

The Protection Of Women From Domestic Violence Act, 2005: Some Emerging Issues

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INTRODUCTION:-

Domestic violence is a widespread, serious social problem which is not only limited to the social context of India, but it is a worldwide phenomenon. Violence directed against women by their intimate partners (current or former spouses, boyfriends, dating partners) is now assumed the shape of an epidemic of global proportions which puts devastating physical, emotional, financial and social effects on women, children, families and communities around the world. Domestic violence cuts across all barriers of caste, class, education and religion, yet it is not recognized as a crime by society. Women from all sections of society, inspite of their socio-economic status get beaten up.

Though it is the most prevalent crime but remains largely confined within four walls of the house. It is least reported due to the feelings of guilt and shame, fear of future beating and other social compulsions faced by the victim. Thus the extent of domestic violence is difficult to measure because many assaults go unreported. Many women are tortured every day but this problem have failed to capture the required attention because we the members of society have been socialized in such away that we accept violence against women as common routine matter. Domestic violence is national health hazard of epidemic proportion.¹

According to the study conducted by International Council for research on women, 45% of Indian women experience violence in some form, 55% women perceived violence as normal part of their marriage. Physical violence on women at home is not confined to homicidal deaths by way of stabbing, strangulations or setting them afire. The violence originates from minor offences like pulling hair, pinching, pushing, hitting to throwing boiling water and acid before the fatal blow is given. Ignoring any minor ailment may lead to a fatal disease. Similarly, condoning trivial

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¹ Dr. Krishnan Chander Jena (Violence against women a human right violation) AIR Journal Section, Vol. 90, 2003, P 3.12

nature of tortures encourages the male or female oppressors to become more and more violent.²

DOMESTIC VIOLENCE- VIOLATION OF HUMAN RIGHTS

Earlier, domestic abuse, as violence that occurs within the home in the context of an intimate relationship, was seen as outside the purview of state responsibility. Historically, theories of domestic violence were based on the premise that such abuse was a “family” or “private” matter that was a consequence of mental illness, alcohol abuse, or poor impulse control. Current theories, however, reflect the understanding that the purpose of violence is the establishment of power and control over another through different forms of abusive, coercive and threatening behaviors. Despite this understanding, the characterization of domestic violence as a private aberration— together with other causes and complicating factors, such as traditional gender roles, economic hardship and some religious practices—continue to impede efforts to protect women and hold batterers accountable.

Gradually with the passage of time, the notion of state responsibility under international law has been expanded in a number of ways. Scholars, advocates and practitioners now recognize that human rights law does, in fact, apply to “private” conduct such as domestic violence. As Radika Coomaraswamy, United Nations Special Rapporteur on Violence Against Women, explains, there are three ways in which domestic violence can be understood as a human rights violation. These are as under: due diligence, equal protection, and torture.

1. **Due diligence:** As articulated by the Committee on the Elimination of Discrimination Against Women in General Recommendation 19, States are not only obligated to refrain from committing violations themselves, but are also responsible for otherwise “private” acts if they fail to fulfill their duty to prevent and punish such acts. This responsibility is reflected, as well, in the Declaration on the Elimination of Violence Against Women and the Vienna Declaration and Programme of Action from the 1993 World Conference on Human Rights. Consequently, when the state fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, it has not acted with due diligence to prevent, investigate and punish violations of women’s rights.
2. **Equal Protection:** States are required under international law to provide all citizens with equal protection of the law. If a state fails to provide individuals who are harmed by an intimate partner with the same protections it provides to those harmed by strangers, it has failed to live up to this obligation. When law enforcement officers respond quickly to reports of stranger violence but fail to respond to reports of intimate partner violence, when forensic medical classifications allow accurate evaluations of the severity of injuries inflicted

² B.D. Agarwal (Legislating Domestic Violence), Cr. L.J. Journal Section, 2002, P. 131

by strangers but consistently fail to reflect the seriousness of the kinds of injuries inflicted in an abusive relationship over time, when judges impose lower sentences on those who assault strangers than those who assault their intimate partners—battered women have been denied equal protection.

3. **Torture:** Advocates and Scholars increasingly recognize that domestic violence is a form of torture. Under international human rights law, torture is severe mental or physical pain or suffering that is intentionally inflicted either by a state actor or with the consent or acquiescence of a state actor for an unlawful purpose. The dynamics of domestic violence closely resemble the defining elements of torture: “(a) it causes severe physical and or mental pain, it is (b) intentionally inflicted, (c) for specified purposes and (d) with some form of official involvement, whether active or passive.” The similarities between these violations are striking particularly because domestic violence and torture are often perpetrated for the same unlawful purpose—namely, to establish and maintain power and control over another. At the same time, however, this approach may be less effective in certain situations because of the strong “state action” (or official involvement) requirement included in the definition of torture.³

PASSING OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

Through the constant efforts, now it is accepted that domestic violence is not only the violation of human rights, but the States are under the obligation to protect women from violence and punish the perpetrators of such violence. The Vienna accord of 1994 and the Beijing Declaration and Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of all Forms of Discrimination against Women in its general recommendations has recommended that state parties should act to protect women against violence of any kind, especially that occurring within the family.

Acting on recommendations, India enacted the Protection of Women from Domestic Violence Act, 2005. Before the passing of this Act, where a woman is subjected to cruelty by her husband or his relatives, it was an offence under section 498 A of the Indian Penal Code but the law however does not address this phenomenon in its entirety. It is therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The very nomenclature indicates that the Domestic Violence Act is not restricted to violence perpetrated against a woman by her husband or in-laws. It

³ Radika Coomaraswamy, *Combating Domestic Violence: Obligations of the State*, 6 *Innocenti Digest* 10, (2000).

includes under its protective umbrella every woman living in a domestic relationship as a member of a family with the person indulging in violence who in this case must invariably be of the male gender.⁴ What has been perceived as radical in certain quarters, a relationship between two persons who are living together as a family in a shared household even though they are not connected to each other by blood or marital relation? So put it simply and adopting the modern-day trend, women involved in “live-in-relationship” or bigamy or adulterous connections are also covered as beneficiaries. The new law also gives victim the right to residence and access to a protection offices, who are answerable to the courts.⁵

PROVISIONS CONTAINED UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

1. **Meaning of Domestic Violence:** Section 3 of the Act, defines the expression domestic violence to include actual abuse or threat of abuse-**physical, sexual, verbal, emotional or economic violence**⁶. It provides that domestic violence includes any act, omission, or commission or conduct of the man in question in relation to the aggrieved woman in case it attracts any of the following four clauses:-
 - (a) harm 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 abuse, 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.

2. **Aggrieved person:** Section 2(a) defines aggrieved person as any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. It covers 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 through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even the daughter, mother, sister, child (male or female) widowed relative, in fact any woman residing in the household who

⁴ R.K. Gauba (Domestic Violence Law- A Recipe for Disaster?) Nyayadeep, P.23

⁵ Ibid.

⁶ For details, see Section 3 of The Protection of Women from Domestic Violence Act, 2005.

is related in some way to the respondent, is also covered under the present enactment.

3. **Domestic relationship**⁷ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The Act has broadened scope of those who may ask for relief under the act. Previously, only a woman who could prove a relationship with the respondent – either by blood or marriage – could avail of relief against domestic violence. The present Act only requires the proof of a domestic relationship as the basis of action. The act has been enlarged to include women in all relationships. For instance, a brother who inherits the family house can not throw his sister out because he wants to sell it. If she has been resident there for long and has no other place she has right to stay or to go to a protection officer if he threatens to vacate her.⁸ Most significantly the Act gives a very wide interpretation to the term “Domestic relationship” as to take it outside the confines of a marital relationship and even include live-in-relationship in the nature of marriage within the definition of domestic relationship under S.2(f) of the Act.
4. **Respondent:** Respondent⁹ means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this act. The definition of respondent under S.2(q) includes any adult male person can only be shown as respondent when the aggrieved person has sought any relief under the act. But the proviso has an expanded meaning that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner. Further under the scheme of the act a complainant shall be a woman and respondent is a male except in case where the complainant is a wife, the respondent may be a female relative of husband¹⁰. A female relative of husband is not excluded from definition of “respondent”¹¹
5. **Shared Household:** 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. As defined under S.2(s) of the Act, expression “Shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the

⁷ Sec. 2(f) The protection of women from Domestic Violence Act, 2005.

⁸ Rattan Singh and Varinder Singh (Socio-Economic Offences in India) Allahabad law agency, Faridabad (Haryana)

⁹ Section 2(q) The Protection Of Women From Domestic Violence Act 2005.

¹⁰ Afzalunnisa Begum V. State of Andhra Pradesh, AIR 2009 (NOC) 2840

¹¹ Nand Kishore V. State of Rajasthan, AIR 2008, 2383 (Raj)

respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household.

6. **Responsibilities of Protection Officers and Service Providers:** Complaint of domestic violence can be filled by neighbors, social workers, or even the relatives on behalf of the victim.¹² This section seeks to provide that any person who has reason to believe that an act of domestic/marital violence has been or is being committed such person may inform the protection officer. It also lays down that the person who is providing the information in good faith shall be exempt from any civil or criminal liability for giving such information.¹³ Section 5 of the Act, lays down the duties of a police officer, protection officer, service provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more relief under the act, the availability of services of service providers and protection officers, her rights to avail free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under S. 498 A of the IPC, wherever relevant.
7. **Appointment of Protection Officer:** The Act provides for the appointment of protection officer¹⁴ by the State Governments in every district (the number of such officer would vary depending upon extent of district) to whom any person, not necessarily the aggrieved person, could report an act of domestic violence or its likelihood. This section provides the protection officers shall as far as possible, be women and shall possess such qualifications and experience as may be laid down by the central government, by rules.¹⁵ The terms and conditions of service of the protection officer and the other officer subordinate to him may also be regulated by rules.¹⁶
8. **Service Providers:** The Act also recognizes a category of Service Providers¹⁷. Service providers, as defined by the act, are private organizations recognized under the companies/societies Registrations Act. Service providers are voluntary agencies set up with the objective of protecting the rights and interests of women. Section 10(2) gives duties and powers of service providers and service providers has powers to record domestic violence report if the aggrieved person so desires and forward it to the protection officer and Magistrate and get the aggrieved person medically examined and to provide

¹² Section 4(1) of the Protection of Women from Domestic Violence act 2005.

¹³ Section 4(2)

¹⁴ Section 8(1), The Protection of Women from Domestic Violence Act, 2005

¹⁵ Section 8(2)

¹⁶ Section 8(3)

¹⁷ Section 10

shelter in a shelter home. Section 10(3) provides protection to the service provider for all actions done in good faith, in the exercise of the powers under this act, towards the prevention of commission of domestic violence. They are thus protected by law and cannot be sued for the proper exercise of their functions.

LOOPHOLES UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

ON October 26, 2006, Parliament enacted the Protection of Women from Domestic Violence Act, not only to recognise the hitherto unrecognised and latent forms of violence against women in domestic relationships (in and outside marriage), but also to provide a civil remedy to ameliorate the conditions of women in such violent relationships. But unfortunately the law fails to protect the women from violence. These were the findings of the Report which makes an attempt to monitor the impact of the Protection of Women from Domestic Violence Act by the Lawyers Collective Women's Rights Initiative (LCWRI), a non-governmental organisation, with assistance from UNIFEM's South Asia office¹⁸. A report that studied how the Protection of Women from Domestic Violence Act was being implemented two years after it came into force, finds that much of the infrastructure, budgetary allocation and interaction between various departments is still lacking. Many states are lagging behind in implementing the Protection of Women from Domestic Violence Act, 2005, by not appointing enough protection officers, providing inadequate budgetary support, and maintaining poor court records thus making the collection of data difficult. The report highlights several trends:

- There are major disparities in implementation of the law in various states. For instance, while Maharashtra appointed 3,687 protection officers, Assam had only 27 on its rolls, and Gujarat 25. Andhra Pradesh had an allocation of Rs 100 million for implementation of the Act, while other states like Orissa lagged far behind. Not surprisingly, states that invested in implementation of the Act in terms of funds and personnel also reported the highest number of cases filed. Maharashtra filed 2,751 cases between July 2007 and August 2008 while Orissa could only manage 64 cases between October 2006 and August 2008.
- There are questions raised about the qualifications of protection officers who play a central role in facilitating women's access to justice under the Act. According to the study, for instance, the majority of protection officers do not have a social work or law background; they are government officials from

¹⁸What is also surprising is that the evaluation of the Act has been done by a non-governmental organisation and not any government agency. One indicator of the government's seriousness about the issue would have been its attempt to bring out annual, or even periodical, assessment reports.

various departments vested with this additional responsibility. This has affected their capacity to intervene effectively.

- Inadequate budgetary allocation and lack of proper infrastructure to implement the Act also emerged as areas of concern in the report.
- The report highlights the fact that the medical profession does not really acknowledge domestic violence as a public health issue despite the fact that it is a stakeholder in the Act along with the police and the judiciary.
- The report highlights the problem of public opposition. Many have labeled the Act as a law that propagates inequality as it provides relief only to women., though the constitutionality of the Act was upheld on the grounds that it is a gender-specific law that recognizes that women are disproportionately affected by domestic violence because of their unequal position in society vis-à-vis men¹⁹.

Though this Report was presented in 2008, but even now the position has not changed. As per the information provided in 2013 by the States/UTs, all the State Governments have appointed protection officers, 25 States/UTs have registered service providers, 21 States/UTs have notified medical facilities and 24 States/UTs have notified shelter homes. However, only six State Governments have appointed independent Protection Officers. In the National Consultation organised by the Ministry of Women and Child Development to review implementation of the Act, the representatives of the State Governments had requested for financial assistance for more effective implementation of the Act²⁰.

Further, the knowledge of the Act itself was found to be wanting as nearly one-third of the magistrates were confused about whether the woman can be a respondent or not and whether the wife's right to reside is valid only if the shared household is owned by the husband. The experience with counselling was also not very encouraging. Here, too, stereotypical notions prevailed as far as role expectations from women were concerned. The study found that the onus of settlement or keeping the family together, despite violence, could be imposed on women, and counselling with this intent could be detrimental and defeat the purpose for which the law had been enacted.

¹⁹The findings, compiled in a report entitled 'Staying Alive: Second Monitoring and Evaluation Report 2008', were presented to the National Commission for Women (NCW) at a seminar in New Delhi

²⁰Scheme for the effective implementation of The Protection of Women from Domestic Violence Act, 2005, stated by Smt. Krishna Tirath, Minister for women and Child Development in a written reply to Rajya sabha on 27 Feb. 2013.

EMERGING ISSUES AND CHALLENGES UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

The abovementioned discussion on the Act is purely a female centric discussion, and to some extent it is true also because ours being a male dominated and patriarchal society Man has always enjoyed absolute and exclusive power over women. But now this trend seems to be changed, though not entirely, but among the educated women's who are not confined within the four walls of the house and are self earners, they raise their voice against such violence and come openly against their husbands.

But unfortunately, this awareness and openness is now misused by the women herself. The legal provisions such as Section 498-A, Dowry Prohibition Act, even the present Act which are gender oriented laws are playing havoc in the lives of innocent husbands and their family members. The present act most of the time is used to harass the husband or any other member claiming under him and to see that he yields to the illegitimate demands of the so called victim instead of vice versa.

Many a time, aged parents and other relatives are falsely accused of physically and mentally torturing the so-called victim, thereby causing unwanted tension, which may result in ill health of the aged parents and physical and mental distress to the family members of the 'accused'. Although this act is devised to protect the interests of the 'victim', instead it causes untold pain and misery to the 'accused' and his elderly family members. According to many legal experts, this act although has some honest intentions of protecting the victim, it has caused more harm than good due to its misuse, misapplication and misinterpretation of the act. When a person is accused under the provisions of the act, no matter what may be the outcome of the prosecution, the social stigma remains, thus affecting the future prospects of the 'accused'.

Thus again, the accused is tormented by the society even if the accusation is proven wrong. Poor and uneducated women may have borne the torture of the husband's family, but today many well-educated women are using this act for unlawful purposes. They falsely accuse their husbands and in-laws so as to gain substantial wealth by means of compensations. With such wrong intentions, these selfish women are ready to jump at the smallest opportunity and file a case. Such misapplication and misuse of the law is one of the main causes for the destruction of many families.

CONCLUSION AND SUGGESSTIONS:

Due to the patriarchal nature of our society, which is deeply interwoven with age old tradition of male hegemony, woman is still regarded as second class citizen. She is confined to domestic servitude, her moments are restricted, she is given no freedom to choose her career and husband, she merges her identity with that of her husband and consequently perceives herself in a subordinate person. Thus our social conditioning determines different perspective for men and women as a result such type of violence still persists. So now in order to control such like violence's, there is urgent need to change the pre-conceived stereotyped notions of the society. For this it is required:

1. **Financial Status of Women should be enhanced:** Improved women's access to and control of income and assets, recognizing her shared right to the family home is the dire necessity of the day.
2. **Need to Strengthen and expand training and sensitization Programs:** Programmes should be designed to create sensitization among the masses, judiciary, counseling and other support service providers under the Act.
3. **Mass Media should create Public Awareness:** Every type of Media play a very important role in creating public awareness regarding the existing laws and how they can be used to protect the women from domestic violence.
4. **Issue of Domestic Violence should be raised through Education:** Prevention of domestic violence ultimately depends upon changing the norms of society regarding violence as means of conflict resolution and traditional attitudes about gender. To achieve this, there must be introduction of gender and human rights chapters in the curricula of schools, universities, professional colleges, and other training colleges. Along with this, there must be recognition and commitment to the principle of free compulsory primary and secondary education for girls.

Further this Act may need revision in order to prevent its misuse and misapplication. The true intention of this Act was to protect domestic violence victims from further pain and to thus relieve them from their misery and not to cater to the selfish needs of people who would not mind accusing their own family of committing atrocities for the sake of gaining financial benefits. Thus, only genuine victims of domestic violence must be identified and given assistance; and such greedy complainants must be stopped from ruining families.