and consequently loss of precious, time-sensitive evidence as time is of the essence in the performing medico-legal examination and collection of evidence in cases related to sexual offences. Section 8 of the Act faces a

³ "sex offender" means and includes any person convicted under sections 292 A, 292 B, 292 C, 371 A, 371 B, 375, 375 A, 376, 377, 377 A, 377 B of the Pakistan Penal Code, 1860 (XLV of 1860) or sections 21 and 22 of the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016).

⁴ "victim" means a ‘woman’ or ‘child’ who has been subjected to scheduled offences.

similar issue. Section 8, dealing with “*Victim and witness protection*” in sub-section (i) mentions “*special security arrangements for witnesses and victims*” but fails to expand on what constitutes the “special security arrangements” and which body, already established or to be established, will be providing the said special security. Police department is dealing with multitudes of registered cases - more than their capacity and capability to deal due to lack of sufficient number of personnel and lack of training and upgradation courses. The already burdened Police department with limited resources – human and financial - must not be expected to yield results if designated the aforementioned task as well. If any special force is to be established for the task, it will not only be a huge burden on national exchequer but will need extensive trainings to undertake the task. In addition to this, section 8 (iv) refers to “*re-location of victims and witnesses*” and section 8 (vii) refers to “*safe-houses, dar-ul-amans, etc.*” These two sub-clauses, practically, elaborate upon the same idea hence inflicting the Act with confusion and repetition. Apart from this, there is insufficiency of safe houses or dar-ul-amans etc. to house the victims. Provinces of Punjab (the population-wise largest province) and Khyber Pakhtunkhwa have 36 (Social Welfare Department 2022) and 7 (KPITB 2022) Dar ul Amaans respectively. Official data for other three provinces Sindh, Baluchistan and Gilgit Baltistan are not found, yet it can be safely assumed that inadequacy is prevailing there as well. Security situation of such safe houses is also a considerable concern. Other than this, the “*provision of reasonable financial assistance*” (section 8 (v)) and ‘*financial assistance*’ promised in section 6 (2) of the Act is repetitive either intentionally or unintentionally. In first scenario, it must have been further elaborated.

Section 24 “*Register of sex offenders*” of the Act refers to preparing and maintaining a database of the offenders by the NADRA (National Database and Registration Authority). The section meddles with Article 14 of the Constitution of Pakistan 1973, ‘*Inviolability of dignity of man, etc.*’ wherein without an exception, the fundamental right of privacy and inviolability of dignity is, unconditionally, granted to all the citizens of Pakistan. Section 24 (2), however, reads that the register of sex offenders prepared and maintained by NADRA may be given “*to any person, agency, authority, court of law or segment of the society*”. This clause covers almost all the cross sections of society to seek, acquire and have this information of sex offenders. This punitive measure will shut the doors of reformation on the offender, making him an object of eternal shame in the society. It will also make his comeback to normal behavior impossible.

Furthermore, the Act lacks in providing the definition of ‘rape’ and specifically refers to the Pakistan Penal Code, 1860 and Code of Criminal Procedure, 1898 for its definition. However, both the acts also fail to provide for a comprehensive definition, missing to encompass various aspects and modes of rape like marital and custodial rapes despite custodial rape being recognized by the *Torture, Custodial Death, and Custodial Rape (Prevention & Punishment) Act, 2014* as a prevalent form of rape. In addition to this, the Act fails to encompass or even mention sexual offences lesser in degree but mostly leading to commission of rape i.e., sexual molestation, unwanted sexual touching, sexual harassment and child pornography etc. In addition to the definitional crisis, the Act also lacks in determining the theory of punishment under which the punitive regime of the Act shall operate. The perusal of the Act gives an impression that law makers are more bent to punish the sex offender and less inclined towards his reformation. The sadism is bad for health and prosperity of Pakistani society in the longer run.

Procedural Law Shortcomings

The Act is also not without procedural law shortcomings. In section 3 of the Act (*Establishment of Special Courts, etc.*) special courts are to be setup ‘*throughout the country*’ to deal with the offences under this Act, whereas, the serious financial incapacity is a harsh reminder of reality. There is a difference between designation and establishment of courts: the former doesn’t require new tribunals or special courts but, in that case, grossly inadequate number of judges and daunting number of pending cases lying with each judge, will be the greatest hurdle in accomplishing the objectives of the Act (Zia 2022, 13). In the latter case, establishment of special courts need huge financial promise from the government which due to political instability, corruption and natural disasters hitting Pakistan hard, among other factors, is not only unable to pay for this assignment but is strictly observing the stringent austerity measures. 18th Amendment in Constitution, delegating financial autonomy to provinces, has made it even more difficult for the center to fund such enormous projects throughout the country. Moreover, the recent policy of finance division of Government of Pakistan to release funds on quarterly installments and not in toto will create frequent bureaucratic hitches in continuity and completion of the project.

Section 9 (*Investigation in respect of scheduled offences*) of the Act states that the Special Sexual Offences Investigation Units (SSOIs) are to be set up in all districts around five provinces comprising police officers who have gained trainings to deal with sensitive cases like rape. However, important details ancillary to the section as to where such trainings shall be conducted, and the duration of the training etc. are not mentioned or left for any authority or body to map out and implement contrary to section 19 of the Act where the Special Committee formed under section 15 of the Act can prescribe rules for the training of the police, judges, medico-legal staff, and other stakeholders in addition to other tasks assigned to it. However, the Special Committee doesn’t exist with clear powers, mandate, capacity or time-frame to operate. General mandate of the Special Committee under section 15 of the Act is to overlook the provisions of the Act, yet there is no clarity as to how such supervisory role shall be performed. Implementation of the Act includes establishment of special courts, Anti-rape crisis cells, SSOIs, register of sex offenders at NADRA etc. which is not a stated business of Federal Ministry of Law and Justice.⁵ Thus, in absence of the Act defining or per se granting powers to Special Committee to enforce the Act when Federal Ministry of Law and Justice also can’t help it in this regard, renders the question of implementation of the Act moot. The Special Committee can, at best, agitate the matter at relevant fora or with concerned authorities without assurance of an action therefrom. Other problems associated with this framework is no determined frequency or mandatory meetings, no accountability in case the Special Committee doesn’t live up to its *raison d’être* and no security of tenure hence empowering the ruling party to reconstitute the Special Committee as per their whims. Its instance is formation of new Special Committee on 22 July, 2022 by PML (N) who is currently ruling the country and dissolution of the first Special Committee formed by PTI, the then ruling party, on December 28th, 2021, without any reason.

Shortcomings in the Implementation Process of the Act

The progress of the implementation process of the Act is also dismal and unfortunate. No official statistics are available to exhibit the indicators of implementation process of the Act. However, it can be assumed with safe certainty that there is still no progress in

⁵ Rules of business 1973, Annexure 2 – ‘Distribution of Business’

formulation of the Special Courts or Anti-Rape Crisis Cells or the Special Sexual Offences Investigation Units (SSOIUs) etc. Throwing light on the execution and implementation of the Rape Ordinance, the Honorable Lahore High Court in *Yasir v The State & Another (2021 LHC 3918)* noted that even after seven months of the promulgation of the Rape Ordinance, section 9 relating to the investigation procedure, was not implemented. The Judgment notes that according to the statistics provided by the Central Police Office (C.P.O), around 13307 of the criminal cases mentioned in the Schedule-I of the Rape Ordinance and 20942 cases pertaining to the crimes mentioned in the Schedule-II of the Rape Ordinance were registered from 36 Districts of Punjab from January 01st, 2021, to July 31st, 2021, only and the provisions of the Rape Ordinance were not applied in even a single case. It further reads that for the formation of Anti-Rape Investigation Units, which are necessary for the execution of the Rape Ordinance, Rs. 4.9 billion initially and Rs 2.58 billion annually were required. The said amounts were not allocated to carry out the task, as stated by the C.P.O, and the lack of funds was the reason behind the non-implementation of the Rape Ordinance. It was vital to include the Finance Ministry of Pakistan in the entire process, from drafting the Act to the completion of its implementation so that the financial constraints could be avoided. Furthermore, the honorable High Court continued to mention that neither *“joint investigation teams were constituted nor gazetted officers were appointed as investigation officers”* which is in violation of section 10 of the Rape Ordinance. It was also added that *“public functionaries should coordinate with each other for its effective implementation, which unfortunately is missing in the present case.”*

Despite all this, the Rape Ordinance *“was not monitored for almost eight months since its original promulgation”*, and it was passed into an Act without amending the flaws – retaining the same subject matter except the change of names of “joint investigation teams” into “special sexual offences investigation units” - the following year, 2022 (Islam 2021).

Recommendations

In order to have a substantively and procedurally sound Act, it is vital to introduce at least, but not limited to, the following amendments therein. First and foremost, effort must be done to comprehensively and sufficiently define the term ‘rape’ to cover the offence and appurtenances thereto. Then, the punishment regime should express, clearly, the intent of the legislature which must aim at reformation and not retribution or sadism. The sex offender must be given a chance to regret and re-enter the society after completion of his due punishment. Therefore, protection of his identity must be considered as crucial as the protection of identity of the victim (*ensured under section 26 of the Act*). The register of sex offenders at NADRA should be accessible to narrowed cross-section of the society i.e., certain authorities or agencies only instead of being easily available to a fairly huge chunk of population. The secrecy of the record should also be ensured by erecting the punishment regime for violators. Upon repeated committals, identity of that sex offender may be revealed in the larger public interest, but it must not be general practice.

Furthermore, according to the *War Against Rape (WAR)*, an NGO in Pakistan, the conviction rate in rape cases is currently under 3% (Zia, Oscar, and Randhawa 2021, 2). This is one of the reasons behind the increase in rape cases in the country. It is vital to introduce amendments to streamline the Criminal Justice System, set up proper training infrastructure for the Special Courts, Anti-Rape Crisis Cells, the Special Sexual Offences Investigation Units (SSOIUs) and Police department to keep them abreast and up-to-date for speedy and effective implementation of the Act. A special wing in the Police department instead of a special security force – well-trained to deal with sensitive

cases like rape, gang rape, and sexual abuse - may be established for the security of the witness, victims, and offenders. Enhancement of number of special courts and judges already established to deal with the sexual crimes instead of establishing new special courts must be considered as it will not only save the cost of establishment of new judicial units but will also speed up the implementation of the Act by making the judicial and executive apparatuses readily available to victims. In a few areas of Pakistan, Jirgas are operating as courts. They should be included for the purposes of this Act to give it a nation-wide approach and outreach. Special Committee must be a crucial part of reform package: its accountability, empowering it with substantial authority, setting up its hierarchy and securing its tenure are a few important steps, inter alia, which must be taken to enable it to work effectively on its Brobdingnagian mandate. Moreover, the role of the Finance Ministry of Pakistan is crucial in the implementation of the Act thus, it must be made part of its implementation process. A proper evaluation of the implementation cost of the Act is to be carried out, and accordingly, funds should be allocated thereto. A Special Fund should be allocated specifically for the implementation of the Act. Besides Federal government, provincial governments as well as IGOs and NGOs from across the world should be reached out for contributions.

There is an urgent need for creating sophisticated data banks in the country to gauge the performance of the Act on the one hand and to ease the process of reform and upgradation, when needed, on the other. The extent of data collection must be deep enough to note even the number of cases in which no punishments could be given and accused managed to secure acquittals upon legal and procedural technicalities. Moreover, better drafting and drafters must be ensured to lessen the chances of ambiguity and contradiction within the Act. Time bound response and disposal must be ensured by the Special Courts, Anti-Rape Crisis Cells, the Special Sexual Offences Investigation Units (SSOIUs) and Police department to effectuate the redressal scheme for the victims which will not only encourage more reporting of sexual crimes but will also cause timely-collection and preservation of time-sensitive evidence. Special safe houses should be built in adequate number all across the country for better safety of victims and witnesses.

Conclusion

Even though the Act was a much-needed reform at the time of its promulgation, it could not satisfy the makers and public at large due to myriad of flaws therein. After the promulgation of the Rape Ordinance and the Act, there were 4329 rape cases, 269 gang rape cases, and 193 minor rape cases reported in the country in 2021 alone (Zia 2022, 40). This shows the failure of the Act in curbing sexual crime. With measures including amendments in substantive and procedural aspects of the Act and removing the hurdles in its implementation, this Act has the potential to live up to its objectives. Otherwise, the plight of the victims of sexual crimes will never cease to exist.

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Brain Imagistic Investigations and Electroencephalography in Forensic Psychiatry

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ABSTRACT: Forensic psychiatry is a complex expertise domain that is required to objectify human antisocial behavior and bring quantitative arguments to the law regarding discernment. The law expects clear and undeniable evidence when investigating a criminal offence. Still, there are many subjective elements in the process of evaluating one's psychological and cognitive state, especially when evaluating discernment at the moment of the crime and not at the moment of evaluation. Psychological test batteries, standard examination protocols and multiple forensic board presentations should eliminate possible errors but more investigation techniques could increase the efficiency of the forensic psychiatric report. As such, this article proposes a literature review over the imagistic and electroencephalographic (EEG) examinations that could open new perspective for standard forensic psychiatric protocols. Absence of discernment, organic pathologies and severe psychiatric disorders were left out of the subject of this article, focusing on personality, behavior and affective disruptions.

KEYWORDS: forensic, psychiatry, electroencephalography, brain, MRI

Introduction

Psychiatry has complex medical and psychological variations and calibration of such variations is difficult, especially within a criminal investigation, where every detail can be subjected to doubt and could change the course of the process. This is one of the reasons why, neurobiology and functional evaluation of brain and behavior is starting to become an important research subject in the medical field.

EEG and brain radiology are the focus of the research and though they still need to be adjusted to forensic protocols, this approach is becoming closer to practical field every day, as forensic radiology has entered autopsy and anthropology laboratories.

Besides it is diagnostic involvement, functional examination could promote rehabilitation strategies for the forensic population. This is why neuroscience should complete the psychiatric field in criminal investigative protocols. Leaving aside brain organic pathologies and chronic diseases that can be easily corroborated with discernment from a clinical point of view, there are more sensitive elements for an apparently normal brain to be examined, such as behavior, impulse control, emotional processing, personality alterations and affective disorders. Although these are all entities processed by the central nervous system and they should be controlled and adjusted for an efficient social integration, any modification in the neuro-bio-chemical balance could lead to disrupted behavior and stimuli response. Although discernment is not affected by these disbalances, an objective analysis and possible corrective

interventions should be available next to a pragmatic forensic expertise (Huebner, Vloet, Marx, Konrad, Fink, Herpertz and Herpertz-Dahlmann 2008, 542).

The Electroencephalogram (EEG)

The applications of EEG in neuropsychiatric field are important in the diagnostic and surveillance of epilepsy, encephalopathy, sleep disorders, coma grade evaluation and other neurologic disorders. It is a non-invasive investigation that detects, increases and records the brain's electrical activity. Also, the EEG is a functional examination as it can record the activity changes during light stimulation, eye opening and other motor and external stimuli. Until recently, the EEG was limited to neurologic diagnostics but given the known areas of the brain that process behavior and emotions, there were questions whereas certain other external stimuli could trigger altered responses in those areas and the examination could record specific affective and behavioral disorders. Of course, every EEG evaluation should be completed by all psychological and psychiatric data and integrated in the expertise (Mednick, Vka, Gabrielli Jr. and Itil 1981, 223).

First of all, psychological testing and psychiatric assessment, should set the premises for the EEG functional evaluation. Most of the studies in this field were conducted on consistent delinquency acting patients with certain behavioral traits such as: lack of responsibility, alcohol abuse, repeated aggressiveness towards others, poor impulse control. Emotional disturbances were studied in cases of psychopathic personality disorder. Also, organic pathology and patients on medication have been eliminated from studies because of the interferences and clear involvement of the somatic disruption with the EEG results and psychiatric symptoms. Control groups were also evaluated in the same form as the study groups and the differences in the results were stated as an additional argument. Most observations concluded that there is a high prevalence of modified results in the EEG examination in the offender group compared with control group (Vendemia, Caine and Evans 2006, 15).

As such, the temporal lobe and the parieto-occipital area showed the most of the alterations, with heightened delta wave activity and lower alpha activity in these specific regions. Beyond its auditory role, the temporal lobe is a center for memory and emotional processes and it integrates certain elements of visual perception. Also, in this area is a center for empathic processing which has been a subject for psychopathic traits studies. In matter of emotions, parieto-occipital area handles sadness, disgust and happiness aside from being a visual area. As these disruptions appear on the EEG, an assumption could be made that external stimuli, processing emotion and behavioral response are the main modified characteristics of the brain neurobiology in forensic population. According to this assumption, there is a possibility that a functional examination context, such as, a specific visual stimulus, could intensify the disruptions in the affected areas of the brain (images of the accused offence, violent or strong emotional stimuli). Another theme for study is the coordination of how these processes take place in both of the cerebral hemisphere and whether there is a symmetric activity (Reyes and Amador 2009, 60).

Another EEG feature could recognize emotional signals from different areas of the brain by applying similar stimuli with different outcome. For example, showing a video with a random violent image and showing a scene from the evidence collected against the offender could trigger different parts of the brain such as temporo-parietal area for empathic traits or cognitive areas such as prefrontal cortex. The presumption is that neutral violence could trigger emotional activity and self-involved scenes could trigger more cognitive activity which could also include simulation traits. EEG has been used in some studies for detection of depressive symptoms and medication response and some cases showed that some patients had changes in the electrical activity of the

affected brain areas but were persistent in showing the same symptoms. As such, mapping emotional EEG activity could offer at least the presumption for dissimulation and simulation during forensic psychiatric expertise, enforcing the characteristics resulted from psychologic testing (Lindberg, Tani, Virkkunen, Porkka-Heiskanen, Appelberg, Naukkarinen and Salmi 2005, 12).

Based on the emotion recognition, the examination could lead to personality information and behavioral pattern recognition. As the affective level is a foundation for personality development, emotional mapping with the EEG could draw a prediction scheme for personality neurobiology. Of course, these findings should be corroborated with psychological test batteries during these studies. There are two theories about brain networking that could set the foundation for this type of evaluation. The first takes into consideration the consistency of brain matrix over time and the second concept takes into consideration the dynamic processes of brain activity, especially in different age ranges. Again, alpha waves in the cingulate cortex and theta waves in the temporal lobe were most coordinated features during these studies in both agreeable and neurotic features.

Even if the EEG is a non-invasive procedure, it still holds multiple variables that could interfere with the objectiveness of the forensic investigation. Given the absence of linearity in the normal EEG diagram and the peaks that could be interpreted differently, the lack of standard stimuli for an emotional analysis and for personality traits, the fact that it gives presumptive results even in clinical pathologies with need of additional investigative techniques for certitude, the EEG remains a more qualitative and not quantitative measure tool during forensic psychiatric protocol. Still, it would make a good future tool for clinical studies and some of the antisocial traits in offenders could be studied in parallel with the standardized evaluation (Niv, Ashrafulla, Joshi, Raine, Leahy, Baker and Tuvblad 2018, 431).

The computed tomography

In the same record of bringing objectiveness to the act of forensic psychiatric evaluation, we move to the possibility of using brain CT evaluation. This feature is most commonly used for the diagnostic of brain organic pathologies but the theory we present is using it for the assessment of personality and behavioral aspects in criminal offenders. Given the specifics of the CT investigations, most studies have chosen single photon emission computed tomography (SPECT) and positron emission tomography (PET) as instrument for analysis of the brain emotional activity with specific contrast substances in order to highlight the brain regions involved in the process. Emotional traits are weighing the most part of the motivation of one's activity. CT has been used for certitude diagnostic in pathologies like stroke or dementia and more recently, even in autistic spectrum disorder. Many lesions have been corroborated with abnormal affective characteristics and behavioral disruptions. The question is, if in the absence of those organic lesions, some changes of personality traits could be evaluated by brain imaging (Kuruoglu, Arikan, Vural, Karataş, Araç and Işık 1996, 350).

The baseline for the hypothesis resides in the literature where most studied personality feature is the borderline personality disorder, a clinical feature with no organic underline and abrupt behavioral and emotional alterations. Bringing a functional feature within the CT scan was used in order to observe the brain's active metabolism and processing in different areas. As such, PET scans showed an inverted relationship between aggressive behavior and glucose usage in the prefrontal cortex and also, borderline patients showed a completely different activity in the prefrontal area compared to control groups. The prefrontal area is an important cognitive hub for

behavioral control and decision making (Schulz, Camchong, Romine, Schlesinger, Kuskowski, Pardo, Cullen and Lim 2013, 535).

Also, another study describes a decrease in the glucose metabolism of the brain in the temporal and parietal lobe but also in the motor cortex (De la Fuente, Goldman, Stanus, Vizuite, Morlán, Bobes, Mendlewicz, 1997). An interesting observation was that in female patients with personality disorder there was a hypermetabolic rate of glucose usage in the nucleus accumbens which is a hub for expressing motor responses to stimuli, such as impulsivity and aggressive behavior in emotional circumstances. This trait could explain the lack of impulse control and hyperemotional characteristic of female offenses (New, Hazlett, Buchsbaum, Goodman, Mitelman, Newmark, Trisdorfer, Haznedar, Koenigsberg, Flory and Siever 2007, 1632).

Another study, demonstrated that, in patients with impulsive aggressive behavior, there was a decreased fluoxetine metabolism in the orbito-frontal area and adding fluoxetine in the treatment protocol resulted in relatively important reduction of aggressivity and normalizing the brain activity in the orbitofrontal cortex (New, Hazlett, Newmark, Zhang, Triebwasser, Meyerson, Lazarus, Trisdorfer, Goldstein, Goodman and Koenigsberg 2009, 1110).

Hostile behavior and aggressiveness were also associated with low glucose usage in the frontal brain regions but also in the posterior areas of the brain but also in the fronto-temporal white matter, insula and striatum which are important hubs for action control and impulse response (Bøen, Hjørnevik, Hummelen, Elvsåshagen, Moberget, Holtedahl, Babovic, Hol, Karterud and Malt 2019, 260).

SPECT scans also concentrated upon brain perfusion that mirrors the activity of those specific areas. Impulsivity and aggressiveness have been correlated to hypoperfusion in the temporal and prefrontal lobe which are decision and emotional processing areas (Goethals, Audenaert, Jacobs, Van den Eynde, Bernagie, Kolindou, Vervae, Dierckx and Van Heeringen 2005, 190). Also, an experimental induced aggressive stimulation showed that patients with borderline personality presented a hyperactivity of the orbito-frontal cortex, thus, in a decision-making area (New, Hazlett, Newmark, Zhang, Triebwasser, Meyerson, Lazarus, Trisdorfer, Goldstein, Goodman and Koenigsberg 2009, 1112). Also, for impulsive personality traits, PET scan with fluorodeoxyglucose was used as a serotonergic agent which abruptly activated the orbito-frontal area in these patients (Hoptman 2003, 271). Serotonergic activity has been studied by using activation markers and it appears that serotonin has implications in aggressiveness and impulse control as PET scans showed a significantly lower serotonin activity in the nucleus accumbens in patients with impulsive aggressivity (Frankle, Lombardo, New, Goodman, Talbot, Huang, Hwang, Slifstein, Curry, Abi-Dargham and Laruelle 2005, 919).

As it can be seen from different studies, aggressive, impulsivity and emotional disruption in personality disorders can be mapped and demonstrated with CT scan variants as long as functionality of the areas involved can be actively illustrated. This perspective opens new possibilities not only for studying antisocial features but also for clinical and psychological management and prevention.

Magnetic Resonance Imaging

In matter of high-standard neuroimaging, MRI brings the most objective and evident diagnostic proofs. Within forensic psychiatry evaluation, functional MRI (fMRI) has the most potency as it can examine and demonstrate detailed neurobiological aspects of one's behavior and emotional processing. Aside from being one of the most powerful diagnostic tools for brain lesions and injuries, as it can reveal profound anatomical and functional disturbances, it reveals changes in the brain's chemistry and networking

through different contexts and stimuli. the most important feature of fMRI is the possibility of placing the patient in a certain context and inducing him certain emotional states with visual and auditive triggers.

In matter of antisocial personality traits, the most common structural and functional disturbances point to the prefrontal cortex. High psychopathic levels in psychological testing have been associated with volume and/or thickness reduction of the prefrontal grey matter, compared to control. Interestingly, some studies showed more or less, the same findings in people with aggressive behavior and low education rates or alcohol abuse. Also, violent offenders, murderers and impulsive aggressive patients have been examined with fMRI and results demonstrated a lower functional rate of the orbitofrontal area and lower inhibitory function when they were given angry faces to visualize (Žarković Palijan, Radeljak, Kovač and Kovačević 2010, 255).

Psychopathic patients have been given emotional and cognitive tasks and compared to controls, the left ventrolateral cortex and the anterior cingulate cortex showed disturbances in differentiating concrete and abstract stimuli. also, in the ventrolateral cortex there was an important decrease of activity in violent offenders when they were shown moral violation videos or images. On the other hand, one study showed that non-convicted psychopaths show similar function of the prefrontal cortex compared to healthy individuals whereas convicted patients showed a reduced volume of the gray matter compared to controls. This suggest that, initially, psychopathic offenders need normal frontal cortex functioning for anticipation and premeditating their crimes. All these findings record good coordination between behavior and emotional disruption and the role of the specific examined areas in the processing of those traits. The prefrontal cortex is an important executive hub while the orbitofrontal and ventromedial area are specialized in emotional filtering, reward processing impulse management. Also, medial prefrontal cortex and parieto-temporal area have been linked to empathy and compassion which promote social integration and functionality. Impaired activity in these areas have been demonstrated by functional MRI in both adult individuals with psychopathic traits but also in children with callous unemotional, which is a strong predictor for psychopathic personality disorder (Decety, Chen, Harenski and Kiehl 2013, 489).

The amygdala is a center for emotional processes in a moral and social direction. Moreover, it is a center for stimuli association which forms connection between emotions, fear in self and the distress and pain of others, forming empathic pathways aligned with moral knowledge and inhibits antisocial behavior. In moral decision contexts and violent visual stimuli, there are lower functioning rates in the amygdala in psychopathic and impulsive aggressive patients. The difference between psychopathy and poor impulse control resides in the lack of empathic traits in the first group when accidental and intentional violence is shown compared to presence of empathic activity in impulsive groups when shown accidental violent stimuli (Dugré, Radua, Carignan-Allard, Dumais, Rubia and Potvin 2020, 170).

The posterior cingulate area is involved in social information processing and moral decision making by linkage with executive and decision-making areas. Disruption in the activities of these linkages have been demonstrated in antisocial behavior patients, when placed in stress-induced contexts. Cognitive and moral judgment disruptions may have only neurobiological reasons or, they may be a consequence of low intellective stimulation during childhood and poor affective development inside the personality levels. a more interesting observation regarding functionality of anterior cingulate area and prefrontal cortex have been assumed to express false emotion, deceit and manipulative traits in psychopaths which are characteristics of their good

interpersonal relations until committing an antisocial act (Jiang, Liu, Liao, Ma, Rong, Tang and Wang 2013, 94).

In adolescents with conduct disorder, fMRI has been the focus of most studies, as the adolescent brain is in continuous development with dynamic endocrinologic, neurochemical and structural modifications. The adolescent brain, as seen in fMRI studies, activates especially impulse responses and bypasses avoidance filters, stimulating executory functions to engage in risky situations. This functioning model is called the triadic model and it consists of prefrontal cortex – the decision hub, the amygdala – the avoidance and control hub and the striatum that represents the approach hub. It seems that emotional triggers, group exposure and adherence and negative external stimuli but also, psychoactive substance usage led to disrupted responses because all stimuli trigger the hyperactive striatum and neglects the hypoactive amygdala, leading the signal directly to the prefrontal area, triggering an active response in an immature structural cortex. Also, fear, risk and intense negative emotions are all processed in an altered way leading to disturbed conduct and poor impulse control in stress contexts. The same triadic model is applicable to adults with addiction problems, the involved structures being active in withdraw symptoms, reward seeking, drug seeking, emotional disorders and behavioral disruption. As such, this is an argument for the predisposition of adolescents for drug abuse (Brown, Benoit, Juhás, Dametto, Tse, MacKay, Sen, Carroll, Hodlevskyy, Silverstone and Dolcos 2015, 124).

An interesting subject in medical literature approaches pedophilia and the intent to find it's neurobiological traits that could help identify, diagnosticate and manage this disorder, which has severe implications in the social and juridical field. There are many classifications of psycho-emotional traits of pedophilia but the mostly it consists of fixated, regressed and sociopathic profiles. The fixated type is characterized by deep emotional involvement as the offender links it's emotional age to the physical age of the child. Although true love is claimed and the offender does not have intentions to harm the child, erotic and physical approach comes as a gratification and a way to create a stronger bond. Usually, the victims are boys but this is not mandatory. The regressive type is characterized by an impulsive reaction to a psycho-emotional stressor, that often appears later in adulthood, during a major affective deficit. Violence is rarely involved as bribes, rewards and seductive techniques are used in order to obtain compliance. Most victims are females and the offenders often feel guilt and remorse related to their own actions but they concentrate on the physical satisfaction in order to cover emotional disturbances. The sociopathic type has most dangerous traits as he lacks remorse and empathy, the physical sexual approach is simplistic with often sadistic elements and he is prone to aggressive behavior, manipulation, threats and intimidation towards its victim in order to achieve compliance. The most plausible motivation for these types of acts is lack of self-esteem, anger and frustration for his personal vulnerabilities and children are chosen mainly because they are easy to dominate physically and mentally than adults (Poepppl, Nitschke, Dombert, Santtila, Greenlee, Osterheider and Mokros 2011, 1662).

In order to understand sexual deviance, fMRI has been used to study normal sexual behavior and to build a schematic neuro-biologic model of sexuality. From a psychological point of view, erotism has cognitive, motivational, emotional and autonomic filters within the central nervous system. Though all of these levels are linked in a variable dynamic, they need to be understood separately. The cognitive hub, where arousal stimuli are filtered, consists of orbitofrontal and superior parietal cortex. The emotional hub, processes the hedonic part of a stimulus and decides the pleasure quality of that stimulus. The second somatosensory and insular region is the hub of the emotional involvement of sexual stimuli. The motivation and desire or reward seeking

hub is represented by the anterior cingulate area and the autonomous art consists in the neuronal linkage of all these hubs with the hypothalamus and the secondary cardiovascular and respiratory effects (Tenbergen, Wittfoth, Frieling, Ponseti, Walter, Walter, Beier, Schiffer and Kruger 2015, 344).

Together, all these relays act in a complex mode, controlling physical, psychological and neurobiological traits of sexual activity. Still, a presumptive balanced network can be described when studying sexual deviance in comparison with healthy individuals. Most of the fMRI studies have revealed deficits in cognitive and emotional linkage in pedophiles. Distorted neural patterns could cause perception disruptions and misinterpretation of a child reactions but also an indifference for consequences at the cognitive level. In case of fixated offenders, there is a lack of coherence when assessing the affective bond with a child and this is what could lead to failure of realistic perception over the situation (Jordan, Fromberger, Laubinger, Dechent and Müller 2014, 10).

Most fMRI studies are describing reduced volumes of amygdala and aberrant activity within the orbitofrontal cortex which would explain the lack of sexual inhibition within these patients. Emotional stimulation during MRI resulted in reduced neuronal activation through affective hubs, especially in the dorsomedial cortex and amygdala. When sexual stimuli were applied, abnormal activity was detected in the cortical brain regions but also in the hypothalamic and midbrain areas, where autonomic traits are activated. The finding is interesting because it would explain why pedophiles are not aroused by adult sexual stimuli but the subject needs further practical exploration. Also, the imbalanced activation between emotional, autonomic and cognitive relays could explain the emotional immaturity and cognitive low inhibitory decision making (Walter, Witzel, Wiebking, Gubka, Rotte, Schiltz, BERPohl, Tempelmann, Bogerts, Heinze and Northoff 2007, 700).

Conclusions

Assessment of forensic psychiatric patients is in need of more objective argumentation of discernment present antisocial behavior. If in most neuro-pathologies and psychiatric disorders, there are standardized diagnostic, treatment and socio-juridical protocols, for the personality disorders, affective disorders and antisocial behavior, there are still important aspects to be solved. The presence of the discernment does not take the gravity off the medical aspects of these pathologies, although corrective measures can be applied more easily. That is because the sensitive and fine physiopathology involved in these events.

Identification, and medical management of these problems could result in better prevention and a lower rate of recidivism in forensic population. Although research is still needed in this field, we can expect future neuroimaging protocols to be inserted in the forensic psychiatric expertise with better outcome for all organisms involved.

It is clear that for personality disorders and non-organic behavioral disorders, neurobiology and functional brain imaging could set the premises for better treatment, correction of behavioral disruptions and increased quality of social insertion for these people, with less negative impact on the social matrix and law enforcement.

EEG can be used in order to find some of the emotional and behavioral predispositions but the technique per se has low specificity. fMRI could be a strong investigation tool for research and later evaluation protocols and could find specific neuro-biologic disfunctions that could serve as evidence in court and premises for better treatments. No matter the technique, the instruments must observe the patient actively, by appliance of emotional triggers and setting contexts with visual and auditive stimuli.

This would require development of very detailed functional criteria when conducting an exploration like this. Furthermore, psychological test results must coordinate with functional and imaging in order to achieve an objective and doubt-free result. Such standards take time but the newest literature provides many starting grounds for the future of forensic psychiatric expertise.

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Human Right-based Understanding of Mining-Induced Displacement and Resettlement: A Review of the Literature and Synthesis

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ABSTRACT: Due to the current economic development, there has been a greater number of resettlement when compared with that in the preceding two decades. Many people are forced to move away from their place of residence and communities due to development projects. In mining-induced displacement and resettlement (MIDR), although this occurs globally, the problems faced by the affected communities in several regions largely vary. In this article, we highlight the varying impacts of MIDR, especially on human rights, through the review of recent literature. Findings from this review demonstrate that MIDR results in numerous human rights violations such as inadequate information for community members and insufficient compensation for lost property and lack of involvement of local communities in the division of profits generated from the exploitation of resources, among others. This essay makes several contributions to the literature by looking at the recent MIDR-oriented literature from the social and human rights theory and social perspectives and providing multiple case studies across the globe. In doing so, this essay demonstrated that MIDR violates numerous human rights.

KEYWORDS: mining, displacement, communities, human rights violations

Introduction

The current economic development has given rise to a substantially greater magnitude of resettlement in comparison to that 10 years ago. In the past six decades, the worldwide magnitude of development-induced displacement and resettlement has fully-fledged to approximately 250 million to over 400 million people (Terminski 2012). Across the globe, development projects have resulted in approximately 15 million people facing displacement on an annual basis (Van der Ploeg and Vanclay 2017). Even though mining is not deemed to be a statistically significant classification of development-induced displacement, the social costs of mining exploitation are substantial.

The concept of mining-induced displacement and resettlement (MIDR) is essentially complex, encompassing several social, spatial, and political changes, with long-term effects on people and communities. Whereas there is no intrinsic reason to make the supposition that resettlement ought to be a harmful process, the nature, subtleties, and coping strategies of communities impacted by MIDR are not well-understood. There is a lack of information to scrutinize the impacted communities in order to identify the challenges of a setting defined by MIDR.

The issue of MIDR is an international predicament, taking place in most of the continents around the world on a different scale. Nations that have especially massive-

scale MIDR comprise of China, Indonesia, India, and several nations in the African continent such as Botswana and Ghana (Terminski 2012). Mining-induced displacement can be regarded as an international phenomenon, and it severely affects especially those facing this issue internally, posing such difficulties and risks.

As Terminski (2013) indicated the difficulties can be based on conflicts, access to land, and the self-identification of local communities. And these difficulties faced by those displaced in numerous expanses of the world vary greatly. The social and human rights issues impacting displaced families are different, depending on where the people reside. Resettlement instigated by mining is part of the wide-ranging context of development-induced displacement and resettlement.

According to Owen and Kemp (2015), physical displacement, repositioning, and resettlement are extensively recognized as factors that pose a significant social risk. Mining-induced displacement and resettlement are significantly signified by factors that take place in 'brownfield' project situations, even when the preliminary displacement originates in otherwise 'new' mining developments. Forced displacement and resettlement give rise to the affected people and communities having to embrace significant risks in the re-establishment of their homes, social relations, employment and professions, and subsistence practices, all of which generate manifold levels of stress (Van der Ploeg and Vanclay 2017).

Social Dimensions of MIDR

The social dimensions of MIDR can be reviewed under the loss of land, insufficient compensation, and improper resettlement, leading to unfair situations among people and in communities. The mining industry has become exceedingly embedded in various intricate and belligerent social policy deliberations, including business and human rights, conflict minerals such as blood diamonds, and negotiated agreements. Disruption, displacement, and resettlement of the affected communities seem to be an emanating subject matter and policy deliberation that has gained the attention of the mining industry, leading to significant social repercussions that impact a large number of people's lives.

Large-scale developmental and infrastructure projects usually require land and common property resources whether instigated by governments or private establishments. This requirement, for the most part, gives rise to the displacement of indigenous people and the residing communities. Moreover, even in circumstances where people or communities are not required to shift, the long-term project developments may still affect their everyday livelihoods and sources of income, either provisionally or permanently (Vanclay 2017). On the one hand, in their endeavor to attain growth and development of the economy, host governments are usually influenced by the opportunities of mining-linked revenues and infrastructure schemes.

Aboji et al. (2019) indicate that insufficient compensation of the displaced people results in landlessness and homelessness. Also, the financial need of the displaced population may become severe, owing to the need for additional funds for renting. Research has established that over 80% of the affected people live in shelters that are not only transitory but also structurally unsafe. Moreover, even though the advent of development projects implies prospective employment chances, the local inhabitants are rarely hired in the job areas (Madebwe et al. 2011).

Furthermore, according to Scudder (2005), individuals and families end up being reliant on the company or government in providing their basic needs during this process of resettlement. Also, the social unity and quality of the associations between and within households are interrupted and deteriorated. Ultimately, this generates a heightened sense of inequality, discrimination, and unfairness. Chakroborty and Narayan (2014)

indicate that MIDR can give rise to the loss of assets that are both physical and non-physical for local communities comprising home environment, productive land, access to traditional properties, resources, cultural locations, social constructions, and income-generating assets. Owing to MIDR, there is the risk that local communities end up being unemployed, impoverished, marginalized, and devoid of access to traditional sources of food while experiencing a loss in social cohesiveness and being forced to deal with the interference of educational and social activities.

Terminski (2013) indicates that MIDR is a wide-ranging global issue and is not only a diverse socio-economic problem but also a human rights problem under developmental dilemmas. The MIDR violates numerous human rights, particularly those of an economic and social nature. Mining-induced displacement and resettlement is not just a problem of individual human rights defilements but also relates to shared rights, community-corporation clashes, the fight for resources, access to traditional and arable land, indigenous rights, the problem of sovereignty of tribal persons and local societies, and sustainable development (Aboagye 2014). One of the adverse impacts of mining in the present day encompasses coercing and pushing masses of people to relinquish their current homes and places of residence. In the contemporary setting, MIDR leads to significant socio-political issues that include posing a threat to local inhabitants and sustainable communities and, importantly, a challenge for individual and collective human rights (Terminski 2012).

International and Human Rights Legal and Policy Framework on MIDR

Human Rights Theory

The concept of human rights is viewed as the measurement of the State's treatment toward its citizens (Lorenzo 2015) and involves the dignity of human beings and majoritarian morality everywhere and at all times (Conte and Burchill 2009). Human rights pertain to the fundamental rights to which an individual is innately entitled basically because he/she is a human being, and these rights should not only be acknowledged but also respected (Sepuldeva et al. 2004). As agreed, human rights are universal, that is, all individuals are entitled to them, and these rights are interdependent. Moreover, when it comes to human rights, everyone is viewed equally and cannot be ordered (Van der Ploeg and Vanclay 2017). For MIDR, the essentials of human rights protected by several treaties and agreements are as follows:

Right to private and family life

The International Covenant on Civil and Political Rights (ICCPR) facilitates people to revel in a variety of human rights. According to Article 17, no individual shall be exposed to discrimination or illegal intrusion of his/her privacy, family, home, or correspondence, nor illegitimate assaults on his/her integrity and standing. Article 23 clarifies that being the natural and core unit of society, the family has the right to obtain safeguards from the society and the State, with no interference.

Rights of the child

The United Nations Convention on the Rights of the Child (CRC) sets out the right of every child, irrespective of their disabilities and racial and religious background. As outlined in Article 24 of the CRC, a child is entitled to enjoy the utmost possible standard of health, and no child should be dispossessed of his or her right to gain accessibility to health care services such as treatment and rehabilitation. Article 28 further indicates that every child should have the right and equal opportunity to obtain an education.

Right to information and right to participation

The United Nations Declaration on the Rights of Indigenous Peoples comprises the principle of free, prior, and informed consent (FPIC), which is intended to enable indigenous populations to have the right to participation and consultation before development starts on their ancestral land or the resources in their territory are used. Also, the indigenous populations have the right to gain information in suitable languages and different formats. This encompasses adherence to the principles of inclusion and equality.

Right to education

According to Article 26 of the United Nations Educational, Scientific and Cultural Organization (UNESCO), education (especially primary education) is indispensably a fundamental human right for everyone, and it should be provided with equal opportunities, non-discriminatory approaches, universally accessible, and quality standards. This focuses on the full development of the human personality.

Right to work

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) guarantees the right to education and also fair and just work conditions. Article 6 of the ICESCR indicates that every individual should have the right of access to work that one selects and accepts at liberty, in addition to the right to food, water, and housing.

Right to culture and religion

Based on Article 15 of the ICESCR, every individual has the right to partake in cultural life, in addition to enjoying the benefits of scientific advancement and its applications and also safeguarding the interests resulting from any scientific, literary, or creative production. Furthermore, Article 27 of the ICCPR indicates that people from minority groups should have the right to enjoy their own culture, in addition to acknowledging and practicing their religion and using their language.

Right to remedy

The ICCPR outlines that every state is mandated to guarantee that any individual whose rights have been infringed is entitled to an applicable remedy and that such remedy shall be ascertained by proficient jurisdictional, governmental, or legislative authorities to develop the prospects of judicial remedy and that the relevant authorities implement the remedies when granted. Such an individual is entitled to full and fair compensation (OCHA 2004; Habitat International Coalition 2010; United Nations 2018).

MIDR and the Violation of Human Rights

The MIDR is associated with the violation of numerous human rights, particularly from a social and economic perspective. As briefly mentioned above, some of these human rights violations include, but are not limited to, insufficient compensation for lost property, lack of involvement of local communities in the division of profits generated from the exploitation of resources, violation of social, economic, and cultural rights, particularly of indigenous people, violation of housing rights, marginalization and subjugation of the most susceptible groups, and cultural devastation instigated by resettlement (Terminski 2012).

Human rights violations related to the exploitation of resources have direct and indirect consequences in several cases such as in the case of Congo. Those consequences are sexual violence around the mining sites, unregulated working conditions, and forced labor against artisanal miners, among others (Mapping report n.d.).

Several case studies below demonstrate the violation of human rights due to MIDR across the world:

Loss of Social Ties and Social Capital: Case studies from Afghanistan and Lao

Social ties and social capital (Coleman 1988; Putnam 1993), based on trust-based networks, are important in communities to provide a sense of belonging and collective identity. Over time, community members establish a network based on shared values and norms. Conflicts, violence-oriented actions, and harmful projects can have unwanted impacts on the maintenance of those community values and shared networks in the long term, leading to severe social issues.

Dastgir, Kawata, and Yoshida (2017) explain this violation of human rights in the case study of the Aynak copper mine project situated in Afghanistan. The study established that one in seven villages affected by the project faced ‘involuntary relocation’. Also, the families affected by the project indicated that mine-associated earnings insufficiently supplanted their traditional sources of income. Also, being geographically divided resulted in the challenges of sustaining social networks that are essential for their survival. Once social networks are lost and misplaced in war-torn Afghanistan, rebuilding them is very challenging, and it requires a lot of time. This case study demonstrates that forced relocation due to MIDR resulted in a significant reduction in the everyday labor earnings and was solely somewhat supplanted by income from activities that are mine-related amongst the individuals and families that were relocated. Moreover, such relocation substantially dissuaded the involvement in community life, mirroring the losses of social capital as a result of this separation (Dastgir, Kawata, and Yoshida 2017). Social capital is socially accepted resource in a particular community (Edwards 2013).

Keovilignavong (2019) examined the case of gold mining in the region of Phu-Hae in Lao. The study ascertained that both illegitimate activities related to small-scale artisanal mining and large-scale mining significantly tarnished the natural resources in the area. Although the endeavors by the local government alleviated the environmental effects of large-scale mining, the problems of lack of social capital and poverty still prevail in the region.

Conflicts and Violation of Social, Economic, and Cultural Rights: Case studies from Africa and India

The African continent, where mineral extraction is a fundamental economic driver, can be an interesting case for mining-induced displacement and resettlement. This issue is one of the most overlooked causes of displacement in Africa, and this has heightened over the decades. When mining agreements are approved, the instantaneous threat to the local community encompasses displacement and loss of property rights. For the most part, development projects result in the loss of land and, even worse, inflict limitations on the usage of land and accessibility to forests, protected regions, and demarcated grounds (Perera 2014). A fitting example is a displacement of the San community from the Central Kalahari Game Reserve to pave the way for large-scale diamond mining.

In the African continent, large mining operations and activities and MIDR have resulted in severe social and environmental costs. Ideal examples include the mining of gold in Ghana as well as diamond and coltan exploitation in the Democratic Republic of Congo (Van Crieking 2008).

The Republic of Ghana, a nation rich in comprehensive gold mines, experienced significant MIDR and violations of human rights. For more than a decade, over 30,000 people from the Tarkwa district faced displacement as a result of gold mining (Akabzaa

and Darimani 2001). Aboagye (2014) reported that mining activities across Ghana have devastated populations. Furthermore, the people from this community experienced severe human rights violations in the forms of beating, imprisonment, and even killing because of advocating for their community rights (Van Crieking 2008; Ayee et al. 2011).

Not only in Ghana, but also in The Democratic Republic of the Congo, the exploitation of coltan and diamonds resulted in severe conflict and plenty of bloodshed due to the illicit trading of these resources. This prompted a major deliberation on blood diamonds. Until today, rebel groups control several regions where these minerals are extracted. As a result, coltan and diamonds have become key players in the mining trade, extracting the minerals and selling them illegitimately to finance the insurgency (Van Crieking 2008).

Furthermore, the violation of socio-economic and cultural rights does not take place solely in Africa but expands to other places, such as Asia. Manjula et al. (2013) examined the impact of MIDR, with a respective emphasis on Kerala, in the southern part of India. The author ascertained that the development project gave rise to displacement and a diminished employment rate. Specifically, before displacement, the population in Kerala had an employment rate of 47%, which deteriorated to 35% after the acquisition of land.

The Effects of Mining Operations in Groups and Communities: Case Studies from Guatemala, Mozambique, and Sierra Leone

Mining operations can facilitate the empowerment of indigenous people. However, based on encounters of the past, these operations have ultimately stripped them of their independence, wealth, and customs (Downing et al. 2002). Rich in natural resources, Guatemala has experienced the challenges of investment in mega projects for development in the past decade, with indigenous communities as the major victims of these development projects. A case study on Goldcorp's Marlin mine in the region of San Marcos in Guatemala indicated that MIDR fails to take into consideration the protection of the rights of indigenous people and the significance of inclusion because of the development projects (Willems 2010).

Bennet and MacDowell (2012) verbalized testaments and evidence regarding amassed physical and economic displacement from coal mines that are situated in India were reported. In the research study, it was established that there were severe impacts on the culture of the community as well as on the lands and sources of income for the affected communities. Wiegink (2020) demonstrated the impact of MIDR in displacing and depleting already vulnerable communities in the Tete province in central Mozambique. The projects implemented by multinational companies in the open-pit coal mines resulted in the resettlement of thousands of people, in addition to repressing the opposition made by the local communities.

Wilson (2019) examined the case of rutile mining communities in Sierra Leone and the significant impacts of MIDR. The study ascertained that the Sierra Leone government and the mining corporations exerted substantial power in implementing the involuntary displacement and ensuring the resettlement of the displaced communities. People in those communities were forced to endure homelessness, joblessness, and food shortage, in addition to marginalization both politically and socially. Ultimately, their livelihoods were worse compared to that before the resettlement.

MIDR and Protection of Community Human Rights

Mining delivers inputs for other manufacturing sectors that play a pivotal role in sustaining population welfare and in operating the global economies. Similarly, mining can produce social and environmental effects, which could result in the public resisting the sector (Mancini and Sala 2018). Moreover, emphasis should be placed on augmenting transparency and public involvement to improve legality and good governance (Wang et al., 2013; Mishra and Mishra 2017).

As a principle, companies involved in the development projects are accountable for respecting human rights, values, and their community identity, irrespective of the human rights obligations of the State. Also, companies should completely evade causing any sort of detriment in any locality. The accountability to respect and live up to human rights in resettlement necessitates private sectors to embark on pro-active measures to contribute to the gratification of the human rights of all affected individuals, groups, and communities (Van der Ploeg and Vanclay 2017).

Van der Ploeg and Vanclay (2018) illustrate that corporations ought to prudently consider the standing of the community affairs function within the project, in addition to having greater dedication, to guarantee that international standards for both social and environmental performances are met. Companies ought to incorporate human rights specialists and outline the plans and processes for guaranteeing resettlement and compensation. Moreover, projects should efficaciously manage human rights issues, regardless of the actualities of intricate operating environments.

Discussions and Recommendations

Human rights are fundamental liberties that are accorded to every human being, which should be acknowledged, respected, and upheld at all times. This essay tries to understand and assess human rights issues in the context of MIDR to ascertain the positive and negative impacts of MIDR and the measures that can be undertaken to ensure that such rights of the communities are respected and empowered in the long run.

In order to promote and protect human rights in post-conflict situations, The Human Rights Council Advisory Committee (2014) designed best practices for the improvement and betterment of the situation. These are mainly based on providing physical security and integrity (e.g. protection of the right to life, etc.); basic necessities of life (e.g. the rights to food, drinking water, shelter, clothing, adequate health services, sanitation, etc.); economic, social, and cultural protection needs (e.g. the rights to access to education, to have a compensation for lost property, and to work); and civil and political protection needs (e.g. the rights to religious freedom and freedom of speech, political participation, and freedom from discrimination).

Forced displacements and resettlements should not pose harm to the human rights of the individuals and communities affected mainly by the development project. Similarly, as it was mentioned by Wang et al. (2013), it should not generate obstacles to the enhancement of standards of living. Advancing and expanding interdependencies amongst players in public, private, and civil societies guarantee fairer and equal treatment of displaced people and increase the capacity of the local community to repel displacement. As mentioned earlier, this is protected by human rights.

Above all, our extensive review helped us to see two important dimensions of MIDR that affects communities due to large-scale development projects. These are a) providing inclusive and transparent information that is understandable for all members, and b) facilitating a fair compensation for those who are rendered disadvantageous during the mining activities.

Providing adequate information through pluralistic approaches and deliberative participation is important. It is worth mentioning that affected individuals, groups, and communities that are affected by mining activities in their locality should be accorded with the right to information, deliberative consultation, and inclusive engagement during the whole process. All pertinent information should be provided to the affected communities before carrying out any decisions to give these communities ample time to process such information. Moreover, such information should be inclusive and comprehensible by all groups, including the susceptible groups (Scudder 2011). The information rendered should be conveyed in facilitated language and different formats that are contingent on the local setting. It requires the inclusion of multi-stakeholders in the process. By respecting the right to information, companies involved in MIDR should ensure that communities can gain access to all understandable documentation and also receive independent consultation. It is also essential to ensure an incessant dialogue and that the information is up to date at any time (Van der Ploeg and Vanclay 2017). It is fundamental that the process should be monitored transparently and accountably.

Mining development is a socio-environmentally unsettling and damaging process. Facilitating compensation for such detriment is crucial if long-standing development plans are to be not only advantageous but also sustainable to all stakeholders (McLeod 2000). Therefore, companies need to ensure that the local communities receive full and fair compensation (Cao et al. 2018; Tagliarino et al. 2018). Part of allocated packages should be facilitating the transformation from land-based livelihoods to wage-based livelihoods. As indicated by Adoteng-Kissi (2017), the mining companies are obliged to facilitate the compensation and alleviation of poverty for the local farmers for the impact that their operations have on their farmlands. Adoteng-Kissi (2017) reported that it is pivotal to establish and execute a compensation package that would function at sustainable magnitudes and seek out coverage against the fluctuating operational effects that disrupt the prospective advantages of farming, unlike the ineffective poverty compensation packages given to farmers in the Prestea mining community in Western Ghana.

Conclusions

The current economic development has resulted in a greater number of resettlement when compared with that in the preceding two decades. Research shows that many people are forced to move away from their place of residence and communities due to development projects taking place in the neighborhood. As much as MIDR is a worldwide aspect, the problems faced by the affected communities in several regions across the globe largely vary. These problems are mostly socio-economic, leading to several detrimental consequences.

By looking at the recent literature through multiple case studies, this essay demonstrated that MIDR violates numerous human rights. As agreed, human rights are universal, and they are protected by several international legal instruments in the form of treaties and agreements. These instruments value fundamental human rights and consider that these rights are interdependent. Moreover, all have equal and legal status and cannot be ordered. Some of the aforementioned human rights violations include insufficient compensation for lost property and lack of involvement of local communities in the division of profits generated from the exploitation of resources, among others.

However, the effects of such violations are largely overlooked and undervalued. Bearing in mind that the development of regions is not bound to cease anytime soon, it

is pivotal for companies accountable for such developments to consider the rights of the communities. Respecting, guarding, and accomplishing human rights must be more conspicuous in both the procedures and results of resettlement. The different entities involved in development projects should better comprehend with responsibility for respecting human rights unconditionally.

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Women's Emancipation in Romanian Society and the Recognition of Her Rights in Couple Relationships

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ABSTRACT: International documents contain explicit provisions for public recognition of the phenomenon of violence against women in the family and society. They also contain provisions for the implementation of national policies to respect gender equality and combat domestic violence. A fairly long period has passed since the emancipation of women, the recognition of rights of all Romanian citizens, regardless of their gender, and the introduction of legal measures against domestic violence. However, the patriarchal mentality and gender violence continue to prevail in certain environments and communities, including educated couples with above average financial status, sometimes even public persons. The perspective of domestic violence has evolved alongside society, and the status of women has changed as the roles she has assumed have diversified and allowed her, through incremental legislative changes, to move from the role of mother and wife, to the role of an equal partner. Thus, the woman became a partner with equal rights over family decisions, a co-participant in the budget of a family, and an expert in education, health, arts and communication. Recently, women are becoming appreciated managers with equal access to leadership and decision-making positions in any field of expertise. Equal opportunities and respect for women's rights must be further supported because society, at an international level, must not forget the echoes of misogyny revealed by the #MeToo movement in the United States. Additionally, we should not omit that the provisions of the Istanbul Convention relating to the concepts of violence and gender equality are currently controversial topics for many states. Our country has taken important steps in changing specific legislation and aligning it with the international norms but women continue to be disadvantaged by the socialization models conveyed transgenerationally. Consequently, in the family environment, it is perpetuated that women should adopt responsibilities related to household work and raising children, whereas in the society, jobs predominated by women are poorly paid compared to those specific to men.

KEYWORDS: gender-based violence, discrimination, domestic violence, patriarchy, feminism

Introduction

An emblematic gender difference is the patriarchy, whose historical antiquity exceeds that of the Judeo-Christian tradition. Max Weber (Weber 1978, 879-880) said about patriarchy that it signifies paternal authority over wife and children. The patriarchal model manifested in our society for almost two millennia considered women inferior to men and therefore incapable of providing for themselves. Women were obliged to submit to male authority, to the father during childhood and then to brothers or husband in adulthood. The man had the obligation to ensure the physical protection of the

weaker members (women, children), to procure the necessities of daily life, being able, in return, to dispose of the women in his family, as he deemed necessary.

In a generic sense, it is a regime of power subordination in which broad categories of people are denied their fundamental rights in favor of a patriarch (symbolic father). The patriarch holds the economic and decision monopoly, being the sole beneficiary of power and freedom of choice.

I think it is important to analyze how this “ideological parent” manifests and how it metamorphosed over time, especially since certain gender inequalities are still manifested today. Our society still needs to solve certain aspects to provide equal opportunities for development and progress for all its members.

The evolution of women rights

For a very long time in history, women did not have the right to make important decisions. They were mere executors of men's wishes and their daily activities involved raising children, preparing food, making clothes and all other household activities. Their role was important, but they were only associated with the domestic space, they were forced to keep quiet, remain uneducated, and that's why they didn't have equal access to education and political rights like men. They did not have the opportunity to debate the problems they faced in society. Moreover, sex life was valued differently. The woman was required to be absolutely faithful in monogamy while the man was allowed to have extramarital affairs.

For women, their biological membership automatically meant a life dominated by persecution. Men, however, were associated with the public space and this meant their opportunity to consolidate their position of strength in social relations. For a long time, domestic violence was institutionalized through marriage laws that favored the man, giving him full power over his wife and children. In Romania, even the Civil Code of 1865 of the Old Kingdom explicitly stipulated that, in spousal relationship, the supremacy of the man should be respected as he was considered the “head of the family”. It was only in the late 19th century, during economic evolution, that the feminism of “equality” appeared, which manifested itself strongly through marches, public statements, gender-themed works. Feminists demanded the recognition of women's legal and political rights, equal access to education, the right of women to support themselves economically and to defend themselves from the abuses of dominant men.

Romanian feminism (the first wave) followed the steps of Western feminism and was implemented by educated, emancipated women, familiar with the ideas of international visionaries. Their ideals were related to the provision of unrestricted access to education and the recognition of rights for all categories of women, regardless of their social class (Miroiu 2004, 60).

Patriarchy began to decay with the attainment, at the beginning of the 20th century, through the efforts of feminists, of the right to vote and participate in politics, to manage personal property, to have access to training and to practice a profession. There was still discrimination against women: wages did not respect the principle of equality between the sexes for the same work, domestic activities remained strictly the prerogative of women, and access to resources was, in most cases, going through men. Cultural beliefs about gender roles placed men in positions of control, domestic violence was a taboo, same as marital rape and sexual harassment.

Communism came with a different vision of the role of women in society. The Stalinist dictatorship and then the Ceausist dictatorship did not allow the penetration of the second wave of international feminism because they considered it a bourgeois ideology, stupid and incompatible with the values of the party. Traditional patriarchy in

gender relations has been replaced by state patriarchy combined with a pseudo-egalitarianism of gender. Women had access to education, they were encouraged to work outside the home, for the progress of the socialist society, together with men, in factories. However, the “head” that could make decisions in every aspect of people’s lives was the state, and it was patriarchal. The state supported women through the network of nurseries and kindergartens and thus offered them the opportunity to take up paid employment. At the same time, the state encouraged women to have many children, to increase the birth rate and thus ensure for the future the growth of the labor force that will be directed by the party. Through the 1966 decree banning abortions, women were given the “sacred mission” to increase the country’s population at an accelerated rate. This mission proved unrealistic and beyond the powers of overburdened families. The effects of this decision? Thousands of empirical, so-called surgical interventions were done in secret, which resulted in many women dying. The orphanages were filled with abandoned children, some disabled, being born after failed attempts of illegal abortions.

In the private space, patriarchal relations were maintained and therefore women continued to have full responsibility for the care of the household, to be devoted mothers and wives. Domestic violence was a taboo because the “new man” had to be presented in a favorable light, thus problems and abuse were hidden “under the rug”.

The promotion of women before the 1989 Revolution was imposed according to the model of the communist URSS and only represented a formal target in the party’s program. It proved to be an unfounded political artifice that did not offer real chances for the affirmation of women (Trandafir 2013, 823).

Party propaganda tried to valorize, from an ideological point of view, the target categories represented by women, peasants and minorities. Focusing on them, the party wanted to prove its power to change the social order considered unfair until then and to appear caring and protective of all the country’s citizens (Cîrdei 2012, 77). Of course, it was all just a slogan devoid of practical content, and in fact all social classes suffered, except the members of the ruling party. The pressure of the state and the restriction of personal rights and freedoms were felt by the entire population.

After the Revolution, however, women ceased to represent a party objective and the job market changed dramatically, to their disadvantage. The sectors occupied by female labor were not considered strategic and since they were not supported by measures to increase the efficiency and allow for development, the sectors were restructured, leaving women unemployed. Left without compensatory wages, women were forced by unfavorable circumstances to accept disadvantageous jobs, in the sphere of services or in the public domain which was usually poorly remunerated (UNIFEM 2006, 9).

The proportion of women without any kind of income was four times higher than that of men and 48% of them earned below the survival limit or had no income (Gender Barometer Romania 2000). Although the situation was downright tragic, affirmative or gender quota policies, in favor of women, were vehemently rejected from the start because they were associated with the politics of the communist system. A system that was entrenched and had to be erased from social practice.

Out of desperation, some of the women were forced to become prostitutes or, in search of better-paying jobs in the West, exposing themselves to the risk of becoming victims of human trafficking for sexual or labor exploitations.

The burden of economic issues led married women or in relationships with aggressive partners to accept humiliation and violence from them because they had no alternative to resist the financial pressure and inequality. In addition, the trust in the morality of the Orthodox religion was imposed, requiring women to listen to their

husbands. The unity of the family was sought at any price, with any sacrifice, to make children lives better. Therefore, women remained in violent, subservient relationships with their partners. We can say that, during this period, modern patriarchy manifested, one through which women were economically subordinated.

Who protected the women in this situation? We can say that Romania's accession to the EU and the adoption of a community *acquis* was the best opportunity to save women due to the activist agenda proposed by the second wave of Western feminism, entered directly into the legislation of our country. The adoption of the legislation was achieved without any political party including in its program the themes and issues promoted by these norms or being concerned with women's rights (Miroiu 2004, 259).

And how could the political class have been interested in women's rights, when women were poorly represented in the political class and their voice was not heard? The data provided by the Permanent Electoral Authority showed a proportion of 10.1% women in the Parliament in 2000.

Studies (Childs and Krook 2009; O'Brien and Rickne 2016) demonstrate that gender quotas at the level of legislation or at the level of political parties are needed to increase the political representation of women. However, in Romania, all the legislative projects that proposed various versions of gender quotas were vehemently rejected, and thus the percentage of women's representation in Parliament was only 18.5% in 2018 (Băluță and Tufiș 2021, 5). From a legal point of view, the Constitution and other provisions of special laws, promotes gender equality in terms of civil, economic, political, religious rights. A law supporting these ideas is: Law no. 202 of April 19, 2002, republished, regarding equal opportunities and treatment between women and men. The state legally protects these relationships of equality, but without guaranteeing that gender-based discrimination does not continue to manifest itself in certain aspects of family life and community relations.

After 1989, the Romanian society was invaded by misconceptions that reinforced false models of femininity and masculinity. The woman came to be treated, rather, as a sexual object, and her concerns were not related to her intellectual or professional training, but to the achievement of certain standards of beauty. At the same time, the man is obliged to have a high salary or a lot of money, a status, in order to be desirable to the female population. With such an approach, the woman loses her position as an equal partner in rights, she is not capable of independence in procuring financial resources and in making decisions about her own life. Therefore, the woman condemns herself to the position of a dependent subordinate. She is only desirable if she looks good physically and is liked by a man who is economically well-positioned.

Patriarchy was reinterpreted after the fall of the communist regime, and Miroiu (Miroiu 2004, 247) presented this break in the balance of rights and forces between women and men. The break is due to a different appreciation of men's work and initiatives in relation to women's activity. From the start, men are better paid at work, their ideas and proposals are considered more important and successful, and their careers develop much faster. Giddens (Giddens 2001, 254) showed that economic imbalance and inequity manifests in the distribution of sexes in the fields of the economy. Where wages are lower, women are predominantly employed, even though they have higher education in a higher proportion than men. This way, the differences between the average salaries of men and women are perpetuated.

The gap has perpetuated, over time, also in terms of the distribution of domestic activities (Research carried out by EIGE in 2017, in Romania). Thus, 75% of women cook and carry out domestic activities daily for at least 1 hour, while, only 41% of men are involved in such domestic duties. Among couples with children, domestic activities are conducted by women on an even higher proportion (79%).

The inequality of time allocated to household activities automatically leads to social behaviors and opportunities that differentiate women from men. Men participate in more social activities, play sports, have more time to take certain courses and improve their careers. Women are overburdened with raising children, caring for the elderly/sick in the family and with household responsibilities. Thus, they lose opportunities for employment, relationships and implicitly have fewer chances to achieve economic independence and develop in their careers.

Nowadays, technology that helps housewives to better allocate their effort to household chores should come to the support of women. Services for the care of dependent people should relieve some of the pressure to solve these needs. This would not change the gender inequalities, but women would be helped, to a certain extent, in the performance of some duties that remain, at present, their exclusive task. In reality, there are many communities where home appliances are unaffordable because they are considered too expensive, and support services for the elderly/ill dependent on care and constant supervision are undersized and poorly funded by the state. Women are still feeling the burden of managing a poor household. In a study carried out by Eurostat in 2020, Romania is on the first place in the poverty list, and 1 in 3 Romanians are at risk of poverty or social exclusion.

In 2018, only 9% of the more than 172,000 patients who needed palliative care were able to benefit from it (Ziare.com, 21.03.2018). While, at the international level, the trend is to adapt the legislation of the pro-euthanasia concept, in Romania, “the voices of professionals in the medical sector and representatives of cults deny the need for such intervention in social relations and promote palliative services as the only ethical options for patients, but which are insufficient. Romanians continue to die in unworthy conditions of this century, rejected by society, or choose assisted suicide in a state that allows this.” (Chirvăsuță 2022)

Women bear the brunt of these institutional shortcomings and continue to sacrifice their careers and personal development, making up for serious failures in the social service system or protection policies. Women living in poverty are also particularly affected by violence from their partner, but studies have not been able to identify why men with low financial incomes feel more frustrated. On the one hand, men might be frustrated as they are not able to live up to their own or their family's expectations, thus becoming aggressive. On the other hand, women might see no hope of getting by without the economic support of their partner and thus remain prisoners in a dysfunctional relationship in an economic system that deeply disadvantages them (Heise, 1998). And yet, the victim of domestic violence does not fit into a restrictive pattern because the phenomenon does not bypass couples with a high level of education or those with above-average economic possibilities.

What is happening today with women's rights in Romania? What is happening at European level?

On the one hand, an alarm signal for Romania is highlighted in the World Bank Report (Romania Gender Assessment, 2018): a large number of young women are neither employed nor in partaking any form of education or professional training. They are thus becoming a risk category. On the other hand, domestic activities continue to be unequally distributed between women and men, our country has a high infant mortality rate, especially in the Roma communities, and the lack of sex education among young people led to Romania being ranked first in teen pregnancies.

However, the legislative improvements in Romania for respecting gender equality and combating domestic violence, as well as the functioning of institutions dedicated to this field, are worth noting. For example, in Romania there are: the National Agency for

Equal Opportunities between Women and Men, the Commission for Equal Opportunities for Women and Men at the level of the Chamber of Deputies, the General Council for Combating Discrimination. In parallel, the network of services for victims was developed, a network supported by local authorities, and intersectoral teams were also created in the field of preventing and fighting domestic violence at the level of all counties and sectors of the city of Bucharest.

A comparative study was carried out in 16 states where levels of violence were in some states low and in others high showed that the size of the phenomenon of family violence depends on the state's interest in the protection of the victims. Interest can be manifested through legislative measures, the establishment of shelters and the operationalization of counseling services. Thus, in states where specific protection measures were instituted, levels of violence against women were lower (Counts et al., 1992). The Agency for Fundamental Rights of the European Union (FRA) presented in 2014 a study on the forms of violence manifested at home, at work, in public and online against women. The results revealed that: "at a European level, 22% of women who are or were in a relationship, also suffered physical and/or sexual violence from their partner. In Romania, the percentage is not very different, falling within average values, 24% of women in Romania were victims of physical and/or sexual violence from their partner. 1 in 3 women in Europe (33%) reported cases of domestic violence to the Police or other support services, and a third of European victims of physical and/or sexual violence by their partners sought medical attention, only 6% shelter and 4% specific support services. The authors of the survey identified as possible problems for this poor access to institutions: the lack of information about services, the positioning of support locations far from the victim's home, the inadequate offer of organizations that cannot offer a certain type of help that the victim needs, at that moment."

The results presented by the FRA in 2014 illustrate very poor access, at European level, to specialized services for victims of domestic violence and a lack of information on the underlying causes. It is clear that new research efforts are needed to identify the specific problems and what improvements need to be made to the system because it is resource-intensive and, unfortunately, inadequate.

The most recent national study on the phenomenon of domestic violence also showed that, even in Romania, the frequency of contacting services is low and there is distrust in their ability to support, in the long term, the needs of the victims. It is about the National Study on the prevalence of different forms of violence against women, carried out in the first months of 2021. The results were presented by the National Agency for Equal Opportunities between Women and Men, during May 2021 as follows: "57% of respondents know of the existence of domestic violence law; 70% know what a protection order is; 56% know what a temporary protection order is, and 7% of the respondents state that they have turned to state institutions or non-governmental organizations to receive any form of help related to domestic violence issues. The police is the institution that most of the respondents turned to, precisely 92%. A little over a quarter of the respondents turned to the General Directorates of Social Assistance and Child Protection, and 14% turned to Centers for helping victims of domestic violence or to other institutions or organizations." The conclusions of the research also reaffirmed the fact that the victims report the acts of domestic violence only to warn or calm the aggressors, as in the moment, they do not want to take legal measures to against the perpetrators, nor to separate themselves from them because they do not feel ready to cope with the separation process. The help received from state institutions, in their opinion, does not give them personal security in the long term.

Conclusions or “what needs to be done?”

I consider this brief history of the evolution of the gender issue necessary because certain discriminatory behaviors are manifested even now and they are resistant to change. These discriminatory behaviors have deep roots in the collective mentality and, following their course and historical motivation, it is possible to intervene more effectively with measures adapted to reality and needs.

Periodic quantitative and qualitative research must be carried out, to know the current social roles assigned to women and men, the areas in which gender disparities are manifested, and to form the basis for the development of effective strategies and policies.

The application and monitoring of these public policies as well as the financing of the protection measures that should be implemented is another problem and the solution can only be guaranteed by the involvement of a considerably larger number of women in politics, in Romania. They must demand the promotion of gender equality and respect for women's rights in all sectors of life.

How should women be encouraged to get more involved in politics? How can the mentality of a society with such a history be changed? Perhaps everything must start from education, the promotion of gender equality during the first years of school, the specialization and professionalization of women, equal opportunities for affirmation, the adaptation of social services and the exchange of good practices with states where women's voices have begun to be heard and to matter in public policies.

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Nurturing Prospective Female Politicians in Local Governance and Community Development

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ABSTRACT: There are efforts to increase the number of assemblywomen in decision-making positions in the district assemblies. Ghanaian women's contributions in public spaces to enhance development at the grassroots ensure their participation in local government administration. Although there is a negative perception of female politicians, assemblywomen encourage other women to engage in local politics. Their efforts are to nurture other women, build their interest in local politics, improve their political participation and develop communities. This study sought to explore the various activities that complement those endeavors. The study adopted the qualitative approach to study four regions in Ghana sampled based on their diverse nature and noticeable female representativeness in district assemblies. Thirty assemblywomen were purposefully selected for in-depth interviews. The results show that their responsibilities gained other women's support where they could liaise to build their community. This mentee/mentorship initiative would enhance women's chances in local government administration. The implication is that once a woman steps out from her private home to contribute to public space, community members recognize her, precipitating the support to engage in local government administration.

KEYWORDS: Assemblywomen, community development, local government, responsibility, representation, Ghana

Introduction

When women gained political rights, it took them years to exercise their rights to vote or stand for office (Paxton, Kunovich & Hughes 2007). Hence, there is continuous global advocacy for women to participate in government and occupy political positions in governance. Besides, many female politicians serve as mentors to others, and their actions encourage them to engage in local politics (Bexell 2012). Also, exposure to formal political leadership models helps people become more informed and engaged (Doherty 2011). Thus, women's candidacies and terms in office offer positive models of political leadership for other women and girls. Besides, gender equity and sensibility have been recognized as crucial in attaining sustainable development (Ofei-Aboagye, 2004). The call for women to be part of decision-making is significant as they form most of the country's population and many of the economy's production sectors. Being part will contribute to them contributing to addressing their needs and concerns. Studies show that Ghana is inhabited by not less than 40 per cent of the women population, poor women living in the Northern, Upper East and Upper West part of Ghana and other parts of the rural areas. They are also in food crop farming, about 70%, and in the informal sectors of the country's economy, about 90% (Ofei-Aboagye 2000). How could the imbalances in the sectors of the Ghanaian economy improve if women, who constitute more than 50% of the world population, are sidelined in decision-making positions?

This study explores how assemblywomen encourage prospective female politicians to engage in community development to build their interest and participate in

local government administration. The paper is organized into five sections. Section one presents the introduction, followed by the concepts' description. The third section presents the methodology, while the discussions are in the fourth section. Section five concludes the paper.

Description of Concepts

Local Government System

The current local government provides a decentralized and participatory system and has become an agent of the national/central government and are home-rule institution to serve their various communities. The system has been an essential component of the country's political system and dates to colonialism in 1844 (Thomi et al. 2000; Ohemeng & Adusah-Karikari 2015). Since 1993, Ghana has been a constitutional democracy in the fourth republic with two spheres of government; the Central government and Local government systems (Boateng, 2017). Under the decentralization policy, the local government system ensures more equitable participation of people in government (ABANTU for Development 2003).

Section 10, 1-3 of the *Local Government Act 462* sanctioned the district assemblies to be responsible for the overall development of the communities through the exercise of deliberative, legislative, and executive powers (Ofei-Aboagye 2004; Boateng & Kosi, 2015). The district assemblies are the highest administrative authorities under the local government system at the local levels (Ahwoi 2010).

Women's Representation in Local Government

Women's political representation (WPR) is a core element in gender equality and good governance (Araujo & Tejedo-Romero 2016). At the local level, the assemblywomen's responsibilities of reducing malnutrition and implementing nutrition interventions and an anti-poverty approach are like extending such functions from the private spheres to the public space. Assemblywomen are involved in implementing the medium-term policies in the focus area of the National Development Planning Commission (NDPC 2015) in Ghana to achieve the following key objectives: I. Reduce undernutrition and malnutrition-related disorders and deaths among infants, young children and women of reproductive ages: II. Ensure effective coordination, integration, and implementation of nutrition interventions in relevant sectors; and III. Ensure improved nutrition among all segments of the population. Women's involvement in the local government system will improve female reproductive roles, which seek to nurture people (Boateng 2009; Abdullahi, Ghani, & Dalhatu 2015).

However, few women are elected to represent the people at the district assemblies because of intimidation, lack of recognition and illiteracy (Gyimah & Thompson 2008). According to Oguonu (2004), lack of resources to execute planned projects, corruption, ignorance, discrimination, and exclusion inhibited women from participating in local government (Abdullahi, Ghani, & Dalhatu 2015). Ghana's 2019 district assembly elections recorded the second-lowest number of women contestants against the 1998 elections, which registered 547 and got 196 elected in 1998 when the current local government system was first inaugurated (ABANTU for Development 2020; Tsikata 2009). Thus, after the 2019 elections, there was a record of 909 female contenders, but only 216 emerged winners. Since many women are not part of the decision-making processes to develop their communities in the district assemblies, strategic needs and female-focused concerns are not provided. For instance, 70% of communities visited during the research had no nursing facilities for nursing mothers in the assemblies and within the communities. Hence, the women could not combine their reproductive, productive and community responsibilities. Women elected and appointed to the district

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assemblies, the districts' highest political authority and administrative bodies, are perceived to enjoy all privileges and benefits of their elected positions when they participate in the decision-making process (Jackson 2021). In his doctoral study, Jackson (2021) affirmed the positive thinking of having women in the district assemblies following their increase in population. The gesture would translate into more women having access to power in the District Assemblies. However, once there is no affirmative action law in the Ghanaian patriarchal society, it becomes a challenge for them to be elected until the stereotype surrounding women politicians is dimmed. The negative perception could be deconstructed when both men and women in decision-making speak up and mentor more women to engage in local politics.

Women's Empowerment

There is advocacy for the observance of the population's human rights, including women in most of the world's population. The provisions in the 1948 Universal Declaration of Human Rights serve as guides to enhance women's capacity to engage in decision-making processes and leadership positions, which will enhance the chance for women to have access to the political structures of the economy. Coincidentally, the 1948 declaration laws include instructions for governments, national bodies, and the private sector to facilitate women's inclusion in decision-making positions and processes. Other social structures that could enhance women's access to power are the political parties, trade unions and employment sectors (Appiah 2015). There are positive responses from the trade Unions as there is an expansion of the political space for women to engage in leadership positions, union activities and other structures (Britwum 2012). For instance, the Trade Union reserves Deputy positions for women aspirants that enhance their participation in decision-making processes.

The more women engage in politics, the more their contribution to development becomes enormous and helps solve societal challenges, including poverty, sanitation issues, hunger, and welfare needs. Also, women's economic empowerment could be a strategy to reduce poverty among women by having access to land, credit facilities, information technology, business services and networks (Boateng 2017). Strengthening other women's capacity to generate income will help manage their concerns (Kamau 2010). Also, the women's network is essential for rebuilding a conflict-ridden society and enhancing development (Powley & Anderlini 2003; Araujo & Tejedo-Romero 2016). Historically, approaches to women in development (WID) placed women's economic agency on the development agenda. Women's effort to achieve equality in development falls within actively participating in governance (Bexell 2012).

Compared with men, the social reality constructed by women seems exceptional. This study observed that the election of women as assembly members saw the construction of nurseries to support other women in the community. These developments appealed to other women to develop an interest in local politics and become part of the local government administration. Therefore, the elected women in the district assemblies have become responsible for persuading other women to participate in local politics.

Community Development

This study adopted the explanation of community development by Kamau (2010), where leaders are likely to guarantee that their actions and influences bring development effects to the areas they hail or constituencies they represent. Good governance results in development, and women's contributions attest to why global, national, rural and community development are based on goals in the new millennium. Thus, the MDG 3 and SDG 5 goals ensure gender equality for sustainable development.

Women's empowerment principles point out that through community initiatives, equality would be promoted (Bexell 2012).

Studies have shown that rural women contribute to community development by providing work opportunities, acquiring impactful skills, and providing necessary commodities to community members (Abdullahi, Ghani, & Dalhatu 2015). Owusu and Lund (2004) revealed that in development literature in Africa, women have been identified as playing key roles in the daily market and small industries in the districts in Ghana. Still, such working places have been hugely underdeveloped. Hence, the need to have many women in the District Assemblies to enhance the growth. In the financial sector, women seem to be missing, and the advocacy has been for their expertise to be considered since their numbers are most of the world's population. Economically and socially empowering women has been the call to have them in decision-making positions. That is especially when society has been moving away from the perceived stereotype about women politicians being bound to certain functions in the traditional division of labor worldwide. They have been marginalized in the economic sectors, and a traditional division of labor is persistent. They are perceived to be the basis of many of the difficulties women face in their effort at self- and community development (Egyir 2010).

Therefore, women's efforts to liaise with other women to contribute to community development must be acknowledged. Moser (1993) acknowledged Women in Development (WID) approaches and the interventions made in the 1950s to change rural people's economic and social progress, particularly women's roles as contributors to their community.

Methodology

The study employs a qualitative research approach to explore people and social and material circumstances (Denzin & Lincoln 2008; Ormston, Spencer & Snape 2014). The in-depth knowledge through face-to-face interviews expands the comprehension of social phenomena emerging in society. Thus, assemblywomen liaise with others to impact the lives of community members. The study adopted a purposive sampling procedure to select twenty respondents to account for their lived experiences in the four areas; Western Region (WR), Central Region (CR), Bono Region (BR), Eastern Region (ER), and Greater Accra Region (GAR). The study areas and the respondents were coded as C1, W2, G3, B4, and E5 as pseudonyms to hide their identities.

The respondents gave their consent before the face-to-face interview; hence, those who did not feel comfortable could stop participating. The data were coded using NVivo version 11 software during the data analysis. The researcher familiarised herself with the subjective presentation of the participants. Six varied themes emerged: (I) *Communal Labor*, (II) *Seeking Support from Local Women*, (III) *Male Partners' Support*, (IV) *Constructions of social amenities*, (V) *Supporting girls and children*, (VI) *Women in Electioneering Campaign Teams*.

Findings and Discussions

Creswell (2014) and Denzin & Lincoln (2000) suggested that the research approach should be linked to the objectives and questions of the investigation. The study explores assemblywomen's efforts to nurture other women to develop the communities, increase their interest in local politics and improve their political participation. The six themes that emerged from the analysis represent how the assemblywomen could invite other women into local politics.

1) Communal labor

C1 organized programmes and spoke to women to be courageous. The time to meet the women was during communal labor when other people would be present to cheer them up. She was an association leader, and her speeches motivated others to come on board to serve the community. Also, B1 admitted that many people excused themselves during communal labor because they failed to bring tools such as shovels, brooms, spades, and rakes to work. She revealed that the absence of working tools always retarded development. Sometimes the women usually presented the tools to work very hard. B1 said, "Using myself as an example, I put trousers and wellington boots on to get involved. The men stand idle while the women work with buckets, cutlasses, head pans and brooms." E1 indicated that the assemblywomen always relied on the women who were more committed to developing their communities. She noted that when a woman announced that all women were needed, many women would heed the call quickly and assemble to undertake any assignment. E1 said, "As for my community, we listen to women; whoever comes to me for support, I stop whatever I do and attend to them." E1 indicated that she had incorporated many women into the district unit committees. Hamah (2015) admitted that women's performances were by no means considered inferior to men's.

The extent of women's engagement is not limited to household reproductive activities as they deal with community work. Thus, housewives (women) extend their engagement in the home to communities or public spaces. G1 hinted that in Ghana, women's duties are associated with improving sanitation; hence, they accompanied her during tours to sanitize the places. After cleaning, G1 organized open fora to meet men and women and brought ideas, fortifying women's political involvement. From the revelations, women's multiple roles as wives, mothers, daughters, community workers and income-generators do not entirely limit their time for community interaction and mobilisation, as some studies (e.g. Ofei-Aboagye 2000) suggested.

2) Seeking support from the local women

As part of their duties, assembly members need to consult community members about developing the areas, which became part of C1's routine. Though C1 invited all members to clean, her targets were the women who assisted. She always advised them to keep the surroundings clean to ward off weeds, mosquitoes and snakes, as people expected much from them.

Other assemblywomen persuade hardworking women in the community to be involved in politics. For instance, CB said,

One woman in my area is very bold, so I have asked her to contest this year, but she says she has no money. However, I had asked her to do all she could because my children helped me when I contested.

In other instances where women attempt to discourage her, she invites them to partake in their activities. CB recounted how she persuaded them to join:

I have been speaking to some women that they should also come forward and get involved so that the number of women in the Assembly will also increase. I have observed that when the women come to the Assembly, we are happier than the men, so I have asked most of them to get active in the Assembly.

While the assemblywomen worked with other women, they invited mentors to speak to them. B1 also talked about a prominent woman in one region who visited them frequently and encouraged them to engage in local politics. Those encounters were motivational periods, and she suggested the assembly take it up to invite more such

mentors to give talks and skills training to make more women engage in politics. Studies have shown that partnerships for women's empowerment attempt to construct their legitimacy and rationale (Bexell 2012). G1 vowed to always go in for women to participate in decision-making.

She said,

"Women are good in leadership. When it comes to effective politics, I will go for a woman because, administratively, women are born with leadership qualities. They are humble and know how to lobby for their needs and change."

G1 acknowledged that her government vouched for more women to participate in politics. Hence, she roped them into the local government administration. G1 and her female team supported widows, aged, childless, and disabled, whose limited access to labor made them suffer greatly.

Thus, women's socio-political and economic empowerment could help address the community members' challenges (Boateng 2017). At the local level, women's active involvement in steering and directing public affairs, including development activities, was critical to successfully implementing government policies such as the Ghana Poverty Reduction Strategy (GPRS).

3) Male partners' support

E2 always praised her husband for the support she received during her political journey and indicated that the husband was the main sponsor who paid for everything during electioneering campaigns. E1 also praised her husband in front of other men, which served as an eye-opener to help their wives. E1 formed three associations; Land Lords Associations, Residents Associations and Stakeholders Associations chaired by the husbands of the women who worked with her. Such associations comprised males and females; the wives participated in local politics to develop the communities. E1 also advocated that husbands allow their wives to step up their political games, with which many agreed.

On the other hand, E1 complained about unsupportive husbands and urged women to work hard. G1 indicated that society did not accept females in politics, but people embraced their presence for the support they received from their husbands. She said, "The support from my husband, who endorsed my candidature, was a real plus in my political career. There was mutual respect and understanding, and we had no problems." G1 shared whatever she gained from politics with her husband and discussed politics with him. Particularly the sub-committee she served in the assembly so that he would understand whenever she returned late from assembly meetings. G1 said her husband had been a role model, and other men emulated his support. She believed other husbands equally supported their wives in engaging in local politics. She pointed out that women in their communities should always inform their husbands of their whereabouts, enhancing their support in their decisions to engage in politics.

DK also insinuated that,

My husband and children supported me when I got involved in the Assembly. I have four children, with my last born being 18 years. They praise me all the time. None of them has been a problem for me since I went to the Assembly, and I can say that their encouragement and zeal helped me to work effectively.

Although literature (e.g. Borrelli 2002) emphasizes women's challenges in politics, the support from their male partners was a wake-up call for wives to develop an interest in politics.

4) Constructions of Social Amenities

B1 admitted that there was no bridge on the stream in their community, which had daunting and unhealthy situations for the people. They encounter snake bites whenever they cross the river. She wrote to the district assembly and requested that wood logs be spread on the stream to serve as pathways. Although the local authority did not heed her request, B1 suggested that her enthusiasm for demonstrating the need attracted other women to her camp. They showed their displeasure, and the semi-literate women began to notice the essence of knowing their rights as citizens. That action, B1 believed, was an eye-opener for women to step out of their private sphere to engage in the public space. Women's Rights and Gender Equality Programme supports women's political participation and engenders public policymaking (Kamau 2010).

With the women's demonstrations, the government heeded their needs through policy formulation and implementation. B1 still appealed to NGOs that came to their aid and built toilet facilities, schools, school fields and shared school bags and bicycles. E1 pointed out that she and her husband established a primary school in 1997 for the children in their community to attend for free. The gesture encouraged many parents, particularly single mothers in the area, who found it difficult to pay for their children's school fees. They voluntarily attended community gatherings to support any proposed development initiatives.

5) Supporting girls and children

C1 aimed to develop her electoral areas, cared for the constituents, and concentrated on improving children's lives. She sometimes gathered children and fed them breakfast, which was very fulfilling. She accompanied parents and their children to the hospital for treatment. C1 said, "The children's mothers had been grateful and always informed community members about my support." These women cared for other people in their communities and were acknowledged though they were not in government. Studies support women's impact in shaping values for children (Zipp, Prohaska & Bemiller 2004). C1 took the opportunity to invite such kindhearted women and worked with them. She also secured national health insurance cards for the underprivileged, the poor and children. She always sorted for admission for Senior High School leavers. She said, "Whenever there is time for school admission, I go round from house to house and ask so that those who need help will be supported through my relationships with the schools and colleges." She only collected lorry fares from the prospective students' parents and journeyed through to get support for them.

C1 also supported orphans and kept the children whose mothers suffered from mental diseases. These mothers might have been impregnated by men they could not identify. She was with eight abandoned children she was nurturing. She said, "When they are happy, I am happy." C1 believed that the work she had been doing support the well-being of the people; if she stopped, many of them would face problems. DK also said,

I sometimes pay the school fees of some children in the community, I register people on the Health Insurance scheme for free, and I make time to visit the older adults in the community. There hasn't been a single week whereby I didn't pay a visit to any of the houses in this community. I listen to the needs of everyone; if someone needs help, I help them out, so when it is time for elections, the people give me the strength to contest.

E1 also paid children's school fees and registered their health insurance fees. Studies have shown that women (and young people) with little education, poorer health and greater food insecurity are at risk (Ofei-Aboagye 2000). Assemblywomen properly communicate this information to other women to be involved in politics and decision-

making to seek women's and children's needs. In their study, Edjah, Dare and Danso (2007) recommended a positive attitude from women and poor parents in general towards female education, and it could be through the giving of material and financial incentives, including removing unnecessary levies. However, this sensitisation could be more effective if many women were in the district assemblies and local government system.

6) *Women in electioneering campaign teams*

While women were involved in spraying their community and fighting dirt and cholera outbreak, others organized themselves to sweep and campaign during elections. Their activities have helped ward off plagues and illnesses. Ghanaians have been free from diseases due to what they have been doing. E1 visited older women who campaigned on her behalf to attract voters. She always gifted them on her birthday, and it went well to collaborate more with many other younger women who would remain in politics for a longer period. Campbell and Wolbrecht (2006) believe that female role models make young women more likely to express an intention to engage in political activity. E2 also brought on board many females during her campaign periods in 2002, 2006, and 2010 district assembly elections. Those energetic female team members could sing and dance to attract many people to the rally. They organized picnics and cooked for the teeming supporters. These spectacles attracted prospective women politicians, and the assemblywoman took no chances but co-opted them into her camp and groomed them to become politicians.

Anytime E2 won elections, she invited enthusiastic women into her administration. She confessed that she had been able to encourage four women to contest and win the 2019 district elections. G1 supports everyone and helps those she sees as vulnerable. She said, "I have a passion for helping people, and the women in the community, particularly those in my team, have seen my hard work. DK also employed women in her campaign team to motivate them. She indicated that

With the campaign, I go out with my female team to lobby for sponsors to help me, and after all, I take good care of my team because they are the people who will always have time to talk to the people, even in your absence. You will lose if you don't pay much attention to that campaign team. Those people can even pull the crowd for your opponent.

With the campaign, I go out to lobby for sponsors to help me, and after all that, I take good care of my campaign teams because they are the people who will always have time to talk to the people, even in your absence.

Conclusion

This study explored the efforts of assemblywomen in Ghana who encouraged other women into local politics. The findings indicated that their care for younger people and the vulnerable in their communities attracted other women to be involved. The engagement with other women and their husbands supported them in their responsibilities for community development. The husband's involvement cemented the wives' political actions. Though some husbands preferred that their wives never got involved, especially when they were on the same political teams, they eventually supported them because of the assemblywomen's roles. The ideas from the female politicians to persuade and motivate other women to engage in politics have been a great initiative, which I believe the stakeholders should hold tight. There is recognition of women's efforts and the reciprocal effect because of the positive influence on other women in the communities. There is still less participation of women in government and decision-making positions, and such actions from women politicians would support addressing unfair representation in decision-making.

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Theoretical Linkages between Status of Maternal and Child Health in India and Risk of Non-Communicable Diseases

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ABSTRACT: The Global Burden of Diseases Study 2019 reports that metabolic abnormalities and high BMI since childhood are the primary reasons for the increasing burden of Non-Communicable Diseases (NCDs) in India. Popularly, these conditions are associated with consumption and lifestyle patterns such as high fat, energy-dense foods, sedentary lifestyle, stress, etc. So, the government is focused on preventing NCDs by promoting healthy diets and physical exercise. Public knowledge of the link between adverse in-utero environment and metabolic abnormalities during childhood, which impact the future health of an individual is under-recognized. Given this background, this paper discusses the implications of adverse pregnancy or birth outcomes (such as low birth weight, premature deliveries, etc.) of an infant on its long-term health, thereby establishing that proper reproductive care can play an instrumental role in averting the risk of NCDs in the future. Essentially, this paper analyses how prenatal, neo-natal and early childhood conditions play a preemptive role in the future incidence of NCDs and their management through appropriate policies that can aid in averting the risk of NCDs.

KEYWORDS: Maternal and child health, non-communicable diseases, reproductive care, nutrition, socio-economic determinants of health

1. Background

The relevance of maternal and child health programs in preventing chronic diseases in adulthood is based on Barker's 'Fetal Origins of Adult Disease' hypothesis which has now been expanded into the 'Developmental Origins of Health and Disease' approach (Wadhwa 2009, 358-68). The hypothesis scientifically proves that the risk of obesity related NCDs in adulthood is rooted in the prenatal and postnatal period, when the fetus is exposed to a myriad of environmental modifications/conditions. Environment to which the fetus is exposed in the womb brings about permanent changes in the structure and function of the fetus, which is referred to as 'programming.' The hypothesis states that fetal and early life environment plays a deterministic role in the development of adult weight, metabolic conditions and adult chronic diseases.

The hypothesis is based on a study that linked mortality ratios with birth data of people born in Hertfordshire from 1911-1930. The data suggested that low birth weight, small head circumference and low ponderal index (mass/height³) at birth was associated with an increased risk of coronary heart disease in adulthood (Skogen, Jens and Overland 2012, 59). These observations were then used to link prenatal exposures and other chronic conditions such as elevated blood pressure, type 2 diabetes and cholesterol. The first report suggested that an inverse relationship existed between

birthweight and blood pressure which was published in 1989, followed by a study reporting an inverse relationship between birthweight and cholesterol (Skogen, Jens and Overland 2012, 59). The study also linked diabetes with cardiovascular diseases and introduced the ‘thrifty phenotype’ hypothesis (Skogen, Jens and Overland 2012, 59). The hypothesis postulated that prenatal exposures bring about specific, irreversible changes (programming) in the fetus, which interact with various environmental factors after birth and pre-dispose an individual to chronic disorders. This is to say that, though obesity and type 2 diabetes are primary causes of cardiovascular diseases but, as argued by Osmond and Barker (2000), these risk-factors lead to chronic disorders only in predisposed individuals, such as the ones suffering from fetal growth retardation (Skogen, Jens and Overland 2012, 59). According to the hypothesis, if a fetus is subjected to malnutrition, it tends to downstream/down regulate various important development processes in the womb. This down streaming leads to insulin resistance and impaired glucose tolerance during prenatal stages itself thereby. After birth, if such babies are exposed to high-energy, nutritionally abundant food, then they are at an increased risk of developing type 2 diabetes. This hypothesis is firmly established now with affirmative evidences globally (Skogen, Jens and Overland 2012, 59).

Other fetal or prenatal factors that affect long-term growth of the infant are the mother’s weight and nutrition before pregnancy and during pregnancy, blood sugar levels and smoking habits, etc. Early life factors, such as rate of increase in infant weight, initiation and duration of breastfeeding, nutrition, etc., determine metabolic conditions in adult life. For instance, children of women who begin their pregnancy with overweight or obesity have been observed to gain excessive amount of weight in early childhood period compared to children of mothers, who gain inadequate amount of weight during pregnancy (Hsph.Harvard 2020). It has been recognized that the most opportune time to prevent adverse fetal programming of NCDs is the peri-conception period i.e., the period before conception to early pregnancy. This makes a strong case for improving nutritional health of young girls as it can play an instrumental role in curbing the spread of NCDs. Such an approach is called ‘primordial prevention.’

In India, the interdependent and inter-generational nature of maternal health, fetal and early childhood nutrition was recognized in the eleventh five-year plan (2007-2012). The main reasons identified for high maternal, infant and child mortality in India were malnutrition, premature deliveries, infections, non-institutional deliveries and inappropriate infant-feeding practices etc. Malnutrition, had previously also been linked to infant survival and its long-term health. Consequently, various nutritional supplementation programs for pregnant women (iron and folic acid supplementation), adolescent girls (National Programme for Adolescent Girls (NPAG) and infants and children (integrated management of neonatal and childhood illnesses) had been enacted as part of the ICDS program in the previous five-plans, starting fifth five-year plan. However, in the eleventh five-year plan, the government acknowledged that the effects of infant malnutrition were irreversible and it is a root cause of not only infections but also chronic, non-communicable diseases. So, as a marked departure from the previous approaches (of temporary nutrition supplementation), the government focused on adoption of the ‘Life-Cycle Approach.’ Within the life-cycle approach, appropriate interventions are undertaken at every stage of life starting from the intrauterine period to old-age, based on the understanding that health outcome at any stage of life is a potential determinant of future state of health. This was to be done by integrating various social, health and environmental sectors. With these new insights, the government introduced demand-side, financial incentive-based programs to enhance

utilization/uptake of programs as part of the second phase of the Reproductive and Child Health (RCH) strategy¹.

RCH-II focused extensively on educating communities on pre and post-pregnancy emergencies, promoting institutional deliveries and optimal breastfeeding through local agents (like Auxiliary Nurse Midwife (ANMs), *Anganwadi* Worker (AWW), Traditional Birth Attendants (TBA), village practitioners etc. and institutions (*panchayats*, NGOs, Self-Help Groups, etc.) and promote referral transport for routine deliveries and emergencies. It also focused on promoting skilled care at birth whether the child is born in a facility or at home. This included ensuring a warm, hygienic environment for delivery and undertaking preliminary examination, recording birth weight and initiating breastfeed. The eleventh five-year plan mentions that exclusive breastfeeding for the first six months could cut down infant mortality in India by 15% (Ministry of Women and Child Development 2006). Other than this, it focused on increasing the proportion of pregnant women receiving three antenatal care checks, in addition to improving coverage and quality of antenatal care. For this, a mother-baby linked card was provided to all pregnant women wherein important clinical and non-clinical details² pertaining to the pregnancy were recorded. The importance of post-partum care was also recognized and provisions were made for the AWW to visit the mother and newborn and guide them in the problems they face.

Under the 12th five-year plan, strategies to prevent premature births and manage deaths among preterm births were put in place. Strategies to prevent premature births included provision of antenatal check-ups wherein screening for high blood pressure, diabetes, etc. Secondly, pregnant mothers would be educated about behavior and lifestyle changes that would prevent preterm births. For children born preterm, the plan identified mechanisms to reduce mortality (Kramer 1987, 663-737; Planning Commission 2013).

2. Adverse birth outcomes and its link with NCDs

Poor birth/pregnancy outcomes namely low birth weight, premature delivery, etc., have been associated with increased susceptibility to chronic disorders in later stages of life.

2.1. Low birth weight

Birth weight- an indicator of health of a newborn, is an important determinant of health in adulthood. Low birth weight i.e., weight less than 2500 grams at birth irrespective of gestational age, in the short-term, increases the risk of neonatal and infant mortality (Kramer 1987). In the long-term, according to ‘fetal origin of adult diseases hypothesis’, it exposes an individual to a higher risk of obesity-related non-communicable diseases especially type 2 diabetes, hypertension and CVDs (Bhargava et al 1982, 123-9; Desai and Tandon 2009, 356-366; Barker 1998). The literature also points out an inverse relationship between birthweight and blood pressure, cholesterol (Barker et al. 1989. 564-7). The association between low birth weight and cardiovascular diseases has been observed in developed countries like Wales Sweden and USA and also in developing countries (Osmond and Barker 2000). A study based in South India found that prevalence of CVDs fell sharply from 18% in people who weighed 2.5kg at birth to 4% among people who weighed over 3kg (Stein et al. 1996, 1269-73). A study based on four-year-old children in Pune, Maharashtra State shows that children who were born with low birth weight were

¹ This was introduced as part of the second phase of Reproductive and Child health Strategy. The first phase of RCH was launched in 1997 with the aim to reduce infant mortality rate, maternal mortality rate and total fertility rate. For this, the government promoted institutional deliveries, immunization and contraception methods

² Non-clinical information includes danger signs, nutrition, iron-folic acid supplementation, birth spacing and newborn care.

highly insulin-resistant, independent of their current size (Yajnik et al. 1995, 330-6). Particularly, the ones who are born with low weight and become heavy during childhood or adolescence were the most insulin resistant (Bhavdekar et al. 1999). Further, studies point out that not only low birth weight but even high birth weight is positively linked to excess BMI gain (adiposity) in late childhood, adolescence and adult-life (Bhargava et al. 2004; Sachdev et al. 2005).

Interestingly, a thin Indian baby could still be fat. This happens when a thin baby with low BMI and lower abdominal circumference has relatively high fat mass than lean mass i.e., has high body fat. Such a physical characteristic is referred to as a 'thin-fat baby' phenotype. In fact, different physical features of the infant reflect different fetal adaptations to adverse fetal environment such as undernutrition, hypoxia (a condition in which the body or region of the body is deprived of adequate oxygen supply at the tissue level) and therefore is indicative of different long term consequences. For example, in Sheffield and Finland, it was found that among people who were born thin (i.e., having low ponderal index - a measure of leanness of person calculated as a relationship between mass and height), short and with small head circumference, morbidity due to cardiovascular diseases, diabetes and hypertension was high (Skogen, Jens and Overland 2012, 59). Studies in Helsinki suggest that those with accelerated growth in height (after retarded growth in utero) are more prone to hypertension and those with accelerated growth in weight are prone to diabetes (Binns et al. 2001, 68-73). These relationships between physical characteristics and NCDs were found to be independent of social class. In India, Yajnik et al. (2003) concluded in a regional study based on rural women in Pune that Indian babies exhibit a "thin-fat baby phenotype". This means that a fetus facing an impaired intra-uterine growth environment, retains the fat while compromising on the muscle mass i.e., higher fat mass and low lean mass (Yajnik et al. 2003, 173-80). Since babies tend to retain this fat throughout growing up it makes them particularly vulnerable to chronic diseases especially CVDs and diabetes irrespective of their adult unhealthy lifestyle. This implies that children with poor birth outcomes remain at an increased risk of NCDs even if they follow a healthy lifestyle while growing up i.e., they are pre-disposed to NCDs and risk factors since birth (Kuriyan 2020, 826-832; Yajnik and Chittranjan 2014, 8-17). In addition to this, the study also found that higher ponderal index at birth predicted diabetes later in life (Yajnik 2003, 173-80). Further, the study states that central adiposity contributes to insulin resistance.

Literature extensively discusses about socio-economic and biological determinants of a 'thin-fat' baby. The 'thin but fat' characteristic was observed in underweight babies born to mothers who were illiterate and had low pre-pregnancy weight. The study suggests that body composition of the neonate is determined by the mother's pre-pregnancy body composition such as fat mass, head circumference and maternal diet such as fat intake, frequency of consumption of green leafy vegetables, milk, fruits etc. during pregnancy. This means there is few associations between maternal macronutrient intake and neonatal size and more with intake of micronutrient-rich diet (Yajnik 2003, 173-80). The results of this study are supported by a Bangalore-based study that found that the 'thin-fat baby phenotype' did not exist among children born to relatively educated and nutritionally sound mothers (Kuriyan 2020, 826-832). Since visceral adiposity is present in Indians from their intrauterine life so interventions to reduce the risk of diabetes and CVDs should begin inter-generationally (Yajnik and Chittranjan 2014, 8-14). This implies taking into consideration nutritional history of the mother in the distant past as well as during pregnancy as it affects fetal adiposity and body composition. Stimuli and exposures after birth further add to the effects of fetal programming thereby increasing the chances of contracting a chronic disorder. For

instance, small, low birth weight babies who tend to gain excessive fat during childhood are at a higher risk of morbidity due to hypertension and diabetes. Biological mechanisms responsible for this association such as high maternal BP³, fetal undernutrition, catch-up postnatal growth (Lever and Harrap 1992, 1642-5; Singhal and Lucas)⁴ etc. are easily manageable through timely screening and diagnosis during pregnancy and lactation. Such interventions can go a long way in cutting off intergenerational transmission of chronic disorders. From this it can further be established that ensuring proper care through childhood, adolescence and reproductive ages especially for women, can go a long way in ensuring appropriate/desirable neonatal health outcome. This further advocates the cause of adopting a ‘life-course approach’ to maternal and child health in India.

Chhabra et al. (2004) found nearly three-fourth of low birthweight infants in an urban resettlement area of Delhi were born to highly undernourished mothers (weighing less than 40kgs). Further, mothers who were less than 140cm in height were four times more likely to deliver babies with low weight. The other important factors identified are maternal age and parity. Among teenage and adolescence pregnancies (less than 19 years) the incidence of low birth weight is high compared to mothers aged 25-29 years. Further, it was found that first pregnancies of mothers are likely to have low birth weight (Chakraborty et al. 1975, 73-9). With regard to this, Kramer (1987) argues that maternal weight-an important determinant, is modifiable over a short period of time with appropriate interventions (Kramer 1987, 663-737). Teenage and adolescence pregnancies- a result of early marriages, lead to unfavorable/poor birth outcomes because the girl is not physically mature for pregnancy. This was found to be independent of socioeconomic status (Chakraborty et al. 1975, 73-9).

Yajnik (2014) argues that undernutrition especially during the first 2 trimesters hinders the growth process such that it leads to overeating and obesity in the postnatal period (called the postnatal catch-up growth). In scientific terms, undernutrition in the third trimester is related to reduced risk of obesity because fewer number of fat cells are produced during this period. So, fetal undernutrition is linked to diabetes and CVDs independent of family history and body mass index in adulthood. This link between fetal undernutrition and incidence of chronic diseases in adult life has been referred to as the ‘thrifty phenotype’ hypothesis. Just like maternal undernutrition, maternal obesity and diabetes are predictive of high birth weight which is indicative of NCDs in adulthood. Therefore, we observe a U-shaped relationship between birth weight and obesity and diabetes. Yajnik also challenges the ‘purely genetic’ perception about diabetes and obesity by arguing that no concrete association was found between parental obesity and diabetes. Further, children born to mothers who had diabetes during pregnancy were more likely to be obese and glucose intolerant compared to children born to pre-diabetic and non-diabetic mothers.

Negandhi et al. (2014) emphasized on the importance of timely and regular antenatal checkup in promoting optimal birth weight. Especially in an undernourished population, the relevance of antenatal care is further magnified as it facilitates/enables adequate calorie intake and zinc supplementation which are important factors affecting birth weight. In addition to this, national programs (under RCH strategy) promoting prenatal care provide free micronutrient supplementation such as iron, folate, calcium etc. to pregnant women upon timely ANC registration. Unlike previous observations,

³ High maternal BP during pregnancy indicates failure of mother’s cardiovascular system to pregnancy which in turn leads to fetal undernutrition, low birth weight and high blood pressure in the offspring.

⁴ Catch-up postnatal growth refers to a process of compensatory accelerated growth in the first year after birth after having experienced a period of poor growth in the womb. This may lead to hypertension during childhood which predicts adult hypertension.

this study found socioeconomic status and low birth weight risk associated with first birth of a women as insignificant factors in determining birth weight.

So, we infer that importance needs to be accorded to improvement in health and nutrition of women especially in their reproductive ages (19-45 years) as it would provide an intergenerational solution to the epidemic of obesity, diabetes and cardiovascular diseases. This is even more relevant for India since it has a history of multigenerational undernutrition. Doctors and social activists could be engaged who can improve the uptake of maternal and child health programs and encourage healthy practices. Social activists can play an influential role in delaying pregnancies in case of early marriages by promoting use of contraceptive. In addition to this, it has been found that among the proportion of low birth weight is highest among first and last pregnancies. Also, women who deliver young are also highly likely to have low birth weight infants, especially as the birth order increases (Chakraborty et al. 1975, 73-9). Of these two, it is parity that is a more important factor in determining birth weight.

2.2. Premature delivery

According to the Global Burden of Disease 2017 estimates, premature/preterm birth is the topmost cause of mortality and morbidity among neonates in India. WHO reports that India has the largest number of preterm births in the world i.e., 3 519 100, followed by China (1 172 300), Nigeria (773 600) and Pakistan (748100) (Blencowe et al. 2012). Preterm delivery is when a baby is born alive before 37 weeks of pregnancy are completed. The major risk factors identified for preterm birth are young pregnancies, history of preterm birth, multiple pregnancies (like twins, triplets), infections and chronic conditions (like diabetes and high blood pressure), genetic influences, malnutrition (undernutrition, obesity, micronutrient deficiencies), smoking or alcohol consumption. However, in nearly 50% of pregnancies the cause of preterm birth is not identified (Nhp.gov.in 2020).

Preterm born children have been observed to have unfavorable body composition at birth and metabolic disorders in adulthood i.e., greater abdominal fat, high cholesterol, high insulin resistance and hypertension (Vasylyeva et al. 2012). In fact, among premature children, those with higher gestational age and birth weight have been seen to be at a higher risk of developing obesity during childhood and adolescence (Gaskins et al. 2010). Increased susceptibility to obesity during childhood and adolescence among preterm born children is due to high pre-pregnancy maternal weight, high birth weight and postnatal growth catch-up (Wood et al. 2013; Mathai et al. 2013). Postnatal growth catch-up is a process whereby a growth-restricted child shows accelerated growth during the first years after birth (Ong et al. 2000, 961-71). This happens if a growth-restricted infant is fed with nutrient-rich diet that typically leads to accelerated/rapid growth in height and weight of the child. On the other hand, if such infants are not fed properly, they would suffer further growth retardation (Hay 2008). Thus, there is a controversy in setting the right nutrition goal for such children. Adverse effects of premature birth persist across generations as children of parents born preterm have relatively higher body fat compared to children of parents born at term (Mathai et al. 2013). There is also a gender differential in effects of premature birth as premature born men on an average displayed greater capacity to store fat (Mathai et al. 2013).

Given the long-term implications of premature birth and its association with prenatal factors, high risk pregnancies must be identified timely, ideally starting before conception and managed till the completion of pregnancy. Special attention needs to be given during the first 1000 days between conception and two years of age. Women who are identified to be at a risk of preterm delivery must deliver at a health institution as it facilitates advanced and specialized care for the mother and the baby. For instance,

during preterm labor, necessary interventions are to be undertaken to improve the health and survival outcomes of the mother and baby, which are possible only at a facility.⁵ Antibiotics are given to reduce premature baby's risk of death, respiratory diseases and developmental problems and at the same time improve infant's long-term health.⁶ Second, a premature baby is incapable of surviving in a non-incubated environment outside the mother's womb as it does not have a fully developed brain, eye, lung functions and weak immunity so, a facility ensures a conducive (clean and hygienic) environment necessary for survival of baby. Third, professional health personnel are trained to undertake necessary precautions in case of high-risk pregnancies like ensuring baby breathing and initiating breastfeeding. Thus, appropriate antenatal and postnatal care is indispensable for a positive pregnancy outcome.

Antenatal care can manage high-risk pregnancies by regular growth monitoring of the fetus, which helps to determine the gestational age of the baby, providing counselling on healthy diet and optimal nutrition, deterrence of tobacco and substance abuse. It also helps to manage other risk factors and provides proper information on steps to be taken.

3. Components of maternal and child health programs

Below we discuss three main components of maternal and child health programs in India that are/could be relevant/instrumental in prevention of non-communicable diseases.

3.1. Natal care - antenatal care and postnatal care

Ante-Natal Care (ANC) refers to the preventive and curative health services provided by skilled professionals to pregnant women in order to ensure favorable health outcomes for the mother and the baby. Antenatal care has five main components- weight check, abdomen examination, Blood Pressure measurement, examination of urine and blood sample (Government of India, Ministry of Women and Child Development 2006). The National Family Health Survey 2015-16 (NFHS-4) reports that only 21% women in India availed complete antenatal care (National Health Profile 2018). The government of India recommends that at least 4 antenatal visits must be attended by a pregnant women wherein the first visit happens within the first trimester. NFHS-5 reports that only 58.1% women had 4 antenatal visits and of these 70% had antenatal visit in the first trimester.

There are three main purposes of ANC- maternal and fetal assessment, undertaking nutritional interventions and preventive measures (WHO 2016). A thorough and timely assessment of the mother and fetus is important to identify multiple acute and chronic conditions such as hypertension, anemia, diabetes, which can lead to maternal and perinatal mortality or cause long-term problems for the child. For instance, maternal diabetes during pregnancy (gestational diabetes) increases the chances of delivering a baby larger in size for gestational age, with higher fat mass and that in turn increases body mass index later in life. Similarly, hypertension among women leads to higher incidence of pre-eclampsia (25%), cesarean section (41%), preterm delivery (28%), low birth weight (17%), neonatal unit admission (20%), and perinatal deaths (4%). This necessitated and increased relevance of antenatal care to such women (Bramham 2014). Further, screening for various types of infections, tuberculosis and tobacco use which increases the risk of preterm delivery. Such conditions need to be properly managed through medication and counselling. The growth of the fetus also is

⁵ Interventions to prolong pregnancy include the provision of tocolytic agents that inhibit uterine contractions to suppress labor (e.g. oxytocin, antagonists, betamimetics, calcium channel blockers, magnesium sulphate).

⁶ Premature labor cases are managed through interventions- antenatal corticosteroids, pre-labor rupture membranes and magnesium sulphate.

to be regularly monitored in order to identify fetus that are small and to estimate their gestational age. This enables better management of pregnancies.

3.2. *Nutritional Interventions*

In addition to natal care, the poor nutritional status of the mother, which is characterized by undernutrition or overweight/obesity, leads to poor perinatal outcomes. The World Health Organization (WHO 2016) noted that natal-care helps to regulate diet and exercise through counselling and supplementation which promotes optimal birth weight of the infant. For example, Iron and folic-acid supplementation prevents anemia, preterm birth and low birth weight among infants. Folate status during pregnancy is a predictor of child's adiposity and insulin resistance. Similarly, energy and protein dietary supplements have been associated with reduced risk of stillbirths and, at the same time, promote proper growth of the child (so helps in targeting fetus and infants who are small-for-gestational age)⁷. Small for Gestational Age (SGA) are those babies who are smaller than expected for the number of weeks of pregnancy.⁸ This happens when a baby is unable to get adequate necessary intrauterine nutrition. To this effect, Yajnik (2014) found that adequate/sufficient levels of Vitamin-C, Vitamin-D, Vitamin-B12, and Iron are associated with optimal fetal growth. The National Family Health Survey (NFHS-4 2015-16) reported that merely 30% of the women consumed iron and folic-acid (IFA) tablets for the recommended period of 100 days (or at least 3 months). Since it has been observed that nutritional supplementation leads to increased attendance of antenatal check-ups, nutritional supplementation could be used as an incentive to promote uptake of antenatal care.

Thus, given the advantages of ANC and its limited uptake, the government launched the Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA) program in 2016. This program was envisioned to reduce the high Maternal Mortality Ratio (MMR) and neonatal mortality in India. As per RGI-SRS (2011-13), the MMR of India is 167 per one lakh live births. Every year nearly 44000 women die due to pregnancy-related causes and nearly 6.6 lakh infants die within the first year of birth (Ministry of Health and Family Welfare 2020). Given the scenario, the government recognized that even a single ANC visit coupled with proper follow-up mechanism would play an instrumental role in averting maternal and infant deaths. Thus, as part of PMSM program, the government provides quality antenatal care services in the form of early screening and diagnosis (usually during the second trimester) of pregnancy related clinical conditions on a fixed day every month. Through a proper follow-up mechanism, it helps to manage multiple clinical and co-morbid conditions such as anemia, pregnancy induced hypertension, gestational diabetes etc. In addition to this, it provides medicines such as iron and folic-acid supplements and calcium supplements to pregnant women. Special attention is given to women with complicated or high risk pregnancies in addition to reaching out to women who either are not registered for ANC or have dropped out.

Another equally important but underrated component of natal care is, Post Natal Care (PNC). Postnatal care reinforces proper infant growth by managing and following up on early motherhood behaviors such as breastfeeding, growth monitoring of the infant, examining the mother and baby for possible infections etc. compared to women who received only antenatal care or obstetric care (Su et al. 2007).

Thus, there are two main areas where public health nutrition interventions must be beneficial, not only on grounds of fetal origin hypothesis but also because of inherent public health value are, prenatal care and postnatal care. Nutrition and health interventions in prenatal period would minimize number of low birth weight babies and

⁷ Small for Gestational Age for those babies who fall below the 10th percentile of birthweight.

⁸ Small for gestational age babies could be born preterm, at term and also post term

thin infants. Postnatal interventions to avoid undernutrition or over nutrition during childhood. Maintaining normal growth rates must be priority for both undernourished and over nourished children.

3.3. Infant feeding practices-breastfeeding

During the Tenth Five-Year Plan, the goals for infant and young child feeding indicators were set for the first time. On the lines of international recommendations of WHO and UNICEF, the government has recommended that the infant must be exclusively breastfed for the first 6 months. Breast milk is the complete source of nutrition for the child for the first 6 months and supplementing it with other foods reduces the benefits of breast milk. Sometimes, supplementation may lead to contamination of breast milk which could lead to diarrhea and increased risk of neonatal mortality (Jatrana 2003). Breastfeeding must be initiated within an hour of birth to ensure successful lactation for the mother and 'colostrum' for the baby. Colostrum is the first thick, yellowish milk of the mother and is a concentrated source of vitamin-A, protein and anti-infective properties which plays a paramount role in infant survival by strengthening immunity. After six months, breast milk must be complemented with semi-solid food in order to provide adequate nutrition for rapid, sustained growth of the baby. Breastfeeding must be continued for 2 years or more along with complementary foods (UNICEF 2020). According to the NFHS-5, about 64% of infants in India are exclusively breastfed for the first six months and for only 41% of neonates are breastfed within an hour of birth. Unfortunately, of these only 11% infants receive adequate diet from 6 months till 2 years of age (National Health Profile 2018).

Breastfeeding has various short- and long-term health benefits for the both the mother and the baby. It promotes cognitive and physical development of the infant and also provides protection against various chronic disorders by preventing childhood obesity (Binns et al. 2001, 68-73; Binns et al. 2016). Studies have pointed out that exclusively breastfeeding for first 6 months provides a protective effect against some risk factors for type 1 diabetes in children and adolescents and type 2 diabetes and cardiovascular diseases in adults (Ravelli et al. 2000, 248-52; Binns et al. 2016). Particularly for mothers, breastfeeding is associated with reduced rates of ovarian and breast cancer, obesity, type 2 diabetes, heart diseases and postnatal depression (Binns et al. 2016). Especially, women with gestational diabetes, who breastfed for more than 6 months had lowest risk of continuing postpartum diabetes. The literature also suggests that the longer an infant is breastfed the lower is the risk of obesity in childhood and adolescents (Binns et al. 2001, 68-73; DeMattia and Denney 2008; Lamb et al. 2010). Promotion of breast-feeding practices is an intrinsic action point in the WHO framework for prevention of non-communicable diseases, to halt the increasing burden of obesity and diabetes (WHO-Government of India 2012-13 Biennial Workplan). Infants, who are breastfed have slightly lower rates of growth after 6 months of age when compared to those put on artificial formulae. With respect to this, Lamb et al. (2009) points out that there is a difference in the nutritional content of breast milk and formula milk. Breast milk has high fat and low protein while, formula food has low fat and high protein. So there is early adiposity rebound and greater subsequent childhood obesity in formula-fed infants. Second, it notes that the protective effect of breast milk is due to lower plasma concentrations of insulin (hormone that promotes fat storage) in breastfed infants compared to formula-fed infants. Further, blood pressure was significantly raised in children with a mean age of 7-8 years who were exclusively formula fed (Wilson et al. 1998, 21-5). Binns et al (2001) also points out towards the "dose-response" effect of breastfeeding with lowest rates of obesity being seen in those children and adolescents who are continued to breastfeed even after 6 months of birth. In a study of children aged below 6 years, it was found that children who were breastfed

for at least 12 months were leaner than formula fed infants (Oddy and Sherrif, 2003). Exclusive breastfeeding has been seen to lower the risk of obesity even in cases where mothers experience excessive gestational weight gain and newborn had high birth weight (Zhu et al. 2015). This way breastmilk is a low cost, effective and readily available strategy to help prevent childhood and adolescent obesity. So timely introduction of breastmilk to infant's diet is paramount.

Duration of breastfeeding is influenced by a variety of social, cultural, geographic and economic factors. Huffman points out that as modernization occurs, the duration of breastfeeding is often reduced which leads to decreased nutrient intake, decreased immunologic protection, increased contamination of nutrient sources and decreased birth spacing (Huffman and Lamphere 1984, 93-116). Other factors like maternal education, access to health services, employment status of women and availability of breastmilk substitutes also determine the duration of breastfeeding. Mother's education, age and parity have been observed to be negatively linked to the duration of breastfeeding (Akter and Rahman 2010, 595-601). Women occupation and its relation to duration of breastfeeding varies across countries. For example, while in Taiwan there is no association of work with breastfeeding but in Malaysia and Philippines it is seen that child care activities take a back seat as women go out to work (Huffman 1984). Type of work is also seen to have an implication on breastfeeding. For example, women involved in activities like dressmaking, food and beverage makers, weavers were more likely to have children less than ten years of age with them compared to ones involved in professional occupations, management, clerical work and service occupations.

In India, the ICDS program (operational through *Anganwadi* Centers) is the primary scheme aimed at promoting and improving infant and child nutritional health by providing micronutrient food supplementation to children from infancy till six years of age, pregnant and lactating mothers. Other key services provided by *Anganwadi* Centers include health and nutrition education to adult women and immunization, health check-ups and pre-school education etc. to children till the age of 6 years. Currently, the program has expanded its focus to adolescent girls and provides nutrition, health, awareness, skill development and income-generation schemes to them.

3.4. Institutional delivery

The importance of skilled care at delivery has been emphasized in the health planning in India because it provides specialized care and so greatly reduces probability of neonatal death. Skilled assistance at birth refers to delivery at a private or public hospital/clinic and home delivery conducted by some skilled health personnel such as a doctor, nurse, Lady Visitor (LHV), Auxiliary Nurse Midwife (ANM). As highlighted above, institutional deliveries assure a clean, hygienic environment, conducive for child birth. It ensures all guidelines meant for delivery and post-delivery processes such as cleaning the baby, noting the birth weight, initiating breastfeeding etc. are undertaken. NFHS-5 Reports that 89.4% births in India are assisted by as skilled health person (doctor, nurse, LHV, ANM, others) and 88.6% births are institutional births (National Health Profile 2018, 13).

As part of the Reproductive, Maternal, Neonatal and Child and Adolescent Health (RMNCH+A) strategy, the government has launched various programs pertaining to maternal, child and adolescent health, nutrition and family planning. However, most of these programs are concentrated mostly on promoting institutional deliveries. The most prominent is the Janani Suraksha Yojana (JSY - a modified version of the National Maternity Benefit Scheme), launched in April 2005, aimed at reducing maternal and infant mortality by facilitating institutional deliveries, antenatal and postnatal services and eliminating female infanticide and feticide (Government of India, Ministry Of Women And Child Development 2006). Under the scheme, pregnant women belonging

to BPL families were provided financial assistance for delivery in a government facility or accredited private medical facility.⁹ The cash given differs in rural and urban areas. It emphasized on the role of the Traditional Birth Attendants (TBAs) in creating awareness and improving utilization of skilled reproductive health care services and provided cash incentives to TBAs in order to motivate them. In addition to this, the program also identified the influential role of ASHA workers in promoting institutional deliveries. An examination of selected districts in seven states with least percentage of women delivering in an institution found that the program fared exceedingly with respect to increase in institutional deliveries and receipt of monetary incentives (Dongre and Kapur 2013, 53-59). The positive effect of JSY on opting for institutional delivery among rural, illiterate and primary literate persons belonging to lower socioeconomic strata was also found in a hospital based study in Madhya Pradesh (Gupta et al. 2012). The JSY has removed the financial burden related to institutional delivery and has therefore motivated even those people who has home deliveries previously.

Other than JSY, the government also launched the program was launched Janani Shishu Suraksha Karyakram (JSSK) in 2011 to make institutional deliveries affordable. Under the program, the government provided free pregnancy-related services to the mother and sick infant such as medicines, diagnosis, deliveries (both normal and caesarean), transport to hospital and return, in addition to other hospitalization expenditures. The program identifies the importance of postnatal check-ups and provides free services to women for up to 42 days and infants until 1 year after birth in government health institutions. Other services include free transportation from home to health institutions, provision of blood transfusion and exemption from all user charges. In 2014, the benefits of the program were also extended to avail antenatal care services.

4. Conclusion

This paper concludes that the birth outcomes of a child such as birth weight and preterm birth are modifiable by appropriate policy interventions in the area of reproductive, maternal and child health. For example, regular antenatal check-ups help to monitor the nutritional status of the mother and growth of the fetus. Through multivitamin supplementation it significantly improves the health of the mother and fetus in a short period of time, thereby preventing them from future risk of NCDs. Institutional deliveries ensure a hygienic delivery and adoption of appropriate feeding practices, which play an instrumental role in averting the risk of obesity later in life. Thus, by promoting effective and efficient utilization of maternal health programs for natal care, infant feeding, institutional delivery etc. can be instrumental in averting the risk of chronic disorders namely obesity and related conditions such as diabetes, hypertension and cardiovascular diseases. Conclusively, the role of maternal health program components is instrumental in preventing NCDs.

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⁹ The program aimed at improving rates of institutional delivery especially among women in Low Performing States (LPS), BPL pregnant women aged 19 years and above in High Performing States (HPS) and ST and SC pregnant women pan India.

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Right to Compensation of the Spouse who is Innocent of the Dissolution of Marriage in Romanian Civil Law

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ABSTRACT: In Romanian Civil Law, once a marriage is dissolved due to the fault of one of the spouses, the spouse who is innocent of the event is entitled to compensation and the spouse who suffers material or moral damage can claim compensation from the guilty spouse. The right to granting compensation is a form of tort liability and, as will be shown in the course of our study, in order for such a claim to be admissible, several conditions must be met cumulatively: the divorce must have been pronounced solely due to the fault of the spouse from whom compensation is sought; the claimant spouse must have suffered damage as a result of the dissolution of the marriage; the damage must be certain, determined or determinable, unrepaired, and closely connected with the dissolution of the marriage. The application for granting compensation is settled by the guardianship court in the divorce judgment, the text of the law being mandatory in this respect.

KEYWORDS: marriage, dissolution of marriage (divorce), fault, guilty spouse, innocent spouse, material damage, moral damage, compensation

1. Preliminary specifications

Right to compensation of the innocent spouse who suffers damage as a result of the dissolution of the marriage is a new legal institution in Romanian law, inspired, as is also indicated in the specialized literature, by Article 266 of the French Civil Code, before the amendments made by Law No 439 of 26 May 2004, Floare 2013, 152).

In Romania, the right to compensation of the innocent spouse was regulated for the first time in the Civil Code adopted in 2011 (adopted by the Romanian Parliament by Law No 287/2009 on the Civil Code, published in Official Gazette No 511 of 24 July 2009 and entered into force on 1 October 2011, according to Law No 71/2011 for the implementation of Law No 287/2009 on the Civil Code, published in Off. G. No 409 of 10 June 2011, which also introduced a number of amendments. The Civil Code was republished in the Official Gazette no.505 of 15 July 2011) and, according to Professor Emese Florian, it is a “reward” given by the legislator to the spouse who has behaved in an exemplary manner during the marriage and cannot be blamed for the dissolution of the marriage (Florian 2021, 344).

2. The “innocent” spouse’s right to compensation

According to the provisions of Article 388, sentence I of the Civil Code, “*the innocent spouse who suffers damage by the dissolution of the marriage may ask the guilty spouse to compensate him/her*”. It follows from an analysis of this text that the right to compensation

arises only if the divorce is the sole fault of one of the spouses and the innocent spouse has suffered material or moral damage through the dissolution of the marriage. On a per a contrario interpretation, if the divorce was based on the agreement of both spouses, or if the court found joint fault in the deterioration or breakdown of the marital relationship, neither spouse is entitled to claim damages.

Claim for damages “*shall be settled by the guardianship court by a divorce judgment*” (Article 388, 2nd sentence, Civil Code). Although it does not appear from the legal text what is the procedural moment in which the innocent spouse can claim material or moral damages, most Romanian authors consider that damages must be claimed in the divorce proceedings, in the form of an accessory claim (Florian 2021, 347; Avram 2022, 228; Lupaşcu and Crăciunescu 2021, 358; Bodoaşcă 2021, 356; Nicolescu 2020, 152; Motica 2021, 154).

The courts have also ruled in the same sense, stating that “*the claim for damages is settled by the divorce judgment, the text of the law being imperative in this respect, therefore such a claim can only be made in the divorce action, its lodging separately from the divorce application being inadmissible*” (Oradea Court, Civil Judgment no. 893/2013, 2019). In another dispute concerning a claim for awarding damages, heard on appeal, the court held that “*An innocent spouse who suffers damage by the dissolution of the marriage may ask the guilty spouse to compensate him/her. The guardianship court settles the claim by divorce judgment (art.388 Civil Code). The right to compensation enshrined in Article 388 of the Civil Code is designed to ensure compensation for the damage caused to the innocent spouse by the dissolution of the marriage, being a particular application of the general principle of tort liability. This explains why this right can only be enforced within the divorce proceedings, and not by direct action after the judgment has become final. Failure to exercise the right within the time limits laid down entails forfeiture of the right, i.e. the loss of the possibility of pursuing such a claim through the courts; in theory, there is nothing to prevent the former spouses from agreeing (after the divorce) on benefits of a remedial nature. The timing and procedural context of the enforcement of the right to compensation is part of the legislator's strategy - no doubt judicious - that, as far as possible, the claims in connection with the dissolution of the marriage should be brought together and settled in the same procedural framework, in order to avoid or limit, at least, post-divorce litigation and the temptation to take action against one or other of the former spouses. In conclusion, the district court considers that the right to compensation governed by Article 388 of the Civil Code is the consequence of the dissolution of the marriage and can only be enforced in the divorce proceedings*” (Călăraşi District Court, Civil Decision no. 1067 of 18 December 2019).

In another opinion, which is also unique, the author points out that given the provision in the second sentence of Article 388 of the Civil Code, according to which it is not mandatory, “if the damage occurs later, the claim for compensation may be lodged separately, within the general limitation period, which will begin to run from the time of the damage occurring” (Hageanu 2017, 194).

Since the Romanian Civil Code does not define the concept of fault, this task was incumbent upon the Romanian specialists in the matter who pointed out that “*a spouse is guilty of marriage dissolution if his or her actions or inactions had the effect of seriously damaging the relationship between the spouses and making it impossible to continue the marriage*” (Hageanu 2019, 171).

For example, in a dispute concerning the dissolution of the marriage, the court established from the evidence produced that “*the plaintiff proved the exclusive fault of the defendant in the breakdown of the family relationship, proving that he became aggressive during the marriage and that he exercised both physical, mental and*

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economic violence against the plaintiff, contrary to the provisions of Art 325 of Civil Code. At the same time, the court held that the family relations between the two parties were irreparably damaged, as their marriage was clearly deprived of its natural purpose and aims” (Măcin Law Court, Civil Judgment no.1050 of 9 October 2020).

An analysis of the provisions of Article 388 of the Civil Code shows that the right to compensation of the “innocent” spouse is a right distinct from the right to the compensatory benefit provided for in Article 390 of the Civil Code, which, according to Art. (1) of the same article, may be granted in order to compensate “*as far as possible, for a significant imbalance which the divorce would cause in the living conditions of the person requesting it*”. The right to compensation is also distinct from the right to maintenance between the former spouses, regulated in Article 389 of the Civil Code, which, in paragraph 2, stipulates that “*the divorced spouse is entitled to maintenance if he or she is in need because of an incapacity to work which occurred before the marriage or during the marriage (...) or when the incapacity arises within one year of the dissolution of the marriage, but only if the incapacity is caused by a circumstance connected with the marriage.*”

As has been shown in recent doctrine (Avram 2022, 226), the right to awarding damages is a form of tort liability. Thus, in order for such a claim to be admissible, the cumulative conditions set out in Article 1.357 of the Civil Code must be met, namely: wrongful act, damage, causal link and guilt.

In other words, as the case law of the courts shows, “*the legal norm recognizes the right of the innocent spouse to claim from the spouse who is guilty of the dissolution of the marriage, compensation for the damage suffered through the dissolution of the marriage. Such a right is acknowledged only to a spouse who is not at fault for the breakdown of the marriage, and is a particular application of the principle of civil liability in tort. The following cumulative conditions must be met in order for this right to be granted:*

(a) the divorce was granted solely on the fault of the spouse from whom compensation is sought;

(b) the plaintiff spouse has suffered damage as a result of the dissolution of the marriage;

(c) the damage must be certain, determined or determinable, unrepaired and closely connected with the dissolution of the marriage” (Bârlad Law Court, Civil Judgment no. 2870/2015).

For example, in a dispute concerning a claim for damages, the court held that “*the cumulative conditions justifying the award of damages are met. The evidence produced shows that the plaintiff’s fault in the dissolution of the marriage is exclusive, given the assumption of the failure of the marriage. It also considers that the defendant has suffered damage as a result of the dissolution of the marriage and that the damage results from all the factual circumstances of the case. The damage incurred by the defendant is a moral one and relates to the emotional trauma resulting from the change of status, the damage to the image caused by the loss of married status. The Court holds that the parties have been married for a long period of time and have become accustomed to each other, so that a separation after a long period of time spent together has a negative effect on the defendant’s personality. Breaking up a relationship cannot be done immediately, from one day to the next, but requires long reactions of adjustment, of acceptance of a new status. It is also noted that the parties live in rural areas, a community in which the dissolution of a long-standing marriage leads to discussions, affecting the defendant’s image, given that, according to witness statements, the plaintiff is involved in another relationship. The defendant’s*

psychological state is revealed by the witnesses heard in the case. Thus, the witnesses reported the plaintiff's state of sadness caused by the separation de facto. The claims made to the court, the bailiff and the local authorities for reintegration into the shared accommodation have caused stress to the defendant, are unpleasant and are likely to affect her psychological integrity. For the reasons de facto and de jure stated above, the court granted the claim for damages based on Article 388 of the Civil Code. and held that, in the light of the actual damage, the defendant's condition, the actual loss and the defendant's professional status (pensioner), the sum of 2,000 lei represented fair compensation" (Bârlad Law Court, Civil judgment no. 2870/2015).

In another dispute, in which, by counterclaim, damages of 35,000 lei were sought for causing moral suffering as a result of the divorce, the court held that *"the plaintiff-defendant has suffered, in addition to the emotional suffering caused by the dissolution of the marriage, damage to her image. This moral damage was caused by her husband's defamatory actions during the marriage and subsequent to the initiation of the divorce proceedings referred to above, the plaintiff-defendant suffering moral damage through the dissolution of the marriage, the defendant plaintiff's defamatory approach to her having caused her, naturally, feelings of shame and of being forced to explain herself, alienation from friends and, therefore, loneliness, and the disparaging discussions about her in her close circle, causing her to suffer damage to her own confidence and self-image. The defendant - plaintiff acted with the aim of provoking such consequences, which he naturally foresaw, an attitude which cannot remain unsanctioned, given that, in relation to the degree of culture and education, specific to a person with such a profession, his conduct exceeded the limit of decency"*(Iași District Court, Civil Decision no.151 of 9 February 2017).

An analysis of the provisions of Article 388 of the Civil Code shows that these conditions must have certain characteristics, namely:

- only the spouse who is innocent of the divorce can claim damages. Therefore, if the divorce is ordered on grounds of joint fault, neither spouse will have the right to claim damages under Article 388 of the Civil Code;

- the damage must be certain, definite or determinable, unrepaired and closely connected with the dissolution of the marriage. For example, in a dispute concerning a claim for damages, the court found that the appellant - defendant had been living alone for the last six years because her husband had left the marital home and she had been living alone, for which *"no evidence could be produced that the appellant-defendant had suffered any damage as a result of the dissolution of the marriage, since she has been in the same situation for more than six years and the depressive disorder mentioned in the certificate issued in 2013 by the family doctor is not accompanied by documents from the specialist doctor, does not appear to be a sufficient argument for the award of compensation."* The court therefore held that the legal conditions for the award of damages were not met (Lupu 2019, 147-150).

As mentioned above, the harm suffered by the innocent spouse must be only as a direct result of the dissolution of the marriage, any other harm cannot be redressed on this basis. In this regard, in the specialized literature (Frențiu 2012, 335.) it has been shown that on this basis, the material damage suffered by the innocent spouse during the marriage as a result of physical or mental violence exercised on him/her by the other spouse, violence which ultimately led to divorce, cannot be claimed. For example, in a dispute concerning a claim for damages, on the basis of the evidence produced, the court held that *"the diseases from which the defendant suffers are not a direct effect of the dissolution of the marriage. The diseases were acquired over time and existed prior to the divorce, according to the documents on file"* (Bârlad Law Court, Civil Judgment no. 2870/2015).

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From an analysis of the provisions of Article 919(1)(d) of the Code of Civil Procedure, it follows that the harm suffered by the “innocent” spouse may be both material and moral. For example, as mentioned in the doctrine, the damage suffered by the innocent spouse, as a result of the dissolution of the marriage, may be of “*a material nature (loss of a contract, which could not be concluded because of the divorce), moral (an image damage, for a politician in an electoral campaign) or even professional (for example, in the case of an Orthodox priest who could lose his parish in case of dissolution of the marriage)*” (Lupașcu and Crăciunescu 2021, 356). It may also constitute material damage “*any material loss incurred by one of the spouses, caused by the loss of his or her status as a married person, if the benefit he or she was to obtain was closely related to this status (for example, in the case of a loan application, the status of married person generates a higher score in the applicant’s assessment)*” (Frențiu 2012, 336; Moloman and Ureche Lazăr 2022, 602-603).

The right to compensation of the spouse who is innocent of the dissolution of the marriage ceases with the death of the debtor as this right is *intuitu personae*. In this respect, the Civil Code states that only the spouse who is innocent of the dissolution of the marriage can claim compensation from the former partner.

3. Transitional right

It should be pointed out that, according to Article 45 of Law no. 71/2011, the provisions of Article 388 of the Civil Code on the award of damages are applicable only if the grounds for divorce arose after the entry into force of the Civil Code, i.e., 1 October 2011. For example, in a dispute in which compensation was sought for damages caused by a divorce, the district court found that “*the provisions of Article 388 of the Civil Code invoked by the appellant-defendant in support of her claim for damages are not applicable to the present case, according to the provisions of Article 45 of Law No. 71/2011. Thus, Article 45 of Law no. 45/2011 states that the provisions of Article 388 of the Civil Code are applicable only in the situation where the grounds for divorce arose after the entry into force of Law no. 284/2010 and, as Law no. 284/2010 entered into force on 01.10.2011, and the grounds for divorce invoked are prior to that date (the parties have been separated de facto since 2008), the appellant-defendant cannot claim compensation for the dissolution of the marriage within the meaning of Article 388 of the Civil Code*” (Gorj District Court, Civil decision no. 834 of 5 September 2014).

4. Conclusions

Now, at the end of our study on the compensation of the innocent spouse who suffers a damage as a result of the dissolution of the marriage, we can specify some conclusions:

- the settlement of the claim for granting compensation is a matter for the guardianship court which has been seized of the divorce application. In other words, a separate or subsequent application for divorce is inadmissible;
- compensation can be claimed and awarded separately from the entitlement to a compensatory benefit;
- compensation can only be awarded by divorce judgment. Therefore, the claim for damages takes the form of a claim ancillary to the application for dissolution of the marriage;
- the debtor of the obligation to pay damages can only be the spouse who is at fault for the divorce;
- if the divorce is ordered on grounds of joint fault, neither spouse will be able to claim damages;

- if the divorce was based on the consent of the spouses, neither spouse is entitled to claim damages;
- since the legal text does not refer to the nature of the damage, the innocent spouse can claim both material and moral damages;
- the damage must be certain, definite or determinable, unrepaired and closely connected with the dissolution of the marriage.

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Toward Marital Holiness as a Christian Value

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ABSTRACT: From a Christian standpoint, marital holiness is a topic that traces its origins back to the very act of creation, as told in the book of Genesis. God is the one who creates the first family, and the expectation thereof is that the resulting relationship between man and woman is characterized by holiness. However, considering the multiplication of contemporary controverted notions of what family is, we ought to ask once again: what holiness means in the context of marriage? This question is addressed in this essay from a biblical perspective. It is argued that the marriage relationship, as intended by the Creator, goes beyond satisfying one's need for a life in companion. It is, in fact, the very means by which the human community, of which the family is its most basic cell, portrays God's image. As such, marital holiness ought to be regarded as a fundamental Christian value.

KEYWORDS: Holiness, marriage, family, Christian values, Christian existence

Introduction

Marriage, as created by God (Genesis 1–2), is the most important institution human society has ever known. It is a universally accepted mode of human association, and as such it represents the very backbone of human civilization. Human beings have specific urges – hunger, thirst, and sex-drive – and human societies have long worked out rules that regulate the ways in which such urges are satisfied. Amongst these, marriage is the institution that creates and regulates social relationships and reciprocal rights between man and woman. It also establishes the rights and the status of children that are born within such relationships. Each society recognizes procedures for creating such relationships and rights. These may include prohibitions, preferences, and prescriptions for deciding when marriage starts and what it entails. It is through the institution of marriage that humans sustain their continuity as a race and attain satisfaction in a socially recognized manner.

The Bible teaches that marriage was designed by God to be the source of great and unspeakable happiness. Yet, as is the case with other aspects of the creation, the purpose and potential of marriage is hindered by sin. Furthermore, the Bible also teaches that happiness is not the first and foremost purpose of marriage. Rather, marriage is about the creation of human communities that, in some way, resemble God (Măcelaru 2021, 596-608). Thus, holiness becomes a precondition of marital relationships, for a God who is utterly holy would be thus represented only within communities characterized by “relational holiness” (Adewuya 2003, 9).

Marriage – Its Nature and Purpose

In the biblical sense, marriage is a covenant in which two Christians, a man and a woman, pledge to live together, to make each other holy before God, as a testimony to Christ (Zhekov 2017). The most important aspect of marriage is the quality of the relationship

developed, founded on love. Attitudes and responsibilities are also important factors in the development of a good marriage. Thus, building a happy marriage is the result of a conscious effort for a good relationship, on the part of both, husband and wife. From this perspective, marriage is a lifelong union, between people bound together by a bond of love, which has spiritual as well as physical and social dimensions.

In the secular world, marriage has been defined in varied ways (*Merriam-Webster Dictionary* 2022), from the traditional view, as the recognized and approved union between a man and a woman who give themselves to one another, with the expectation of a secure and lasting, contractual relationship, recognized by the law, to more controverted definitions, such as the union between a man and a man or between a woman and a woman. Evidently, within the present argument, the biblical prohibition of same-sex relationships (cf. Leviticus 18:22, 20:13) is upheld. Generally speaking, however, nowadays marriage usually begins with a ceremony known as a wedding, which formally unites the marriage partners as well as their respective relatives. This union is secured under the law. The usual roles and responsibilities of the man and woman that engage in such a relationship involve living together, having sexual relations only with one another, sharing economic resources, and being recognized as the parents of their children.

In addition to the above, it seems that the Bible teaches yet another specific purpose for marriage: “that believers might marry and keep themselves undefiled members of Christ’s body” (Baumert 1996, 371). Thus, beyond happiness, sexual expression, the bearing of children, companionship, mutual care and provision, or any other such rationale, marriage is instituted in order to please God the Creator by enabling humans to live a holy life. Ridiculed by many nowadays, holiness remains a principle honored among Christ’s disciples. It is exactly what the Apostle Paul has in view as he writes to the church in Corinth. Confused and seduced by sexual immorality, the Corinthian Christian community had compromised its own ability to represent Christ. Within this context, Paul points to marriage as a means of channeling sexual desire into its proper context, lest believers “burn with passion” and sin against God. (1 Corinthians 7:9). Moreover, in his letter to the Ephesians, Paul uses marriage as a metaphor to speak of the union between Christ and His church. As such, in Paul’s teaching, marriage becomes directly related to the glory of God, the mystery of Christ and the church. The exclusivity and purity of the marriage bond points to the exclusivity and purity of the relationship between Christ and His church.

Moreover, the Scripture teaches us that marriage is a reflection of God Himself (Genesis 1:27, 31). As Baumert describes it, the image of God in this context points to marriage. He says: “when an artist brings forth his or her inner vision in a visible ‘image’, he or she simultaneously makes something of his or her own essence visible. Thus, it is not only in spirit and soul that people resemble God; their body also is such a visible ‘image’; their whole being is fashioned in the image of God” (Baumert 1996, 274). God in His very nature is relational, affirming, gracious, giving and much more. He is Father, Son and Holy Spirit – three in One. If marriage is a reflection of the nature and relational essence of the Trinity, then the love, integrity and wholeness of God is made manifest in the love, integrity and wholeness between spouses. As we embrace the privilege and responsibility of being a reflection of the Trinity, we are assured that He who has called us to reflect His image and likeness will empower and equip us to fulfill the call. This is the “gracious operation of the Holy Spirit, involving our responsible participation, by which he delivers us from the pollution of sin, renews our entire nature according to the image of God, and enables us to live lives that are pleasing to him” (Hoekema 1989, 192).

Many other biblical passages that address the issue of marriage, in both the Old and the New Testament support the argument that marriage is not only designed by the Creator as an arena for human happiness and the continuation of the human race, but also as the arena of God's glory, where the delights and disciplines of marriage point to the purpose for which human beings were made. As such, marriage is to be cherished and respected (Hebrews 13:4). It is not to be taken lightly; rather it ought to be a life-long commitment (cf. Matthew 5:32), for the relationship between man and woman it entails commences in God's presence and is ordained by God. It is a commitment, a covenant between a man and a woman that should only be broken by death, and if any challenge is brought into the marriage relationship by infidelity, it ought to be addressed under the umbrella of Christ's work of reconciliation that can put an end to a relation of enmity, and "substitute for it one of peace and goodwill" (Barrett 1973, 173).

Holiness – Its Nature and Purpose

The essence of holiness is to mirror God or to reflect God's purpose in our everyday lives. When God created Adam and Eve, he created them with a special purpose – to "mirror" Him, to be His representatives within the creation. This is holiness; it is God's purpose for humanity. Based on the connotations of the Hebrew *qodesh*, Greathouse (1998, 18) explains that holiness has a threefold meaning: separation, glory, and purity. Thus, holiness includes purity of heart or dispositions, sanctified affections, and moral goodness. It is sacredness – a state of consecration to God, a state of worship. It is separation to and for the purpose of service to God. Donelson writes that "holiness is not a power or a status that belongs to a temple precinct or one's behavior in the temple. Perfect liturgy does not make us holy. Holiness belongs to every moment of one's life" (Donelson 2001, 83). Thus, holiness ought to include marriage, as the day-by-day activity of the couple. Donelson continues: "holiness comes from obedience to the living and enduring word of God. We make us holy through our deeds. Holiness is not a status; it is a way a living" (Donelson 2001, 83).

Thus, holiness is the result of a right relationship with God. If one has not placed her faith in God to be saved from sin, then her pursuit of holiness is in vain. It starts with being born-again (cf. John 3) and it includes being set apart from the world (cf. 1 Peter 2:9). Quoting Leviticus 11:44 and 19:2, Apostle Peter urges his readers: "prepare your minds for action, keep sober in spirit, fix your hope completely on the grace to be brought to you at the revelation of Jesus Christ. As obedient children, do not be conformed to the former lusts which were yours in your ignorance, but like the Holy One who called you, be holy yourselves also in all your behavior; because it is written, 'You shall be holy, for I am holy'" (1 Peter 1:13-16). Referring to these passages, Adewuya (2003, 94) rightly explains the relational and experiential meaning holiness takes: "In Leviticus 19, holiness is enacted in, by, and through the life of the community. The divine life, understood in relational terms, is paradigmatic for Israel's life. Holiness is manifest in relationship characterized by integrity, honesty, faithfulness and love". Thus, holiness in the context of marriage is an expression of God's holiness.

It follows from the above that only God can "give" us holiness. It is the view of the present author that He often does so through relationships. As a daily commitment, marriage tests many avenues of our life. Holiness in marriage, therefore, is expressed as faithfulness, trust, integrity, honor, respect, good character, excellence, sacrifice, joy, fruits of the Spirit, etc. Thus, marriage becomes the best place in which one can grow toward wholeness and holiness. Being holy, in this perspective, is first "to be" and only then "to do", which fits the biblical vision of an ethical life.

Beside wholeness, I would associate here with holiness the concept of togetherness. Togetherness in marriage ought to be seen as its highest relational objective. In Christian marriages this may entail praying together, worshiping together, fasting together, attending church together, instructing one another, encouraging one another, strengthening one another. Side by side, husband and wife partake of the Lord's Supper, side by side they go through life's challenges and share their consolations. This is the kind of marital relationship characterized by God's shalom, which prompts God's manifested presence (cf. Matthew 18:20).

Thus, marriage can be the source of happiness if the married couple live a life close to God. Yet, we also ought to recognize that because of sin, marriage relationships can go in the wrong direction, making it inconsistent with the image of holiness thus far presented. This is where spiritual disciplines should lead to forgiveness, which subsequently provides the means to keep on going even in the context of a sinful world. As John Owen, one of the greatest puritan scholars noted, "the person who understands the evil in his heart is the only person who is useful, fruitful, and solid in his belief and obedience" (Owen 1983, 29). Thus, before kindness and compassion for the other, one must recognize his/her own frailty and fallacious living. Only then one can show understanding and compassion for the other. As William Law (1978, 294) suggests,

No one is of the Spirit of Christ but that who has the upmost compassion for sinners. Nor is there any greater sign of your own perfection than when you find within yourself all the love and compassion toward them that are very weak and defective. And on the other hand, you have never less reason to be pleased with yourself than when you find yourself most angry and offended at the behavior of others. All sin is certainly to be hated and abhorred where it is, but then we must set ourselves against the sin as we do against sickness and diseases, by showing ourselves tender and compassionate to the sick and diseased.

Marriage therefore is not first and foremost about making us happy. It is about making us holy. Through the covenant of marriage two Christians pledge to live together (mutuality) so as to make each other holy before God, as a testimony to Christ. This is the purpose of togetherness in marriage. As Adewuya (2003, 170) explains, marital relationships and community relations have mutuality in common:

The idea of mutuality means that "every such relationship represents unity and plurality or plurality in unity. It entails that believers develop within the group meaningful relationship with one another. The relationship believers share means that they sense sympathy, compassion, and empathy for each other, that they "rejoice with those who rejoice" and "mourn with those who mourn" (Romans 12:15). Mutually means likewise that believers seek to live in harmony with each other (Romans 12:16), intercede for each other, care for each other, minister to the needs of one another (Romans 12:13).

Holiness in marriage

It is often said that holiness requires separation. Regarding this, Adewuya (2003, 176) writes:

Paul uses the marriage relationship, the complete separation of man and woman from all others only to each other, as a picture of the relationship that is supposed to exist between God and His people. In this one picture, we see clearly the separation aspect of holiness. As the bride is separated from all others to her husband alone, so the people of God are separated not only from any form of defilement but to Him.

Evidently, the Pauline example takes marriage beyond the notion of mutual comfort. Within the perspective of holiness, marriage also speaks about the divine relationship established between God and His people. Paul's analogy makes this explicit: "Husbands, love your wives, just as Christ also loved the church and gave Himself up for her, so that He might sanctify her, cleanse her by the washing of water with the word, that He might present to Himself the church in all her glory, having no spot or wrinkle or any such thing; but that she would be holy and blameless" (Ephesians 5:25-27). Regarding marital holiness, the implications are that when we fail to behold the image of God in our spouse and instead embark on a deceitful life, when we become disengaged as married people, we are headed ultimately to separation from God. Drawing close to God, on the other hand, is the solution. Holiness in marriage means separation from the world and sin and closeness to God.

Furthermore, I argue that holiness requires wholeness and integration. These are basic facts that underline all other psychological characteristics necessary to marital adjustment. Without wholeness or integration there is little chance of marital success and therefore of holiness. Wholeness and integration define the unity or oneness that must underline the marital relationship. On the other hand, when characterized by anxious instability, dishonesty, jealousy, immaturity, harassment, inadequacy, inferiority, guilt and other similar feelings and attitudes, oneness and togetherness are destroyed; and together with these, the integrity of the couple is impaired, the marital union is weakened and eventually the marriage fails. Such dysfunctionality, I argue, is fought with integrity, both spiritual and relational. The breakdown of spiritual fidelity is often described in the Bible through marital analogies. Jeremiah, for instance, compares idolatry with adultery (Jeremiah 3:8). Also, Jesus picks up on this image when he refers to an "adulterous" generation (Mark 8:38), and when he portrays himself as the "bridegroom" (Matthew 9:15) and the kingdom of heaven as a "wedding banquet" (Matthew 22:1-14). The same imagery, depicting the end of earthly history, is present in the book of Revelation: "Let us rejoice and be glad and give glory to Him, for the marriage of the Lamb has come and His bride has made herself ready." (Revelation 19:7). All these show that the marital relationship as wholeness and holiness is never far from God's mind and purposes.

Considering the above, one ought to wonder what practical action is available to the believing couple to ensure the possibility of a sanctified marriage. I suggest in the conclusion that prayer is the essential practice that leads to holiness in a person's and a couple's life. Paul urges believers to pray continually (1 Thessalonians 5:17). Peter connects the success of one's prayer to the quality of one's marital relationship: "Husbands, in the same way be considerate as you live with your wives and treat them with respect as the weaker partner and as heirs with you of the gracious gift of life, so that nothing will hinder your prayers" (1 Peter 3:7). Thus, prayer appears here to be the essence of one's spirituality. This is even more so as Paul singles out prayer as the foundation of abstinence in a couple's search for holiness, understood as drawing nearer to God (Levine 2004, 141; Deming 2004, 213).

Conclusion

Holiness in marriage means love and respect for each other, it means togetherness in all aspects of life, material and spiritual. It means wholeness and integration, sacredness and happiness. It calls us to act in God-like manner towards the other. It is a relationship that becomes a reflection of God's image, for holiness is to be defined by God's nature, not by the custom of humans. It is attainable by such means as prayer and other spiritual disciplines in which husband and wife engage harmoniously, in mutuality. Holiness should be present in every aspect of a Christian's conduct, it is the

way in which one becomes more like Christ. It entails loving God with heart, soul, mind, and strength; and loving your spouse as yourself. Something that is holy is separated from common use for a special purpose. As such, marital holiness is rooted in the relationship with God in Christ. God is the ultimate source of holiness. Thus, holiness has singularity of purpose, for it is the preparation to meet the Lord. To conclude, the pursuit of holiness in marital relationships should be regarded as a Christian value, for a holy marriage is a covenant with one another and God. Ultimately is the way in which human beings become a reflection of the Creator.

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