

Domestic Violence Act 2005:A Big Step of Women Empowerment

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Abstract

Women have insufficient understanding of the law and lack of access to the courts. Hence it is necessary not only to enact a law but also to provide the necessary infrastructural tools with which to access the law. The way of doing this is to put a mechanism in place in the law itself.

“State can make special provisions for women and children” towards realizing the right to equality”. (Article 15, 2, Indian Constitution).

This indicates the use of affirmative action to remedy a wrong. It is often said that India has several laws but they are not implemented. The problem, however, is not the lack of implementation, but the lack of a mechanism by which it can be implemented.

Keywords

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Introduction

It is pitiable to report that independence has not brought freedom for a majority of women. To be born a woman means to inhabit, from early infancy to the last day of life. It is painful to note that in spite of theoretical constitutional equality for all (men & women), separate personal laws ensure that man and women are not equal. According to available statistics from around the world about 35% of the women have experienced violence in one form or the other,

In India, statistical evidence available about the actual prevalence of domestic violence is scant and the only large scale survey carried out by the National Crimes Record Bureau, Ministry of Home Affairs, Government of India relating to the crime against women reveals that a record 55% in 2016. The empowerment of women is one of the central issues in the process of development of countries all over the world.

Women emerged as a distinct interest group in the 19th century primarily because the bourgeoisie democratic revolutions of 17th and 18th century that excluded women from their concept of equality. UN stated that 'Gender Equality and Women Empowerment' as one of the Millennium Development Goals to be attained by the year 2015. However these goals are far from being realized in a country like India. In fact often women in India are deprived of their fundamental right to dignity also leave alone the question of gender equality. The origin of the Act lies in Article 15 (2) of the Constitution of India.

Crimes against women have been steadily on the rise. As per the crime in India 2016, report of the National Crime Records Bureau (NCRB) a total of 3, 38,954 crimes against women (both under various sections of IPC and SLL).

Domestic Violence

Violence against women can be in the form of domestic violence, bride burning for dowry, rape or molestation, wife battering, sexual abuse, mental, physical, or emotional harassment etc. Domestic violence occurs within the home and poses a challenge to the sanctity of familial relationship.

The definition of domestic Violence as implied by law is especially critical as it defines standards and thus impacts broader social perception of the problem. A number of studies highlight that domestic violence against women is more common in the lower classes (Davis 1963, Whitehurst 1974). Some studies show that housewives had a lower risk of violence than employed women (Fitch & Popantonio 1983, Gaguin 1978, horning 1981, Stark 1988, Levinson 1989).

Those women who do not have independent source of income run greater risk of being abused as compared to those who are not dependent on their husbands (Levinson 1989, Hodson 1984, Roy 1977, Mahahan 1989, Walker 1978).

The domestic violence against women may be classified as under:

- Physical Violence
- Emotional Violence
- Economic Violence

The Domestic Violence Act, for the first time in the nation's history, formally defined an act of domestic violence. The Protections of Women from Domestic Violence Act defines domestic violence in a series of steps or classifications.

- In spite of the fact that in India we have 'Protection of Women from Domestic Violence Act 2005', domestic violence still remains a serious problem. The domestic violence had taken the form of psychological and physical abuse against women like slapping, hitting, public humiliation, etc. In India the 'Dowry Prohibition Act and the Protection of Women from Domestic Violence Act and cruelty under Section 498 A of the Indian Penal Code in 1983'⁴ declares brutality to a woman in her conjugal house a punishable and non-bail able offence that can lead to a sentence of up to three years and fine.
- **The Indian Government brought the Protection of Women from Domestic Violence Act 2005 into force** from October 26, 2006. The Act was passed by the Parliament in August 2005 and assented to by the President on 13th September 2005. As of November 2007 it has been ratified by 4 of 28 State Governments in India.

This Act primarily provides protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women who are sisters, widows or mothers. Under the act, domestic violence includes all actual abuse or the threat of abuse, regardless of whether the actions are of a physical, sexual, economic, verbal or emotional nature. Economic domestic abuse, according to the domestic abuse act, refers to any harassment by way of unlawful dowry demands to the women or her relatives.

The kinds of abuse covered under the Domestic Violence Act '2005 are:

Physical Abuse

- an act or conduct causing bodily pain, harm, or danger to life, limb, or health;
- an act that impairs the health or development of the aggrieved person;
- an act that amounts to assault, criminal intimidation and criminal force.

Sexual Abuse

- any conduct of a sexual nature that abuses, humiliates, degrades, or violates the dignity of a woman.

Verbal and Emotional Abuse

- any insult, ridicule, humiliation, name-calling;
- insults or ridicule for not having a child or a male child;
- repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Economic Abuse

- Depriving the aggrieved person of economic or financial resources to which she is entitled under any law or custom or which she acquires out of necessity such as household necessities, stridhan, her jointly or separately owned property, maintenance, and rental payments;
- Disposing of household assets or alienation of movable or immovable assets;
- Restricting continued access to resources or facilities in which she has an interest or entitlement by virtue of the domestic relationship including access to the shared household.

Domestic Relationship: A domestic relationship as under the *Domestic Violence Act '2005* includes live-in relationships and other relationships arising out of membership in a family.

A- Beneficiaries under the Domestic Violence Act '2005:

- **Women:** The Domestic Violence Act '2005 covers women who have been living with the Respondent in a shared household and are related to him by blood, marriage, or adoption and includes women living as sexual partners in a relationship that is in the nature of marriage.
- **Children:** The Domestic Violence Act '2005 also covers children who are below the age of 18 years and includes adopted, step or foster children who are the subjects of physical, mental, or economical torture. Any person can file a complaint on behalf of a child.
- **Respondent:** The Domestic Violence Act '2005 defines the Respondent as any adult male person who is or has been in a domestic relationship with the aggrieved person and includes relatives of the husband or male partner.
- **Shared Household:** A shared household is a household where the aggrieved person lives or has lived in a domestic relationship either singly or along with the Respondent. It also includes a household that may belong to the joint family of which the Respondent is a member, irrespective of whether the Respondent or person aggrieved has any right, title or interest in the shared household.

C. Rights Granted to Women under Domestic Violence Act '2005

· **Right to Reside in a Shared Household:**

The *Domestic Violence Act '2005* secures a woman's right to reside in the matrimonial or shared household even if she has no title or rights in the household.

The Supreme Court has ruled in a recent judgment that a wife's claim for alternative accommodation lie only against her husband and not against her in-laws and that her right to 'shared household' would not extend to the self-acquired property of her in-laws.

· **Right to Obtain Assistance and Protection:**

A woman who is victimized by acts of **domestic violence** will have the right to obtain the services and assistance of Police Officers, **Protection** Officers, Service Providers, Shelter Homes and medical establishments as well as the right to simultaneously file her own complaint under Section 498 A of the Indian Penal Code for matrimonial cruelty.

· **Right to issuance of Orders:**

She can get the following orders issued in her favor through the courts once the offence of **domestic violence** is prima facie established:

- **Protection Orders:** The court can pass a **protection** order to prevent the accused from aiding or committing an **act of domestic violence**, entering the workplace, school or other places frequented by the aggrieved person, establishing any kind of communication with her, alienating any assets used by both parties, causing **violence** to her relatives or doing any other **act** specified in the **Protection** order.
- **Residence Orders:** This order ensures that the aggrieved person is not dispossessed, her possessions not disturbed, the shared household is not alienated or disposed of, she is provided an alternative accommodation by the Respondent if she so requires.
- **Monetary Relief:** The Respondent can be made accountable for all expenses incurred and losses suffered by the aggrieved person and her child due to the infliction of **domestic violence**. Such relief may include loss of earnings, medical expenses, loss or damage to property, and payments towards maintenance of the aggrieved person and her children.
- **Custody Orders:** This order grants temporary custody of any child or children to the aggrieved person or any person making an application on her behalf. It may make arrangements for visit of such child or children by the Respondent or may disallow such visit if it is harmful to the interests of the child or children.
- **Compensation Orders:** The Respondent may be directed to pay compensation and damages for injuries caused to the aggrieved person as a result of the acts of **domestic violence** by the Respondent. Such injuries may also include mental torture and emotional distressed caused to her.

- **Interim and Ex parte Orders:** Such orders may be passed if it is deemed just and proper upon commission of an **act of domestic violence** or likelihood of such commission by the Respondent.

D. Right to obtain relief granted by other suits and legal proceedings:

- The aggrieved person will be entitled to obtain relief granted by other suits and legal proceedings initiated before a civil court, family court or a criminal court.
- The Respondent can be made accountable for providing monetary relief to the aggrieved person and her children and pay compensation damages as directed in the Compensation order.
- He has to follow the arrangements made by the court regarding the custody of the child or children of the aggrieved person as specified in the Custody order.

E. Authorities Responsible and Their Function:

1. **Protection Officers:** These are officers who are under the jurisdiction and control of the court and have specific duties in situations of domestic violence. They provide assistance to the court in preparing the petition filed in the magistrate's office, also called a Domestic Incident Report.
2. **Service Providers:** These refer to organizations and institutions working for women's rights. They must be registered with the state government to record the Domestic Incident Report and to help the aggrieved person in medical examination.
3. **Court of first class Judicial Magistrate or Metropolitan Magistrate:** This shall be the competent court to deal with cases of domestic violence and within the local limits of this court, either of the parties must reside or carry on business or employment, or the cause of action must have arisen.
4. **General duties of Police Officers, Service Providers and Magistrate:** Upon receiving a complaint or report of domestic violence or being present at the place of such an incident, they are under a duty to inform the aggrieved person of:
 - Her right to apply for obtaining a relief or the various orders granted under the Domestic Violence Act '2005'.
 - The availability of services of Service Providers and Protection Officers;
 - Her right to obtain free legal services; and
 - Her right to file a complaint under Section 498 A of the Indian Penal Code.
5. **Counselors, Welfare experts:** The Magistrate may appoint any member of a Service Provider who possesses the prescribed qualifications and experience

in counseling, for assisting the parties during the proceedings.

6. In charge of Shelter Homes, Medical Facilities: The person in charge of a shelter home & medical facility will provide to the aggrieved person.

F. Procedure of Filing Complaint and the Court's Duty under Domestic Violence Act '2005

The aggrieved person or any other witness of the offence on her behalf can approach a Police Officer, Protection Officer, or Service Provider and file a complaint with a Magistrate for obtaining orders or reliefs under the *Domestic Violence Act '2005*. The court is required to take cognizance of the complaint by instituting a hearing within three days of the complaint being filed in the court.

- The Magistrate shall give a notice of the date of hearing to the Protection Officer to be served on the Respondent and such other persons as directed by the Magistrate, within a maximum period of 2 days or such further reasonable time as allowed by the Magistrate.
- The court is required to dispose of the case within 60 days of the first hearing.
- The court, to establish the offence by the Respondent can use the sole testimony of the aggrieved person.

Upon finding the complaint genuine, the court can pass a Protection Order, which shall remain in force till the aggrieved person applies for discharge.

G. Penalty/ Punishment under Domestic Violence Act '2005.

For Respondent

The breach of Protection Order or interim protection order by the Respondent is a cognizable and non-bailable offence. It is punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to twenty thousand rupees or with both.

For Protection Officer

If he fails or does not discharge his duties as directed by the Magistrate without any sufficient cause, he will be liable for having committed an offence under the *Domestic Violence Act '2005* with similar punishment. However, he cannot be penalized without the prior sanction of the state government. Moreover, the law protects him for all actions taken by him in good faith.

Some Loopholes

A consistent reduction in the number of domestic violence cases registered in the state, in the peripheral evaluation, seems to be a good sign, but actually it's not. Legal experts and activists say that the Domestic Violence Act has lost its initial charm and it has failed to be what it was actually meant to be. But some following loopholes are remarkable:

- 1- Though the Act stipulates disposal of cases within 60 days, in reality, it takes nearly six months and sometimes more than two years. For the helpless women who fight for existence and survival, such long duration of the trials will obviously dampen their spirits (whatever left) and she is likely to give up, say the experts.
- 2- In this particular Act, unlike its predecessor 498A, the victim can directly file the case with the protection officer in charge of a particular district, who will in turn move it to the magistrate court, without the aid of an advocate. Though the Act ensures that the victim can stay in the same house of the abuser and a Residence Order is issued, there won't be enough police protection during her stay at a place, which had been hell to her.
- 3- Thus an Act that was aimed at speedy trials and disposal loses its purpose. And there are no punishments served immediately after filing the case. Only if the accused breaches the Residence Order, he/she will be punished. If the accused is a female member, they would not be asked to vacate the house.
- 4- Misuse of 498A: IPC 498A commonly known as the Anti-Dowry law was passed in 1983 to protect married women from mental and physical cruelty and dowry related demand by husband and his relatives. 30 years on, 498A today is commonly known as the law which is 'Misused'. 'For beginners - 498A is not a case between husband and wife. It's a case between husband and state where state fights on wife's behalf. 498A can be filed any time after marriage - even after 22 years. Behind every FIR there are hundreds of cases that get 'settled' because of fear of arrest, harassment for years and humiliation. There is no data as to how many Mutual Consent Divorces are a result of such threats! Everyone including lawyers, police and the girl makes great money in this racket, which is approximately a 2000 crore business every year.

Conclusion

In spite the misuse of Domestic Violence Act, 2005, all forms of violence that women face, domestic violence remains the least reported and largely suppressed. Although the women are usually the primary targets, violence is sometimes directed towards children, and sometimes towards family members and friends. Many women who suffer from domestic violence have little or no education. Moreover, women are also discouraged to come back their parent's home, as it would bring a bad name to the whole family.

Women's freedom and autonomy is less well studied than crime rates, but some studies offer an insight. Through its nationwide large sample India Human

Development Survey (IHDS), the National Council for Applied Economic Research (NCAER) sheds light on the lack of women's financial independence. The purpose of law is to protect the most vulnerable and marginalized individuals of society. It is the duty of State to enforce protective laws and ensure the compliance of its agents in implementing these laws. Though various women organizations are working very hard with well-defined strategies, yet they have failed to address the issue of domestic violence specifically. It is in this background it is necessary for each one of us to understand the issue and the legal provisions for playing a reformist role to combat this growing violence.

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