

LEGAL PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE IN INDIA- A CRITICAL ANALYSIS

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1. Introduction

"Give her food when you take food, clothe her when you clothe yourself, do not revile her face, and do not beat her": Prophet Muhammad (peace and blessings be upon him)

An act of domestic violence is a violation to human rights. It is generally women who are the victims of domestic violence, not men. The World Health Organisation (WHO) has estimated that one of five women experience domestic violence throughout their lifetime. This is enough for the disturbance of the society and to increase pendency of cases before the courts. Now domestic violence is not a private issue; its prevention and control is the prime responsibility of the state. Domestic violence against wives is the central concern of this paper. This paper deals with legal measures to curb domestic violence against women in India. There are several laws enacted in the past to address the issue and a comprehensive law i.e. the Protection of Women from Domestic Violence Act, 2005 is added to the list. Yet, a review of the performance of the old and new laws on domestic violence proves that legal measures to curb domestic violence have serious limitations. They could neither guarantee any reduction in the extent of such violence nor expedite the justice delivery system in India.

Incidents of violence against women are on the rise outside the home and inside the home. They feel unsafe everywhere; on ways, workplace and even within the four walls of the home. This is a matter of gross violation of the human rights of women in the country. The rampant domestic violence against women in India is a harsh reality and attracts the policymakers to think about this horrible situation. According to the data released by the National Crime Record Bureau (NCRB) for 2018 Domestic violence against women is the top gender-related crime in the country. According to the National Family Health Survey, released by the Union Ministry of Health, every third woman, since the age of 15, has faced domestic violence in any form in the country¹. Women in India, surprisingly, are supportive of domestic violence. A survey reveals women in India between the ages of 40 to 49 were most supportive of domestic violence, with 54.8% in agreement. The percentage of justifying abuse is marginally lesser among younger women. 47.7% of girls between the age of 15 and

¹ (NHFS-4) released by the Union Ministry of Health

19 agreed with violence by husbands. This marginal difference in attitudes of women towards domestic violence is also visible in urban and rural areas. While 54.4% of rural women surveyed across the country agreed with domestic abuse, only 46.8% of urban women supported such violence.²

Since independence, more than fifty laws have been framed in India which have a direct or indirect bearing on the life of women. The severity of the subject draws the attention of the state to enact adequate legislation that can ensure women's protection against the domestic violence in India. The steady rise in cases of cruelty against women and dowry deaths in India had compelled the government to enact the laws like Dowry Prohibition Act, 1961 Protection of Women from Domestic Violence Act, 2005 and some other amendments in colonial period laws which have a direct or indirect relation with the life of women.

2. The Constitutional safeguards to protect women from violence

The Constitution of India has guaranteed all basic rights in favour of both the man and woman equally. The fundamental rights guaranteed under Articles 14, 15 and 21 are the most important safeguards to protect human. Article 21 confers the right to life and liberty for both man and woman. Article 21 provides, no person shall be deprived of his life and personal liberty except according to the procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights among others-

i. The right to be free of violence: In case of *Francis Coralie Mullin v. Union Territory Delhi, Administrator*, the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the violation of the right to life and personal liberty as enshrined under Article 21.

ii. The right to dignity: In case of *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors*³, the Supreme Court emphasised the fact that the right to life included in its ambit the right to live with dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to domestic violence and any kind of emotional abuse as a form of domestic violence against women. It would also include the right against being insulted.

² <https://www.news18.com/news/india/the-elephant-in-the-room-every-third-woman-in-india-faces-domestic-violence-1654193.html> visited on 28/02/2020

³ (1997) 11 SCC 123

iii. The right to shelter: In case of *Chameli Singh vs. State of U.P.*⁴, it was held that the right to life would include the right to shelter. Eviction of wife from the dwelling house is the violation of her right to life enshrined under Article 21. Section 6 and 17 of the Domestic Violence Act reinforce this right. Under Sec.6, the Protection Officer has to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under Sec.17, the party's right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

iv. Right to equality: Women can not be treated unequally. Article 14 contains the equal protection clause, which affirms equality before the law and the equal protection of the laws. Article 14 prohibits class legislation but permits classification for legislative purposes. A law does not become unconstitutional simply because it applies to one set of persons and not another. Where a law effects a classification and is challenged as being violative of this Article, the law may be declared valid if it satisfies the following two conditions:

1. The classification must be based on some intelligible differentia,
2. There must be a rational nexus between this differentia and the object sought to be achieved by the law.

As a result of the ruling in cases of *E.P. Royappa v. State of Tamil Nadu & Anr*⁵, any arbitrary law is considered violative of Article 14 as well. This provision is significant in putting a stop to arbitrariness in the exercise of state power and also in ensuring that no citizen is subjected to any discrimination. At the same time, it preserves the power of the state to legislate for a specific category of people such as women, children and any other class of people.

The Domestic Violence Act protects the rights of women guaranteed under Articles 14 and 15 of the Constitution. Domestic violence is one among several factors that hinder women in their progress, and this Act seeks to protect them from this evil. It indeed effects a classification between women and men, protecting only women from domestic violence, but this classification is founded on an intelligible differential, namely, gender, and also has a rational nexus with the object of the Act. Further, the Act is far from arbitrary, in that it is a well-thought and necessary attempt to curtail domestic violence and eventually defeat it. It is to be remembered that it is generally women who are the victims of domestic violence, and not men. At this stage, it is essential to keep in mind Article 15(3) which empowers the state

⁴ AIR 1996 SC 1051

⁵ AIR 1974 SC 555

legislate for the benefit of women and children, thus creating an exception in their favour against the operation of Article 15(1) which disallows discrimination on the grounds of religion, caste, sex, race, etc.

3. Protection from cruelty under the India Penal Code, 1860

Before the passing of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) women could seek criminal sanctions for domestic violence under Section 498-A IPC (deals with cruelty) or Section 304-B IPC (deals with dowry death). After Independence, the steady rise in dowry deaths in India had compelled the government to enact the Dowry Prohibition law which was enacted in the form of the Dowry Prohibition Act in 1961 to book a person for demanding dowry. Let us begin, in brief, with an analysis of the performance of these old laws. It may be noted at the outset that despite the long presence of legal measures to prevent dowry and domestic violence, the number of such crimes is escalating in India.

The number of dowry deaths has increased from 6,208 in 2003 to 8,172 in 2008 and 91,202 in 2012. Only in one year in Bengaluru, the number of dowry deaths saw a jump from 48 in 2018 to 52 in 2019⁶.

Similarly, dowry prohibition cases have gone up from 2,684 in 2003 to 5,555 in 2008. In 2019 only in one year, the number of cases filed under the Dowry Prohibition Act saw a rise from 690 in 2018 to 739.⁷

The cases of cruelty by husbands and other relatives have increased dramatically from 50,703 in 2003 to 81,344 in 2008⁸. According to the National Crime Records Bureau, in 2011, there were greater than 228,650 reported incidents of crime against women, while in 2015, there were over 300,000 reported incidents. These are official statistics and no one knows how many cases go unreported. It appears that the mere passing of acts may fail to guarantee any reduction in the number of violence. Similarly, the existence of any law cannot guarantee registration of a sufficient number of cases. For example, cases registered under the Dowry Prohibition Act represent only a fraction although dowry is a common cultural practice in India.

⁶ Pareeja Prasad, Express News 17 January, 2020

⁷ *Ibid*

⁸ GOI 2003, 2008

3. The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act was passed by the Parliament with recourse to Article 253 of the Constitution. Article 253 confers on the Parliament the power to make laws in pursuance of international treaties and conventions. The Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. Before the enactment of the Act, the term 'Domestic violence' was defined in a narrower sense to refer to only cruelty and harassment of wife under Sec. 498-A IPC and wife's murder under Sec. 304-B of the IPC. The continuous struggle by women's groups has changed the situation and ultimately Indian lawmakers have realized that domestic violence means not only violence related to dowry but several other forms of violence against women. The Act is a comprehensive law and it addresses all issues related to women in the domestic sphere. Interestingly, as per the judgment of the Bombay High Court delivered on 18th July 2009 provisions of the new Act will apply retrospectively. Hence, women can seek protection under the PWDVA even though they have faced violence much before it came into force in October 2006. The Protection of Women from Domestic Violence Act, 2005 provides a definition of domestic violence that is comprehensive and includes all forms of physical, emotional, verbal, sexual, and economic violence, and covers both actual acts of such violence as well as threats of violence. Also, the PWDVA, 2005 recognizes marital rape and covers harassment in the form of unlawful dowry demands as a form of violence.

A praiseworthy aspect of the Act is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognised by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

The Act has classified 'domestic violence' into four categories, namely- physical, sexual, verbal & emotional, and economic violence, and attempted to define such violence comprehensively. The act has laid down stringent rules to prosecute a man for committing any type of violence against women at home. Even though this new law is framed to protect women from domestic violence committed by adult male 'respondents', an aggrieved wife may also 'file a complaint against relatives' including female relatives of the husband. However, 'no order under clause (b) shall be passed against any women and remove her from the shared household. A victim also has the right to simultaneously file her complaint under section 498-A (IPC). For any 'breach of a protection order' under section 18 of the Act, a

man can be jailed for 1 year, or fined up to Rs. 20,000. Under section 31 and 32 of the Act, such an offence is cognizable and non-bailable. The PWDVA goes beyond the 498 (A) of the IPC and extends protection to even female live-in partners. The law empowers the court to stop any further acts of domestic violence on the woman or her children. It also prescribes for giving possession of *stridhan* (property of the wife given by her parent), jewellery, clothes etc., to a woman and stops all transactions of any joint bank accounts/lockers. Further, the Act provides for the right of a woman to live in her matrimonial or shared household peacefully, her right to property in which she is residing, and stops any disposing of the house without the permission of the court. In other words, an aggrieved wife cannot be harassed for lodging a case against her husband or other members of the house. The law also makes a provision for positive entitlements through an interim monetary relief order related to-

- (a) Maintenance for the victim or her children,
- (b) Compensation for physical injury including medical expenses,
- (c) Compensation for mental torture/emotional distress,
- (d) Compensation for loss of earning,
- (e) Compensation for loss due to destruction, damage, removal of any property from her possession or control.

Thus, the Act for the first time goes beyond the framework of mere 'punishment' to the offenders and tries rather protecting women from violence at home.

The Act also provides for the creation of an official cadre called Protection Officers (POs) and recognition of NGOs as Service Providers (SPs) which are two other salient features of this new law. The POs and the SPs will also provide free legal, medical, shelter and other assistance to the aggrieved woman. The POs can be penalized for failing to discharge his/her duty with the permission of the state government. Besides, the law takes into consideration the issues like speedy justice and easy accessibility to justice. First, the cases under this act will be adjudicated under the magistrate's court, which is located at the sub-district level. Second, there is an emphasis on speedy disposal of cases. The first court hearing has to be fixed within 3 days of the date of receipt of an application, and within 6 days of the first hearing, it is to be disposed of. Besides, the Act makes provision that the sole testimony of the aggrieved person may be sufficient for the court to conclude.

Criticism of the PWDVA, 2005

Let us also note the non-feminist critiques of the Act to assess their validity and reliability in real life. Firstly, the Act is argued to be highly inclined in favour of women and this has raised fear about its likely misuse to harass the male relatives. There is apprehension for a rise in the rate of divorce if women come forward to register cases under this act. The number of fake cases of domestic violence is increasing. Pandurang Katti and Anil Goebekk of the Save Indian Family have remarked (Sharma 2006): In fact, we fear that the institute of marriage may end, as it would be viewed with suspicion if the interests of very members are not protected. Preventive measures can be taken by husbands to protect their interests in the face of abuse of the new Act. Perhaps it would be advisable for the men and their family members to read the Act properly understand it fully before venturing into any relationship leading to marriage.

Conclusion Remark and Suggestions

Besides the Constitutional safeguards to protect women from domestic violence, the Protection of Women from Domestic Violence Act, 2005 certainly has many positive aspects. It has provided the victims with an easy scope to file a case to win their case at lower courts and send a message to the community. Yet, it appears that the Act has not been able to check domestic violence per se or provide immediate protection to the victims. Lack of sensitivity on the part of the administration to understand the law, implement court orders and punish the offenders reduces this Act to the status of any common law in the country. Also, its popularity is restricted to certain urban victims who have already filed cases under the old law and is seeking limited types of protection or compensation. Moreover, the types of cases filed leave out many options available to the victims of domestic violence within the joint family. This is because women are conditioned to tolerate, allow and even rationalize such violence in India. For the Act to become popular and widely useful, we need to initiate actions to change the public mindset including the views and actions of stakeholders like NGOs, police and judiciary.

The prevailing infrastructure for the justice-delivery system should also be upgraded to accommodate local and specific needs of the victims. The law needs revision to- (a) clearly explain many technical aspects and particularly the option of punishment for non-execution of court orders, (b) suggest steps for speedy disposal of execution cases, (c) fix responsibilities of police, and (d) clear guidelines including financial responsibility of the administration. If the lawmakers are serious about protecting the rights of women in the domestic sphere, they should create appropriate institutions and mechanisms to realize the goal. We should keep in mind that cases of domestic violence inflicted upon women are systematic and structural and some of them are the result of doubt over fidelity. Hence, the problem cannot be tackled without addressing the basic issues of domestic life.