

ANALYSIS OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 AND STRATEGIES FOR ITS EFFECTIVE IMPLEMENTATION

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Abstract: Domestic Violence is a burning issue all over the world. Despite various provisions in the different legal instruments to protect women's rights, a large majority of women suffer on a daily basis on several fronts and suffer gross injustice. Even after a lot of awareness, we are not able to totally eradicate the discrimination and crimes against women. The domestic violence against women can be in diverse forms, which will include Physical, verbal, psychological, sexual, economic it also involves the threats to commit the same. Although physical injuries can be easily seen as they are visible and could be produced before the court but mental and psychological injuries are not visible, and most of the times they cause greater harm to the victim. Therefore, it is very crucial to first identify the violence and then act upon it. This paper attempts to analyze the Protection of women from domestic Violence Act 2005 and ascertain strategies for its effective implementation.

Key words: Domestic Violence, PWDVA.

Introduction: Domestic violence that is any act of physical, sexual, economical and psychological abuse, or the threat of such abuse, inflicted against a woman by a person intimately connected to her through marriage, family relation, or acquaintanceship. This menace is universal in nature and has its root in the socio-cultural set up of the society. Internationally, one in three women have been beaten or abused; sexually, physically or verbally by a member of her own family. Traditionally women are treated and expected to behave in a particular way due to deep rooted gender inequality in the mindset which eventually causes grave issues such as domestic violence. Deep-rooted male patriarchal roles and long-standing cultural norms that propagate the view of women as subordinates throughout their lifespan.

Domestic violence (DV), defined by the Protection of Women from Domestic Violence Act 2005 as physical, sexual, verbal, emotional, and economic abuse against women by a partner or family member residing in a joint family, plagues the lives of many women in India.

Domestic Violence in India: Today women have proved themselves to be equal to men in every field which no doubt highlights their capabilities; still violence towards women is increasing day by day. The possible reasons are many and are spread over the length and breadth of the country. According to UNPF (United Nation Population Fund) Report, around two-third of married Indian women are victims of domestic violence and as many as 70 per cent of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India, more than 55 percent of the women suffer from domestic violence, especially in the states of Bihar, U.P., M.P. and other northern states.

The most common causes for women going through this torture is social structure and ever burning dowry issue existent in India. In some cases infertility in females also leads to their assault by the family members. The greed for dowry, desire for a male child and alcoholism of the spouse are major factors of domestic violence against women in rural as well as in urban areas. Women in India also admit to hitting or beating because of their suspicion about the husband's sexual involvement with other women.

Factors: There are many factors responsible for domestic violence as follows.

Legal:

- Low level of legal literacy and awareness in women
- Paper tiger laws
- Poor implementation of legal instruments
- Insensitivity towards women issues
- Poor condition of shelter homes
- Cumbersome procedure of implementation of court orders
- Biased opinion of judiciary and police.

Economic:

- Economic dependency on men
- Poor access to employment opportunities
- Workplace harassment
- Limited access to credit and cash
- Discriminatory succession laws for men and women

Cultural:

- Gender roles in society
- Deep rooted patriarchy
- Social values
- Different expectation from men and women from society
- Acceptance and tolerance of violence as a solution to domestic violence
- Stigmatization of victim

Political

- Under representation of women in Indian politics
- Issues of women taken less seriously
- Limited organizations representation women
- Limited participation in policy making
- Identification of women's issues

Better Implementation of Provisions:

1. As stated in section 12, the magistrate can take into consideration the Application submitted by Protection Officer, service provider, aggrieved person or any person on behalf of an aggrieved person. Generally, the later part of the section is massively ignored and in many cases, it is made mandatory that only an advocate should file the Application whereas the section does not point out anything like that. Similarly, the Application should be well drafted mentioning each and every detail of the violence; which will help the victim to get better orders and proving her violence in a better way.
2. Secondly, while implementing section 18, which also talks about economic violence and protection from it thereof, such as prohibiting from operating bank accounts. It also talks about instances of stalking. This section explains that if the magistrate is satisfied with prima facie domestic violence, then he may pass an order to protect that. Here the Applicant may also ask for other reliefs such as custody of children which can be given at the very first date itself.
3. Thirdly, while asking for residence orders, it is necessary to keep in mind that the Act clearly specifies about shared household in section 17 that every woman has a right to stay in the shared household. Similarly order for partition can also be asked under DV Act so that she can peacefully stay in the shared household.
4. Fourthly, while asking for monetary reliefs under section 20, the Applicant should produce maximum income proofs of the Respondent so that she can get maintenance as per Respondent's standard of living. Income proof may include bank account statement, property details, 7/12 extract of the land, other movable and immovable property, documents showing Respondent's standard of living etc. These documentary evidences should be submitted along with the main Application to avoid duplicity of work and to make the compilation perfect. Applicant should include Income

related details in her forms as well. There should not be any contradiction in the information filled in the forms and information provided in the main DV Application.

5. Lastly, regarding child's custody- If the Applicant is afraid of losing the custody of the child, she should take the child along with her while leaving the shared household. It should be kept in mind that the Applicant is possessing the custody of her child at the time of filling of the Application. Because, as per supreme court's judgement related to child custody, the court cannot take away the child from his parent if the child is comfortably staying with one.

Case Laws:

Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori:

Name of the Court: Supreme Court (2014)

Name of the Bench: Sudhansu Jyoti Mukhopadhyaya & Sharad Arvind Bobde, JJ.

Date of Judgment: Sep 18, 2014

Issues: Whether divorced Muslim woman can file under PWDVA

Decision:

The judgement of the case fell in an ambiguous situation as the Appellant had claimed to file a divorce on 09/05/2008 with the help of the mufti on which the non Appellant had filed petition for conjugal rights, Further to which the Appellant again filed an FIR on 29/09/2009 for Domestic Violence.

The proof of domestic violence which took place much before the divorce led the Appellant to file this FIR and petition whereas the Respondent proved that there was no domestic relationship between them. In this case the first and foremost part was to understand if any domestic relationship existed between the two parties during this period. Later the judgement stated that the case was not maintainable as it was found that there was no domestic relationship between the two parties. Therefore interim relief for the Appellant was not provided which was also affirmed by the high court. Therefore this case challenges two parts wherein in the first did divorce between the two parties take place on the suggested date of the Appellant and was it considered and accepted. And second can a divorce woman ask for any kind of relief after the divorce.

In this case it was proved that there was no proper procedure for the divorce as stated in the law was followed and also the Qazi was not involved in this case. As the Respondent denied divorce and also filed conjugal rights. It proved that the Respondent did not want a divorce. The Appellant could not produce sufficient proof of information of the decision of the mufti of dissolution of marriage to the Respondent, but the khula was pronounced by the mufti. Therefore in the absence of evidence the certainty of divorce of the stated date was reduced to the least.

To the second, the option is left in the hands of the magistrate to decide if any act of domestic violence has taken place during the domestic relation compensation can be provided which is not listed in the Section 26 of the Domestic Violence Act, 2005. The Fir in this case was registered long before the filing of divorce and therefore the Respondent was forced to pay interim and other compensations to the Appellant. Further Leave was granted to the Respondent.

Chanmuniya vs. Virendra Kumar Singh Kushwaha:

Name of the Court: Supreme Court (2010)

Name of the Bench: G.S. Singhvi, Asok Kumar Ganguly

Date of Judgment: 7th October 2010

Issues: Whether living together husband and wife would give rise to the presumption of a valid marriage? Would this presumption give a woman right to maintenance under 125 Cr.P.C.

Decision: Leave granted.

The Appellant in this is remarried to the younger brother who after a period refused to look after the Appellant and deserted her in return; therefore the court ordered the Respondent to live with the Appellant and ordered him to perform his duties. To this the first Respondent filed an appeal asking for evidence of Marriage. The high court did not receive the essentials for the valid Hindu marriage further reversed the findings. A review was sought by the Appellant which was dismissed by the high court thus

the Appellant approached by the means of special leave petition. The key issues was the presumption of marriage if both the parties were living together also if a man and woman living together without a valid marriage will it entitle the woman for maintenance if need be and also to claim maintenance strict proof of marriage is necessary or not . Keeping many cases into consideration the dilemma was to understand and interpret the meaning of wife and if the Appellant in this case can be given the rights of one. In this Laws from different countries like England and America were taken into consideration. Wherein various states of relationship like live in relationships are also termed as 'Domestic relations' thus entitled reliefs. The proceedings for this case are still continuing.

Conclusion: The experience of violence destabilizes the empowerment women and certainly is a barrier to the socio-economic and demographic development of the country. In view of eradication of this problem, it is essential to take suggested measures in a proactive manner. Education, awareness, sensitization are ways to achieve gender neutral society. India is having excellent legal system, only if the implementation part is taken care of, then maximum problems in women's issues will get sorted out and it will be beneficial to curb the violence.

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