

Women and Domestic Violence Law in India- A Critical Appraisal

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ABSTRACT

Domestic violence is an offence committed within the four walls of home. The menace of the crime is increasing day by day in our society. The Protection of Women from Domestic Violence Act, 2005 is an important piece of legislation enacted by Indian Parliament. However, only legal system or laws cannot protect the women from domestic violence. In order to safeguard the women from domestic violence, a vigilant judiciary, effective role of executive, protection officers, service providers, active participation of people in the dispute settlement is highly necessary. The present research is based on doctrinal study and includes both primary and secondary data.

Key Words : Domestic violence, Women, Judiciary

INTRODUCTION

Domestic violence against women is one of the most vicious and humiliating violation of human rights prevalent in world today. It is one of the most extremely complex and vicious forms of abuse committed with the four walls of family which is penetrating day by day in our society. The domestic violence not only affects physical and sexual health of the women but also hampers the Psychological health of women.

Protection of Women from Domestic violence Act, 2005 is one of the milestone legislations protecting the human rights of women in general and domestic abuse in particular. Although, the Protection of Women from domestic violence Act, 2005 has often been misused by the women, yet it has the potentiality to give justice to the needy women who are real victim of domestic violence.

The present work is an attempt to unearth the present position of laws relating domestic violence and its use and misuse in India with an international perspective.

Definition and forms of Domestic Violence:

Domestic violence is multi dimensional terminology. Domestic violence not only include actual abuse but also threat of abuse in the form of physical, sexual, verbal, emotional and economic. Unlawful dowry demand coupled with sexual harassment is also seen as a domestic violence.

According to Black's Law Dictionary "domestic violence means violence between members of household , usually spouses, an assault or other violent act committed by one member of household against another"¹

Section 3 of the Protection of Women from Domestic Violence Act, 2005 has defined domestic violence in the following words-

Definition of domestic violence—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing

1. Preeti Mishra, Domestic Violence Against Women: Legal Control and Judicial Response, Deep and Deep Publications, New Delhi, 2007 at P. 51

physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or

separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

Thus, the definition of domestic violence under the Protection of Women from Domestic Violence Act, 2005 include violence of different forms such as physical, sexual, verbal, emotional or economic etc.

The ambit of domestic violence has been ever increasing. Now it includes violence committed by any person who is in live in relationship or any form of intimate relationship. The World Health Organization has come out with a definition of intimate partner violence. According to World Health Organization, it refers to any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship.²

According to World Health Organization, the various forms of intimate partner violence are³

- (i) Acts of physical violence such as slapping, hitting, kicking, beating etc.
- (ii) Sexual harassment such as forced sexual intercourse and other forms of sexual coercion
- (iii) Emotional or psychological abuse such as insults, belittling and constant humiliation and intimidation, threats of harm, threats to take away children.
- (iv) Controlling behaviours including a isolating a person from friends and family , monitoring their movements and restricting access to financial resources, employment education and medical care.

Global response to Domestic violence Law:

At the global level various countries have adopted legislations for protecting women from domestic violence. The United Nations and its subsidiary organs have also

2. World Health Organisation, Intimate partner violence and alcohol, available at http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_intimate.pdf (Last accessed on 17th November, 2019 at 8.40 P.M.)

3. World Health organization, Intimate partner violence, *apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf* (Last accessed on 17th November, 2019 at 8.40 P.M.)

developed a framework of international law relating to domestic violence.

The Declaration on Elimination of Violence against Women is one of the first international instruments which exclusively and explicitly deal with the protection of women from domestic violence. The preamble to the Declaration proclaims that "... violence against women constitutes a violation of the rights and fundamental freedoms of women"

On the other hand, the platform for action from the fourth world conference on women (the Beijing Platform for action) commits governments around the world to take action to address violence against women. Among other demands the platform calls on the governments-

(i) to condemn violence against women and refrain from invoking any custom, tradition etc. to avoid their obligation under this declaration.

(ii) to adopt and implement, periodically review and analyse legislation

(iii) to take measures to ensure the protection of women subject to violence, create or strengthen institutional mechanisms and plans of action for elimination of violence against women.

In order to implement the objective of Studying the causes and consequences of violence against women and the effectiveness of preventive measures, the Beijing platform for action inter alia calls upon the Governments, regional organizations, the United Nations, other stakeholders to promote research, collect data and compile statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women.⁴

Domestic Violence Statistics-

The incidents of domestic violence are increasing tremendously. The National Crime Records Bureau

Year	2014	2015	2016
Number of cases reported	426	461	437

Domestic Violence under SLL Crimes Head as Per Crime in India, 2016 of NCRB

Salient Features of Protection of Women from Domestic Violence Act, 2005-

1. The Protection of Women from Domestic

Violence Act, 2005 is the first significant legislation which recognizes domestic violence as punishable offence and extends the provisions of the Act to those who are in live in relationship.

2. Any act or conduct, commission or omission that harms or potential to harm comes under the purview of domestic violence. As per the Act physical, sexual, emotional, verbal, psychological and economic abuse or threat are included within the definition of domestic violence.

3. Another important feature of the Act is the recognition of women's right to reside in matrimonial home and shared household, whether or not she has any title or right in the household.

4. Section 8 of the Act provides for setting up and functions of protection officers. The protection officers are appointed by the state government and functions under the jurisdiction and control of the court. They are responsible for monitoring the cases of domestic violence.

5. The protection officer can be penalized for failing or refusing to perform his or her duties.

6. Participation of service providers is another important feature of the Act. The service providers are generally private organizations recognized under the Company Act or Societies Registration Act. The service providers inter alia ensure that the aggrieved person is provided accommodation in a shelter home as he is required.

7. The Act recognizes some of the reliefs in the form of protection order, residence order, monetary relief custody order for children, compensation order, interim order or ex-parte order. Under the Act breach of protection order or an interim protection are made cognizable, non-bailable and punishable with one year imprisonment or fine of Rs. 20,000 or both.

Judicial approach:

Indra Sarma v. V.K.V. Sarma⁵ – The Supreme Court of India confronted with the question whether a "live-in relationship" would amount to a "relationship in the nature of marriage" falling within the definition of "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005.

4. The United Nations Fourth World Conference on Women, <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm> (Last accessed on 16th November, 2019 at 8:20 A.M)

5. Criminal Appeal No. 2009 of 2013 Available at <https://indiankanoon.org/doc/192421140/> Last accessed on 16th November, 2019 at 8:30 A.M)

The Court observed in the following way - All live-in-relationships are not relationships in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" under Section 2(f) of the DV Act.

Explaining the requisites of 'relationship in the nature of marriage' in *D. Velusamy v. D. Patchaiammal*⁶, the Supreme Court of India observed that "a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

It further observed that "a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'."

The Honourable Supreme Court of India in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori*⁷ held that where the decree of divorce had been obtained subsequently, an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Protection of Women from Domestic Violence Act, 2005. The benefit shall include the monetary relief under

Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the Protection of Women From Domestic Violence Act, 2005 .

In *Prakash Babulal Dangi v. State of Maharashtra*⁸, the court held that Maintenance under Domestic Violence Act to be paid in addition to and not in substitution of maintenance awarded under S. 125 Cr PC.

The Supreme Court of India in *Manmohan Attavar vs Neelam Manmohan Attavar*⁹, has observed that S. 17 creates entitlement in favour of woman of right of residence under "shared household" irrespective of her having any legal interests in the same.

In another recent judgement the Supreme Court of India in *Hiral P. Harsora v. Kusum Narottamdas Harsora*¹⁰ interpreting the term "adult male" has observed in the following way – "the words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India"

Critical appraisal:

The prevalence domestic violence violated any guarantee of protective security. It undermines the whole notion of the home as a protective sphere. It adversely affects individuals, their families and the wider society. The reconciliation with the hegemony and hopelessness harms the women more than the violence itself as it harms her personality and also that of children.

The domestic violence Act is like a tiger without tooth and nails. The burden of proof lies on the aggrieved person to prove the act of domestic violence. This adverse approach resulted in discouraging the victim to carry forward the case in the courts.

Indira Jaisingh, senior advocate of Supreme Court of India has aptly asserted that it is readily acknowledged that the implementation of the Act is slow. In most states protection officers have yet not been appointed or service providers are registered.

The Act has certain limitations which may be outlined in the following way-

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6. Criminal Appeal Nos. 2028-2029 of 2010 available at <https://indiankanoon.org/doc/1521881/> (Last accessed on 14th November, 2019 at 8:20 A.M)
 7. Criminal Appeal No. 2069 of 2014, decided on 18.09.2014
 8. 2017 SCC Online Bom 8897
 9. (2017)8 SCC 550
 10. 2016 SCC OnLine SC 1118

1. Privatization of responsibilities- The state has privatized the responsibility of assisting in providing legal aid, medical, financial or other assistance to the victim. However, monitoring of the shelter homes and other services by the state has not been under the Act. The Bihar shelter home episode has highlighted the need of strict monitoring of the service providers.¹¹

2. No provision on misuse of Act- The misuse of the Women related laws are not new. Although genuine cases go unreported but some cases are reported to harass the husband and his relatives. A few instances where judiciary has unearthed the misuse of the law may be narrated in the following way-

In *Rukmani and others v. Manonmani and others*¹² the Madras High Court has held that “on perusal of the materials on record, is convinced that there is no material to make out a prima facie case of domestic violence, however, an attempt has been made by the first respondent to misuse the provisions of the Domestic Violence Act, which was enacted with laudable object to provide for remedies, such as, protection to the affected women.”

In another case recent case decided by Hon’able Madras High Court namely *T.K.Krishnan vs The State Of Tamil Nadu*, it was held that “Taking note of caution that power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, this Court considered that this is an illustrious case where the benevolent legislation intended to protect women in distress due to domestic violence has been misused and thereby it is clear that the criminal proceeding is manifestly attended with mala fide and the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the respondents with a view to spite them due to private and personal grudge¹³. It is pertinent to

note that distant relatives have been entangled in the case.

This kind of misuse cannot be redressed properly under the Indian Law. Recently Law Commission of India in its report 277th Report has advocated for a special court as well as proper amendment in the Criminal Procedure Code, 1973 by adding malicious prosecution.

3. Ineffective provisions on health care – Health care is one of the most neglected areas of the Domestic Violence Act. The health needs of the victim are of paramount interest. The Act has not only delegated the responsibility of providing health care to state Governments but also provides no strict provisions on health care. As per section 2(j) medical facility has been defined as “‘medical facility’ means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;”. A glance of the Central rules reveals that the service providers under the Act need not have medical or counseling facilities mandatorily.¹⁴

4. Psycho-social Counseling of Accused- The reformatory theory of law requires that young persons who commit crime must be given opportunities reform themselves. In this respect Psycho-social Counseling of accused is must. However, the Act has not provided any mandatory provisions for Psycho-social Counseling of accused. Central rules have no mandatory provision on Psycho-social Counseling service by service providers. Further such facility is not provided to accused.

The domestic violence Act is specially meant to address the issue of domestic violence by providing for civil relief to Indian women facing violence in intimate relationships. But to the utter surprise it is humbly submitted that the Act has failed to achieve its ultimate goal. This does not mean that the present law is bogus and should be refurbished but what is needed simply

11. See https://en.wikipedia.org/wiki/Muzaffarpur_shelter_case (Last accessed on 18th November, 2019 at 7.30 p.m)

12. Crl.O.P.No.27548 of 2012 and M.P.Nos.1 & 2 of 2012 available at <https://indiankanoon.org/doc/59810839/> (Last accessed on 18th November, 2019 at 07.30 p.m.)

13. Crl.O.P.No.1727 of 2014 and M.P.Nos.1 & 2 of 2014 available at <https://indiankanoon.org/doc/67767289/> (Last accessed on 19th November, 2019 at 07.30 p.m.)

14. Rule 11 (3) (b) of the Protection of Women from Domestic Violence Rules, 2006

is that the courts and lawyers should be aware of real spirit and object of the Act. The courts should decide the cases as soon as possible having in view the statutory time limits in plausible manner.

Suggestions:

The following suggestions may be put forwarded-

1. The Domestic Violence Act may be amended so as to include a provision of monitoring or superintendence of the service providers to ensure effective implementation of the Act.
2. The Domestic Violence Act may be amended to add a provision for malicious prosecution so as to curb the misuse of the law.
3. The state Government and Union Government must amend the rules so as to ensure that the

service providers must provide effective health care to the victim.

4. A provision to provide psycho-social counseling of accused may be incorporated in the Act.

Conclusion:

The protection of women from Domestic Violence Act, 2005 is a milestone legislation enacted by the Parliament of India to save the women from violence occurred within the four walls of home. In the recent years, violence against the women especially domestic violence has increased manifold. The domestic violence can only be curbed with proper education which instills respect for women and empowering them to face the challenges of the time. With the active role of judiciary, civil society, morally educated men and women, the menace of domestic violence can be minimized.
