

DOMESTIC VIOLENCE ACT- A BOON OR A BANE
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“Sita was not born, but found, and after marriage, exile, agnipariksha and abandonment was her lot. Yet there is not a single temple to Sita, and Rama is adored as the ideal man — Maryada Purushottama — AdarshaPurusha. Women get nothing being Sitas. Let us look for Durga and Kali in them.”

Justice Rajendra Babu (Allahabad High Court)

Introduction

The inseparable fact of women’s life is violence and harassment. She faces violence of different kinds nearly at all places, be it in the home, at the workplace or anywhere else; be it from strangers, intimate partners; be it in public or in the private domain. This shows the persistence of violence against women in every section of society¹. In our legal system, it has been a significant lacuna from a long time that we do not have any system to accommodate the cases of domestic violence against women. It has been challenging for a victim of domestic violence to get legal redressing as our existing laws are insufficient and inadequate to provide legal assistance and protection to the victims who are suffering from violence in private domain². But now the

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1 Indira Jaising, “One step closer to Equality for women, the Prevention of Domestic Violence” 36-58 at 36 in : JNA’s Education for Educators Programme or “Effective Implementation of the Law Against Domestic Violence: Role of the District Judiciary,” Aug. 24-26, 2007.

2 Indira Jaising, “Domestic Violence and the Law”, (2002) Journal of National Human Rights Commission, at 72. Cited in Pani Vyas,

Domestic Violence Act lays down provisions to eliminate the lacuna and eradicate the problem of domestic violence. The very objective of elimination and eradication of the evil is clearly stated in the Preamble of the Domestic Violence Act. It states that the main stress will be laid down on providing the relief to the victims on immediate basis and besides that reasonable effort will be done for the rehabilitation of the aggrieved. The provision of providing compensation has also got place in its objectives. In other words, the main aim of this Act is to provide protection to the women who are bearing domestic violence. In the form of protection not only the rehabilitation but also the compensation will be provided to them under the Act.

Historical Perspective

Enactment of Domestic Violence Act specifically provides assistance to the females who are persistent torture bearers behind the walls. Although, there are certain sections under Indian Penal Code 1862, namely Section 304B and 498A, but they were not sufficient in eliminating the exploitation and harassment faced by women. If we take out the history, then it would be pertinent to note that generally Indian law concerning domestic violence has focused on mainly on the issue of dowry³, and many a times even

“Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women’s Fundamental Rights”. (2006-07) 13 Michigan Journal of Gender and Law, at 178.

3 Indra Jaising, “Domestic Violence and the Law” (2002) Journal of National Human Rights Commission, at 74.

police refused to register cases under the provisions unless some form of dowry demand was involved. Eventually, the Bill was passed in the year 2005 and its commencement was from year 2006.

Significant Features

A prominent step taken under the Act by putting stress on understanding the nature of domestic violence. In the case of Dr. VinodParashar v. State of U.P.⁴, it was held that proceedings are essentially civil in nature under this Act and the only purpose is to cut down the delay in procedures, the power has been laid with Judicial Magistrate for the enforcement of right under the provision of Cr.PC. This Act has five chapters and 37 Sections. The significant first feature of the Act is the defining term” domestic violence” as it contains all kinds of abuse which can do any harm to or endangered the life, safety, body of aggrieved person. The second prominent feature is the way of defining the term “aggrieved” which means not only the legally wedded wife but also any woman who has been in sexual partnership of the male, no matter what her legal status is. The woman whether she is a daughter, widowed relative, mother and sister living in the same house and related to the respondent comes under the definition in the Act. Another important chapter of the Act is Chapter 4. Under Section 12, the Magistrate is empowered to

4 2008 (3) ALJ 324; 2008 Cri. L.J. (NOC) 837.

adjudicate the matter relating to the domestic violence. Section 17 provides wide powers to the Magistrate as the right to residence in shared household, and to pass interim orders for the protection of women. As Magistrate are having discretionary powers under the Act, and therefore, their role becomes very much significant and thus judiciary has become prominent protector of rights of women.

The other important feature which signifies the brilliance of the Act is that in the Act, the magistrate is allowed to protect the woman under Section 18 and not only from the acts of violence but also from those acts too which are likely to happen in the future. It also lays emphasis on the protection of possessions of aggrieved person so that respondent do not put any kind of disturbance to her possessions etc. Furthermore, Section 22 lays down the procedure in which magistrate can make respondent to pay compensation and damages to the victim for the acts of violence done against her, whether it be a mental torture or any other kind of abuse . The amount of compensation under the Act is imprisonment upto one year and or fine upto Rs. 20,000.

Causes of Domestic Violence

Generally, women and children are the most easy and soft targets of domestic violence. The act of domestic violence is so grievous that it leads to the deaths of many people. If we look into the major causes of this evil, then illiteracy and lack of economic independence are the two factors which comes as prominent one.

The other significant reason of increasing violence against females behind the walls is our male dominated society which do not find anything wrong in that man who acts violently against his spouse. Furthermore, the major reason of violence against newlywed brides is the demand of dowry. Whenever parents of the daughter are not able to full-fill the greed of in-laws of their daughter, their daughter become the subject of violence. It is so disturbing that not only the woman but also the small female children are also victims of this gruesome act. Undoubtedly, the act of violence against female child is heinous but it becomes more severe when it is done by child's own father, brother and other male member of her own family. Domestic violence against children can be both in direct or indirect way. Indirect abuse can do against children because of their parents' violence to each other which can be called as inter-parental violence. Although, children are not directly subject to violence but they cannot escape from the bad effect of it in the form of emotional abuse. Though in the parent's disputes, children have the passive role to play still it cannot be denied that it hurts them as severely as to the direct victim⁵.

This gives the picture of downfall of morality of Indian society. The hypocrisy of society is again a main reason behind the expansion of this kind of evil as society always try to conceal

⁵ Nitu Nawal, *Domestic Violence Against Women (Legal Protection, Legislative and Judicial Aspect)*, Regal Publications, New Delhi, Edition : 2013,p, 1-7.

the matter of such kind of violence which is done in domestic are in the name of “family matter”. It also tries to persuade the victim to keep her mouth shut as her expression of grief will bring embarrassment to family. This double standard society is good with the silent sufferers and always discourage outspoken victim. Our cultural ideas also put ghee in the fire by calling it “sanskar” of a woman to endure every wrong act done by her husband.

Judicial Approach

In *Krishna Bhattacharjee v. Sarathi Choudhury*⁶, the Supreme Court has held that the 2005 Act is a complete Act and it covers not only every kind of violence and abuse, but also have given a wide definition of the terms like aggrieved and the concept of domestic violence has been made under the light of Indian Constitution. This Act guarantees every such right to women which is essential for basic human life and dignity. The Preamble of the Act clearly states the objective of protection of victims of domestic violence.

The Supreme Court in *S.R. Batra v. Taruna Batra*⁷ has held that a wife can take the relief of separate accommodation only against her husband but cannot sought it from the other relatives of husband. This decision was reconsidered and lead to a different view which was given by the Supreme Court in *Satish Chander*

6 (2016) 2 SCC 705

7 (2007) 3 SCC 169

Ahuja v. Sneha Ahuja⁸, wherein it was held that it is the right of women to even get separate accommodation from the other members of the family and also issued directions to the Trial Court instead of the Family Court to proceed further and decide the same. The reason behind this judgement shows that the Court has taken the basic aim of the Act in mind which seeks protection of women against violence and as the remedies laid under the 2005 Act are limited so such interpretation is need of the hour.

In Satish Chander Ahuja case⁹ Supreme Court held that the scope of the concept of matrimonial home is not limited but wider enough. The High Court set aside the decree of the trial court and remanded for fresh adjudication. Amarendu Jyoti v. State of Chhattisgarh¹⁰, In the case, Supreme Court has laid down various directions and guidelines on whose basis, the amount of compensation can be determined especially in matrimonial cases. In *M. Palani v. Meenakshi*¹¹, Court held that:

“The duration for the partners to live together is immaterial and not necessary for evaluating the case of maintenance. Court further held if petitioner and respondent lived together, the lady is eligible to claim maintenance as the criteria is to have close relationship with each other.”

By viewing all these decisions and judgements, it can be undoubtedly remarked that judiciary is playing the role of

8 2020 SCC OnLine SC 841

9 2020 SCC OnLine SC 841

10 (2014) 12 SCC 362

11 [2008 SCC Online Mad 150](#)

protector for the victims of domestic violence in a very enthusiastic way. Although, there are still many hindrances in the way of providing justice to the victim but with times these loopholes are going to eradicate.

Critical and Analytical Overview of the Act

This Act recognizes the significance of all the basic relief which a woman want like the need of violence less space and dignity. But the relief provided under the Act are majorly temporary in nature. Despite of having so many benefits for women, its confused provisions opened the way for a great controversy as this Act can be used by women to harass men. There are chances that this Act can be a nightmare to those men who has left their fate on the wishes of women. The reasons behind such anticipations are as follows:-

1. The Act has created a level of intolerance and impatience amongst the married women related to even the minor issues happened in marriage, which attacks the basic foundation of marriage.
2. Secondly, this Act has empowered woman to harass man at her wish as this Act not only the actual acts of violence but also covers all anticipated violent acts irrespective of the fact that they can be something very trivial in nature.
3. Another pointed lacuna is that this Act almost give legal sanction to any such kind of relationship generally does not have any acceptability in society.

4. The Act only includes females to whom they are giving protection and male children totally get ignored and no provision is there to protect them from any kind of violence done in household.
5. Questions also arise about the qualifications of protection officers as majority of them do not have social work or legal background.

Conclusion

On the basis of the above analysis, it has been concluded that the crux of the reason behind enacting the Act was to provide necessitated protection against the harassment faced by the females in our country. To eradicate the evil of violence done against the woman within the four walls of domestic area is the prominent purpose behind commencing the Act. Many a times, the monetary relief seems not to be sufficient enough for women, the sole aim to be achieved through the aid of this Act is to provide equality before law amongst all genders. Male children are however, excluded from the purview of this Act. So, it is humbly submitted that the protection of this Act should be extended to all male children. There are certainly some obstacles in the way of achieving the objective of the Act, like, if whole family is being sent to jail after filing of complaint, then it would be quite impossible to even think of reconciliation amongst them. It will definitely lead to irretrievable breakdown of marriage which eventually crush the motive of provide dignity and

happiness to women. Therefore, the case must be dealt by the family courts so that matrimonial rights and obligations of the women are fulfilled. Moreover, merely enacting legislation would not be sufficient unless all of us are sensitive enough towards the issue. It is the need of the time of those women who have for longest time has been silent sufferers of oppression and harassment to overcome the suppression and injustice.

One of the most horrendous kinds of abuse suffered by women in our society is domestic violence. The study shows that nearly 85 percent of domestic violence victims are female. The evil of domestic violence can happen to anyone, irrespective of their race, creed, religion, or status in society. It is for sure that if still the issue is taken lightly then the acts of domestic violence will continue to rise amongst all sections of society. Therefore, as society we all have to work together as a team and put all reasonable efforts in order to eliminate this evil from our society. It is the time to be united and stand together and make more practical and strict laws, which provide help to the abuse victims in coming out of this kind of horrendous crime. It can be summed up by this quote of Marx, “ **Equal Laws cannot be applied to Unequal people.**”