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DOMESTIC VIOLENCE ACT 2005 IN INDIA: VISION AND REALITY

Afshan Meer

Research Scholar , Department of Political Science , Aligarh Muslim University Aligarh .

Abstract:-Today, discussion about women empowerment is in limelight. Government is busy in throwing various program and policies for the upliftment of her status. Domestic violence has always been a major threat to the dignity and status of women. Earlier there was no specific law to deal with this problem of violence against women. It was only in 2005 when a serious step was taken and an act known as 'Domestic Violence Act 2005' came into existence. This act provides effective measures to protect women from being victim of violence within her own family. The vision which Domestic Violence Act 2005 reflects is, indeed, like a dream come true for women. This paper addresses the provisions of Domestic Violence Act 2005 and critically examines its application in Indian society.

Keywords:Domestic Violence, Women, Society, Laws, PWDVA .

INTRODUCTION

In India, woman is considered to be a Devi or goddess but in reality her condition does not seems better than Dasi or a Servant. She is subject to all sorts of torture and violence, which can be thought of. A Woman is usually supposed to live within four walls of house in the name of protection from outside threat but least consideration is given to the exploitation which occurs within the family. In India, women are culturally and socially taught that they are inferior to men and men have a privilege to dominate over them. To maintain their dominant position in the home, men inflict some or the other kind of violence on women and harass them throughout their life.

Women are exposed to domestic violence which has been an age old phenomenon. K. Ajitha, a well known Human Right activist from Kerala wrote an article "Violence and women in Kerala"¹ in which she described the extent of Domestic Violence in state in particular and of India in general. She wrote, "The depth of violence experienced by women cannot be measured in such cases. Usually women start complaining about it only when they reach the point of suicide. But almost all the agencies which are approached by a bettered woman such as police stations or religious organizations take a very indifferent and unsympathetic stand. They consider this as a family matter and hence very privet issue."

This victimization of women in India starts from the time of their birth. Boys are preferred to girls. In most of the cases the birth of a girl-child does not make happy even the parents of the child, not to speak about other members of the family. On the contrary, the birth of a son is enthusiastically celebrated with blessings showered on the couple by all the members of the family, friends and neighbors alike.² After getting married she is supposed to accept the traditional role of submissiveness and subordination to groom's family. This gender inequality generally has many manifestations. One such manifestation in a traditionally patriarchal society like India is domestic violence on women.

In a survey of "Future of Human Rights in India and Who Deserves it Most: Human Rights Protection and Promotion" out of 210 respondents, 17.14 percent felt that women as a group deserve the most human right protection and promotion, in our country. Whereas 13.80 percent thought that every citizen was a deserving candidate for the protection and promotion of human rights. According to 21.42 percent, the scheduled castes and 22.38 percent the scheduled tribes were the most deserving groups for human rights protection and promotion which also includes women within.³ Thus, understanding the humanness of a woman is imperative in helping her to attain development besides helping her to protect and promote her dignity and rights. But every aspect of a woman's life ranging from her early socialization in family going through schooling to married life is a comprehensive phenomenon which considers a woman inferior to man.

Many researches indicate that in a patriarchal family, the new bride has to quickly conform to the norms of her husband's family. Violence on women begins as a last resort with the non-conformity or delayed conformity to the family

norms, when the 'errant' woman is disciplined by the use of force.⁴ Thus, to tame a woman who does not accept the traditional role of submissiveness; any means including various violent acts are justified. Wife battering is the most prevalent form of violence against women which is most commonly used due to maladjustment between husband and wife.

The battered rationalizes his battering saying that it happened as he was not satisfied by the conduct of his wife. So she is made to feel guilty of her performance at home – be it cooking or general upkeep of the home. A housewife of Rajouli was beaten to death by her husband as she was not cooking good food and the house being untidy, for which she alone often at times, is not responsible. Implicit, in this viewpoint is that the husband has a right to beat his wife if she does not behave according to what he desires. A young woman of village Taddih under Amarpur Police Station of Banka was battered to death by her husband and in-laws as she refused to go out in rain to bring 'Ganja' for her husband.⁵ There are several such cases in each state pending before court and demanding justice. But Domestic Violence is not only confined to a particular detriment like Wife-Battering. It is a manifestation of the violence against women in the private space, and can take a form of physical, sexual, mental/psychological and economic abuse.

Earlier, in India, there was no particular law to deal with this kind of violence against women. The engagement of the Indian women's movement with the law since the 1970s has been primarily on the issue of violence against women (rape and dowry law reform campaigns) and violence in matrimonial relationships recognized in Section 498(A) IPC (cruelty by husband and his relatives, including mental cruelty). This engagement was mainly in the realm of criminal law. Thus, naming the problem and introducing it in the Indian legal discourse was half the battle won.

DOMESTIC VIOLENCE ACT 2005 IN VISION

It was in 2005 when Domestic Violence Act got introduced and provided some relief to women. The Act came into force on 26th October, 2006. It is to be noted that the definition of domestic violence under the DV act is wider than the definition of cruelty under Section 498(A), which covers "only willful conduct that is likely to drive the woman to commit suicide or which is likely to cause grave injury to the life, limb or health of the women or harassment with the view to forcing the women or their relatives to give some property or if, they did not give some property."⁶

Thus, practice of existing laws and provisions was not adequate to deal with the violence which women were facing in intimate relationships. Moreover, most of provisions were only to be used by a woman who was in legally valid marriage and these laws were not to offer a relief in terms of shelter, maintenance or compensation. The most significant lacunae in law were the non recognition of right to reside. In patriarchal context, in most cases, it is the male member of family who are in possession of the premises, as it is their names that appear on the legal deeds. This means that it is easier to dispossess a dependent female. This omission played a significant role in increasing the vulnerability of women, who continued to remain in violent relationships for fear of the dispossession and destitution. Thus a separate law for women was needed to facilitate women's access to justice as a step to overcome inequalities.⁷

However, it is to be noted that the rights under the DV Act are in the nature of reliefs to protect a woman from domestic violence and can be revoked, altered and discharged under the change of circumstances. This aspect has been addressed in dealing with each of the specific reliefs provided under the Act. This nature of reliefs was provided by the Protection of Women from Domestic Violence Act 2005 (PWDVA) to provide a breach of rights that are recognized. Here, the obvious right to be protected was the right to violence – free home, as it was essential to provide for this right within a legislative framework. That has been long for the first time in the PWDVA. This Domestic violence may be physical, emotional, verbal, sexual and economic in nature under DV Act.

A comprehensive definition of 'domestic violence' that captures a women's experience of violence in its diverse forms includes:

1. Physical violence includes at of beating, stepping hitting, biting, punching, kicking, pushing, shoving etc. -
2. Emotional and verbal forms of violence include constant demands for dowry; threats of violence or dissertation, ridicules, name calling, insults regarding child bearing and son preference or taunts on looks, culinary skills, character assassination, preventing the woman or child from going to school, preventing one from taking a job, forcing one to leave a job, preventing from leaving home with or without child, preventing one from meeting any person, forcing one to get married, preventing marriage to a person of one's choice, threat to commit suicide etc.
3. Sexual violence includes coerced sexual intercourse, being forced to watch or participate in pornography and any act of sexual nature to abuse, humiliate or degrade person or is threat of one's dignity or unwelcome sexual conduct.
4. Economic or financial violence includes failure to maintain and provide for, preventing one from working, forcing one to stop working, or disturbing one at work, taking away one's income, preventing one from using one's salary or wages, forcing one out from the house, stopping access to house or any part thereof, not allowing use of clothes or articles of household use, not paying rent and demand for dowry.

Moreover, Domestic violence includes both acts of commission and omission.

(i) Acts of commission include physical acts of beating, desertion, coerced sex, ridicules and insults.

(ii) Acts of omission include the failure to maintain, denial of food and money, neglect and failure to take proper care.

A single act of commission or omission of any of above is considered domestic violence. Further, women have often complained of abuse, which is a combination of different types of violence, commissions and omissions.⁸

The next question to be answered under PWDVA was how a woman would access these reliefs. Going to court is a traumatic process for most people. Also there are other constraints such as stigma attached to litigating against one's own family, the lack of wherewithal to access the courts and difficulties to get orders on forced. It was essential to address these concerns by providing mechanisms within the law. The office of the 'Protection Officer' was therefore instituted under the law. The Protection Officer has a two fold duty – First, to assist the woman in accessing the court and other support sources (such as legal aid, medical facilities, shelter homes, etc.) and second, to assist the court during the course of the proceedings and in the enforcement of orders. However, it was important that protracted litigation be avoided and the reliefs be granted on an emergency basis to tackle the situation of violence. Hence, though the law is civil in nature, criminal procedure was to be applied in accessing reliefs as it is speedier, complaints under this law, therefore, were to lie before the magistrate's court.⁹ The magistrate, in turn, is given wide powers to ensure that cases are disposed off in an efficacious manner. Thus, the DV Act combines features of both civil and criminal laws. It is governed by the code of criminal procedure and Magistrate passes the orders, but provides remedies in the nature of civil law.

This law seeks to assist the victim of violence and if the respondent fails to abide by the order, then he is to be visited with the penalty. Also the respondent is given an opportunity to stop the violence before he is punished for his acts. The law is thus reasonable, fair and effective in dealing with violence. Section 31 of the Act makes it an offence if the respondent doesn't abide by the terms of the protection order. Section 31(1) makes a breach of any order passed under the Act, whether an interim order or a final order, an offence under the Act and makes it punishable with imprisonment of either description (simple or rigorous) for a term up to 1 year or with fine up to Rs. 20,000/- or with both.¹⁰ The offence under section 31(1) shall be cognizable and non-bail able and the court can convict on the sole testimony of the aggrieved person.¹¹

The aid and assistance which a woman may exercise for immediate protection and shelter are also mentioned in the DV Act. If a woman wants to avoid the legal option or wants to wait for some more time before she tries it out, here are some options she can think about:

- i. The National Commission on women
- ii. State Women's Commissions
- iii. The National Human Rights Commission (NHRC)

Apart from these statutory bodies and institutions women could also take help of the police; some special cells are also established by local political in Metropolitan cities which are categorized as under:

- i. Crime against Women (CAW) Cells
- ii. Special cells for women and children.

Under this DV Act, the role of counselors, NGOs, Women's Organizations and even medical personnel has also been spelt out.¹²

Rights of Victim under the Act:

Under the DV Act, the victim of domestic violence has the following rights:

1. The rights to reside in the shared household. This right also entitles her to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the amenities facilities therein, by her or her children under section 19.
2. The right to immediate and emergency relief against domestic violence.
3. The assistance of a Protection Officer and Service Providers to inform her about her rights and the relief which she can get under the Act under section 5.
4. The assistance of Protection Officer, Service Providers or the Officer-in-Charge of the nearest police station to assist her in registering her complaint and filing an application for relief under sections 9 and 10.
5. To receive protection for her and her children from act of domestic violence under section 18.
6. She has the right to measure and order protecting her against the particular dangers or insecurities she or her child are facing.
7. To regain possession of her 'Stridhan', jewelry, clothes, articles of daily use and other household goods under section 18.
8. To get medical assistance, shelter, counselling and legal aid under sections 6, 7, 9 and 14. Under the Act, medical professionals and shelter homes are under a duty to assist the women who has faced domestic violence, in case she approaches them.
9. To restrain the person committing domestic violence against her from contacting her or communicating with her in any manner under section 18.
10. To get compensation for any physical or mental injury or any other monetary loss due to domestic violence under section 22.
11. To file complaint or application for relief under the Act directly to the court under sections 12, 18, 19, 20, 21, 22 and 23.

12. To get the copies of the complaint filed by her, applications made by her, reports of any medical or other examination that she or her child undergo.
13. To get copies of any statements recorded by any authority in connection with domestic violence.
14. The assistance of the Protection Officer or the police to rescue her from any danger.¹³
15. She can file a complaint under section 489A of Indian Penal Code (IPC) simultaneously. This right has been recognized under the DV Act.

Thus, the vision which the Protection of Women from Domestic Violence Act 2005 (PWDVA) cherishes is to have a society in which women are completely protected from all kinds of detriments. Provisions and conditions which DV Act provides are enough to ensure a dignified life to a woman but only if they are applied properly.

REALITY DESPITE THE EXISTENCE OF THE ACT:

As one knows that the success of any law is dependent upon whether the society and policy makers are able to identify the problem and are they keen to solve it seriously. Domestic Violence Act 2005 seems a better policy which identifies the domestic violence as a violation of human rights and not as a mere domestic dispute. The law sends out a powerful message on the standards of behavior that will not be tolerated. But in a country like India, it is very difficult to apply such provisions of law in a perfect manner. India has a patriarchal society in which women are supposed to live under the dominance of men. Men are in hold of the majority of institution. Still women are being victimized by the institution of marriage, in which, they are thought to be inferior to other husbands and are repressed by the implied and convert socio-cultural practices. Social pressure forces women to maintain the status quo. Thus, neglect and exploitation of women continue in its characteristic fashion.

Moreover, no one dares to interfere or questions the men even if he is seen molested or abused his wife because it is considered purely something their family affair. Being most frequently referred to "Crime in India" reports does not provide information on domestic violence to the extent which exactly exists. The society also implicitly supports this attitude by leaving the husband and wife to themselves to settle their affairs. Wife-battering is commonly accepted by society and not many people take much notice to it.¹⁴ People usually ask: why women continue to live in a situation where they are eventually abused. The theory of learned helplessness gives an insight into the mental stage of passive resignation experienced by women. According to this approach, some events occur in women's life during childhood and onwards due to which they acquire feelings of helplessness and poor self-image and resigning themselves to fate or accepting blame. The fear of losing the husband's affection and the fear of disruption of their home life and status quo also prompts them to tolerate the violence. Thus wives are afraid to stay but at the same time terrified to leave for fear of inescapable reprisals. They prefer to choose the devil than foray into the deep sea.

Also the dependency factor is there to restrict women from opting for any legal help. This dependency of women in husband's family has two levels:

- (A) Objective Dependency
- (B) Subjective Dependency

OBJECTIVE DEPENDENCY INCLUDES:

- i. Lack of independent financial resources
- ii. Low level of education
- iii. Physical insecurity
- iv. Presence of young children
- v. Fear of living alone and
- vi. Fear of physical assault, harassment etc.

Subjective Dependency may occur in spite of economic independence or she have no children but still is subject to violence by her husband. They are given below:

- i. Differential sex role socialization
- ii. Emotional investment in marriage and children
- iii. Stigma attached to divorce
- iv. Fear of rejection by parents and
- v. Lack of social support system etc.¹⁵

As a result of all these shortcomings crime against women inside home is increasing with ease. It is continuously being shown in the Report of NCRB that there is urgent need to secure women from inside threat as much as from outside threat.

Crime against women in India

Crime Head	Committed by	Reported Cases	Charge sheet rate	Conviction
Cruelty by husband and other family members	Family members	99,135	94%	20.2%
Molestation	Outsiders	42,968	96%	27.7%
Kidnapping and Abduction	Outsiders	35,565	73%	28%
Rapes	Outsiders and family members	24,206	93.8%	26.4%
Dowry deaths	Family members	8618	92%	35.4%
Sexual harassment	Outsiders	8570	96.4%	45.8%
Importation of girls	Outsiders	80	82.4%	7.8%

Source: national crime report bureau¹⁶

Hence, in such a society it is very difficult to utilize the remedies which are provided by law and PWDVA being no exception is avoided by most of the women. Moreover, Government of India, under the section 11 of the DV Act, has some obligation to take affirmative actions to prevent violence and protect victims of Domestic Violence. Government has a duty to ensure that the provisions of this Act are given wide publicity through public media and the Central Government and State Government has given periodic sensitization and awareness training on the issues addressed by the Act. Also various ministries and departments have a duty to ensure that the services provided over the issue of domestic violence are established and periodical review of the same is conducted. Various protocols for the various Ministries concerned with the delivery of services to women, under this Act, including the courts are prepared and put in place.¹⁷

But, despite of these provisions women are in deplorable condition and are being continuously threatened and main reason behind it is ineffective application of provisions. Sometimes government is not serious to provide services and fulfill its duty as per the provisions of Act and sometimes women are not willing to take the advantages of the Act because of prevailing social conditions. Thus, the need is to bring a mental revolution in our society to fulfill and realize the vision of PWDVA. Administrative system also needs to be strict and effective in providing relief to women from domestic violence. Ideas like women are better half of society or have role of goddess over earth are need to be enhanced. Only change in mental attitude can provide remedies to women otherwise any Act, no matter what provisions it have, will prove ineffective.

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Afshan Meer

Research Scholar , Department of Political Science , Aligarh Muslim University Aligarh .

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