



AN ANALYTICAL STUDY ON VIOLENCE AGAINST WOMEN IN INDIAN SCENARIO



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INTRODUCTION :

Domestic violence against women is widely prevalent yet invisible aspect of Indian society. It has also been rightly considered to be a human rights issue in various accords¹ and declaration including the convention on elimination of all forms of Discrimination against women (CEDAW). The Protection of Women from Domestic Violence Act, 2005(or D.V. Act or Domestic Violence Act in Short) is a step towards ensuring the effective protection of the constitutional rights of women against violence of any kind that takes place in the family. The enactment has been made in pursuance of Article 15, 14 and 21 of the Constitution of India² so as to provide for a civil remedy to the victims of domestic violence. The remedy under the criminal law, mainly section 498-A of the Indian Penal Code was often times considered to be time consuming and elaborate. Making a law is one thing and ensuring the proper implementation is another thing. Hence it is also equally important to provide the necessary legal setup with which the law becomes accessible. In this regard the enactment creates the office of the Protection Officer³ and recognises Service Providers for the better implementation of the act. Providing of legal aid,

ABSTRACT:

Violence occurs in about 35 per cent of women globally in their lifetime. In a study done in India, on about 10000 women, 26 per cent reported having experienced physical violence from spouses during their lifetime. The prevalence could be as high as 45 per cent as indicated by data from Uttar Pradesh. Latest figures from the National Crime Records Bureau show that a crime was recorded against women every three minutes. Every hour, at least two women are sexually assaulted and every six hours, a young married woman is beaten to death, burnt or driven to suicide. It is appalling to learn that 28.4 per cent of pregnant women suffer domestic violence. As a result of violence, women suffer social isolation, unemployment, income loss, poor self-care and fail to provide childcare, which is a grave concern. Multi-Country Study on Women's Health and Domestic Violence Against Women by the World Health Organization (WHO) reported that 40 and 60 per cent of women surveyed in Bangladesh, Ethiopia, Peru, Samoa, Thailand and Tanzania revealed that they had been physically and/or sexually abused by their close partners.

¹Vienna Accord, 1994 and Beijing Declaration, 1995

²1950.

³Section 8 and section 9.

shelter homes⁴ and medical facilities⁵ and assistance has been made the duty of the government, so that the woman who has been subjected to domestic violence is provided with all these facilities.

The Act is progressive in nature, just what is expected from a 21st century social welfare legislation. The Act defines “Domestic Violence” in the most elaborate terms and makes it a remediable wrong in the eyes of the law for the very first time in Indian law. It covers a spectrum of acts so as to define domestic violence not only as physical violence but also in other acts of violence in the form of emotional, verbal, sexual, and economic abuse⁶. The enactment no doubt provides for a fresh civil remedy for the protection of women from domestic violence.

BRIEF OVERVIEW AND THE SALIENT FEATURES OF THE ACT

The domestic violence Act contains 37 sections which are spread over 5 chapters. The said Act does not have a change in the existing personal law or other civil law remedies in this regard. The reliefs that have been provided for under the Domestic violence Act are alongside and in addition to existing laws which are made with the object of empowering women against domestic violence.

When it comes to domestic violence, a woman might often require assistance with the legal procedures and also require support to go through the proceedings of the complaint. The domestic violence Act stipulates for the appointment of not only the Protection Officers, but also emphasises on the role of Service Providers to provide medical, legal and other types of assistance. The Protection Officer is a public servant who has been designated with the role to assist a victim to avail of the legal, medical and other facilities as well as to obtain appropriate relief under the Act.

The Act has also incorporated provisions for preparing of domestic Incident Reports⁷ which helps the court to ascertain the matter with great caution and detail. Since the Domestic Violence Act is a civil law remedy for protection of women from domestic violence, the orders of the court under the Act are not meant to punish but only to provide certain injunctive relief to the victim. Apart from this, the Act also recognizes the right to residence of the victim woman, this ensures that the woman has a right to live in a violence-free residence. The Act also provides not only temporary but also various emergency reliefs. The Act is a law in response to the domestic violence against women. There is also the protection order which can be claimed by the victim, so as to injunct the respondent from harassing the respondent. If the protection order of the magistrate is violated, it will lead to penal consequence.

For better understanding of the enactment let us now discuss the step by step process required to be taken by the victim under the Act.

Step 1: Information to Protection Officer⁸: the aggrieved woman who has been subjected to or can be subjected to domestic violence may inform the Protection Officer.

Step 2: the rights under the law must be told⁹ to the aggrieved woman by the police officer, magistrate service provider or the Protection Officer who has received a complaint. Such rights include a right to obtain protection order, order for monetary relief, order for custody, an order for residence and a compensation order. The aggrieved must also be told about the right to get free legal services and her right to file a complaint under section 498 A of the Indian Penal Code.

Step 3: Protection Officer shall then prepare and submit to the Officer In charge of police station, a domestic incident report¹⁰.

⁴ Section 6

⁵ Section 7

⁶ Section 3

⁷ Section 9

⁸ Section 4

⁹ Ibid.

¹⁰ Section 9

Step 4: Within three days from the receipt of the application, the magistrate must fix the first date of hearing for the matter¹¹, and must try to dispose every application within a period of 60 days after such hearing. In order to speedily dispose of the application, through a notice of the date of hearing via Protection Officer, the respondent must be notified within a maximum of two days.

Step 6: The Magistrate may seek help of a welfare expert¹², or may refer parties to undergo counselling and may also conduct the proceedings in camera¹³.

Step 7: The magistrate may ensure that the aggrieved person resides in the shared household, irrespective of her right or title in the residence and may also order that she must not be evicted. After both parties are heard, and the magistrate comes to the conclusion that the act of domestic violence has taken place he may pass different orders such as, a protection order, order for residence and may also order the respondent to pay to the aggrieved person monetary as well as compensation orders. Order for custody may also be passed. Each party is entitled to a free copy of such order of the magistrate¹⁴. In case of a breach of the protection order, penal consequences will surely follow.

PROMINENT JUDGMENTS OF THE HON'BLE SUPREME COURT

Apart from the progressive stance taken by the Parliament in ensuring the protection of women from domestic violence, the Courts in India have also been proactive in doing purposive interpretation of the enactment in order to do complete justice to not only the aggrieved women, but also to the social welfare legislation (The D.V. Act). Some of the prominent judgments are discussed below.

- 1) *Nikhil dhadani v. Tanya Dhadani*¹⁵ In this Judgment the Hon'ble Delhi High Court held that relief under the D.V. Act is in addition to other remedies available under the family and criminal law.
- 2) *Velluswamy v. Patchaimmal*¹⁶, the Apex court held that Live in relationships between consenting adults are also covered within the definitions of domestic relationship arising out of a shared household.
- 3) *Sandhya Wankhede v. Manoj Wankhede*¹⁷ this being a landmark judgment, the Apex court held that the definition of "respondents" under the Act includes not only the male perpetrators but also female perpetrators.
- 4) *Satish Ahuja v. Sneha Ahuja*¹⁸ In a fairly recent judgment, the Hon'ble Supreme Court overruled S.R. Batra judgment and held that the aggrieved person under the domestic violence Act shall be entitled to get a residence order in her favour even when her husband does not have a beneficial interest in the shared household. This is a very progressive stance taken by the Supreme Court on a very progressive enactment.
- 5) *V.D. Bhanot v. Savita Bhanot*¹⁹ in this case the Apex court held that the D.V. Act is a social welfare legislation and thus in the interest of the society must be retrospective in its operation.

CONCLUSION

Domestic violence act is no doubt a progressive enactment for the protection and welfare of women who have been subjected to the vice of domestic violence. It has been enacted with the objective of securing the fundamental rights of women as are enshrined under Articles 14, 15 and 21 of the constitution of India²⁰. Since it's a civil remedy, the process for getting a relief is less technical and yet more expeditious. There are a

¹¹Section 13

¹²Section 15

¹³Section 16

¹⁴Section 24

¹⁵ 2019, Delhi High Court Judgment

¹⁶ 2010, Supreme Court Judgment

¹⁷ 2011, Supreme Court Judgment

¹⁸ 2020, Supreme Court Judgment

¹⁹ 2012, Supreme Court Judgment.

²⁰ As mentioned in the statement of objects and reasons of the D.V. Act

number of favourable orders such as the protection order²¹, compensation order²², order to secure residence²³ and other orders which may be gotten in the favour of an aggrieved person.

Another salient feature of the Act is that by way of judicial interpretation, the respondent need not be a man alone and may very well be a women too²⁴. The Act also covers live in relationships to be a "relationship in nature of marriage" and thus an aggrieved woman in such relationship is considered worthy of protection under the Act²⁵.

In order to do complete justice to the aggrieved person, protection officers are also appointed under the act so as to not only assist and aid the aggrieved woman in obtaining favourable order from the court but also to assist the court by submitting a domestic incident report and thereby act as a link between the court and the aggrieved woman.

Since the enactment is retrospective in nature it caters to the needs of those who have been aggrieved even prior to its enactment in 2005. It has been held by the Hon'ble Supreme Court that the reliefs under the Act are in addition to other reliefs and thus are in addition to other rights under civil and criminal laws. Although there are a number of amendments that are required to be made to the Act, yet the enactment in the present form is also quite progressive and caters to the need of the victims of the domestic violence in a holistic way. What the true reach and impact of the enactment would be is something what the time alone will tell.

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²¹Section 18

²²Section 22

²³Section 19

²⁴Honble Apex Court in Sandhya Wankhede v. Manoj Wankhede, 2011

²⁵Indra Sarma v. V. Sarma, Supreme Court Judgment, 2013