

Review on Establishment and Implementation of Domestic Violence Act in India

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Abstract: *Domestic violence affects men and women of all ages, races, religions, and incomes. However due to the “secrecy” of domestic violence, it is often a hidden social problem. The “invisibility” of the problem is largely attributed to the belief that it is a private family matter, which should not be made known to outsiders. This problem is not confined only to India but is a world-wide concern. Domestic violence is the most prevalent term women are physically and emotionally weaker than men because of the conservative ideology of the society. In the ten years since the Domestic Violence Act was passed, more than 1, 00,000 lakh cases have been filed across the country under sections related to cruelty and dowry by husbands. Assault and fatal incidents in a generation Police court can impose section 498 of IPC at any time but action is rarely taken. Protection of women from Domestic Violence Act 2005 is only for relief, most women file lawsuits to get financial respect for their children however there are some people who want their husbands to pay for their hardships. Despite its pressing nature, it loses its intensity and thus fails to resolve as well as lengthy court proceedings delaying access to justice for women. This paper looks at the meaning of domestic violence against women and also discusses the national responses to prevent domestic violence against women and also highlights the Protection of Women from Domestic violence Act and the delays in processing as well as insufficient compensation and lack of knowledge of the law among women and fear of registration of complaints among large sections. And this paper tries to give recommendations to eliminate these menaces from the society.*

Keywords: Domestic Violence, Abuse, Implementation, process, Compensation.

I. INTRODUCTION

A women who has been foundation stone of family and society in general who gives birth to life, nurtures life, shapes it, and strengthens it, who is transmitter of tradition and an instrument through which culture is preserved and transmitted from generation to generation, the greatest tragedy in our country is that grave injustice is done to her. She is subjected to domestic violence irrespective of her age, race, and caste, social and economic and political status. Her vulnerability in various forms is the common phenomenon in Indian society. The silent sufferings of a woman are making her easy prey to the male domination which is supported by prevalent patriarchy. The authoritative, autocratic nature of male member in society and victimization of female makes the situation worst. Almost every home in India must be suffering from some kind of domestic violence where women either as a daughter, daughter-in-law, or as a wife are abused physically, mentally, verbally economically.¹

Domestic violence is physical, sexual or psychological abuse directed towards

One's spouse, partner or other family member within the household. Domestic violence occurs when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other. After independence, the most important event, safeguarding the interest of women was the framing of the constitution of India, which is held to be the base of the legal system in our country. The framers of the constitution of India were well aware of the sociology of the problem of emancipation of female sex. They have seen the position of the weaker, marginalized, vulnerable section of society and have realized the need to give them some special treatment in order to bring them to the mainstreams. They realized that equality was important for the development of the nation. In order to reduce disparity

in class based system ruled for long terms in the country; it was evident that to eliminate inequality, to provide opportunities for exercise of human rights; it was needful to protect them from exploitation time immemorial and provide additional safeguards and social justice

II. HISTORICAL PERSPECTIVE

Domestic violence is as old as recorded history which has been reported in virtually every society, every civilization. Discrimination and oppression leading to physical, mental or emotional violence have been accepted as a part of every patriarchal society. Except recent reference is found, domestic violence has been both socially and legally acceptable. Some important event, laws, codes, provide historical context, within which conceptualization of domestic violence becomes crystal clear. Two major elements combined to seal the status of women are male dominance and projecting women as 'property' an object belonging to men and secondly expectations from women as an ideal 'role model' suit each other, in such a way as to make her vulnerable and subject to discrimination, oppression and all sorts of victimization and resultantly compel their subordination.

Various social, protective, prohibitive, regulatory enactments were made to protect and empower women by bringing them to the mainstreams. The National Commission for Women Act, 1990 established National Commission for Women and also the State Commission, which are working hard towards protection and promotion of rights of women. In 1994 National Commission for Women came up with its draft bill on Domestic Violence which was severely criticized by Women's organisations. In 2001 for political significance the Protection of Domestic Violence Bill, 2001 was once again brought in parliament and was opposed. Later, the Protection of Women from Domestic Violence Act, 2005 was passed by the legislature for protection and promotion of women's right.²

Legislative Provision and protection

The legislative protections against domestic violence can be divided in three major categories –

Constitutional Protection

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard. The relevant protections for women enshrined in Part III of the Constitution are as follows-

Articles 14 to 18 of the constitution of India guarantees of equality for every citizen of India. Equality before law for **women (Article 14)**. The State not to discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them (**Article 15 (i)**). The State to make any special provision in favour of **women** and children (**Article 15 (3)**). Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (**Article 16**). **Article 21** of the Constitution of India protects human dignity. It imbibes the principles of natural justice and fairness and confers on every person the fundamental right to life and liberty. In the words of J. Bhagwati in case of *Francis Coralie vs. Union Territory of Delhi*.³ Through various other judgements the courts have held that right to livelihood is included in the right to life. The relevant provisions contained in **Part IV of the Constitution** The State to direct its policy towards securing for men and **women** equally the right to an adequate means of livelihood (**Article 39(a)**); and equal pay for equal work for both men and **women (Article 39(d))**. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way suitable legislation or Scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (**Article 39 A**). The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**). The State to take steps for establishing a uniform code throughout the territory of India, a code incorporating equal rights for women and children (**Article 44**). The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**). The State to raise the level of nutrition and the

standard of living of its people (**Article 47**). To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of **women (Article 51(A) (e))**.

Protection under Criminal Law

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as ‘Murder’, ‘Robbery’, ‘Cheating’ etc., the crimes, which are directed specifically against women, are characterized as ‘Crime against Women’.

Protection available to women under criminal law are as under:- Female Foeticide – (Causing miscarriage), Female Infanticide ; Rape ; Kidnapping or Abduction For Different Purpose; Murder; Immoral Traffic in Human Beings; Indecent Representation of Women; Cruelty and Torture; Bigamy

III. METHODOLOGY

The nature of this research paper is theoretical. It shall be depend upon the existing law i.e. PWDVA Act 2005 and Cr.P.C. The present research is based on the precedent and various research material i.e. published paper, etc. which are available (secondary data). The Research will be relied upon the relevant Textbook, Article, Journal, Magazine, Newspaper, Supreme Court and High Court cases and Judgments, AIR Manuals, Records of various institution, organization and association, seminar, workshops, Law Commission Reports. In this research paper the review of the establishment and implementation of domestic violence act in India

IV. DISCUSION

Domestic violence is a global issue reaching across national boundaries as well as socio-economic, culture, racial and class distinction. Domestic violence is the most common form of violence against women. It affects women across the life span from sex selective abortion of female fetuses to forced suicide and abuse, and is evident, to some degree, in every society in the world

A total of 2,519 cases were reported under PWDVA between 2014 and 2018, with an average crime rate of 0.14 per 100,000 women aged 15–49 years during this period. Majority of the states did not report any case under this Act. In India between 2001 and 2018, the majority of domestic violence cases were filed under ‘cruelty by husband or his relatives’, with the reported rate of this crime increasing by 53% over the 18 years. However, it is important to note that only some states recorded change in the reported rate with the almost stagnant reported rate of domestic violence in many states over time. Significant heterogeneity was seen in the pattern of the four types of crimes at the state-level. Overall, the mean persons arrested decreased irrespective of the crime during the period studied, and less than 7% of the filed cases had completed legal trial in 2018. We discuss the gaps identified in the reported data which unless addressed have major implications in the facilitating action to reduce domestic violence against women in India.

The rate of reported crime under all the considered categories excluding dowry deaths in 2018 in India in the NCRB was close to the 33% self-reported domestic violence reported by women in the national survey in 2015–16.⁴

The NCRB data provides passive surveillance with the source being the FIR filed by family/kin/community member with the police for a crime, and hence is dependent on the reporting from the community, which is known to be selective as women report less to the police for domestic violence due to various reasons including lack of social support, shame, and stigma.⁵

These differences could account for differential rates of domestic violence between the police records and self-reporting of domestic violence in the surveys. Recently, it is also shown that how women are asked about domestic violence in surveys can also result in different estimates. Furthermore, the Principal Offence Rule followed by NCRB "hides" many cases of domestic violence as according to this Rule, each criminal incident is recorded as one crime.

If many offences are registered in a single case, only the most heinous crime—one that attracts maximum punishment—is considered as counting unit.⁶ For example, an incident involving dowry death and cruelty by husband or relative will be reported in NCRB as dowry death as it warrants the maximum punishment, thereby underreporting the number of cases with cruelty by husband or relative.

A total of 658,418 cases were sent for trial in India in 2018, of which trial was completed in only 44,648 (6.8%) cases. Among the cases in which trial was completed, the offender(s) was convicted in only 6,921 (15.5%) cases. Women face violence each second in society. It can be said that women's are not safe within their own home. Due to violence women's are unable to access their most basic rights such as right to safety, health, schooling and work. Mentally, physically and emotionally women is affected. Violence limits women's access to land, water and food and their ability to participate in work, education, travel and community meetings. It also stops women and their family's development.⁷ Victim may also suffer depression, which can disturb their personal life. Victim may have guilt or shame on her person, many times it happens that women abuse may not come out from that incidence due to which she may face anxiety and panic attacks. These types of incidence have general sense of fear, fear of men, hate against men, revenge feeling which provoke them from crime.

Due to violence victim women have to face economic problems example she may lose her job or she may not be able to continue with her job.

Loss of income from missed work or partner who withholds money is basic reasons for financial problem. Medical bills, legal fees, extra child care and protection cost put extra burden on victim. So from one side she has to face violence and from other side she has to suffer financial burden. It means violence not only affects women mentally and physically but also it affects economically.

V. CONCLUSION

The Protection of Women from Domestic Violence Act (PWDVA), 2005 is passed by the Parliament in response to worldwide demand for such legislation and also the outcomes of the continuous efforts of Women Organizations working for women. The Act gives right and Protection to the women's. The remedies available to the victim prior to the PWDVA 2005 were in the form of punishment of the offender under IPC, the civil remedy of divorce and maintenance were not giving her ultimate relief, the remedies which were available that were related to matrimonial proceeding and also according with court proceeding. The statutory provision and constitutional provision were available to women but these provisions were insufficient and the most important problem about it was lack of awareness about their rights which constitution provide for the protection PWDVA 2005 was brought to answer the inconsistency and provide victim the relief. This act gives protection to women and instant remedy on the violence against her. The object of passing the Protection of Women From Domestic Violence (PWDVA), 2005 was to protect the women's from domestic violence which they face within the four walls in their life span, to stop the violence against women, to provide the opportunity for her development and to encourage them to fight for their rights and also to support them to the full extent. The government has passed the law and now it's time for the proper implementation of these laws for the protection of women against violence. The government has to facilitate and encourage the registration of Service Providers, Protection Officer and to give them a proper training so that they can protect the women and provide protection to them against violence.

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