



IMPACT OF DOMESTIC VIOLENCE ACT, 2005

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Abstract: *Cruelty used to be ground of divorce and judicial separation under Hindu, Christian and Parsi Civil laws. Indian Penal Code dealt with it in a limited way. It was confined till dowry harassment, physical and mental cruelty under the Dowry Prohibition Act, 1961 and Section 498-A of Indian Penal Code. The definition of cruelty under Section 498-A was vague and not comprehensive one. The domestic violence used to be considered a private affair. The Protection of Women From Domestic Violence Act, 2005 has filled up the gap and rights of women in the household stand recognized by this legislation. The concept of equality between man and women is slightly taking birth with enactment of this significant Act. This Act is a beneficent piece of legislation for fighting human rights of women.*

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INTRODUCTION

Before the enactment of the Protection of Women From Domestic Violence Act, 2005, the cruelty was punishable under Sections 312 to 326, 375 and 376, 494 and 495 of the Indian Penal Code, 1860. Adultery, cruelty and desertion were grounds for judicial separation under Hindu, Christian and Parsi Civil laws. Adultery was punishable under Section 497 of Indian Penal Code. The Dowry Prohibition Act, 1961 was applicable for dowry harassment. Section 498-A was enacted for dealing with physical and mental cruelty. There was presumption of dowry death under Section 113-A and 113-B of Indian Evidence Act, 1872. Section 15 (3) of the Constitution of India and the Indian Penal Code dealt with cruelty in a limited way. Earlier a complaint regarding domestic violence could generally be made only under Section 498-A of the Indian Penal Code which entails imprisonment of the perpetrator of violence but the definition of cruelty under Section 498-A was vague and not comprehensive one. There were many cases of domestic violence that went unreported due to the fear that once a complaint was made under section 498-A then the woman's husband and in-laws would never accept her in their family and ultimately her marriage would result in divorce¹ Reports indicate that every 20 minutes at least one woman is subjected to domestic violence in India.²

Domestic Violence Act, 2005 is a beneficent piece of legislation

The strong campaigns of Women Organizations led to amendments in the criminal law which recognized cruelty as an offence under Section 498-A of the Indian Penal Code. The Dowry Prohibition Act, 1961 punished dowry related harassment and recognized dowry deaths as a separate offence under Section 304-B of Indian Penal Code. Civil and personal laws provide cruelty as ground for divorce. Section 125 of the Code of Criminal Procedure Code used to provide maintenance to legally married women. The law extends right to reside in home to those persons who are owners of the house but the owners of the house used to be men as the property was registered at their names. It was very easy for them to dispossess women from the right of property. And in such a situation the woman remained dependent on man. The suffering women used to remain in the house of the perpetrator of violence due to the fear of dispossession from property and they had no other place to go. They could also be deprived from the custody of children. It was in such circumstances that a separate legislation to protect women from domestic violence was considered and the



Parliament of India passed the Protection of Women From Domestic Violence Act, 2005. Article 15 (3), which permits the Legislature to make special laws for the welfare of women and children. Moreover, it was obligatory for Indian Govt. to pass it under International conventions like Elimination of All forms of Discrimination against Women (CEDAW), 1993 to which India is a signatory. Though this Act is a civil law but criminal law enters into it under Section 31 if the respondent does not comply with the orders passed by the Magistrate and imprisonment of one year along with fine of Rs.20,000/-can be imposed on him. This Act has provided concept of equality to women and the law has entered into private domain and the human rights of women stand recognized in the private sphere. The Act provides Protection Officers, Service Providers to assist the woman in getting various reliefs in the eventuality of domestic violence. Physical, verbal, social, economic, sexual and dowry related violence is punishable under this Act. If the respondent fails to provide necessary facilities to the aggrieved woman, he can be sent behind the bars and fined upto Rs. 20,000/-. The police is also responsible to inform the victim of domestic violence about facilities available under this Act.³

BRIEF FACTORS RESPONSIBLE FOR DOMESTIC VIOLENCE.

- (i). Drug-addiction, use of alcohol, illicit relations and son preference are main reasons responsible for domestic violence against Indian women.
- (ii) Not cooking food in time, neglecting the cleanliness of the home, children and care of elderly persons by the wife.
- (iii) Excessive use of Mobile phone and interference in the independent life of daughter by mother and her close relatives.
- (iv) Doubting character of the wife by the husband and suspecting illicit relations
- (v) Lack of trust, toleration, faithfulness and moral values.
- (vi) Mentally disturbed husbands and in-laws and attempt to rape by close relatives.
- (vii) Distrust between the daughter-in-law and mother-in-law.
- (viii) Arguments with the husband or in-laws over money matters, children.
- (ix) Going outside the home without taking permission of the husband or in-laws.
- (x) Bad influence of T.V., Internet and Western Culture



Predicament of Indian Women

The Constitution of India provides equal rights to women but in real life they are not enjoying equal rights with men. Patriarchal mind-set of the men is responsible for it. Although the woman is full owner of the property under Hindu Succession Act, 1956 but if she demands property rights, her brothers and sisters-in-law start quarreling with her. She is not safe anywhere not even in the womb of her mother due to foeticide, infanticide, dowry deaths, rapes, gang rapes, honor killing, Sati and domestic violence. Still the women are being burnt and it is said that she has died due to an accident. Discrimination is done with her as 33% women reservation bill has not been passed by the Parliament of India. Women have not been given equal rights by some men and crimes against them have reached alarming proportions. At least 10 cases related to women's harassment or violence are registered in police stations throughout the country.⁴ Indian society is still largely male-dominated, and most women do not have real freedom. A cultural struggle is needed to sweep the feudal and medieval mentality from which such a situation stems⁵

Salient Inadequacies in the Protection of Women from Domestic Violence Act, 2005

It is submitted that violence can be inflicted on any member of family, whatever the age, gender or relationship. It can be old, handicapped or dependent relatives of both sexes of any age, a step child or step-mother, or unmarried daughter, widowed married or divorced daughter. This Act should include all the persons irrespective of gender who are suffering from domestic violence. No doubt, aggrieved woman facing domestic violence requires to be safeguarded but there is no cogent and logical reason to give recognition to immoral as well as illegitimate relationships.⁶ Though the live-in relationship sometimes may amount to an offence such as bigamy or adultery and it may not be justified to grant legal recognition it should be provided in the Act that the female partner in a live-in relationship will be entitled to remedies under this Act only if such relationship does not amount to an offence.⁷ Sufficient budgetary provisions have not been made by the Central and State Governments for proper functioning of the Act.⁸ Counseling is one of the effective remedies which should be recommended than the other forced remedies prescribed by the Act but no Counselors have been appointed under Section 14 of the Act.⁹ There should be provision of filing complaint against the persons of 12 years like I.P.C. and not 18 years as provided in the existing Act.. Any person lodging complaint on behalf of the aggrieved wife is vague.. This Act



provides temporary rights. Permanent rights like custody, marriage, divorce and property rights are to be obtained in Civil Courts or under other existing laws. And for obtaining these rights women have to run in different Courts. Loopholes are left by the police and doctors during investigation. The provision for payment of maintenance, cost of accommodation and residence rights to the wife clashes with the rights of live-in-partner. Violence against young widows has also been on a rise in India. They are cursed for their husband's death and are deprived of proper food and clothing. They are not allowed or encouraged for remarriage in most of the houses. Old women are prone to a greater risk. There are no safety valves in the Act to prevent its misuse. It may prove disastrous not only for an individual in case the complainant has 'malafide' intentions. The Act completely ignores violence by the daughter-in-law against the in-laws. The object and spirit behind the law is noble but the enforcement of the Act appears to be doubtful in the absence of adequate legal machinery.¹⁰ Due to the alarming rate of filing of cases. Criminal Courts find it difficult to attend with other cases as there is a time limit imposed by the Domestic Violence Act. The Govt. has to seriously consider in setting up special or new Courts for the remedial measures under Domestic Violence Act.. Ordinary criminal Courts are in an explosive state of pendency with other cases thereby other litigants who seek justice will be put into trouble by the flux of this new litigation.¹¹ Section 12 (1) of the Act says that an aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more relief under the Act. Sub-Section 4 of Section 12 says that the Magistrate shall fix the first date of hearing which shall not be ordinarily beyond three days from the date of receipt of the application by the Court. The mode of service of notice is prescribed in Section 13 which says that it shall be served by protection officer by such means. This causes a lot of difficulty. First of all, the period of three days prescribed for hearing within which the notice is to be served on the respondent is a never achievable proposition. Supposing that the respondent is a person from far away place, then how the protection officer could get the notice served on the respondent within three days? Again, the protection officers would find it difficult to give the notice on the respondent as they are not provided with any means or resources for service of notice. The protection officer appointed under the Act looks like a person to render voluntary public service as it seems that he has got a duty to find out domestic



violence in his area and report it to Court. Sole testimony of the victim is dangerous.¹² The Protection Officer has a tremendous amount of responsibility in preventing violence against women in a matrimonial home or in a live-in relationship. To realize the objectives of the Act, a Protection Officer must be gender sensitive and be committed to saving women from violence¹³.

Role of Police

Although the Act introduces the institutions of the protection officers and service providers, these are intended to supplement, rather than supplement existing mechanisms. The police, in particular, continue to play a pivotal role. There has been some confusion regarding the role of the police, especially in those jurisdictions in which protection officers have not been appointed, or where the number of existing protection is not sufficient. Many remote and rural areas continue to have police as the principal, or even only resource for domestic violence victims seeking recourse to law. The absence of protection officer may raise concerns over procedural matters like service of notice, enquiries to be conducted under the Act, enforcement of orders, etc. If protection officers are not available, it is better to authorize and train local police to perform the functions than to let those functions go unattended. In addition, overworked protection officers may sometimes need the police to assist them. The Court should encourage protection officers and police to work hand-in-hand. Although the Act does not explicitly authorize the police to record a Domestic Incident Report and forward it promptly to a Magistrate, the Court could adopt its own rules permitting the police to do so. In general, the Court should not hesitate to empower the police with the orderly administration of the Act whenever doing so is helpful, provided that nothing so does not unnecessarily overburden the police. Section 36 of the PWDVA clearly states that the provision of the Act shall be in addition to the provisions of any existing law. Therefore, the police continue to exercise their powers and fulfill duties under the existing criminal law regime. In fact, section 5 of the Act further provides that an aggrieved person shall have the right to file a complaint under section 498-A (cruelty by husband or relatives of the husband), simultaneously with any complaint filed under PWDVA.¹⁵ Whether the case is to be taken under the summary trial case of calendar case, maintenance case, and charges are to be framed or not is not mentioned in the Act? There is only one penal provision in the Act under Section 31 which is applied if the respondent



does not obey the order of the Court.. If the Court feels from the Domestic Incident Report that the offence under Section 498-A of IPC is also attracted, whether the Court can take cognizance of the offence under Section 498-A of IPC along with the offence under the Domestic Violence Act or not is also not clear. This Act is also silent about recording of evidence and how the case is to be proved because in this Act the police will not investigate the case, the protection officer or Service provider will file domestic incident report. So recording of Statements under Section 1961 of Criminal Procedure Code, 1973 or under what basis they came to conclusion that that the respondent has committed offence mentioned in the domestic violence Act are all to be seen at the time of disposal of the cases. If the evidence is recorded there will be no opportunity for the respondent to go through the previous statements of the complainant and the other persons who supported the case of prosecution and there is no possibility to test the veracity of the witnesses, to come to conclusion that all the allegations in the complaint are true or genuine. When the orders are un-enforceable or un-executable there is no meaning passing of the orders. For example if the protection order was granted by the Court to the victim how it has to be enforced was not found in the Act. There is no use of passing of the orders by the Court and if the respondent fails to pay the amounts and even he went to the prison and undergone the sentence passed by the Court still whether the petitioner is able to recover the amount if so under what provision of law and how it has to be recovered is also not clear in the provisions of the act. As per the Domestic Violence Act the male members are only to be shown as respondent/accused which is also not correct and proper because in any family the part played by woman will be more than a man when harassing a woman. It is settled law that any penal law is only prospective but not retrospective. The wife and husband are living separately for the last 10 years but the wife filed complaint against her husband under section 498-A of IPC and Section 125 of Cr.PC,1973 for the maintenance and partition etc.¹⁶ It appears that the framers of the Act completely lost their way and ended with drafting mere a penal law dealing with offenders than a law dealing with the social problems of our society¹⁷. In the proviso to section 2 (q) the present definition of 'respondent' excludes all other female relations from committing domestic violence so the definition of the term 'respondent' needs to be amended. as *"respondent means any adult male person, who is or has been in a domestic relationship, commits an act of 'Domestic*



Violence” against the aggrieved person either himself or in complicity with another person”.

An American jurist Prof.

Wechsler says that if penal law is weak or ineffective, basic human rights are in jeopardy. If it is harsh or arbitrary in its impact, it works gross injustice to those caught within its coil.¹⁸

Where the criminal law provision dealing with dowry focus on incarceration, the Domestic Violence Act gives women an opportunity to keep the perpetrator at a distance, but not in jail. Women can no longer be evicted from their homes by the abuser, and can seek an order to reside in the same house or be allotted a part of it for her personal use.¹⁹ The Legislature while passing the Act did not notice that having sexual intercourse with any person other than his or her spouse is a ground for Divorce u/s 13 (1) (a) of the Hindu Marriage act, 1955. Even Sections 24 and 25 of the Hindu Marriage Act, 1955 which provide for the maintenance pendent elite and permanent alimony respectively do not recognize any relationship except that of legally husband and wife. Section 125 Cr.P.C. which provides for the grant of maintenance to wife, children, father and mother in a broader perspective, does not recognize persons having illegitimate relationships, entitled to claim maintenance except an illegitimate child. Section 125 (4) specifically prohibits wife living in adultery from claiming any maintenance from the husband under section 125 (1), Cr. P.C. It is a matter of irony that while on the one hand a married woman indulging in adultery is not entitled to claim maintenance from the person with whom she had or is having illegitimate relationship. The legislature did not notice adultery is also an offence u/s 497 IPC. So, therefore, while on one hand, a man will be prosecuted for adultery, at the same time he will be compelled to pay maintenance as well as residency rights to a woman whom is alleged maintained illegitimate relationship. This will destroy the matrimonial relationship thereby disturbing the social fabric of the society. Another strangeness of the Act is term ‘any other person’. It will be very strange that a person, who is stranger to the aggrieved person or even if known to her but has not himself or herself witnessed the domestic violence being committed on the “aggrieved person” files a complaint on her behalf.²⁰ Live-in-relationship also affects relationships with family members because such a relationships is treated as stigma on society, a morally wrong act.²¹



Impact of the Domestic Violence Act, 2005

The Parliament of India has enacted beneficent piece of legislation which provides protection to women in the four walls of their home. It ensures gender justice to women who were suffering from domestic violence since centuries. The law has entered into private domain and the victims of domestic violence has a potent weapon to fight against domestic violence. This Act ensures safety of women in the eventuality of domestic violence against them. The definition of the domestic violence is comprehensive one and it covers physical, verbal, social, mental and dowry harassment violence. Not only actual domestic violence but also threat of future violence is also covered under this Act. Indian women feel empowered with the enactment of this useful legislation. This Act ensures empowerment of women. This Act challenges domestic slavery and aggrieved woman is entitled to shelter homes, medical facilities, protection orders and compensation orders. Even the perpetrator of domestic violence can be restrained from communicating with the victim. Complaint of domestic violence can be lodged by any relative of the victim. Even police is responsible under Section 5 of this Act for guiding the victim about the facilities available under this Act. This act also contains punishment provision under Section 31. If the respondent fails to comply with the orders passed by the Court, he can be imprisoned for a period of one year and fined upto Rs. 20,000/-. Even during imprisonment, he may be obliged to provide shelter and food to the dependent woman. Persons may be prevented from entering into certain limits of area where the victim resides so that the safety of victim can be effectively ensured. Coupled with this, there are also provisions in this Act to make the investigating agencies trained in the gender sensitization programmes. The Act has definitely brought some change in the attitude of men towards women. Now women have started thinking themselves equal with men thought to some extent but still there is need to change the mind-set of persons towards women. But there are certain inadequacies in this Act on account of which women are not getting speedy justice.

CONCLUSIONS & SUGGESTIONS

The Domestic Violence Acts of U.K., Sri Lanka, Africa and Malaysia are gender-neutral but Indian Domestic Violence Act is gender-based. It should be made gender-neutral. Effective mechanism for fighting gender based violence does not exist. The Domestic Violence Act should be replaced by a more benign, sensible, gender-neutral legislation that ensures



women and men their rightful, honorable place within and outside the home, in order to promote domestic harmony, reduce litigations and prevent legal terrorism and extortion through misuse of the law.²²This Act which is based on a foreign model, can be made comprehensive according to Indian conditions by incorporating various scattered laws under this one Act. Thus, a single window legislation can prove more beneficial for women to fight violence not only at home but also outside home against all types of aggravated criminal violence, provided it is implemented in letter and spirit and frequent adjournments are curtailed by the Courts and lawyers concerned. It is submitted that divorce rate in first marriage is 66%, second marriages 75%, third marriages 90% Hollywood marriages 50% of people and under age 28 in the first year 66%²³. Marriage rate in America is less than 50% So, live-in relationship concept should be discouraged to save Indian couples from the divorces which will destroy the Indian family structure. There is hue and cry in our country regarding misuse of Dowry Prohibition act, 1961, Section 498-A of Indian Penal Code and the Protection of Women From Domestic Violence Act, 2005. The Hon'ble Supreme Court of India has recently cautioned the police that no person should be arrested without proper investigation. There should be provision of punishment in this Act for those persons who may indulge in vexatious, frivolous and misuse of process of law. Only qualified, trained and law educated persons should be appointed as Protection Officers. who are able to understand the complexities of Court procedures. As enshrined in the Act itself, preference should be given to Women Protection Officers. Protection Officers should be appointed according to the proportion of the population. Now Protection Officers are available at district level but the Protection Officers should be appointed at Tehsil, Block and village level also. Live-in relationship concept is not compatible to Indian culture, hence it should be discouraged to save Indian families from the family breakdown. Necessary infrastructure for proper functioning of the Act must be provided. Protection Officer must be given some authority to carry out his duties without any fear.

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