

Relevance and Implementation of Domestic Violence Act in India—A Critical Analysis

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Abstract

The basic fact attached to the domestic violence is that it happens within the four walls of a family. It not only includes physical violence but also many other abusive tortures which ultimately provide relief to the ego, dominance, and power to male. It is only a way to retain dominance in a relationship and make the victim feel weak. Although the crime is committed in a limited area, its impact can be felt throughout a large society. It is not only the victim who suffers this abuse and torture; the mute, innocent spectators like kids are also the victims. Such a family environment causes irreparable loss to the minds of the young children. The scariest part is that this kind of behavior leads to the deaths of many people. After going to the depths of its reason, one thing which mainly comes across is that, in our society, a man is a provider. Therefore, there is sole dependence on him for monetary and other facilities, leading him to become more dominant. The other reason, which is highly disheartening, is that domestic violence is not seen as a problem in society. A large number of people still see it as the natural wear and tear of a relationship called marriage. If we do not see the victim as a victim, then you can imagine the situation and how much effort is being made to relieve them from this kind of hell. Other social evils like dowry, female foeticide, etc. also aid in the rise of these kinds of gruesome atrocities against women. It is not the women only but in same proportion children also are the targets of domestic violence. In our society, the position and status of women and children is so vulnerable that they many a times even not imagine themselves to raise voice against these kinds of tortures. Most importantly, this paper lays stress on the good side as well as the bad side of the Domestic Violence Act of 2005. The critical analysis of the act is significant as it will help sort out the problems relating to such a gruesome crime.

Keywords: Abuse, lacuna, society, targets, violence

INTRODUCTION

“Sita was not born but found, and after marriage, exile, agnipariksha, and abandonment; that was her lot. Yet there is not a single temple to Sita, and Rama is adored as the ideal man—Maryada Purushottama—Adarsha Purusha. Women get nothing being Sitas. Let us look for Durga and Kali in them.”

—Justice Rajendra Babu (Allahabad High Court)

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Received Date: March 26, 2022
Accepted Date: April 12, 2022
Published Date: August 20, 2022

Citation: Preeti Bhardwaj. Relevance and Implementation of Domestic Violence Act in India—A Critical Analysis. Journal of Family & Adoption Law. 2022; 5(1): 11–15p.

The inseparable fact of women's life is violence and harassment. She faces violence of different kinds nearly everywhere, be it in the home, at the workplace, or anywhere else; be it from strangers, intimate partners; be it in public, or in the private domain. This shows the persistence of violence against women in every section of society [1]. In our legal system, it has been a significant lacuna for a long time that we do not have any system to accommodate cases of domestic violence against women. It has been challenging for a victim of

domestic violence to get legal redress as our existing laws are insufficient and inadequate to provide legal assistance and protection to the victims who are suffering from violence in the private domain [2]. But now the Domestic Violence Act lays down provisions to eliminate the lacuna and eradicate the problem of domestic violence. The very objective of elimination and eradication of the evil is clearly stated in the Preamble of the Domestic Violence Act. It states that the main stress will be laid on providing the relief to victims on an immediate basis, and besides that, reasonable effort will be made for the rehabilitation of the aggrieved. The provision of providing compensation has also got place in its objectives. In other words, the main aim of this act is to provide protection to the women who are the victims of domestic violence. Under the act, not only rehabilitation but also compensation will be provided to them.

HISTORICAL PERSPECTIVE

Enactment of Domestic Violence Act specifically provides assistance to the females who are persistent torture bearers behind the walls. Although, there are certain sections under Indian Penal Code of 1862, namely Section 304B and 498A, but they were not sufficient in eliminating the exploitation and harassment faced by women. If we take out the history, then it would be pertinent to note that generally Indian law concerning domestic violence has focused mainly on the issue of dowry [3], and many a times even police refused to register cases under the provisions unless some form of dowry demand was involved [4]. Eventually, the Bill was passed in the year 2005, and its commencement was from year 2006.

SIGNIFICANT FEATURES

A prominent step was taken under the act by putting stress on understanding the nature of domestic violence. In the case of *Dr. Vinod Parashar v. State of U.P.* [5], it was held that the proceedings are essentially civil in nature under this act and the only purpose is to cut down the delay in procedures, the power has been laid with Judicial Magistrate for the enforcement of right under the provision of Cr.PC. This act has five chapters and 37 sections. The significant first feature of the act is the defining term “domestic violence” as it contains all kinds of abuse which can do any harm to or endanger the life, safety, body of aggrieved person. The second prominent feature is the way of defining the term “aggrieved” which means not only the legally wedded wife but also any woman who has been in sexual partnership of the male, no matter what her legal status is. The woman whether she is a daughter, widowed relative, mother, or sister living in the same house and related to the respondent comes under the definition in the act. Another important chapter of the act is Chapter 4. Under Section 12, the Magistrate is empowered to adjudicate the matter relating to the domestic violence. Section 17 provides wide powers to the Magistrate as the right to residence in shared household, and to pass interim orders for the protection of women. As Magistrate is having discretionary powers under the act, and therefore, their role becomes very much significant and thus judiciary has become prominent protector of rights of women.

The other important feature which signifies the brilliance of the act is that in the act, the magistrate is allowed to protect the woman under Section 18 and not only from the acts of violence but also from those acts that are likely to happen in the future. It also lays emphasis on the protection of possessions of aggrieved person so that respondent does not put any kind of disturbance to her possessions, etc. Furthermore, Section 22 lays down the procedure in which magistrate can make respondent to pay compensation and damages to the victim for the acts of violence done against her, whether it be a mental torture or any other kind of abuse. The amount of compensation under the act is imprisonment up to one year and or fine up to ₹ 20,000.

Causes of Domestic Violence

Generally, women and children are the easiest and softest targets of domestic violence. The act of domestic violence is so grievous that it leads to the deaths of many people. If we look into the major causes of this evil, then illiteracy and a lack of economic independence are the two factors which

come out as prominent ones. The other significant reason of increasing violence against females behind the walls is our male dominated society which do not find anything wrong in that man who acts violently against his spouse. Furthermore, the major reason of violence against newlywed brides is the demand of dowry. Whenever parents of the daughter are not able to fulfill the greed of in-laws of their daughter, their daughter becomes the subject of violence. It is so disturbing that not only the woman but also the small female child becomes victim of this gruesome act. Undoubtedly, the act of violence against female child is heinous but it becomes more severe when it is done by child's own father, brother, and other male member of her own family. Domestic violence against children can be both direct or indirect way. Indirect abuse can be done against children because of their parents' violence to each other which can be called as inter-parental violence. Although, children are not directly subject to violence, but they cannot escape from the bad effect of it in the form of emotional abuse. Though in the parent's disputes, children have the passive role to play still it cannot be denied that it hurts them as severely as to the direct victim [6].

This gives a picture of the downfall of morality in Indian society. The hypocrisy of society is again a main reason behind the expansion of this kind of evil, as society always tries to conceal the matter of such violence which is done in the domestic area in the name of "family matters". It also tries to persuade the victim to keep her mouth shut as her expression of grief will bring embarrassment to family. This double standard society is good with the silent sufferers and always discourage outspoken victim. Our cultural ideas also put ghee in the fire by calling it "Sanskar" of a woman to endure every wrong act done by her husband.

A Critical and Analytical Overview of the Act

This act recognizes the significance of all the basic relief which a woman wants like the need of violence-free space and dignity. But the relief provided under the act is primarily temporary in nature. Despite having so many benefits for women, its confusing provisions opened the way for a great deal of controversy as this act can be used by women to harass men. There are chances that this act can be a nightmare to those men who has left their fate on the wishes of women. The reasons behind such anticipations are as follows:

1. The act has created a level of intolerance and impatience amongst married women related to even the minor issues that happened in marriage, which attacks the basic foundation of marriage.
2. Secondly, this act has empowered woman to harass man at her wish as this act is not only the actual act of violence but also covers all anticipated violent acts irrespective of the fact that they can be something very trivial in nature.
3. Another pointed lacuna is that this act almost gives legal sanction to any such kind of relationship, which generally does not have any acceptability in society.
4. The act only includes females to whom they are giving protection and male children totally get ignored and no provision is there to protect them from any kind of violence done in the household.
5. Questions also arise about the qualifications of protection officers as majority of them do not have social work or legal background.

There are some judgements which signify the attitude of court towards the implementation of the act:

In *Krishna Bhattacharjee v. Sarathi Choudhury* [7], the Supreme Court has held that the 2005 Act is a complete act and it covers not only every kind of violence and abuse, but also have given a wide definition of the terms like aggrieved and the concept of domestic violence has been made under the light of Indian Constitution. This act guarantees every such right to women which is essential for basic human life and dignity. The Preamble of the act clearly states the objective of protection of victims of domestic violence.

The Supreme Court in *S.R. Batra v. Taruna Batra* [8] has held that a wife can take the relief of separate accommodation only against her husband but cannot sought it from the other relatives of husband. This decision was reconsidered and lead to a different view which was given by the Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja* [9], wherein it was held that it is the right of women to even get separate accommodation from the other members of the family and also issued directions to the trial court instead of the family court to proceed further and decide the same. The reason behind this judgement shows that the court has taken the basic aim of the act in mind which is to seek protection for women against violence. As the remedies laid out under the 2005 Act are limited so such an interpretation is need of the hour.

In *Satish Chander Ahuja case* [10], the Supreme Court held that the scope of the concept of matrimonial home is not limited but wider enough. The high court set aside the decree of the trial court and remanded for fresh adjudication. In the case of *Amarendu Jyoti v. State of Chhattisgarh* [11], the Supreme Court has laid down various directions and guidelines on whose basis, the amount of compensation can be determined especially in matrimonial cases. In *M. Palani v. Meenakshi* [12], court held that the duration for the partners to live together is immaterial and not necessary for evaluating the case of maintenance. Court further held if petitioner and respondent lived together, the lady is eligible to claim maintenance as the criteria is to have close relationship with each other.

By viewing all these decisions and judgements, it can be undoubtedly noted that the judiciary is playing the role of protector for the victims of domestic violence in a very enthusiastic way. Although there are still many hindrances in the way of providing justice to the victim but with times, these loopholes are going to be eradicated.

CONCLUSION

The crux of the reason behind enacting the act was to provide necessitated protection against the harassment faced by the females in our country. To eradicate the evil of doing violence against women within the four walls of the domestic area is the prominent purpose behind commencing the act. Many a times, the monetary relief seems not to be sufficient enough for women, the sole aim which aims to be achieved through the aid of this act is to provide equality before law amongst all genders. Male children are, however, excluded from the purview of this act. So, proper consideration should be given to the fact that the benefits of this act should be extended to all male children. There are certainly some obstacles in the way of achieving the objective of the act, like if whole family is being sent to jail after filing of complaint, then it would be quite impossible to even think of reconciliation amongst them. It will definitely lead to irretrievable breakdown of marriage which eventually crushes the motive to provide dignity and happiness to women. Therefore, it is really pertinent that these kinds of cases should be dealt by the family courts so that these matters get resolved with sensitivity and the rights of the women can be saved. Moreover, merely enacting legislation would not be sufficient unless all of us are sensitive enough towards the issue. It is the need of the time of those women who have for longest time has been silent sufferers of oppression and harassment to overcome the suppression and injustice.

Domestic violence is one of the heinous crimes which have been going on against women and children in our society. The percentage of victims is approximately 85% out of the total population in nation which itself is scary. As the targets are children and women, so it becomes need of the hour that the strict implementation of the act is needed. The evil effect of the crime will be seen in coming generations too, if a suitable step has not been taken now. It is for sure that if still the issue is taken lightly then the acts of domestic violence will continue to rise amongst all sections of society. Therefore, as society, we all have to work together as a team and put all reasonable efforts in order to eliminate this evil from our society. It is the time to be united and stand together and make more practical and strict laws, which provide help to the abuse victims in coming out of this kind of

horrendous crime. It can be summed up by this quote of Marx, “Equal laws cannot be applied to unequal people.”

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