

A Review of Domestic Violence Act-2005

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Abstract: Today violence against women in India is a common phenomenon. Most of the scholars agree with the fact that domestic violence, also known as domestic abuse, spousal abuse, or intimate partner violence (IPV), can be broadly defined a pattern of abusive behaviors by one or both partners in an intimate relationship such as marriage, dating, family, friends or cohabitation. Domestic violence has many forms including physical aggression (hitting, kicking, biting, shoving, restraining, throwing objects), or threats thereof; sexual abuse; emotional abuse; controlling or domineering; intimidation; stalking; passive/covert abuse and economic deprivation. Domestic violence may or may not constitute a crime, depending on local statutes, severity and duration of specific acts, and other variables. The present research paper makes a review of Domestic Violence Act-2005 in the changing scenario of Indian society.

Keywords: Society, Domestic Violence, Domestic Abuse, DV Act-2005.

Introduction: Various scholars and social activists have defined Domestic Violence as when one adult in a relationship misuses power to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. The violence may involve physical abuse, sexual assault and threats. 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. It is one of the crimes against women which is linked to their advantageous position in the society. Domestic violence refers to violence against women especially in matrimonial homes. Therefore domestic violence can deeply affect the mental as well as physical well-being of the family.

Types of Domestic Violence: The fact is that all forms of domestic abuse have one purpose: to gain and maintain total control over the victim. Abusers use many tactics to exert power over their spouse or partner: dominance, humiliation, isolation, threats, intimidation, denial and blame. Various types of domestic violence may be as under:

- **Emotional Abuse:** This abuse is also called as psychological abuse or mental abuse. It can include humiliating the victim privately or publicly, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, implicitly blackmailing the victim by harming others when the victim expresses independence or happiness, or denying the victim access to money or other basic resources and necessities.
- **Physical Violence:** It is the intentional use of physical force with the potential for causing injury, harm, disability, or death, for example, hitting, shoving, biting, restraint, kicking, or use of a weapon. It often aims at harming the victim with maximum force possible. In some cases it even leads to the death of victim.
- **Sexual Abuse:** This abuse is prevalent in the relationships. The National Coalition against Domestic Violence reports that between one-third and one-half of all battered women are raped by their partners at least once during their relationship. Any situation in which force is used to obtain participation in unwanted, unsafe, or degrading sexual activity constitutes sexual abuse. Forced sex, even by a spouse or intimate partner with whom consensual sex has occurred, is an act of aggression and violence. Furthermore, women whose partners abuse them physically and sexually are at a higher risk of being seriously injured or killed.
- **Stalking:** This is often considered a type of psychological intimidation. The main purpose of the abuser is to make the victim feel a high level of fear.
- **Economic Abuse:** This type of abuse occurs when the abuser controls the victim's financial and other economic resources. Usually, this involves putting the victim on a strict 'allowance', withholding money at will and forcing the victim to beg for the

money until the abuser gives them some money. It is common for the victim to receive less money as the abuse continues. Economic abuse also includes instances like preventing the victim from finishing education or obtaining employment.

Domestic Violence Act 2005: The fact is that Domestic Violence Act, 2005 has been passed with a view to improve the position of women in the domestic front. The Protection of Women from Domestic Violence Act 2005 (DVA) came into force 26 October, 2006. It is widely expected that DVA will go a long way to provide relief to women from domestic violence and enforce their 'right to live'. Primarily DVA is meant to provide protection to the wife or female live-in partner from violence at the hands of husband or male live-in partner or relatives. DVA also extends its protection to women who are sisters, widows or mothers. The Act is an extremely progressive one not only because it recognizes women who are in a live in relationship but also extends protection to other women in the household, including sisters and mothers thus the Act includes relations of consanguinity, marriage, or through relationships in the nature of marriage, adoption, or joint family thus, 'domestic relationships' are not restricted to the marital context alone. In fact the Act has given a new dimension to the word abuse because unlike the primitive notion abuse includes actual abuse or threat of abuse, whether physical, sexual, verbal, economic and harassment by way of dowry demands. In other words we can say that DV Act-2005 is a landmark in the history of women's rights.

Key Provisions in the Act: The new Domestic Violence Act-2005 contains 5 chapters and 37 sections. Key provisions of the Act are as follows:

- The definition of an 'aggrieved' person' is equally wide and covers not just the wife but a woman who is the sexual partner of the male irrespective of whether she is his legal wife or not. The daughter, mother, sister, child (male or female), widowed relative, in fact, any woman residing in the household who is related in some way to the respondent, is also covered by the Act.
- The respondent under the definition given in the Act is "any male, adult person who is, or has been, in a domestic relationship with the aggrieved person" but so that his

mother, sister and other relatives do not go scot free, the case can also be filed against relatives of the husband or male partner.

- The information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by "any person who has reason to believe that" such an act has been or is being committed. Which means that neighbors, social workers, relatives etc. can all take initiative on behalf of the victim.
- This fear of being driven out of the house effectively silenced many women and made them silent sufferers. The court, by this new Act, can now order that she not only reside in the same house but that a part of the house can even be allotted to her for her personal use even if she has no legal claim or share in the property.
- Section-18 of the Act allows the magistrate to protect the woman from acts of violence or even "acts that are likely to take place" in the future and can prohibit the respondent from dispossessing the aggrieved person or in any other manner disturbing her possessions, entering the aggrieved person's place of work or, if the aggrieved person is a child, the school.
- The respondent can also be restrained from attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral, written, electronic or telephonic contact". The respondent can even be prohibited from entering the room/area/house that is allotted to her by the court.
- The Act allows magistrates to impose monetary relief and monthly payments of maintenance. The respondent can also be made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earnings, medical expenses, loss or damage to property and can also cover the maintenance of the victim and her children.
- Section-22 of the Act allows the magistrate to make the respondent pay compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence.

- Section-31 gives a penalty up to one year imprisonment and/or a fine up to Rs. 20,000/- for and offence. The offence is also considered cognizable and non-bailable.
- Section-32 (2) goes even further and says that "under the sole testimony of the aggrieved person, the court may conclude that an offence has been committed by the accused"
- The Act also ensures speedy justice as the court has to start proceedings and have the first hearing within 3 days of the complaint being filed in court and every case must be disposed of within a period of sixty days of the first hearing.
- It makes provisions for the state to provide for Protection Officers and the whole machinery by which to implement the Act.
- The Act enunciates the certain duties of central and state government to make wide publicity & training programs for the police officers.
- The Act provides for the assistance of welfare experts if found necessary by the Magistrate. The Act also provides for the penalty for not discharging duty of Protection Officer.

Challenges in the Present System: There are some loopholes or challenges in the present Act. These are as under:

Un-Clarified Responsibility and Lack of Resources: As per the provisions of the Domestic Violence Act, it is the duty of the Protection Officer to make domestic incident reports (DIR). This needs to be made in prescribed form and application to Magistrate needs to be made. Also, service providers have the power to record the DIR if the aggrieved person desires so. In practice, after two years of implementation, duty of each role still seems ambiguous. In the consultation on Domestic Violence Act and Reproductive Rights (29th-30th Nov.2008), advocates around India expressed their worry about the un-specialized of Protection Officers.

Inadequate Training of Police Officers and Magistrates: Often it has been pointed out that there is a lack of training of police officers and magistrates regarding this Act's requirements. Moreover, the officers dealing need to recognize its purpose. There is also a

lack of sensitivity training towards the issue of domestic violence, an old evil but newly recognized concept in Indian society. This lack of training has led to the re-victimization of women within the justice system, either through police non-response to calls for help, sending women back home to their abusers by branding their victimization as mere domestic disputes, or magistrates allowing for numerous continuances of cases, prolonging the court process and forcing victims to come to court to face their trauma time and again.

Dual System- Family Court and Criminal Court: There are mainly two legal approaches for women who had suffered domestic violence, one is filing for divorce through Family Court, and the other is filing application to Magistrate according to DV Act which might go through Criminal Legal System. The dual system sometimes makes the legal proceeding more complex even tedious for them. Also, the social impression of each approach put some stress on them.

Gender Biased: The Act is heavily biased in the favor of women and states that, the person who commits domestic violence is always a male, and secondly, that on being accused, the onus is on the man to prove his innocence. Therefore there are a lot of chances of the act being misused by unscrupulous women. As a result, many have labelled the PWDVA (Protection of Women from Domestic Violence Act) as a law that propagates inequality. There are, at the moment, five petitions challenging the PWDVA in various high courts which argue that the Act violates the constitutional right to equality as it provides relief only to women.

Lack of Proportion: In order to find all possible means to provide justice to all aggrieved women from any sort of harm, the framers of the law have put their faith in all women being essentially honest victims, without worrying about proof of claims. In the process we are likely to see this law make a mockery of itself.

Improper Implementation: Although, the Act has been framed but on the ground level, there are major disparities in implementation at the state level. For instance, while Maharashtra appointed 3,687 protection officers, Assam had only 27 on its rolls, and Gujarat 25. Andhra Pradesh had an allocation of Rs 100 million for implementation of the

PWDVA, while other states like Orissa lagged far behind. Not surprisingly, states that invested in implementation of the Act in terms of funds and personnel also reported the highest number of cases filed. Maharashtra filed 2,751 cases between July 2007 and August 2008 while Orissa could only manage 64 cases between October 2006 and August 2008.

Poor Infrastructure: Very few NGO's have registered themselves as service providers under the Act, the registered service providers as well as protection officers' lack experience with domestic violence work, too few protection officers are assigned in each district to handle the caseload, and government service providers provide poor services to those in need. Though the Act provides for state legal aid, the quality of services in such cases is really poor. The state has passed on all responsibility to the service providers. They have to provide medical aid to abused women, arrange for short stay homes and arrange for compensation. It becomes a burden on these providers who do not have the wherewithal.

Failure to Mandate Criminal Penalties: Many activists and scholars have identified additional inadequacies of the PWDVA. This includes the Act's failure to mandate criminal penalties for abuse along with its civil measures, its failure to explicitly provide a maximum duration of appellate hearings which delays women's grant of relief, the residency orders' failure to give women substantive property rights to the shared household. As this act only gives them the right to reside at the property. There is also a basic lack of infrastructure linking law enforcement officials, officials under the act, and service providers together in order to best and most efficiently serve domestic violence victims.

Suggestions: To conclude, it can be said that since past few decades, multiple organizations and NGOs have been working to curb the menace of domestic violence. There is a dire need to safe guard the constitutional rights of women. The reason behind the rise in the domestic violence cases is the incorrect implementation and misuse of these laws by the miscreants; may it be the accused, the police or the lawyers. However, if implemented correctly the Protection of Women against Domestic Violence Act 2005 is a powerful Act. Here are some suggestions to combat domestic violence:

- Making the women aware regarding their constitutional rights.
- Breaking the traditional culture of tolerating violence and making women bold and fearless.
- Family counselling of all the members along with the victim whenever the case of domestic violence is reported.
- Spreading social awareness and making families responsible to the society by reporting instances of domestic violence.
- Mass media needs to spread awareness in small villages and towns regarding domestic violence.
- Sensitization of the police force and all other persons dealing with victims of domestic violence.
- Ensuring that adequate assistance is given to the victim to safeguard her/him.
- Sufficient funding of the shelter homes need to be done to provide a safe environment to the victims.
- Bar councils in every state should ensure that lawyers connect criminal, civil & family law while negotiating for women's rights.
- Stringent punishments should be awarded to those who use the law to falsely accuse innocent people.

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