



DOMESTIC VIOLENCE-A SAD REALITY IN INDIAN SOCIETY: A SPECIAL REFERENCE TO THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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INTRODUCTION

Women have accepted suffering at the hands of men as their destiny or have just acquiescence their right to raise their voice, perhaps, because of the justice system or the lack of it or because they are vulnerable or scared. This Research paper highlights the main provisions of The Protection of Women from Domestic Violence Act, 2005. It primarily looks into the provisions of this Act from the International and constitutional perspective. The main aim of the research is to bring to light the numerous rights, most of which are constitutionally guaranteed, of women who are protected directly or indirectly by this Act.

As discussed above, in the Indian patriarchal setup, it became an acceptable practice to abuse women. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity. The Protection of Women from Domestic Violence Act, 2005 (or the Domestic Violence Act) is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a long way towards protection of women in the domestic setup.

INTERNATIONAL CONCERN

Before throwing significant light over the first ever comprehensive domestic violence law in India, I found it my profound duty to highlight the various efforts made on international arena in the shape of conventions and declarations which are summarized as follows:

1. The Universal Declaration of Human Rights
2. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
3. ILO Convention No. 100 Equal Remuneration Convention, 1951
4. Convention on the Political Rights of Women
5. Convention on the Nationality of Married Women
6. International Covenant on Civil and Political Rights
7. Convention on the Elimination of All Forms of Discrimination against Women 1963
8. Vienna Declaration and Programme of Action
9. Declaration on the Elimination of Violence against Women
10. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
11. Convention No. 183 Convention Concerning Maternity Protection
12. SAARC Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution

NATIONAL CONCERN

The above said international conventions and declarations represent all over the world the rights of the women by one way or the other. The Government of India has been a participatory and signatory to these international agreements, covenants and declarations. Before we discuss the provisions of Domestic Violence Act, 2005, it is impairing to mention various constitutional provisions followed by legislative intents being expressed in the



form of various enactments which were passed to protect the rights and uphold the dignity of women.

1. The Constitutional Mandate: The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Some of the important specific privileges are as under:

- (i) Equality before law for women (Article 14)
- (ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (1))
- (iii) The State to make any special provision in favour of women and children (Article 15 (3))
- (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
- (v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))
- (vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)
- (vii) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)
- (viii) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
- (ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)
- (x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))
- (xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))
- (xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))
- (xiii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))
- (x) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

2. Legislative Measures: To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. These are broadly classified under two categories:

- 2.1 The Crimes Identified Under the Indian Penal Code (IPC)
 - (i) Rape (Sec. 376 IPC)
 - (ii) Kidnapping & Abduction for different purposes (Sec. 363-373)
 - (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
 - (iv) Torture, both mental and physical (Sec. 498-A IPC)
 - (v) Molestation (Sec. 354 IPC)



- (vi) Sexual Harassment (Sec. 509 IPC)
- (vii) Importation of girls (up to 21 years of age)

2.2 The Crimes identified under the Special Laws (SLL)

2.3 Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some Acts which have special provisions to safeguard women and their interests are:

- (i) The Employees State Insurance Act, 1948
- (ii) The Plantation Labour Act, 1951
- (iii) The Family Courts Act, 1954
- (iv) The Special Marriage Act, 1954
- (v) The Hindu Marriage Act, 1955
- (vi) The Hindu Succession Act, 1956 with amendment in 2005
- (vii) Immoral Traffic (Prevention) Act, 1956
- (viii) The Maternity Benefit Act, 1961 (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961
- (x) The Medical Termination of Pregnancy Act, 1971
- (xi) The Contract Labour (Regulation and Abolition) Act, 1976
- (xii) The Equal Remuneration Act, 1976
- (xiii) The Prohibition of Child Marriage Act, 2006
- (xiv) The Criminal Law (Amendment) Act, 1983
- (xv) The Factories (Amendment) Act, 1986
- (xvi) Indecent Representation of Women (Prohibition) Act, 1986
- (xvii) Commission of Sati (Prevention) Act, 1987
- (xviii) The Protection of Women from Domestic Violence Act, 2005
- (xix) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

3. Special Initiatives for Women

- 3.1. National Commission for Women
- 3.2. Reservation for Women in Local Self-Government
- 3.3. The National Plan of Action for the Girl Child (1991-2000)
- 3.4. National Policy for the Empowerment of Women, 2001

WHY WE NEEDED NEW LAW AGAINST DOMESTIC VIOLENCE?

After going through so many international conventions and declarations been adopted by international fraternity followed by India into action and reality by way of constitutional directives in the forms of Fundamental Rights, Fundamental Duties and Directive Principles various legislative measures, to counter social discrimination and various forms of violence and atrocities and to provide support to women the first question that arises in a man's mind is that- "Why we needed a new law for domestic Violence?"

The answer to this question, which I found, is that of all forms of criminal behaviour, domestic violence is among the most prevalent and among the least reported. One reason for this anomaly is that till 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Section 498A of the Indian Penal Code) were limited. There was no emergency relief available to the victim; the court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser. And relationships outside marriage were not recognised. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the IPC without any regard to the gender of the victim. There was no measure in place to allow her to continue staying in her matrimonial home and yet raise her voice against the violence perpetrated against her.



This, together with many other problems faced by women in the household, prompted this enactment.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

This piece of legislation, in my view has been long over due. It is a comprehensive law and addresses all issues related to women. It is for the first time that an Act has been made to address women's issues in such detail. The Act is an extremely progressive one not only because it recognizes women who are in a live-in-relationship but also extends protection to other women in the household, including sisters and mothers. The Act includes relations of consanguinity, marriage, or through relationships in the nature of marriage, adoption, or joint family thus, 'domestic relationships' are not restricted to the marital context alone. In fact the Act has given a new dimension to the word abuse because unlike the primitive notion abuse includes actual abuse or threat of abuse, whether physical, sexual, verbal, economic and harassment by way of dowry demands. It consists of 37 sections divided into five chapters.¹

The Salient Features of the Protection from Domestic Violence Act, 2005 are as follows:²

1. The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included.
2. It defines "Domestic violence" includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
3. One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.
4. The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.
5. The Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman such as medical examination, legal aid, safe shelter, etc.
6. The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

DOES THE ACT OF 2005 HAVE EFFECT ON SOCIETY?

The next question that comes in handy is that "Does the Act of 2005 have any effect on the Society?" Does the law addresses all kind of abuses practiced against women?

The sincere answer that I could give is that cultural influences affect not only the content of the law, but also how the law is enforced. If members of society do not respect or understand the law-including those individuals responsible for the law's enforcement-the objectives set forth by the law will not be achieved. The highlighting point of this Act is that it not only provides protection to household women but also those who are in live-in-relationship. The new law also addresses sexual abuse of children, or forcing girls to marry against their wishes as well. This certainly proves that the new Act has been formed keeping the current relationship culture in India and the irregularities in previous Domestic Violence Laws, in mind.

WHAT IS DOMESTIC VIOLENCE IN THE EYES OF ACT OF 2005?

1. Physical Abuse is defined as any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health, or an act that impairs the health or development of the person aggrieved, or that



includes assault, criminal intimidation and criminal force.

2. Sexual Abuse is any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of the person. The law also covers instances where a woman is forced to have sexual intercourse with her husband against her will.

3. Verbal and Emotional Abuse has been defined as any insult, ridicule, humiliation, name-calling and such acts. A woman who is insulted and ridiculed, to say, not being able to conceive or for not having produced a male child, can now take recourse to this law. Any repeated threats to cause physical pain to any person in whom the person aggrieved is interested in other words, if say the abuser were to threaten the children, or relatives, of the aggrieved party will also be covered under this head.

4. Economic Abuse is a very forward-thinking, important part of this definition. The deprivation of economic or financial resources to which the aggrieved woman or child is entitled under law or custom, or which the person aggrieved requires out of necessity, can be claimed under the provisions of this law; withholding such resources now falls under the category of economic abuse. This provision comes into play in instances of marital disputes, where the husband tends to deprive the wife of necessary money as a weapon. The law also sees a husband who sells off his wife's jewellery and assets as being guilty of economic abuse.

KINDS OF RELIEF AND REMEDY UNDER THE ACT OF 2005

The remedies provided under the Act to the victims of domestic violence are (a) Residence orders³ (b) Protection orders⁴ (c) Monetary relief⁵ (d) Custody orders⁶, (e) Compensation orders⁷.

Under the Act the law provides for the setting up and function of Protection Officers (PO). The State Government will appoint protection officers to help the affected women. These protection officers are likely to be appointed in every district across the country.⁸ According to the provisions of the Act, the woman will be given complete protection. The court can pass 'protection orders' so that the charged person will not cause violence to the woman's relatives. Apart from this, the woman can rightfully continue to live under the same roof with the man while fighting him in the court. According to the Act, the woman will have the right to a 'secure housing' in the matrimonial or shared household. The PO will assist the court in making a Domestic Incident Report or an application for a protection order on behalf of the aggrieved woman and/or child. POs will ensure that aggrieved people are provided legal aid, medical services, safe shelter and other required assistance. POs will ensure that necessary information on service providers is provided to the aggrieved woman and that orders for monetary relief are complied and executed with.⁹

The other relief envisaged is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties.

It also provides for a breach of protection order or an interim protection order by a respondent as a cognizable and non-bailable offence punishable with imprisonment for a term, which may extend to a year or with a fine, which may extend to twenty thousand rupees or with both.¹⁰

An important addition to the law ensures that an aggrieved wife, who takes recourse to the law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms of violence, he cannot during the pending disposal of the case prohibit/restrict the wife's continued access to resources/ facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household.¹¹ In short, a husband cannot take away her jewellery or money, or throw her out of the house while they are having a dispute.

A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under Section 498A of the Indian Penal Code or the Dowry Prohibition Act, 1961 in case the facts discloses the commission of any offence under those provisions of the set. Thus, such charges shall be in addition to the



breach of the protection orders given by the Magistrate.¹¹

Similarly, the Act has made provisions for Service Providers.¹² It provides that any voluntary organization (registered under the Societies Registration Act, 1860) or a company registered under the Companies Act, 1956 with the objective of protecting the rights and interests of women (including free legal and medical, financial or other assistant) shall register with State Government as service provider. The Act also provides immunity to the Service Provider from any suit prosecution or other legal proceedings, if the ‘provider’ acts in good faith, to discharge the functions under the Act and in exercise of the powers given under the provisions of the Act.¹³

CONCLUSION

Before we jump to the conclusion, it is pertinent to note that the Act is based on the untenable assumption that victims of domestic violence are always women and that the perpetrator is always a man. The Act, apparently on its face, blatantly denies protection to men against any form of domestic abuse. The Domestic Violence Act presumes that the accused man is guilty until proven innocent, thus violating the presumption of innocence and the principles of fair trial guaranteed under Articles 20 and 21 of the Constitution of India. There are other faults as well.

However, what I feel is that the Domestic violence Act, 2005 is a comprehensive law and addresses all issues related to women in detail. This Act provides them a safeguard and a sort of sword in their hand so that they will not be seen as an animal, or a shoe that you can wear anytime and throw anytime. Its shortcomings do not, on final analysis; blot out the immense benefit the Act could be of to women. A good thing about the Act is the fact that it deals with domestic violence regardless of the religion. The Act is an extremely progressive one not only because it recognizes women who are in a live in relationship but also extends protection to other women in the household, including sisters and mothers. The Act could play a stellar role in protection of women’s rights in the household and in guarding them from domestic violence. The government has passed the law; it now needs to put in place the mechanism of implementation. The government will also have to initiate a widespread campaign for public awareness. It will also need to implement training programs to sensitise the police, media, lawyers and judiciary to the dimensions, scope and functioning of this Act of 2005. The Act could play a stellar role in protection of women’s rights in the household and in guarding them from domestic violence.

REFERENCE

- [I] The Act received the assent of the President on 13-09-2005 and published in the Gazette of India, Ex. Pt. II, S.I dated 14-09-2005
- [II] <http://www.lawyersclubindia.com/articles/Objectives-of-Domestic-Violence-Act-3089.asp> data retrieved on 03-10-2016
- [III] Section 19 of the Act
- [IV] Section 18 of the Act
- [V] Section 20 of the Act
- [VI] Section 21 of the Act
- [VII] Section 22 of the Act
- [VIII] Section 8 of the Act
- [IX] Section 9 of the Act
- [X] Section 31 of the Act
- [XI] Section 17 of the Act
- [XII] Section 31 (3) of the Act
- [XIII] Section 10 of the Act
- [XIV] Section 10 (3) of the Act