



## The Right of Women Against Domestic Violence

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### ABSTRACT

The post-independent era of India has been a male dominated. It is the efforts of our legislation that has been the stakeholder regarding women empowerment in India. The protection of the human rights of women has been the urgent need since the independence. One of the efforts of our legislation is the enactment of THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005. This paper throws the lights on the main provisions of the Act, types of Domestic Violence, impact of its on the development of women, role of supreme court regarding the protection of women under the Act, the problems related with the provisions and suggestions regarding the same.

### KEYWORDS

Rights of women- Violence – Domestic Violence – Impact in health and wealth- Supreme Court of India- Violence of Human Rights of Women- National Commission for women-Gender Justice.

### (1) INTRODUCTION:

Art.1 of the Universal Declaration of Human Rights says that ALL THE HUMAN BEINGS ARE BORN FREE AND EQUAL IN RIGHTS. Art.21 of the constitution of India says: "No person shall be deprived from his life or personal liberty without the procedure established by law". All these seem in PAPERS when we hear about the violence against women, especially, in the four walls of their own house by their own family members! Without mentioning the name of our so called saint, I would like to mention his words: "The woman deserves to be beaten up". Another saint had expressed his divine pleasure on hearing the death of his wife. So far as spiritual or religious purpose, we cannot criticize them, but we cannot follow this strategy in the present era. There are many kinds of violence against the woman in India. Domestic Violence is one of the serious crimes in India. So far as the protection from Domestic Violence of Women is concerned, it matters for the achievements of Gender Justice in India.

### (2) TYPES OF DOMESTIC VIOLENCE:

It can be known as Domestic Crime against a woman. It is done by the family members of her. Some illustrations of Domestic Violence against women are as such, in the form of physical domestic violence, mentally domestic violence and sexual domestic violence:

Physical domestic violence includes Beating, Biting, Slapping, Pinching, Twisting arms, Kicking, Pushing and what not. Mentally domestic violence includes facing abusive languages, insulting in the present of other persons, and using all the means that prevent her development. Sexual violence includes marital rape by husband and any form of sexual act that she does not wish to do. The survey of National Family health survey also agrees with the same.

Domestic Violence may be acted by Son, Son in law, Father, Father in law, Brother, Brother in law, Husband or the relatives of the Husband.

### (3) PROVISIONS OF THE RIGHT OF WOMEN AGAINST DOMESTIC VIOLENCE:

In India there is a separate law deals with this subject, named, THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005. There are 37 sections in the Act. Section 2 of the Act is the Interpretation Clause of the Act. Section 3 defines DOMESTIC VIOLENCE. It says that Domestic Violence includes physical, sexual, verbal-emotional and economic abuse of a woman. Any act or omission or commission or conduct of a respondent that 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 physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. When a person doing such, with a view to demand dowry, it is also known as domestic violence. In such types of cases duties of various authorities, such as, Police, Shelter Homes, Medical Centers, Protection Officer, Shelter Homes, Service Providers and Governments have been mentioned in the Act. Section 16 deals with IN CAMERA proceedings. As per Sec.31, the offence regarding this subject is cognizable and non bailable. This Act provides some rights to the woman, such as, right to maintenance, right to reside in a shared household, right to prevention from domestic violence, right against the loss of earnings, right to custody of the child, right to get free copy of the judgement of the court, right to interim relief and other monetary rights. Aggrieved person may file an appeal within 30 days from the decision of the lower court. So this is one of the women oriented enactments of India.

### (4) CASES ON THE DOMESTIC VIOLENCE:

The role of Indian Judiciary reflects in such cases regarding this matter:

#### 4.1 VIJAY VERMA VS. STATE N.C.T. OF DELHI: ( 13 \8\2010)

The petitioner is a permanent resident of USA and is living in USA since year 2000. She came to India on a visit on 15th July, 2008 and alleged that when she went to her parental house on 16th July, 2008, she was not allowed to enter her parental house. She lodged a complaint against her brother for shared house hold that was the property of her father. According to her brother, that property was given by his father by a will. The H'ble Delhi High Court has held in this case that Domestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband. Such son, daughter, daughter-in-law, son-in-law, if they have any right in the property say because of co parcnary or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from Domestic Violence Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. In this case, it has been held that it would be nothing but a violation of Sec.12 of the Act if the application be accepted. The petitioner had settled her separate house in America, her Passport was issued in America, she was doing job in America, and she was adult and able to take care of herself, take her own decisions. She decided to live in America

after leaving her parents here. As she had filed a separate suit for partition, she cannot get benefit of Sec.12 of the Act. By this way, the H'ble Delhi High Court rejected the application to prevent the misuse of the Act.

It means if a woman having her own household or cease to have a domestic relationship or files a separate suit for house property cannot misuse the provisions of the Act.

#### **4.2 V.D.BHANOT VS. SAVITA BHANOT : ( 7\2\2012 ) ( Supreme Court of India)**

The marriage between the parties was solemnized on 23<sup>rd</sup> August 1980 and till 4<sup>th</sup> July 2005 they lived together. On 29<sup>th</sup> November 2006, the wife filed a petition U/s.12 of the Act against her husband before the Magistrate. The Magistrate granted interim relief of Rs.6000/- per month as maintenance of the wife along with residential order of her. On dated 6<sup>th</sup> December 2007, the husband who was a member of Armed Forces, retired from the job and the wife had to vacate the quarter in Mathura. The learned Magistrate directed the husband to provide adequate accommodation to his wife. Thereafter, the husband argued in his appeal before the Sessions Court that since her wife had left the matrimonial home on 4<sup>th</sup> July 2005 and the Act came into force on 26<sup>th</sup> October 2006, the claim of her wife is not maintainable. As the argument was accepted by the learned court, an appeal was filed in the Delhi High Court. H'ble Delhi High Court after considering the various provisions of our Constitution of India decided that the Act is applicable in this case. So the Petitioner approached before the Supreme Court of India by SLP. During the pendency of the petition, the husband came in person to the H'ble Supreme Court and expressed his willingness to settle the case. Hence, the case was given to the Mediation Center of the Supreme Court. A settlement was made between the parties, but when the order of settlement was to be made, it was found that the parties were not agree with the settlement. So the H'ble Supreme Court had to decide the case. It has been held that if a wife who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of PWD Act, 2005. The relief was granted to her.

It means, keeping in mind, the object of the Act to provide effective protection of the rights of women guaranteed by the provisions of our Constitution of India, such as Art.14, 15, and 21, a petition under the provisions of PWD Act, 2005 is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the Act.

#### **4.3 SARASWATHY VS. BABU : ( 25\11\2013 ) ( Supreme Court of India)**

The marriage between the parties was solemnized on 17<sup>th</sup> February 2000. The wife brought 50 sovereign gold ornaments and 1 Kg. Silver articles as Stridhana and Rs.10000/- were also given to the husband. After four months of the marriage, the demand of dowry was made by her husband and the relatives of him. She was thrown out from the matrimonial house when she could not satisfy their demand. In this case, the main issue came before the apex court was whether the Act is applicable for the facts of pre-enactment era of the Act. In this case, the H'ble Supreme Court accepts the decision of Savita Bhanot Case and has held that this is the case of economic abuse and it amount to domestic violence. The H'ble apex court directed the husband to pay Rs.5 Lac to the wife as compensation along with suitable residential house.

#### **4.4 INDRA SARMA VS. V.K.V. SARMA ( 26\11\2013 ) ( Supreme Court of India)**

On the eve of LAW DAY 2013, our H'ble Supreme Court of India decided the significant case. It revolves round the rights of a woman having live in relationship with a married person and the social status of LIVE IN RELATIONSHIP in the context of Indian Culture. In this case a question was raised before the apex court whether or not a live in relationship would amount to a relationship in the nature of marriage falling within the definition of DOMESTIC RELATIONSHIP under Section 2(f) of

the Protection of Women from Domestic Violence Act, 2005 and the disruption of such a relationship by failure to maintain a woman involved in such a relationship amounts to DOMESTIC VIOLENCE within the meaning of Section 3 of the Act.

In this case, both the parties were working in a private company. The respondent was a married person having children. The appellant was an unmarried woman. In 1992, the respondent left the job and began to live with the appellant in a separate shared house. However, all the family members of the respondent opposed the live in relationship of both the parties. They started a business in her name. After some time the respondent shifted the business to his house and began to run the business with the help of his son. The appellant became pregnant on three occasions, though all resulted in abortion. The respondent took money from the appellant but never returned her. The appellant, then, filed a petition under Section 12 of the DV Act before the III Additional Chief Metropolitan Magistrate, Bangalore. That was accepted and the respondent filed an appeal before the Sessions Court. As it was rejected, the respondent filed an appeal before the High Court. The H'ble High Court accepted the appeal on the ground that there was no any marital relationship between the parties. Hence, this appeal was filed by the appellant before the Supreme Court of India. In Para 65 of the case, it has been held that such types of LIVE IN RELATIONSHIP cannot amount a relationship in the nature of marriage. Hence there is no question of Domestic Violence in this case. It would be injustice to the part of the wife and children of the respondent, if the court declares such type of relationship as a relationship in the nature of marriage. So the appeal was dismissed. It was left to the legislature to frame laws regarding such matters.

It means any kind of LIVE-IN-RELATIONSHIP cannot amount to relationship in the nature of marriage. So, one cannot approach before the court under the Act.

#### **(5) EFFECTS ON DOMESTIC VIOLENCE:**

It makes adverse effects on the health and wealth of the victim woman. It also makes adverse effects on the development of women. It creates a lot of stress to the woman and the stress converts into mental and physical problems to the woman that creates problems in her education and healthy family atmosphere. The spousal domestic violence also makes effects on the children of the family. They do not proper attention on their daily schedule, such as education, playing or other creative activities. The stress revolves rounds the whole family members to the society at large. On seeing a domestic violence towards the mother, the children begin to hate their father and other relatives, and that create a negative attitude in the children regarding the marriage life cycle. And other social evils are invited by such types of Domestic Violence.

#### **(6) CONCLUSION and SUGGESTIONS :**

When we see domestic violence of women in the Indian society, we cannot ignore the misuse of the same provisions. The Times of India, dated 20<sup>th</sup> March 2013, says other side of the Act. A husband has to approach before Karnataka High Court with a pray to declare the Act as unconstitutional. Mr.C.H.Venkatkrishna's wife, one of the actresses of TV Serials, Lakshami Bhat demanded Rs.2 crore from him as compensation. The main issue is the shared house hold provisions of the Act. We cannot ignore the matters deal with abuse of the Act. However, we have faith in our Indian Judiciary in this regard. We must agree that we must have faith in our Judiciary regarding these matters. However, we cannot deny of the fact that the Act may be an instrument to suppress a male in some extent. It may be in a rare case, but it may be. The other fact that I would like to put before the Indian Society that we rarely find any complaint against parents. Why! Suppose an unmarried adult woman does not find a good match or a good job, it means in such cases, she may not receive a gentle respect from the family. May be, her father may force her to marry with anybody and denying of it may cause a get trouble to the woman. She may face a dire consequences from

her own father or mother or brother or sister-in-law or from anybody of the family! It is the INDIAN WOMANHOOD that prevents her to lodge a complaint against her own father or mother or any relatives of her parental house in such a situation. So we cannot deny of the fact that Domestic Violence prevails in PARANTAL and MATRIMONIAL HOUSE of the Indian Woman. Yes, it prevails in every moment in Holly India! The National Crime Record Bureau 2012 says that total 8223 complaints of Dowry Death were received and 106527 cases were registered as a cruelty to the women by the husband and his relatives. However, I would like to suggest to enact a separate law regarding the domestic violence in LIVE IN RELATIONSHIP nature. To prevent the misuse of the Act, a provision for compensation should be inserted in the Act.

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