



In-House Family Violence Against Women: A Critical Analysis

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ABSTRACT

Domestic violence is recognized as most serious problem and intolerable crime in our patriarchal society. But to utter surprise these crimes have the list reported as because of no knowledge about the enactment of the DV Act 2005 by the women folk in general. Although the act is empowering women towards curbing by the in-house violence but they are often misusing the Act for their own benefit.

KEYWORDS : Domestic violence, Residence Order, Custody Order.

Introduction

Domestic Violence simply means violence committed by a member of the family against another member. Violence within the family or inside the household, between parties, who are in intimate relationship with each other is commonly called Domestic Violence. Education, age, marital duration, place of residence, caste, religion, sex of the head of the household, standard of living, work status of women, exposure to mass media and the autonomy of women with respect to decision making, freedom of movement and access to money are linked to domestic violence. The expression Domestic Violence is very comprehensive. It includes physical injury, mental harm, sexual harassment, economic exploitation, emotional abuse and many acts of commissions and omissions rooted in gender discrimination, inequality, subordination and injustice.¹

There are various plausible causes of Domestic Violence in which low educational level, poverty, marriage at a younger age are significant. With these Lifestyle of men such as smoking, alcoholism and drugs, also promote men to commit domestic violence further, men raised in patriarchal family structure that encourages traditional gender role are more likely to abuse their intimate partners. This extensive violence has significant harmful effects like unwanted pregnancy, gynecological disorders and physical injuries to private parts besides large scale mental health impacts. Again, many of the commonly associated disorders/problems are found to be inadequately addressed.

II Domestic Violence Act, 2005.

The prime object of this Act is to protect women from domestic violence. The DV Act, 2005 is different from the earlier legislation, as it not only includes physical or sexual abuse but also verbal or emotional abuses, which were not taken into consideration by the earlier laws. The Act does not, however, cover all kinds of violence against women. The violence to be within the meaning of the Act has to fulfill certain conditions, namely –

The victim must be a woman

The violence should be committed by an adult male person.

There should exist domestic relationship between the two person, namely the aggrieved woman and the alleged perpetrator of violence. The violence against the children under the care and custody of the victim woman is also covered by the Act.

III Reliefs available under the Act

The Protection of Women from Domestic Violence Act, 2005 provides these kinds of remedies.²

Residence Order: Under Section 19 of the Act, when a Magistrate is convinced that domestic violence has taken place, then he can pass a residence order. The respondent may be restrained from dispossessing or disturbing the possession of the aggrieved person even if the respondent has no equitable or legal interest in the shared household. The respondent may be removed from the shared household but this order cannot be passed against a woman.

only entitled to claim a right to residence in a shared household, and a shared household would only mean house belonging to or taken on rent by husband, or house which belongs to joint family of which husband is a member.”

Monetary Relief: Under the Section 20 of the DV Act, the respondent may be directed to meet the expenses incurred and losses suffered by the aggrieved party and the child of the aggrieved party due to domestic violence. Such relief may include the loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from the control of the aggrieved party, and maintenance for her and her children. Section 20(2) states that the monetary relief granted must be fair, adequate, just, reasonable and consistent with the standard of living of the aggrieved person.

Custody Orders: The court may grant the aggrieved person the temporary custody of the child or children, and an application may be made regarding the arrangement of visits by the respondent.

Compensation Orders: Under Section 22 of the Act, the Magistrate may direct the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed.

IV Criticism of the DV Act, 2005

Criticism of the Definition: The definition of domestic relationship under the Act, does not make clear, whether the definition of an aggrieved person would include a child or not because Section 18(c) suggests that an aggrieved person as defined under Section 2(a) would include a child, however the fact that Section 2(a) is concerned with any woman who is or has been in a domestic relationship suggests that children would not be included within its ambit. Children, who have lost their parents, are the most vulnerable targets of domestic violence. Hence the DV Act, 2005 does not sufficiently recognize their requirements.

Violation of Right to Equality: As per the DV Act, only women could be involved in an abusive relationship, when in fact men too face domestic violence, domestic violence is not just limited to women even men experience domestic violence.⁴ Due to lack of social support and legal protection many male victims of domestic abuse are taking their lives every day. Moreover this section does not take into account violence for individuals of the same sex. Or infect for the male child. Therefore, the Act violates the Right to Equality guaranteed by the Constitution of India.

Violation of the Principle of Fair Trial: It is the general principle of the law that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law. However, the DV 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.

Section 17 of the DV Act states that “the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by

In the case S.R.Batra v. Tarun Batra,³ Supreme Court held that “Wife is

law." But why it was not taken into consideration that how a wife who is embroiled in a litigation under this Act should continue to reside in the husband's house as it is bound to only make matters worse for the husband and his family and it will only give the women more reason to instigate the husband in acts which would land him in further trouble.

Under section 18 of the DV Act, the Magistrate has been given the power to pass a protection order in favour of the aggrieved woman, when we read this with Section 17, it indicates that Section 17 would only apply in those cases where there is a minor case and there is no prima facie case for further domestic violence, since otherwise a protection order under Section 18 would be applied. Thus a woman may traumatize her husband due to a minor conflict.

Violation of Principle of Natural Justice: Section 32(2) and Section 31(1) of the Act, are clearly against the principle of natural justice and equity. There is absolutely no proof required against the husband but the sole testimony of an individual who is embroiled in a bitter litigation and perhaps preparation for divorce and thus a husband can be punished with a term which may extend up to one year without any other evidence.

Misuse of the Domestic Violence Act: The DV Act is highly favouring women, due to this it is also misusing by many of them. The majority of cases on domestic violence are actually not reported and contrary to this the only fake complaints are registered as they do have knowledge of their rights and accordingly they use them for their own benefits. The increasing threat of false cases is also driving many married men to commit suicide. So in this case a major problem arises as to how one would know which one is a bonafide complaint and which one is not.

V Proposed Amendments

Domestic Violence Law should be Penalized: The Domestic Violence Act, 2005 is greatly in favour of women so the chances of it being misused are vast, further women can easily manipulate it for their advantages. So it is suggested that the misuse of Domestic Violence law should be penalized, so that the instances of misuse can be minimized. The misuse of law often destroys the lives of many innocent citizens.

Domestic Violence Act should be made Gender Neutral: The DV Act is very liberal towards the women and the definition of Domestic Violence is ambiguous. It does not make clear whether it includes only women or men also. It is suggested that there should be laws to protect the harassed husband and his family from the malicious interests of the wife. There must be no assumption that only man can harass or women never lie etc.

The Principle of Fair Trial Must be Followed: Domestic violence laws must follow the general principle of law, that every person must be presumed innocent until guilt is proven beyond all reasonable doubt.

The Act is very liberal towards women. Thus under the Act a woman can traumatize her husband due to a minor conflict, but it was not taken into consideration that minor issues are the part of the family & family is the basic unit of an individual. So to ensure proper use of law the laws must be strengthened.

Education of Girls should be encouraged: it can again be suggested that education of the girls should be encouraged, which will certainly work as a deterrent to domestic violence.

There must be some provision for victims of domestic violence. In order to protect them from further abuse they must be relocated to new shelters. Further, it can be suggested that there must be stringent laws against the perpetrators of the violence and against the people who use the laws for settling their own score, and not against the innocent people.

In conclusion the authors recommend that the DV Act should be reinstated by a gender-neutral and harmonious legislation which will ensure the end of this Social Evil.

Conclusion

After carefully analyzing this paper, authors come to the conclusion that The Domestic Violence Act, 2005 is a legislation totally favouring women, which instead of providing justice has given a weapon of offence which causes them to use the Act for their own benefits. Misuse of the Act can be proved by seeking that in several cases Courts have decided that the charges by women are false and are mere blackmail attempts by the wife, when faced with an anxious marriage. Through this Act, Government is protecting those women who harass their husbands or his family members. The law dilutes the long standing family centric values existent in the Indian society and encourage

Reference

1. As defined in Section 3 of the Domestic Violence Act, 2005.
2. Remedies available under the Sections 18-23 of the Domestic Violence Act, 2005.
3. 2007(3) SCC 169
4. In a study conducted by two NGOs. My Nation and Save Family Foundation (Delhi), it found amongst a sample of 1650 married men that 98% of men faced domestic violence of some sort, ranging for physical, emotional, economic and sexual violence.