

Domestic Violence: A Never-Ending Saga of Torture

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Abstract: Women since time immemorial have been stereotyped as feminine, emotional, less assertive and more focused on looks whereas men on the other hand, have been expected to be masculine, aggressive, strong and less emotional.

These definitions have changed with time but in our country the clock is yet to move forward. Women are somewhere treated as goddesses yet somewhere worse than dirt. All they need is a chance at equality, a chance to live, breathe, eat, drink in the same manner as men are “permitted”, a chance to exist as individual human beings and not as daughters, wives & mothers all their lives. The best example of gross violation of women’s rights is Domestic Violence. It is a violence that occurs within the private sphere, generally between individuals who are related by intimacy, blood or law. Despite, the apparent gender-neutrality of the term “Domestic Violence”, it is most often committed by men against women. This paper in the first section provides a brief overview of the legislation dealing with domestic violence i.e. Protection of Women from Domestic Violence Act, 2005 and the underlying process prescribed by it. In the subsequent sections the paper highlights various issues related to domestic violence faced by the country today. Using a bird’s eye view the attitude of the judiciary in this regard has been discussed and finally the authors have made suggestions aimed at leveling the uphill-task that women suffering from Domestic Violence in India face today.

Keywords: Domestic Violence, Victim, Judiciary, Implementation

1. INTRODUCTION

Domestic Violence is a violence that occurs within the private sphere *i.e.* within the “home” and hence, has been able to escape legal restraint or state intervention for quite some time. In order to address this situation many legal provisions were formulated such as S. 498-A, IPC which provides for cruelty by husband and family members against the wife, S. 304-B, IPC which provides for punishment for Dowry death, S. 125, CrPC which further provides for maintenance etc. However, criminal law, by its very nature, requires the State and its agencies to activate it. According to LCWRI (2009), it is based on the fundamental premise that the accused is presumed innocent until proven guilty and in a country, which is known for its proverbial delays in litigation, this could mean presumed innocent forever.

LCWRI (2009) reported that *reconciliation with violence is the very antithesis of justice for women* and hence a demand for a law on domestic violence was made which in turn led to the enforcement of the Protection of Women from Domestic Violence Act (hereinafter referred to as the “Act”) on October 26, 2006. The definition of “Domestic

Violence”, as given in S. 3 of the Act, has for the first time been defined in such a comprehensive manner which is to include physical, sexual, economic, verbal abuse etc. The special feature of this Act is the provisions relating to various orders regarding protection, residence, monetary reliefs, compensation etc. The Act enables the woman to live in her marital home without fear and the primary objective of the Act is not to punish or penalize the offender but is rather to stop the violence and suffering of the victim.

2. UNDERSTANDING THE PROCESS

It is important to understand how a domestic violence case is processed in order to study pros and cons of domestic violence. A separate mechanism has been provided for under the Act.

Pre-litigation phase: A victim has to lodge a complaint with the Protection Officer or a Service Provider, as they are empowered to record Domestic Incidence Reports (DIR). The Protection officer or Service Provider fills the DIR after seeking relevant information from the victim and file an application under the Act in the court.

Litigation phase: The role of magistrates comes into play in this phase. After an application is filed before the Magistrate, he can order the Protection officer to make enquiries, carry home visits, serve notice or can also refer the matter for counseling. The Magistrate can also direct the police to help the Protection officers or the Court. After looking into the merits and demerits of the case, the Magistrate grants or rejects the victim’s plea by issuing an order within sixty days from the date of its first hearing.

Implementation: The third and last phase of the case is implementation of the order. It is the responsibility of the Protection officer and police authorities to ensure the implementation of Magistrate’s order. According to LCWRI (2013), breach of Magistrate’s order will invite criminal proceedings against the Respondent.

2.1 Domestic Incidence Report (S. 2(e), PWDVA)

It is in essence a report filed by the aggrieved person. This report has a common Form for all over the country and asks for specific information such as the kind of violence inflicted, requirement of any assistance, host of options for the aggrieved person to express her grievance against the perpetrator, also includes an application to be filed to the Magistrate, an affidavit by the complainant, all to be rendered under the sign and seal of the protection officer. The DIR is an excellent example of how this Act is over-reaching and seeks to eliminate the suffering of the victim.

2.2 Protection Officers

Protection officers in essence are the true protectors of aggrieved persons and also the torch-bearers of their path to justice. This officer is the key authority appointed under the Act to implement the Act. As per S. 30 of the Act, they are deemed to be public servants under this law. It must be noted that, as far as practicable, POs should be women.

A list of some of their duties can be found below:

- To assist the aggrieved person with the processing and completion of the domestic violence proceedings, and provide the necessary legal and moral support.
- To work in coordination with Service Providers such as shelter homes and medical professionals.
- To act as a link between the aggrieved women and the justice system.
- To assist the court in the discharge of its functions and in the enforcement of its orders.

2.3 Service Providers

The Act under S.10 provides for the establishment of service providers, which are non-governmental organizations (NGOs) required to be registered under the Act. Such legal recognition enables these NGOs to function in a better manner. According to Saumaya Uma (2010) their primary aim is to protect the rights and interests of women including by providing legal aid, medical and financial assistance, shelter, counseling, vocational training. Service Providers are empowered to fill the DIR and present the same to the Protection officers for their sign and seal. They are also responsible for ensuring that a woman is medically examined, that the police are sent a copy of the medical report. The Lawyers Collective Womens' Rights Initiative (LCWRI, 2009) states that service providers vary in terms of how effectively they fulfil their responsibilities and notes that they also lack funding.

3. JUDICIARY AND POLICE OFFICERS: FACILITATORS OR OBSTACLES ?

An aggrieved person or a Protection officer on behalf of an aggrieved person can make an application to the Magistrate seeking reliefs under the Act, according to sections 12 and 27 of the Act.

Judiciary, the guardian of justice can sometimes throttle, the very core of justice. The recent judgment by Karnataka HC J. K. Bhaktavatsala, who reportedly said it was okay for a man to indulge in DV and beat his wife as long as he was taking good care of her, as reported by NDTV, is testament to this fact. Further, the slow disposal rate of cases related to domestic violence has a detrimental impact on the APs and this "waiting-period" can push the victims into depression and can also give birth to self-destructive tendencies in the mind of the victims. According to LCWRI (2005), the lower courts do not easily entertain applications filed under the Act and usually send the petitioners to the Protection Officers and also give more weightage to DIR filed by the PO than the SPs. Furthermore, courts require applications under the Act to have documentary evidence, such as marriage certificates. Acquiring this documentation is virtually impossible, since the woman rarely has the certificate with her, and requires protection to collect it from her husband's house. Though it has been six years, since the Act came into force, yet in many instances the Magistrate himself has to be informed of the procedure under this Act. And the final nail on the coffin is the conspicuous absence of the bare text of the Act with Magistrates.

The Chief Justice of India, Altamas Kabir, recently released a report by LCWRI which states that the judiciary, at all levels, must convey zero tolerance for all forms of domestic violence regardless of the perceived severity of the violence, as reported by Hindustan Times. The anti-violence attitude of the Chief Justice in this regard is commendable but the standards of the Supreme Court on the same issue come under the scanner when it commuted the death penalty of a man responsible for, first raping his minor daughter and then hacking his wife and daughter to death and that too on parole (after being arrested on wife's FIR accusing him of raping the daughter), as reported by Times of India. The judgment given by Justice Sathasivam and Justice F M I Kalifulla brings out the glaring discrepancy in the idea of justice harboured by the Apex-justice delivering body of the country. It does not end here, at a symposium in 2010, Justice Sathasivam had shared his views "on how women in India although more than half of our population were being subjected to various forms of deprivation and violence and that the society has failed to create adequate reprimanding mechanisms to stop this kind of violence against women."

This just highlights how well the principles of justice especially when it comes to women, are applied in real-life scenarios.

And when a female judge of the Supreme Court can list her daughters as a liability in her statement of accounts (even though later clarified as the same having a financial consequence), as reported by CNN-IBN and Hindustan Times, the general attitude of the judiciary towards gender-related issues becomes clear.

Police, the 'supposed' protectors, can be said to be one of the major reasons contributing to the growth of domestic violence. Though they assist Protection officers for implementation of orders, yet at the same time do not entertain complaints regarding domestic violence, feeding fables to victims asking them to settle, stating that every relationship has arguments and differences. According to HRLN (2010) Gujarat has been reported as the only state in 2011 where police officers do not provide any assistance for enforcement of orders and also do not take any action when a breach ensues. The reason for subjecting the aggrieved person to discomfort by asking her to run from door to door, remains unclear.

3.1 The Victim: Bruised and Battered

The definition of an AP, under section 2 (a) of the Act has been restricted to a woman and that of the respondent to an adult male person under section 2 (q). Though the judgment of the Supreme Court in *Sou. Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and Ors.*, 2011 (2) SCALE 94, has stated that the scope of said definition includes the relative of husband or male partner within scope of complaint, which may be filed by an aggrieved wife or female living in relationship in nature of marriage and the definition does not exclude females from the ambit of complaint. A restrictive meaning to the expression "relative" cannot be given, the Act does not limit it to males only. The relationships of father-daughter, brother-sister, mother-son etc. have also been brought within the ambit of this Act.

It must be noted that no one asks to be abused, ever. But the question which arises here is that why does the woman continue to stay with the perpetrator. The answer spreads into myriad directions encompassing reasons like societal pressure, benefit of children, low self-confidence and can also include failure of institutional responses. The victim is a prisoner who is unable to flee from the clutches and control of the perpetrator. It is a misconception that domestic violence occurs only in poor, poorly educated or dysfunctional families. domestic violence can happen to anyone. It is not limited to any particular socio-economic class, educational level, occupation, age, race, religion etc., as stated in LCWRI (2009).

The response of these women reflects hope, fear, happiness, their stories are heart-wrenching, their courage is infectious, (akin to a motion-picture), all of which brings out the true form of domestic violence, a heinous monster, eating into the lives of millions of women (be it a post-graduate or a domestic help), most of whom feel, they have no recourse and are destined to suffer this forever. Those who do speak up are either labeled or are silenced. What remains unanswered is that why should the woman suffer, first, violence at the hands of the husband (or his family members or even her own), second, humiliation by the society and lastly, dejection by the system. The common belief that domestic violence is a result of anger management problems, alcohol or provocation by the victim herself or by another person (mother-in-law, sister-in-law etc.) is a misnomer. Domestic violence is not typically a singular incident nor does it simply involve physical attacks. According to Ahmad (2010), examining a husband-wife relationship, it is perplexing to note that the husband, in most cases, inflicts violence only on the wife and not on his mother or sister. This clearly indicates that domestic violence is a deliberate set of tactics where violence is used to solidify the abuser's power in the relationship. Most of the women (demonstrating years of brain-washing by the supposed Indian "culture" and "society"), do not believe in retribution, all they want is peace of mind and an opportunity to live life to the fullest and enjoy it with full dignity.

4. CONCLUSION AND RECOMMENDATIONS

"It is hard to look for the light when you are lost in darkness." Anonymous

Women are the pillars on whose shoulders this entire world rests. It is unfortunate that their importance is undermined and their potential suppressed. There is an urgent need to address the issue and curb the problem before it spreads its tentacles all over.

According to Saikia (2012), unfortunately, the Indian society makes domestic violence invisible and cloaks it in the feelings of guilt and embarrassment and every woman who thinks she suffers alone or is the only victim of violence has to know that there are more.

Ahmad (2010) notes that the law to combat domestic violence does exist but its actual implementation has left a trail of disappointment, anger and resentment among affected families.

According to a report published by the women and child development ministry, there has been an increase in the incidence of domestic violence from 89,546 cases in 2009 to

99,135 in 2011. This means that the incidence of violence against women in the home has climbed by nearly 11%, despite the various legislations and systems being put in place to fight it as reported by DNA.

The fault lies within this “hypocritical society” which on one hand condemns domestic violence but on the other, accepts the perpetrator and isolates the woman. A social worker, interviewed, went to the extent of saying that domestic violence cases should be speedily disposed otherwise a woman, if left alone for a long period of time, can pose a threat to the purity of the society. This supposed society being spoken about, is what actually crushes and destroys the woman, creeping upon her like a python leaving no trace of her existence. There is an urgent need to address the issue of DV and hence, SPs need to be trained to deal with the same effectively and in a manner that can reduce the incidence of DV cases.

4.1 Recommendations

- The lack of a proper support system is the biggest hindrance in the implementation of this Act. Cleansing of the system and establishing a robust administration can lead to a multi-fold increase in efficiency.
- The main objective of this entire exercise is to alleviate the suffering of the victim and all such measures should be taken which fulfill this objective. Appointment of female officers at every stage of the process can be a step in this direction.
- The harmful and threatening effects of the slow disposal rate hence, calls for the establishment of separate courts for the purpose.
- If the justice rendering body itself is not sensitive to the issue of Domestic Violence, the entire purpose of any legislation in this regard will be frustrated. Training sessions involving other important stakeholders such as SPs, NGOs, POs etc. need to be conducted at periodic intervals for sensitizing the magistrates and enabling them to get a better grasp of the intricacies of this Act. Also, it is important to ensure that Magistrates are kept abreast with the latest developments in the area.
- Counselors play a very important role in the entire process as they are the ones who first interact with the Aggrieved Persons. They can cause a paradigm shift in the affected woman’s attitude towards the case and towards entire situation as a whole. The counselor can also play the part of the person, she needs to confide with. And hence, it becomes imperative that certain rules and regulations be formulated to provide and regulate the duties and functions of counselors.
- There is a need for a widespread campaign involving usage of audio, visual and print media not only to inform women of their currently existing rights and the respective authorities, but also to make them realize that they stand an equal chance of fighting this battle.
- Focusing more on statistics and engaging in the blame-game will only divert the issue at hand. Rather, a better option would be to recognize that a problem does exist and to dealing with it by providing a robust system is the only way out.

Domestic violence is the violation of the basic rights of an entire section of the society. It is one of the under recognized pandemics of our time. The spread of domestic violence

can be compared to that of cancer and there is a burning need to stop this cancerous growth before it is too late.

5. REFERENCES

- [1] Ahmad, et. al, “Domestic Violence in India: Will Law Alone Change the Situation?”, (2010), Available at: <<http://ssrn.com/abstract=146789>>
- [2] Dhananjay Mahapatra, “SC commutes rapist-killer father’s death”, January 29, 2013, Times of India, Available at: <<http://timesofindia.indiatimes.com/india/SC-commutes-rapist-killer-fathers-death/articleshow/18231604.cms>>
- [3] Gangadhar S Patil, “Domestic Violence cases up by 11%”, January 09, 2013, DNA, Available at: <http://www.dnaindia.com/mumbai/report_domestic-violence-cases-up-by-11pct_1787065>
- [4] Human Rights Law Network and Majlis, Report on “National Consultation on the Protection of Women From DV Act, 2005.” (2010).
- [5] Iyer R., “Plea to remove Karnataka judge for alleged sexist remarks” (2012) www.ndtv.com, Available at: <<http://www.ndtv.com/article/south/plea-to-remove-karnataka-judge-for-alleged-sexist-remarks-263672>>
- [6] Lawyers’ Collective Women’s Rights Initiative, Ending DV through non-violence: A Manual for PWDVA Protection Officers, Print Graphics, New Delhi, 2009.
- [7] Lawyers’ Collective Women’s Rights Initiative, Resource Tool for Monitoring and Evaluating the Implementation of the Protection of Women from Domestic Violence Act, 2005, Print Graphics, New Delhi, 2013.
- [8] Lawyers’ Collective Women’s Rights Initiative, Staying Alive: 5th Monitoring & Evaluation 2012 on PWDVA, 2005, 2012.
- [9] Nagendra Sharma, “Daughters my biggest assets, not liability, says SC judge”, January 05, 2011, Available at: <<http://www.hindustantimes.com/India-news/NewDelhi/Daughters-my-biggest-assets-not-liability-says-SC-judge/Article1-646436.aspx>>
- [10] Nandita Saikia, “Domestic Violence Handbook”, Available at: <<http://lawmatters.in/wp-content/uploads/2010/03/dv.pdf>>, (last visited, 19th September 2012).
- [11] Saumaya Uma, “Addressing Domestic Violence through the Law: A Guide to Protection of Women from Domestic Violence Act, 2005, Multiple Action Research Action Group, 2010”, Available at: <<http://www.ngo-marg.org/wp-content/uploads/2011/01/DV-BOOK-ENG.pdf>>
- [12] Symposium on Protection of Women from the Domestic Violence Act, 2003: A dialogue between Judiciary, Government Agencies and Civil Society Organisations for Effective Implementation of PWDVA 2005 in the State of Gujarat, 7 – 8 August 2010, jointly organised by The Gujarat State Legal Services Authority, Gujarat State Judicial Academy, Department of Women and Child Development, Government of Gujarat and Gender Resource Centre, Ahmedabad. Report Available at: <http://www.grcgujarat.org/PDF/JC_reportMM_3-9-2010.pdf>
- [13] V.S.K, “Seek Protection under Domestic Violence Act”, The Hindu, December 3, 2013.

- [14] Vwastav Ghosh, “Zero tolerance for domestic violence”, January 27, 2013, Hindustan Times, Available at: <<http://www.hindustantimes.com/India-news/NewDelhi/Zero-tolerance-for-domestic-violence/Article1-1002347.aspx>>
- [15] “Woman SC judge lists daughters as liability”, December 28, 2010, CNN-IBN, Available at: <<http://ibnlive.in.com/news/woman-sc-judge-lists-daughters-as-liability/138837-3.html>>

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