

A Critical Analysis of Domestic Violence Laws in India with Special Reference to Domestic Violence Act, 2005



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Abstract

Domestic Violence against women is a social phenomenon. It is one of the crimes against women. Domestic violence is defined as violence perpetrated against women in marital homes. It is widely acknowledged as a major impediment to women's empowerment. It has recently piqued everyone's interest. Domestic violence refers to violence perpetrated by an intimate relationship, regardless of where it occurs or how it manifests. It may be in any kind like physical, sexual, psychological, economical harm or suffering to women. Domestic violence goes unnoticed a lot of the time. Women may not confess that they are subjected to violence on a daily basis. But they faced routinely physical or mental abuse by their male partners. Then they want to receive immediate advice and information about their options. At this time The Protection of Women from Domestic Violence Act, 2005 come as a hope for their redressal. The question that brings into in this research paper is how successful this Act has been in meeting the needs of all victims of domestic violence and providing reparation and safety to them. The responsibility of implementation of this act lies on the shoulders of we educated and the elite group of the society.

Key words: domestic violence, women, physical, mental abuse, redressal.

Introduction

Women's domestic abuse is an almost universal social concern. Domestic violence occurs primarily behind closed doors, in the context of the family. Women and men are two wheels of chariot. In theory, in most countries, women and men are treated equally and without discrimination in almost sphere-social, culture, economic and political. However, in reality we find that this is a utopian ideal as discrimination against women is manifested very vividly. In a patriarchal culture, women are viewed as slaves. Women have been denied of means of production and are confined to the four walls of their homes, where they are viewed as a commodity. Their fate is intertwined with that of her spouses and in-laws, and women are not safe even at home, where they are susceptible to physical and sexual exploitation. Rape, sexual abuse, women's trafficking, domestic violence, pornography, selective abortion of female

fetuses, and dowry death are all types of violence that devalue women's dignity.

Historical aspect of Domestic Violence

If we see the domestic front from the Vedic era to the twenty-first century, the notion of 'ARDHANGINI' appears to exist only in books and has never been applied in life practically. The 'PARDA' system, 'SATTI' system, 'CARVA CHAOUTH' system, and other systems, women are only a reflection of women's subservient status throughout history. Similarly there are other factors that maintain the unedifying status quo of women in India. In Rig Vedic Era, Women enjoyed the status of equality with men unsurpassed ever since. In the household, the status of wife was highly regarded. In some ways, woman was in a better position than a male when it came to performing religious rites. The dowry system was unknown at the time. The position of women deteriorated in later Vedic Period. In the marital household, the

wife's position was less than ideal. Despite the fact that Manu describes wife as Divine alongside who assists his husband in all of his endeavors, he also states that the husband is the Lord and Master of his wife. The Rajput Period in the medieval history posed too many restrictions on women in the form of PARDA, SATI, and JAUHAR system and denial of widow remarriage. The status of women did not change throughout the Muslim rule. In a variety of ways, the Muslim period left an indelible impact on Hindu women. Child marriage and depriving children of an education were common social characteristics. Domestic violence was a method of coercing widows into committing 'SATI'. The standing of women in the household and society had reached an all-time low during the British period. Because of the evil of socio-religious rites and inhuman superstitions unseen in the Ancient Period that had come into society during British rule, the status of women in the family was in a terrible state of affairs. During the British period, feminist reform groups addressed issues such as SATI, Hindu widow remarriage, denial of education, PARDA, the incidence of child marriage, women's property rights, and so on. However, it should be noted that throughout the British time, the pace of women's welfare was extremely sluggish. During the British era, legislation such as the Child Marriage Restraint Act of 1929, Hindu Widow Re-Marriage Act, 1856 helped to eliminate societal ills. However, despite efforts to correct women's unequal status, these laws were ineffectual and remained a dead letter for a long time.

Meaning of Domestic Violence

When one adult in a relationship abuses authority to dominate another, this is known as domestic violence. It is the use of violence and other types of abuse to build dominance and terror in a relationship. Physical abuse, sexual assault, and threats are all possible forms of violence.

Sometimes it's more subtle, like making someone feel worthless, not letting them have any money, or not allowing them to leave the home. Social isolation and emotional abuse can have long-lasting effects as well as physical violence. Domestic violence isn't simply striking, fighting, or having a fight every now and again. It's a form of power abuse. The abuser uses premeditated threats, intimidation, and physical assault to torment and control the victim. Although both men and women can be mistreated, women are the most common victims. Children are harmed or neglected in households when there is domestic violence. Although women are generally the major targets of violence, it can also be aimed towards children, family members, and friends. It is one of the crimes against women that are connected to their privileged social status. Domestic violence is defined as violence perpetrated against women, particularly in marital families. As a result, domestic violence is considered as one of the most important impediments to women's empowerment, with implications for women's health, health-seeking behavior, and acceptance of the small-family norm.

Forms of Domestic Violence

Domestic violence has one goal: to obtain and retain complete control over the victim. To exert authority over their spouse or partner, abusers employ a variety of strategies, including domination, humiliation, isolation, threats, harassment, rejection, and accusation.

Direct Physical Violence: Unwanted physical contact, rape, and murder are all examples of direct physical aggression. Destroying items, hitting or hurling objects near the victim, or harming pets are examples of indirect physical violence.

Emotional or Mental Abuse: Abuse of the victim's mind or emotions, including threats of physical violence against the victim, oneself, or others, especially children. Threats, insults, put-

downs, and assaults are examples of verbal violence.

Non-verbal Threats: Gestures, facial expressions, and body postures are examples of nonverbal threats.

Psychological Abuse: Controlling the victim's money and other economic resources, restricting the victim from visiting friends and family, deliberately undermining the victim's social ties, and isolating the victim from social interactions are all examples of psychological abuse.

Physical violence: The purposeful use of physical force with the potential to cause pain, harm, disability, or death, such as striking, shoving, biting, restraining, kicking, or the use of a weapon, is referred to as physical violence.

Sexual abuse: In violent relationships, sexual abuse is frequent. According to the National Coalition against Domestic Violence (NCADV), one-third to half of all abused women is raped at least once by their partners throughout their relationship. Sexual abuse is defined as any circumstance in which force is used to obtain participation in undesired, unsafe, or humiliating sexual behavior. Forced sex, especially when carried out by a spouse or intimate partner with whom consensual sex has already happened, is an act of hostility and violence. Women who are physically and sexually abused by their spouses are also more likely to be badly hurt or murdered.

Emotional abuse: Physical violence is not present in all abusive relationships. It doesn't imply you aren't being mistreated just because you aren't bruised and pummeling. Many women are subjected to emotional abuse, which is just as damaging. Unfortunately, even by the individual who is being abused, emotional abuse is frequently underestimated or disregarded. Emotional and verbal abuse can have long-term and short-term consequences that are equally as severe as physical violence. It's also an indication that physical abuse

is on the way. If physical violence begins, emotional and verbal abuse may follow. Emotional abuse is designed to erode your sense of self-worth and independence. Verbal abuse, such as screaming, name-calling, accusing, and humiliating, is an example of emotional abuse. Emotional abuse can also take the shape of isolation, intimidation, or dominating conduct

Economic abuse: When the abuser has total control over the victim's money and other financial resources, this is known as economic abuse. This usually entails placing the victim on a strict "allowance," holding money voluntarily, and pressuring the victim to beg for money until the abuser provides it to them. As the abuse continues, the victim is likely to receive less money. This includes (but is not limited to) stopping the victim from completing their education or finding work, as well as wasting or abusing common resources.

Stalking: Stalking is frequently seen as a form of psychological harassment in which the victim has a high level of panic.

Laws relating to Domestic Violence

The Constitution of India, 1950

The Indian Constitution is the original source of all women's rights, and all Indian laws emerge, clothed with sanctity the Constitution. The Indian Constitution prioritizes social fairness. Gender justice is one element of it, which is a broad notion. The Indian Constitution's preamble, fundamental rights and duties and directive principles of state policy, all include the idea of gender equality. The Constitution of India, in order to achieve the objective of socio-economic equality of women makes the following provisions:

- ❖ Prohibition of discrimination on the ground of birth, place, language and sex.
- ❖ The state is already given the authority to establish specific arrangements for women in order to allow it to take special care of them due to their psychological,

biological, and socioeconomic circumstances.

- ❖ In directive principles of state policy there has already given provisions that direct the state to take specific actions relating to women and their socioeconomic advancement.
- ❖ Provisions relating to right to equality have been mentioned under articles 14 and 15.
- ❖ Article 15 (3) allows for the exclusive reserve of certain posts in favor of women. Women's rights provisions in criminal law, in particular, have been preserved.
- ❖ Under articles 14, 15 and 23, the Constitution of India has given some rights in which sexual harassment of working women is amount to violation of these rights.
- ❖ Equal pay for equal work i.e. Article 39 defined that no women can be paid less payment for the same work. Directive principles of state Policy is referenced that.

The Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, and the Hindu Disposition of Property Act, as well as the Marriage Laws (Amendment) Act of 2001, all favor women.

The Indian Penal Code, 1860

The Indian Penal Code, 1860 has made no demarcation between violence against women and domestic violence. But, the Act has not specifically dealt with offences against women when one glances at various provisions, is thrown say for that matter u/s 294, 304 (b), 312, 313, 314, 316, 317, 354, 366 (a), 366 (b), 375, 376, 494, 495, of Indian Penal Code. These, are the general crimes against women whether by members of the family or outsider. However, its sections 494, 498 (a) which contain terms in their rudimentary form provide

safeguard against offences by near relatives like family members.

The Child Marriage Restraint Act, 1929

While the law provides for the punishment of child marriage, it also states that no women would be penalized as a result of the law.

The Dowry Prohibition Act, 1961: As amendment from time to time is another example of socio-legal reforms under which acts of giving and taking dowry, demanding dowry and abatement of these three acts have been declared offences punishable with imprisonment and fine both.

The Indian Evidence Act, 1872: Section 113 (a) inserted in 1983, provides that when suicide is committed by woman within the period of seven years from the date of marriage and that her husband or such relative of her husband subjected her cruelty, the court may presume that such suicide had been abetted by her husband.

The Criminal Procedure Code, 1973: Section 174 of the Criminal Procedure Code had also been amended in 1983 and sub-section (3) had been inserted which provided for the case that involves suicide caused within seven years of marriage.

The Medical Termination of Pregnancy Act, 1971

The medical termination of pregnancy legislation of 1971 was enacted in attempt to reduce the high rate of unlawful abortions. It allowed abortions on three reasons.

- ❖ On health ground where women's lives are in danger or their physical or mental health is jeopardized.
- ❖ On humanitarian grounds when a pregnancy is produced by a sex crime or intercourse with a lunatic etc. and
- ❖ On eugenic grounds when there is a significant danger that the

child would be born with malformations or illness.

Thus, the unborn child has the right to life, which can be limited in the benefit of the mother's or child's health.

The Protection of Women from Domestic Violence Act, 2005

Domestic abuse is unquestionably a human rights issue and a significant impediment to development, according to the Vienna Accord of 1994 and the Beijing Declaration and Platform for Action of 1995. In its General Recommendation No XII (1989), the United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) urged that State Parties take steps to safeguard women from all forms of violence, including domestic abuse. Domestic violence is a widespread problem that has remained mostly unnoticed in the public eye. It is now a crime under Section 498-A of the Indian Penal Code, 1860, when a woman is subjected to cruelty by her husband or his family. The civil law, on the other hand, does not handle the problem in its totality. As a result, it is suggested to create legislation to provide for a civil law remedy, keeping in mind the rights provided under Articles 14, 15, and 21 of the Constitution of India, 1950. This remedy aims to protect women from becoming victims of domestic abuse and to prevent domestic violence from occurring in the first place. The Lok Sabha passed the Protection of Women from Domestic Violence Bill, 2005 on August 24, 2005, and the Rajya Sabha passed it on August 29, 2005. On September 13, 2005, the President of India gave his approval to it. The Protection of Women from Domestic Violence Act of 2005 was enacted into law (43 of 2005).

Main Contents of the Act

The present legislation namely, the Protection of Women from Domestic Violence Act, 2005 contains the following special features-

Extensive Enactment: It includes women who are in a relationship with the abuser in which both parties have shared a home and are related by consanguinity, marriage, or a relationship in the form of marriage or adoption. Relationships between family members who live together as a joint family is also taken into account. Sisters, widows, mothers, and single women living with the abuser are all entitled to legal protection under the current legislation.

Expression “domestic violence” defined: Domestic violence is defined in it as real or threatened physical, sexual, verbal, emotional, or economic abuse. Harassment of a woman or her family in the form of illegal dowry demands would also fall under this criterion.

Right to women to secure housing:

It protects women's right to adequate housing. It also guarantees a woman's right to live in her marital home or joint household, regardless of whether she has any ownership or rights there. This privilege is guaranteed by a Magistrate-issued residence order.

Power of Magistrate to pass orders:

Under this legislation, a Magistrate may issue a protective order in the aggrieved person's favor to prohibit the respondent from assisting or perpetrating domestic abuse. The magistrate might also award monetary damages to compensate for the aggrieved person's costs and losses. He issues custody orders, which give the aggrieved party temporary custody of any child or children. A magistrate may provide compensation for injuries such as mental torment and emotional anguish under such order.

Protection Officers’ Appointment: It calls for the establishment of Protection Officers and the registration of non-governmental organizations as

service providers to help the aggrieved person with medical examinations, legal aid, safe shelter, and other matters.

Important Expressions in the Act and Their Definitions

These are the following:

- Aggrieved person
- Child
- Domestic Relationship
- Shared household
- Shelter home

Aggrieved person: The term "aggrieved person" is defined in Section 2(a) of the Act as any woman who has been in a domestic relationship with the respondent and alleges to have been subjected to domestic abuse by the respondent.

“Female” includes in terms of “Relative”: In *Sandhya Manoj Wankhade v. Manoj Bhim Rao Wankhade & others*, wherein proceedings under Domestic Violence Act complaint against mother-in-law and sister-in-law as the respondents’ no. 2 and 3 besides husband as respondent no. 1. There was deletion of names of female respondents. The High Court directed appellant/applicant to vacate matrimonial house, besides it confirmed as order of Session Judge deleting names of female members from list of parties as respondents. The Apex Court observed that both of Courts below put erroneous interpretation to the expression ‘respondent’ in Act of 2005, Section 2(a). The Apex Court observed that it is not only “adult male persons” but also ‘a relative’ of the husband in the nature of marriage. Despite the fact that the term "female" was not used in the proviso to the abovementioned clause, but it has not excluded a “female” from the sweep of the term “relative” as used therein. The Supreme Court held that both courts made errors in their decisions by being swayed by the definition of "respondent" in the main body of Section. As a result, the contested order is reversed, and actions against respondents 2 and 3 will continue.

Child: The term "child" is defined under Section 2(b) of the Act as any individual under the age of 18 years old, including any adopted, step, or foster child.

Domestic relationship: The term "domestic relationship" is defined in Section 2(c) of the Act as "a relationship between two persons who live or have lived together in a shared household at any time, when they are related by consanguinity, marriage or a relationship in the nature of marriage, adoption, or are family members living together as a joint family."

Shared household: The term "shared household" is defined in Section 2(3) of the Act as a household where the person aggrieved resides or has lived in a domestic relationship with the respondent, either alone or together. It also covers any home in which the aggrieved person, the respondent, or both jointly or individually have any right, title, interest, or equity, whether owned or tenanted jointly by the aggrieved person and the respondent or owned or tenanted by either of them. It includes any household that may be part of the respondent's joint family, regardless of whether the respondent or the aggrieved person has any right, title, or interest in the shared household.

Aggrieved wife’s right of residence in a ‘shared household’:

In a landmark judgement by the Supreme Court that will have an indelible impact on the jurisprudence surrounding “The Protection of Women from Domestic Violence Act”, A three-judge panel consisting of Ashok Bhushan, R. Subhash Reddy, and MR Shah, JJ, has ruled that “The living of woman in a household has to refer a living which has some permanency. Mere fleeting or casual living at different places shall not make shared household.” The Court carefully analyzed and interpreted the contents and structure of the DV Act in the approximately 150-page judgment. Overturning the law set forth in *SR Batra v. Taruna*

Batra the Court held that the respondent in a Domestic Violence Act proceeding can be any relative of the husband, and that if the shared household belongs to any relative of the husband with whom the woman has lived in a domestic relationship, the conditions set forth in Section 2 (s) are met, and the said house becomes a shared household. In SR Batra v. Taruna Batra a two-judge bench had ruled that the woman is only allowed to claim a right to dwell in a shared home under Section 17(1), and that a shared household would only include the house that the husband owns or rents, or the property that belongs to the joint family of which the husband is a member.

Shelter home: The word "shelter home" is defined under Section 2(t) of the Act as "any shelter home notified by the State Government to be a shelter home for the purposes of this Act."

Misuse of D.V Act

Misuse of the legislation, like all other acts in India, is a possibility. In reality, in a corrupt system like ours, money, clout, and physical might will always have the final say. And as long as the woman is treated as a pawn or puppet in the hands of her male relatives, she will be controlled and exploited. The likelihood of the act being abused is quite high. In Dowry Prohibition Act of 1961, we have already seen how it has been abused in the past by those who claim to be offended. In camera procedures can sometimes spare the aggrieved woman from a lot of embarrassment and shame, especially when graphic acts of sexual abuse and violence are recounted in open court. And it permits her dignity and privacy to be preserved. However, we've witnessed instances when the in camera processes merely served to frighten the aggrieved, resulting in a decision in favor of the respondent. This is especially true when the aggrieved is the only woman in a courtroom full of hostile, smiling judges, prosecutors, officials, cops, male respondent and so on. The remedy is to amend this

clause so that only in camera proceedings are permitted. Not whenever either party wishes, but only when the injured party wishes. In addition, the injured party should be permitted to be accompanied by any female family member, social worker, or other support person of her choosing for moral support.

Suggestions

- ❖ The Domestic Violence Act, as well as how to apply it, must be made more widely known among women. Effective training for each function of department engaged in the Act's execution is required as a result. To finish the system, a significant budget should be invested with careful oversight.
- ❖ No case should be taken as trivial. Never suggest the women that she is over reacting on domestic violence. It may have taken considerable spirit for her to reach out for assistance.
- ❖ We have to ban those web series, television serials and movies which are creating bad impression and communicate unhealthy message about the women's character and the society.
- ❖ We should start from our home that both the boy and the girl are treated equally in their sphere of life. Boys should do all those work in the house which are considered only for girls and girls should do all those work in the house which are considered only for boys.
- ❖ In providing counseling and assistance to victims of violence NGO's play a vital role. There is a need of vigorous lobbying of NGO's for policy advocacy.
- ❖ Improving the legal and institutional structure is necessary for better protecting women and girls. This is also good

for preventing and combating gender-based violence.

- ❖ There is a pressing need of basic societal change for preventing domestic violence so that women's inferior status removes. Actually no women are inferior of their male partners rather they both are equal.
- ❖ To make India a more female-friendly society, all societal agencies must work together, including family, school, peer groups, and, of course, the media. It is an opportune time for a cultural and mental shift.
- ❖ In India, women still have a long way to go in terms of creating a gender-equal atmosphere. They must first identify the structure's violence before preparing for fight.
- ❖ Moral teaching for our children at home, school, college, and university levels is essential so that boys learn to respect girls and women.

Conclusion

The topic posed in this paper is how successful the Domestic Violence Act of 2005 has been in appropriately identifying all types of domestic violence and providing restitution and protection to victims. The problem has been addressed from both a conceptual and a practical standpoint. In terms of the principles it incorporates into the Indian legal system, this enactment represents a significant first step. On certain reasons, the viability of its execution may be questioned. In terms of ideas, the legislation's goal of addressing the problem of domestic violence perpetrated against a woman by a male in a domestic relationship has been met to a large extent. The variety and complexity in which various definitions and types of relief have been constructed, demonstrate a clear attempt on the part of the legislators to offer appropriate remedy and

protection, according to an overall analysis of the Domestic Violence Act, 2005. Only in a few instances has implementation been inadequately supplied. For instance, consider the mechanism for dealing with a breach of a protection order. More precisely, in the case of protection officers, the act might have explored utilizing existing administrative machinery rather than requiring additional spending. This enactment was enacted in response to violations of women's human rights as well as their person, which may be punished legally. Despite the fact that this legislation has been properly drafted, flaws will always exist, allowing accused to bypass the law. However, when such circumvention is occurring, it is the judge's responsibility to interpret the provision in light of the goal that "violence inside the household is not acceptable." Only time will tell if the legislation will be misused, as there can be no discernible change in women's standing overnight. Things will take at least a decade to alter. This Act will serve as a safety net and a weapon in their hands. So that they aren't mistaken for an animal or a shoe that may be worn and thrown at any time. However, some women would benefit, setting a precedent for others.

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