

Domestic Violence Act 2005 – A Critical Analysis



Law

KEYWORDS :

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INTRODUCTION

The term 'Domestic' signifies 'within the realm or province of home'. Violence that is committed on a woman by her married partner or his relatives is the foremost cause of domestic violence. This concept carries with it, the demolition of the assumption that home is a secured place for the protection of an individual. The women are made hostages at home in a way and their life becomes a prey to the whims and fancies of the people exercising violence. In fact, the horror present is even more formidable since law is hesitant to enter into the private sphere to address the wrongs committed against women².

It is not consensual, but somewhat a pattern of behavior used by an individual to maintain coercive power over another. The abusive behavior may become more normal and severe. It is divided into 5 heads:- 1) Verbal abuse – like name calling, threatening, intimidating, 2) Emotional abuse- criticizing constantly, displaying extreme jealousy, publicly humiliating, isolating the partner, domination 3) Financial abuse- controlling the money, concealing joint assets, keeping the other impoverished, using partner's money without consent. These abuses though may be witnessed in an infant form in the initial stages but in later stages they might take an inhumane form as listed below. 4) Physical abuse- pushing, slapping, hitting, kicking, choking, pulling hair, biting, using weapons, tying the partner up, locking the partner in a room with denial of food. 5) Sexual abuse- raping, physically attacking sexual parts, forcing the partner to perform sexual acts³.

Not only had that, in India various surveys have been conducted which revealed that such violence is mostly prevalent in rural areas as compared to urban areas. It has also been observed that women are largely ignorant about the laws that protect them from dowry deaths, harassments and violence at home. They are unaware of the new reforms undertaken. The Indian context would be discussed again in detail in subsequent parts⁴.

CONSEQUENCES:

Women, going through domestic violence have reported sleeping problems, depression, anxiety attacks, low self-esteem, lack of trust in others, feeling of abandonment, anger, sensitivity to rejection, diminished physical and mental health, inability to work and even poor relations with their relatives and loved ones. Such victimized women are more likely to report miscarriages and abortions, suicidal thoughts and attempts. The physical and mental health effects may last long after the violence has ended⁵. The children who grow up in such environment are rather confused, agitated from inside. Later in life, they have a strong inclination to turn aggressive. Moreover, the sons lose respect for womenfolk if they are used to seeing them in subversive position. The negative ideas are carried forth in the next generation. In a survey done by UNICEF in India, 6902 men were surveyed in the state of Uttar Pradesh during 1996. It was seen that 45% of the married men acknowledged beating up their wives.

FOUR TYPES OF CRUELTY ARE DEALT WITH BY THIS LAW

- Conduct that is likely to drive a woman to suicide.
- Conduct which is likely to cause grave injury to the life, limb and health of the woman.
- Harassment with the purpose of forcing the woman or her relatives to give some property.
- Harassment if the women's relatives couldn't yield to demands for more money or property.

The punishment is imprisonment for up to three years and a fine. The complaint could be lodged by the person itself or by any relative on her behalf. This is an important merit since the victimized women are often not in a position seek help. The forms of 'cruelty' recognized by the Indian courts are persistent denial of food, insisting on perverse sexual conduct, constantly locking a woman out of the house, denying the woman access to children- thereby causing mental torture, physical violence, taunting-demoralizing and putting down the woman with intention of causing mental torture, confining the woman at home and not allowing her normal social intercourse, abusing children in their mother's presence and denying the paternity of children with the intention of causing mental torture and threatening divorce until dowry is given. The matrimonial home is the household a woman shares with her husband, whether it is rented, officially provided or owned by the husband or his relatives. She has the right to remain in that home as long as she is married. If the victim is being pressurized to leave the home, she can ask the court for an 'injunction' or 'restraining order' protecting her from being thrown out. An injunction is a court order directing a person to do or not to do something. The IPC addresses dowry death in section 304B⁶. If a woman dies of 'unnatural death' within 7 years of marriage and has been harassed for dowry before her death, the courts assume that the death is due to it. A dowry death is punishable by imprisonment of at least 7 years.

As per the Act, a police officer, protection officer, service provider or magistrate who receives a message of domestic violence shall inform the aggrieved person of her right to make an application for obtaining relief by way of protection order. The Act provides the rights for free legal services under the Legal Services Authorities Act, 1987⁷ and right to file a complaint under Sec. 498-A of the IPC, wherever relevant. The aggrieved person may be provided shelter in the home and also medical facilities, if needed. Any woman subjected to mental/physical injuries, physical abuse, criminal intimidation by force, sexual abuse (any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of woman), will be covered under domestic violence. The state governments may appoint, by notification, such number of protection officers, as far as possible women, in each district as may be considered necessary and shall notify the area within which a protection officer may exercise the powers and perform duties conferred on him or under this Act.

PROTECTIVE MEASURES FOR WOMEN UNDER PWDVA 2005

While most of the Western countries passed laws against domestic violence in the 1970s, in India only violence in

matrimonial relationship, particularly dowry related violence, remained the focus of the women's movements as well as that of legislative institutions. It was since the 1990s that efforts were being made to draft a bill on domestic violence exclusively. In the light of the "Government of India Report on Platform for Action: Ten Years after Beijing" and the crime scenario prevailing in the country the need was felt for an exclusive law on domestic violence. Initiatives in this direction began with the collaborative efforts of the UNIFEM and Lawyers' Collective Rights Initiative (LCWRI). A delegation of representatives from women's groups and State Women's Commissions met the then HRD Minister regarding the need to enact a law on domestic violence. It finally resulted in the drafting of the Bill on domestic violence, that is, "Protection of Women from Domestic Violence the Act 2005", which was passed by Parliament in September 2005 and came into force in October 2006.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005⁸

The Act defines domestic violence to include actual abuse or threat of abuse that may be physical, sexual, verbal, emotional or economic violence. Section 3 of the Act says that any act, omissions or commission or conduct of the respondent shall constitute domestic violence in case it

(a) harms or injures or endangers the health, safety of life, limb or well-being, whether mental or physical, of the aggrieved 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 him 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.

For the purpose of Section 3:

(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 reasonable

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.

Thus the Act prima facie appears to be comprehensive. The term "domestic violence" has been defined for the first time in such a detailed manner which includes actual abuse or threat of abuse that is physical, sexual, verbal, emotional or economic. Even harassment by way of unlawful dowry demands to women or her relatives would also be covered under this definition. The Act seeks to cover even 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 adaption. Also, relationship with family members living together as a joint family is included. Legal protection is thus available to women who are sisters, widows, mothers, single women or living with the abuser. Besides, the Act protects the rights of women to secure housing. Moreover, the Act is not relying only on law enforcement agencies for protecting women against domestic violence. It refers to "protection officers" and allows registration of NGOs as "service providers for legal aid, medical examination or shelter for women in distress".

The term 'cruelty', as defined under section 498A of IPC, is covered in the new Act as well. Further, the new law has widened the meaning of the word 'WOMAN' and it covers the woman facing violence outside matrimony. Also the secular outlook of the Act is clearly reflected as it deals with domestic violence regardless of the religion of the parties. The term 'woman' here is religion neutral. Many a time general protections available to women, irrespective of their religion, are denied on account of religion based personal laws

MISUSE OF D.V ACT

Misuse of the act, like all such acts in India, cannot be ruled out. In fact, with a system as corrupt as ours, money, clout and muscle power will always call the shots. And as long as the woman stays a puppet or pawn in the hands of her male relatives, she will always be manipulated and used. The chances of the act being misused are enormous. We have seen in past how The Dowry Prohibition Act, 1961 has been misused from the side of the so-called aggrieved person.

The definition of Domestic Violence is too wide for my liking. How can the court ensure that the complaints of the affected party are right or not? The presence of the Malafide intentions on part of one party to harass the other cannot be ruled out.

Sometimes in camera proceedings can protect the aggrieved woman from a lot of humiliation and shame especially in cases where explicit acts of sexual abuse and violence are being discussed in an open court and it allows for her dignity and privacy to be maintained. But, we have also seen trials where the in camera proceedings only intimidated the aggrieved in favour of the respondent. This is especially so when the aggrieved is the only woman in court facing a completely male phalanx of hostile, sneering magistrates, lawyers, officials, police, male respondent etc. The solution is to change this section to only allow for in camera proceedings. Not when either party so desires but

only if the aggrieved party so desires. Also, the aggrieved party should be allowed to be accompanied by any relative/woman social worker etc. of her choice for moral support.

CONCLUSION

One of the drawbacks of Indian laws is there is no prohibition or stopping marital rape. Sexual intercourse without a wife's consent within a marriage is not termed 'rape' legally. As observed by Justice Pasayat- 'while a murderer destroys the physical frame of victim, a rapist degrades and defiles the soul of a helpless female'. Since it occurs within the confines of home, as in other forms of domestic violence, there are often no witnesses. Excessive demand for sex comes under 'cruelty' and may entitle a woman to divorce. Marital rape can be more damaging than rape since it is repeated number of times and the victim feels emotionally betrayed by her own loved one. Strict law against such form of rape should be enacted.

A strong crusade against domestic violence could be launched only when we try to implement the already-existing measures. Making more laws is not the only solution. Its only when we are sincere in our efforts at the grassroots level also, we can expect a change to happen. It is through a collective determination to support women's rights not only 'outside' but also 'inside' the hitherto restricted boundary of home, that we can attain the objective of destroying the well-embedded thorns of domestic violence from our society.

Reference

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2. Pandey, Geeta, "100 Women 2014: Violence at home is India's 'failing'", et. Al.
3. Datta, Damayanti, "The new laws of marriage".
4. Malhotra, Anju, Reeve Vanneman, and Sunita Kishor. "Fertility, Dimensions of Patriarchy, and Development in India." *Population and Development Review* 21 (1995).
5. [304B. Dowry death.—
- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]
6. LEGAL SERVICE AUTHORITIES ACT, 1987 (39 of 1987).
7. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 NO. 43 OF 2005 [13th September, 2005.]