

Right to Life with Dignity vis-a-vis Domestic Relationship: from Subjugation to Empowerment

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Abstract

Domestic violence causes endless pain and leaves scars on the life of a person who is being victimized in an entrusted relationship. Domestic Violence is often understood to constitute such 'cruel' conduct towards the women. It commonly prevails in many Indian states where not only the women but also the children are victims of the social evil. In spite of the various laws and its amendments, India is still witnessing the pain of such suffering. It thus becomes a human right issue. The need to respond to the mental and physical violence against woman as the primary approach to ensure the gender justice.

Keywords: Domestic Violence, Women, Children, India, Human Rights.

Introduction

Domestic Violence is undoubtedly a human right issue, which was not properly addressed in the country prior to 2005. Domestic violence means physical, sexual, verbal, emotional, and economic abuse against women by a partner or family member residing in a joint family, which plagues the lives of many women in India¹. Domestic violence is a standout amongst the most insidious types of violence against women. It is pervasive in all social orders. Almost in all family connections, women of all ages are subjected to brutality of different sorts which includes battering, assault and different types of rape, different types of viciousness and mental tortures which are propagated by customary states of mind. Absence of financial freedom constrains numerous women to remain in vicious connections. Shunning of the family obligations by men can be another type of brutality and compulsion. These types of viciousness put women's well being in danger and disable their capacity to participate in family life and open life to the fullest possible extent. Domestic Violence Act has also introduced new concepts like 'right to residence', 'domestic', 'shared household' for the protection of women.

Review of Literature

The main aim of the review of the literature is to explain the evidence based upon the occurrence of the domestic violence, it also explains the present and current research based upon the exact ratio and laws that are framed in order to curb this violence. The Protection of Women from Domestic Violence Act, 2005, explains the basic definitions, features and various remedies in case of the happening of domestic violence against the women in the society. This research paper basically deals with this above mentioned Act for review.

Objective of the Study

The main aim to write this research paper is to highlight the issues mainly based by the women in her matrimonial homes and how the Protection of Women from Domestic Violence Act, 2005 is still not resolving the issues related to the domestic violence of the women in India. This paper is basically designed to know how the human right of a women is interrelated to her free life in her matrimonial home.

Definition

According to Section 3 of The Protection of Women from Domestic Violence Act, 2005 – "Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—
a. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or



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b. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

c. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

d. otherwise injures or causes harm, whether physical or mental, to the aggrieved person.²

Whereas this Act also specifically mention the definition of 'Domestic Relationship'.

According to this Act, "Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are correlated by way of consanguinity, or through a bond in the scope of marriage, marriage, adoption or are family members living together as a joint family.³

This Act is gender based and empowers women to raise their voice against any kind of harassment, cruelty, torture and violence within the four walls of the home.

Causes of Domestic Violence

To summarize the causes of domestic violence faced by the Indian women is a very herculean task and can take any form like bigamy, dowry death, sexual intercourse during judicial separation, abetment to commit suicide etc. The main causes that lead to enhancing the domestic violence are-

- 1) Dowry
- 2) Drugs
- 3) Drink (Alcohol)

Dowry

It is worst form of domestic violence wherein many married women have been harassed and tortured or killed at the matrimonial home by her husband and relatives out of greed for dowry. It is considered to be the gravest social evil of today's immoral society. It is practiced in many different of the world, dowry-related violence is most prevalent in South Asia, in the states of India, Pakistan, Sri Lanka and Bangladesh. Acid Attacks, Battering, Marital rape, dowry death, bride burning are the most frequent offences related to the dowry related violence in India. Many kinds of methods of extortion are adopted by the perpetrators like starvation, deprivation of clothing, evictions and false imprisonment. They habitually use violence and disguised it as suicide or accident, such as acid attacks or disaster from kerosene or stove to burn or kill women for meeting the dowry demands.⁴

Drugs

Drug consumption beyond the prescribed ratio of the drug which is prescribed by the government of India becomes a sufficient cause to increase the probability of domestic violence in India. The World Drug Report which was released on 26th June 2016 states that drug use by men impacts women as they face a higher rate of physical violence.⁵

Alcohol Abuse

No doubt drinking is a constituent of culture all over the world and is almost a cult in certain

societies. Yet, even in India as elsewhere, a habit of excessive drinking is a vice and cannot be considered reasonable in a married life. No reasonable person marries to endure habitual drunkenness which is a disgusting conduct. This type of the abuse may cause huge amount of anguish and distress to the wife that becomes miserable and unbearable at some point of time. Yet it is also a ground for the matrimonial relief in India under various personal laws as it will come under the preview of the cruelty physical as well as mental. It can also become one of the main causes of Irretrievable Breakdown of Marriage in many areas of the nation. So it is one of the main abuses faced by the women in the society by her husband. If it is so, she may leave him and may, apart from cruelty, even complain of constructive desertion.⁶

Journey of the Law on Domestic Violence

Prior to 2005 the word 'Domestic Violence' was not defined under the legal discourse of India. This does not mean that Acts related to the domestic violence were not punishable. It was earlier defined under the Section 498A of the Indian Penal Code, and this is also a ground for divorce in various personal laws. It is often taken as a act of cruel conduct against the women. Most importantly as a signatory to Convention on the Elimination of Discrimination Against Women (CEDAW) and the Beijing Platform of Action, India has accepted the definition of Violence against women. International law helps to elucidate, illustrate and interpret Indian law and is useful in expanding the scope and parameter of the definition of the Domestic Violence. The Lawyers Collective (Women's Rights Initiative) began its campaign for a civil law on domestic violence in the early 1990s. The need for a specific law on domestic violence was obvious given the fact that the Indian legal and political systems have denied adequate legal redress to women facing violence within homes and intimate relationships for long.⁷ After consulting with other groups working for the benefit and welfare of the women it was proposed to enact a law keeping in view the rights guaranteed under Article 14, 15 and 21 of the Indian Constitution, 1950 to provide for a remedy under the civil law which is intended to protect the women from being victim of domestic violence. Hence the Government was persuaded to make the Laws on Domestic Violence for the protection of the Women.

Cases on Domestic Violence

According to the NCRB Report in 2014, 426 cases were registered; in 2015, 461 cases of domestic violence were registered and in 2016, 437 cases were registered in India. According to the Annual Report 2016-17 published by the National Commission of Women total 1293 cases related to the violence against women was registered in India.

Functionaries under the Act

1. Government of India –Section 11 defines duties of the State Government and Central Government to make laws for the protection of the women.
2. Metropolitan Magistrate & Police Officer – This Act also mentions duty of the Metropolitan Magistrate and the Police officer to help the

victim of the Domestic violence. To deal with cases under Domestic Violence Act, the Government of India has been stressed upon the want to educate and impart training to First Class Judicial Magistrates/Metropolitan Magistrates through National/State Judicial Academies.

3. Protection Officer - One of the mainstays of the Act is the creation of a Special post of Protection officer by the State Government, at least one for each district, who shall preferably a woman⁸ Under section 5⁹, it is the duty of the Protection Officer to inform a victim of domestic violence of the reliefs available under the PWDVA including her right to seek monetary relief, residence order, compensation order, access free legal services, and other rights that may be available under any other law. Under Section 6¹⁰, the Protection officer can also request a shelter home to provide shelter to a victim of Domestic Violence. The duties and functions of Protection Officers have been enumerated under Section 9¹¹ and include inter alia provision of services to victims by making 'domestic incident report' to the Magistrate, assisting then Magistrate in the discharge of his functions, making application for a protection order and ensuring that legal aid is provided free of cost to victims wherever required.
4. Service Provider - Under section 10 of the Act, provisions have been made for the registration of a voluntary association or an organization registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 as a service provider for the purposes of this Act. A service provider, under this section, shall have the power to record a domestic incident report and forward a copy of the same to the Magistrate or the Protection Officer. Such service provider can also get the victim medically examined and ensure that she is placed in a shelter home wherever required. No legal proceeding, suit, prosecution or can be framed against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence¹². A suit or proceeding cannot lie against a service provider while discharging his functions in good faith as required under the Act.

Relief Available to the Victim

- a) Protection order- Under section 18, the Magistrate is empowered to grant Protection Orders if he is prima facie satisfied that an incident of domestic violence has taken place or is likely to take place. The protection order is passed to prohibit the respondent from committing, aiding or abetting acts of domestic violence; entering the place of employment of the victim; establishing oral, written, telephonic or any other form of contact with the victim; alienating assets or operating joint or single bank

accounts/bank lockers or her stridhan/ any other property held jointly/ separately; causing violence to the dependants or committing any other act specified in the Protection Order.

- b) Residence Orders- Section 19 provides for the passing of Residence orders restraining the respondent from alienating or disposing of or renouncing rights in the shared household except with the permission of the Magistrate; directing the respondent to secure an alternate accommodation; restraining the respondent or his relatives from entering any part of the shared household. Under this section, the Magistrate may also direct the respondent to not enter the premises of the household.
- c) Monetary Reliefs- Under section 20, fair and reasonable monetary reliefs may be provided to the victim for compensating for loss of earnings on account of domestic violence, meet medical expenses, or make up for loss caused due to destruction, damage or removal of property from the control of the aggrieved party. The types of monetary reliefs provided under section 20 are not exhaustive.
- d) Custody Orders- Under section 21, temporary custody of any child may be given to the aggrieved person or any person making an application on the victim's behalf.
- e) Compensation Orders- The Magistrate may also make orders for providing compensation and damages to a victim of domestic violence on various grounds including mental torture and emotional distress, caused by acts of domestic abuse and violence done by the respondent.

Conclusion and Suggestion

This Act is not clear about the definition of 'Aggrieved party'. Whether the Male child would be included in the definition or not has not been specified. Woman victim of Domestic violence in Live-in Relationship are not included in the definition of Domestic violence. The famous 'Bell Bajao' campaign was initiated to encouraged residents to stop domestic violence by ringing the doorbell whenever violence was suspected. A pertinent problem is that even though we are aware of a neighbor who is in pain due to domestic violence, we tend to mind our own business and walk away. It is not at all successful in Indian society where people are very self-centered and also due to the long investigation and interrogation by the police, people usually tend to ignore the hapless victims of domestic violence. One of the most important reasons of the domestic violence is the stereotype culture of the Indian society which force a woman to live at her matrimonial home in any condition what so ever, because the responsibility of a married girl in her own home ends with her marriage. In India we have so many laws and Legislation regarding the protection of Woman but still woman is facing the all forms of the exploitation, harassment, and mental and physical torture. According to the provisions of this Act There must be a protection officer to check and curb the occurrence of this social evil but the exact situation is quite different. As The Domestic Violence Act may have

been introduced 12 years ago, but the implementation of its provisions was not taken up uniformly across the country.

In Maharashtra, consistent advocacy by social work organizations like the Tata Institute of Social Sciences has ensured that the government has now appointed as many as 216 permanent, full-time protection officers across the state, with their own zonal offices and assistants. But in many other states, even years after the Act came into force protection officers were not appointed. The appointments varies from State to State, some have very few Protection officers while other States have many Protection officers who are already over burdened with other official responsibilities.

At last our submission is that in India we have so many laws that are essential for the upliftment of women in the society but lacks proper implementation of the various Acts which is the main impediment for its success. Before legislating the new laws first of all we should concentrate on the implementation of the existing ones.

References

1. Section 3 (a) of The Protection of Women from Domestic Violence Act, 2005.
2. Section 3 of The Protection of Women from Domestic Violence Act, 2005.
3. Section 2 of The Protection of Women from Domestic Violence Act, 2005.
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5. <https://www.shethepeople.tv/news>.
6. <http://www.legalservicesindia.com/article/2080/Journey-of-Women-Empowerment.html>.
7. <http://www.lawyerscollective.org/domestic-violence/domestic-violence>.
8. Rule 3(1) of the Domestic Violence Rules, 2006.
9. Section 5- Duties of police officers, service providers and Magistrate.-A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—
 - a. of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
 - b. of the availability of services of service providers;
 - c. of the availability of services of the Protection Officers;
 - d. of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
 - e. of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:
Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.
10. Section 6- Duties of shelter homes.—If an aggrieved person or on her behalf a Protection

Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

11. Section 9 Duties and functions of Protection Officers.—
 1. It shall be the duty of the Protection Officer—
 - a. to assist the Magistrate in the discharge of his functions under this Act;
 - b. to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
 - c. to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
 - d. to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
 - e. to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
 - f. to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
 - g. to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
 - h. to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973.(2 of 1974);
 - i. to perform such other duties as may be prescribed.
 2. The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.
12. Section 10(3) of Protection of Women from Domestic Violence Act, 2005.