

A Critical Study on the Protection of Women from Domestic Violence Act, 2005

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ABSTRACT

Domestic violence under the Act has been defined as an Act of violence against a woman who is in domestic relationship either because of marriage or otherwise is a victim of violence whether mental or physical which also includes physical abuse, sexual abuse and economical abuse and verbal and emotional abuse. This act of domestic violence upon women is an evil act seldom to create terror in the mind of the victim and control relationships in an arbitrary manner. Domestic violence also includes criminal intimidation and sometimes it also includes very subtle and meticulous behaviour like making someone feel irrelevant or depriving them of their basic needs or rendering a person homeless. Domestic violence, besides mental and physical violence also applies upon social boycott and emotional misbehaviour. Under the phenomena of domestic violence it has also been seen that with women children are also under the subject of violence and negligence. Most of the time domestic violence is related to or committed upon women but it may also include violence against children, other family members and friends and relatives. However, the present Act regarding domestic violence is primarily related to violence against women and therefore any act of domestic violence is an impediment towards women empowerment, their mental and physical health and their social well being of general acceptance.

KEYWORDS: Domestic violence, domestic relationship, aggrieved person, protection officer, shelter home.

OBJECTIVE OF STUDY

1. To critically analyse and interpret relevant provisions of the Protection of Women from Domestic Violence Act, 2005;
2. To identify any loopholes and deficiencies in the Protection of Women from Domestic Violence Act, 2005; and
3. To explore options and solutions so as to protect the interest of women against their subjugation of domestic violence.

ACTION PLAN FOR THE STUDY

To execute and complete the instant study and to fulfil objectives of this study, primary and secondary sources of law have been approached, studied, critically analysed and have been interpreted. Relevant primary sources including legislations and secondary sources including articles, publications, judicial precedents and online content has been resorted to for the purpose of this study. The study has been taken in hand and executed keeping in mind the nature of critical research is conducted.

INTRODUCTION

Domestic violence which is also considered as domestic misbehaviour is also one of the forms of matrimonial disrespect which has been primarily under the law been considered as disrespectful and degrading behaviour between persons who are in matrimonial relationships or in relation or are relatives. There are many forms of domestic violence like, physical attack which includes kicking, fisting, pushing, biting, unlawful restraint or confinement, throwing things, intimidating, sexual misbehaviour, economic torture and negligence by a person. Besides, domestic violence may or may not take place on the basis of local laws, seriousness of offence and period of specific acts.

According to data released by the Director of National Crime Record Bureau, Sharda Prasad, in Delhi the rate of offences against women by 2030 will increase more than the rate of increase in the population of Delhi. In the national capital of our country in spite of making efforts to eliminate misbehaviour, affording legal protection and reformation in the criminal justice system and although of institutionalising law and legal reforms centres there has been a rise against domestic violence of women in the national capital of Delhi. As per the National Crime Record Bureau report of year 2022, an increase of violence against women has been underlined or seen and according to the year 2020-2022, the cases of domestic violence has increased from 3,71,503 to 4,45,256 which is apparently a very worrying and perverse situation. In the last ten years according to data released by the National Crime Record Bureau, offences against women in the form of domestic violence committed by husband and/or his relatives has been in forefront.

One of the prominent women rights activists and senior advocate of the Supreme Court Indira Jaisingh has said that our present criminal justice system does not effectively address the grievances of women relating to domestic violence committed by men. The criminal Courts which are the grass root level Courts in the hierarchy of Indian judicial system have been proven to be incapable to provide and protect the rights of women to move out of their household and work independently and to immediately address the needs of women and children during the pendency of trial in subordinate Courts.

HISTORICAL BACKGROUND OF DOMESTIC VIOLENCE

The act of domestic violence upon women is not a new phenomenon in our society and rather for last hundreds of years women has been subject of domestic violence, mental and physical harm and even to heinous crimes of rape and death. The patriarchal mindset of society in our country has led women to face different types of day to day mental and physical problems at even homes which is a place that gives us everyone a sense of security and oneness and even there women have been subject of domestic violence. This fact that women are not even safe at home and has been subject to domestic violence can be understood that during the outbreak of COVID-19, emerging data and reports from those on the front lines, have shown that all types of violence against women and girls, particularly domestic violence, has intensified.¹

It will not be wrong to say that every woman at some point of their life have faced some form of violence which involves crimes like rape, dowry exploitation, confinement, abduction or kidnapping, honour killing, physical hurt or attack, acid attack, sexual exploitation or child infanticide. The act of domestic violence does not discriminates between ruler or urban areas of State and crimes and violences of child marriage, forced prostitution, forced marriage, violence against wife, indecent comment,

¹ UN Women, *available at*: <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19> (last visited on December 28, 2024).

blackmailing, sex determination, sexual exploitation of girls and indiscriminate medical attention have been committed irrespective of rural or urban areas which have increased in recent years.

Today in our country the state of affairs is such that domestic violence or physical or emotional or mental violence is common now and women do not feel safe in any part of the country. If we talk about the historical background of the present Act relating to domestic violence against women then the path of the Act has not been a cake walk. In the decade of 1970, when there was a women oriented revolution then as a result of this revolt Criminal Law (Amendment) 1983 was introduced and a new Section 498A was added to the Indian Penal Code, 1860. Under this law husband and his relatives were made liable for harassment of wife involving mental and physical harassment and offence under this provision was made cognizable and non bailable where the punishment was of three years with fine.² In 1986, one more provision was added to the Indian Penal Code, 1860 which was Section 304B and was related to the dowry death of a wife where seven years have not lapsed since the date of marriage.³

Both the above provisions under the Indian Penal Code, 1860 were quite a success in itself but were not sufficient enough and it was seen soon that domestic violence against women is committed due to other reasons as well and what happened that because of these provisions attention of the society and law enforcement agencies was deprived for other reasons out of which domestic violence is committed upon a women. Sexual harassment and violence, economic violence and basic act of crimes like, threatening and intimidating were also not part of the above provisions that was a big lacuna.

FORMS OF DOMESTIC VIOLENCE

In statutory sense the term, “domestic violence” has been defined under Section 3 of the Protection of Women from Domestic Violence Act, 2005 in the following words:

“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 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.”

All forms of domestic violence as has been defined in above words leads to the sole objective towards controlling the victim women entirely and to maintain that control over the body and mind of such a person. The culprits who exercise domestic violence, in order to commit the offence resort to different means like, use of physical strength, desertion, threatening, acquisition, negation or et cetera in the like. Domestic violence also constitutes direct or indirect physical violence, mental violence, forced sex and economic, social, emotional and psychological misconduct by the accused. Various primary forms of domestic violence have been discussed under the following heads:

Physical Violence: This type of violence can be committed by either direct or indirect mode where direct physical violence involves from physical contact of bodies between the accused and victim to even commitment of rape or forced sex and causing death. Under indirect physical violence there is no

² The Indian Penal Code, 1860 (Act 45 of 1860), s. 498A.

³ The Indian Penal Code, 1860 (Act 45 of 1860), s. 304B.

direct contact between the body of the accused and victim rather it involves illegal acts like, destruction of material things and misbehaving with things or throwing things in front of the victim. Thus, physical violence under the category of domestic violence means that it involves deliberate use of physical force involving hurt, causing loss or destruction, physical partial or full disability and chances of causing death through beating, pushing, biting, restaurant or confinement, kicking or using any weapon.

Mental Violence: Under this type of violence where the violence is mental or psychological or emotional misconduct it includes economic or social control or both like, depriving victim women from monetary or other economic resources or controlling monetary or economic resources, restraining victim in meeting from her friends and relatives, destruction of social relationships of victim and separating victim from her social relationships.

Sexual Misconduct: In domestic violence acts, sexual misconduct is common between partners. Sexual misconduct can be defined or explained as a situation where unwanted, unsafe and disrespectful sexual intercourse activity is involved and in order to exercise such sexual activity an unwarranted force has been used. This means and also involves forced sex committed by husband or wife or an intimate partner where the sexual activity is a result of attack and violence. It has been often seen that where those women with whom their husbands have committed physical or sexual misconduct then their chances of being physically harmed or being dead is more as compared to other women.

Oral and Emotional Misconduct: In oral misconduct or violence the victim or the accused himself or children or other persons involved directly or indirectly in a household are subjected to oral intimidation, disrespectful and oral violence by way of words. It also involves verbal threatening or intimidation by way of different signs, facial expressions and bodily postures.

In emotional misconduct which is also sometime known as psychological or mental misconduct, the victim is at personal or public level is badly humiliated, arbitrary controlled what a victim is permitted to do or not permitted to do, hiding material information from victim, deliberatory doing something so that victim undermines itself or feels embarrassing, segregating victim from her friends and family, making feel victim subjugate and unhappy by harming her or others in whom her emotional or otherwise interest is involved or depriving victim from monetary and other basic resources and needs in order to emotionally blackmail women.

Persons who are tortured emotionally or orally, they often feel that they are not independent and master of their own rather they feel that they are being totally controlled or under subjugation of an accused person. Victim women who have been subjected to this type of misconduct or violence are often have been seen to be suffering from mental trauma and depression and due to this they are at the higher risk of committing suicide, irregular eating habits and use of intoxicating drugs and liquor.

Economic Exploitation: Economic exploitation or torture can be committed or is possible when accuse has total control over the monetary and other economic resources of the victim. The victim is forced to literally beg for money until the accused who exploited does not give her adequate monetary means. In an act of domestic violence which can continue for a longer period, getting an inadequate amount of money or other monetary means is very common. Under the economic exploitation besides above activities it also involves restraining the victim from completing her education and getting employment, deliberately destroying community monetary resources or misuse of available economic and monetary resources.

THE LAW RELATING TO DOMESTIC VIOLENCE

Domestic violence is one of the most serious and large scale human rights violation and for long years women in our country has accepted it as their fate and has not raised their voice before appropriate platform against this heinous act of domestic violence committed against them because of either lack of appropriate legal and judicial mechanism or they are socially, economically and educationally weak. Another reason behind non reporting of domestic violence by women in our country is because they are suspicious and afraid of being boycotted by their own family and societal members or due to other personal reasons of which they are themselves best aware of.

The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), a central Act passed by the parliament which came into force on 26th October 2006 was enacted with an objective to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. This Act has been enacted to ensure and protect rights of women against domestic violence committed by accused thereby improving their social and well being. This Act primarily protects women and women living in partnership with a male against offence of domestic violence committed by their husband or any men, living in male partner or relatives of husband or living partner. The Act also provides protection to those women who are widow and/or mother of children. This Act is very much progressive in nature because it also effectively protects the rights of women against the office of domestic violence who are not traditionally married but are engaged in live-in relationships. The Act has given new dimensions to term, “misconduct” or “abuse” or “exploitation” because as opposed to general thinking it has considered and interpreted misconduct, abuse or exploitation as involving actual incident or intimation of any criminal act whether it relates to victim’s physical body, mental state, sexual orientation, oral, economic or harassment by way of demand of dowry. The instant Act has five Chapters and thirty seven Sections in total and has following specific characteristics:

1. According to the Act, aggrieved person includes in its definition a daughter, mother, sister, child whether male or female, widowed women or in substance any women member of the family who is directly or indirectly related to the respondent is living or has lived in a house with the respondent. This broad definition though not exhaustive covers all the aspects of a woman that she can be in while living or has lived with the respondent.⁴
2. The cognizance or initiation of proceedings under the Act of domestic violence is taken upon the complaint of the victim women which is needed to be filed with the protection officer. For the purpose of filing a complaint against the incident of any domestic violence the provision has been made that it is not necessary that complaint can only be filed by the victim herself but any person can file a complaint with the protection officer who has reasonable belief that such an act has been committed or accused is committing such an act.⁵ This means that any person and not only the victim herself can file a complaint to the concerned protection officer which includes any person in the neighbourhood, social worker, relative or a near friend.
3. Hitherto it has been generally seen that women were afraid that they may be forcefully evicted from her in-laws house or her own house if they choose to take any action against domestic violence committed upon her and this stereotype made them mute spectators or victims. But under this Act, competent Courts have been empowered to pass an order that a victim woman can not only reside in

⁴ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 2(a).

⁵ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 4.

her current house where she is living but also Courts can order that a part of house be allotted to the victim women for her personal use, whether or not she has legitimate legal claim over the property or house.⁶

4. This Act empowers magistrates to protect a woman from the actual commission of domestic violence acts committed upon her or even any foreseeable acts of domestic violence that may be committed upon a woman in near future. It also empowers magistrate to protect the interest and rights of victim women in case respondent tries to evict victim from his property or house or respondent tries to create hindrance in the peaceful enjoyment of property or house by the victim and if the victim is a child then magistrate can also protect his rights like, getting him proper means for his school education. Respondents can also be restrained from trying or establishing communication with the victim in any form which includes personal means of communication, oral, written, electronic or telephonic call. Respondents can also be stopped from entering into an allotted room or premises or house which has been allotted to victim women through an order of Court.⁷
5. This Act relating to domestic violence also empowers magistrates to issue grants for monetary relief and maintenance on a monthly basis. Respondents can also be directed to pay for expenses and losses which have been incurred out of domestic violence committed by him against the victim which will also include loss in income, medical expenses, loss of property or damage of property which will also cover any other expenses required to meet maintenance for victim and her children.⁸
6. This Act makes mandatory provisions regarding magistrate's power to direct respondent pay for compensation and damages occurring out of domestic violence committed by accused and because of which the victim has suffered mentally and emotionally including any physical harm.⁹
7. Penal provisions have also been made under this Act relating to any offence committed under this Act where there is a provision for imprisonment of one year with or without fine which may extend up to 20,000.¹⁰ Accused can be held liable upon the statement of victim women given before the Court if the Court is satisfied and draws conclusion that offence has been committed by an accused person under this Act.¹¹
8. This Act also ensures speedy trial and justice because according to provisions a competent Court is required to initiate proceedings and take action and hold first hearing within three days of filing a complaint by the victim women. Besides, Courts are also required to finally dispose of the matter within sixty days of the first date of hearing. For this purpose, the Act enables the State government to arrange machinery and every necessary prerequisite to appoint a Protection Officer¹² and for implementation of the Act.
9. This Act makes provision for fixing responsibility and liability upon the central government and state governments for the purpose of comprehensive publicity of the Act and organising training programs for better implementation of this Act. Provision is also there to seek help from public

⁶ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 17.

⁷ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 18.

⁸ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 20.

⁹ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 22.

¹⁰ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 31.

¹¹ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 32.

¹² The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 8.

welfare experts if deemed necessary by the concerned magistrate for the purpose of better counselling and promoting welfare of victims.¹³

10. Determining mandatory duty, the Act makes provision that if the Protection Officer does not perform his duties and functions in accordance with the mandatory provisions of this Act then he may also be punished accordingly. Therefore, the Protection Officer is under duty to make a domestic incident report in the prescribed format of domestic violence committed by the accused upon the victim and forward it to the concerned magistrate. Besides, he is also under obligation to ensure filing of domestic incident reports upon the request of victim women with service providers.¹⁴

CONCLUSION AND SUGGESTIONS

The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005) has how far been successful in defining and covering all forms of domestic violence that may be committed upon women can be understood with the fact that whether this Act has been successful enough to provide relief and adequate security measures to victims. The ascertainment of success and effective implementation of the Act is needed to be understood with thoughtful and practical process and in this respect the instant Act has been quite successful and a seminal step towards addressing offences of domestic violence upon victim women in our Indian legal system.

A woman who is a victim of domestic violence has two legal options before her, first an application for divorce filed in the respective Family Court and secondly, filing of complaint before the concerned magistrate under the domestic violence Act which may at times makes legal process cumbersome and expensive. Finally, following conclusions and suggestions have been drawn on the basis of nature and functioning of the Act:

1. This Act has been quite controversial as it focuses upon the theory that domestic violence is and can only be committed by a male upon a victim who is a woman. It also says that prima facie it is the sole responsibility of accused male just upon the basis of allegations made by woman and because of this the Act has often been misused by women due to their ulterior motives.
2. However, the Act has been especially made in favour of victims suffering from or facing domestic violence who are females but keeping in mind the contemporary changing social conditions in our country this Act violates the constitutional doctrines of equality and non discrimination as it only focuses upon the victims who are women.
3. Many non profit organisations have registered themselves as service providers under the Act and it is subversive to say that both registered service providers along with protection officers have no substantial or practical experience to handle sensitive matters relating to domestic violence incidents.
4. The lawmakers while making this law have considered every complaint of a victim woman to be true and honest and had relied blindly upon their complaints against male accused and therefore this has ultimately created a situation of travesty of justice.
5. It is now urgently required that on the level of social and cultural basis there is a need to encourage the idea of gender equality among the common public by civil society members. In society, family units, schools, peer groups and social media who are considered as social agencies are required to get together to make an environment in our country which is more women centric society for which cultural and psychological revolution is also needed.

¹³ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), ss. 15, 11.

¹⁴ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 10.

6. The instant Act for the protection of women rights and interests is no doubt an effective piece of legislation which focuses upon various aspects and factors relating to women security, their dignity and affording criminal justice but then also there are certain areas where implementation of various provisions of this Act is urgently required.
7. With the changing social, economical and political contemporary situation of our society it is very much pivotal and needed that in order to create a check and balance in the society among male and female members there has to be some measure and broad awareness to tackle frivolous and fake cases.
8. Like other legislations the success of this act too not only depends upon the drafting of its provisions but also upon its effective, honest and transparent implementation in our legal system. To create a balanced and just society of male and female it is very much necessary that every citizen resorts to this Act in order to secure his rightful, just and coherent rights.
9. Lastly, legislation is just a book of words while its success depends upon the person who is empowered and under duty to implement this Act but it is more important to understand that society like any Act is not a nonliving thing but there exists people who are very much real and living in nature. Therefore, it is the members of society upon whom there lies ultimate liability and responsibility to ensure that incidents of domestic violence do not take place because it has been seen that in our country the real culprit behind any act of violence including domestic violence against women is a woman.

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