

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 : A CRITICAL EVALUATION

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Violence against women is mostly found within the precincts of the four corners of the dwelling house and is covered by the expression domestic violence against women. Use of violence against women is also found outside the homes such as in case of communal rights, caste conflict, mass and gang rape, honour killings and killing of women allegedly practicing witch craft.

The systematic exposure by the women's movement of violence against women, and especially of sustained domestic violence, has focused attention on one of the most serious violations that women suffer at the hands of men within their own families and in their own homes. Till recently, the issue has remained largely a women's issue, a problem that needed to be addressed by women's groups, because the domestic nature of the violation precluded serious consideration by policy makers. Even towards Equality, the landmark report on the status of women published in 1975¹, did not include a section on violence. Largely as a result of tireless campaigning and lobbying, by national and international women's movement, violence against women has began to be taken seriously as a social crime, and a serious indicator of something terribly wrong in gender relations. This violence includes physical and non-physical abuse and many extend right through the better part of a woman's life; all the way from female foeticide and infanticide to death by burning. Feminists in India have uncovered the endemic nature of domestic violence, but have also drawn attention to its structural and systematic under printings, whereby violence in the family and within the household is simultaneously sanctioned and silenced, and legitimized. Indeed, a number of recent studies have identified the family/household as a major locu of violence against women and girls, raising important issues about women's vulnerability in the home generally believed to be a safe haven².

Protection of Women from Domestic Violence Act, 2005

The tireless efforts, highlighting the gravity and severity of domestic violence bore fruit in the year 2006 when the Parliament passed a law on the subject entitled "Protection of Women from Domestic Violence Act 2005". The Monsoon session of August 2006 of Parliament was marked by the passage of this Act which was hailed as the first significant attempt to recognize domestic violence as a punishable offence. Heretobefore, there was no remedy under civil law available to a victim of domestic violence. Where as woman is subjected to cruelty by her husband or other relatives; it is an offence under Indian Penal Code, for

which the accused may be punished with imprisonment and fine³ but there is no civil remedy available to the victim regarding her protection, relief and custody of her children. The Protection of Women from Domestic Violence Act 2005, now confers this right to the victims of domestic violence. This Act is the result of decade long campaign by women's group, social and legal bodies and NGOs for a civil law against domestic violence. Domestic violence has been defined under the Act as "Physical, economical, sexual or psychological abuse directed towards one's spouse, partner or other family members within the family. This Act of 2005 is significant because the term 'domestic violence' has been widened in the meaning and scope from cultural specific restriction of dowry deaths and cruelty to positive civil rights of protection and injunction. This Act is a marker in the history of women's movement in India, which has confronted the problem of violence for well over decades.

Under the Act it is stated that any act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered domestic violence. Under this the law considers physical, sexual, emotional, verbal, psychological and economic abuse or threat of the same⁴.

Form of Abuse Constituting Domestic Violence

Following are the form of abuse constituting domestic violence :

- (a) Physical abuse is any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb or health or an act that impairs the health or development of the person aggrieved or that includes assault, criminal intimidation and criminal force.
- (b) Sexual abuse is any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the person. The law also covers instances where a woman is forced to have sexual intercourse with her husband against her will.
- (c) Verbal and emotional abuse has been defined as any insult, ridicule, humiliation, name calling and such acts. A woman who is insulted or ridiculed for say not being able to conceive or for not having produced a male child, can now take recourse of this Act of 2005.
- (d) Economic abuse is a very important part of the definition. The deprivation of economic or financial resources to which the aggrieved person or child is entitled under the law or custom or which the person aggrieved requires out of necessity, can be claimed under the provisions of this law. This provision comes into play in instances of marital disputes, where the husband tends to deprive the wife of necessary money as a weapon. A husband who sells off his wife's jewellery and assets is guilty of economic abuse. The husband cannot dispose of household effects, cannot alienate her from her assets or any other property in which the aggrieved person has an interest or entitlement by virtue of the domestic relationship. A husband may not sell or use stridhan (dowry) and or any other property jointly or separately held by the wife.

An important feature of the Act is that the law ensure that an aggrieved person who takes recourse to law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms of violence, he cannot during the pendency/disposal of the case prohibit/restrict the wife's continued access to resources/facilities to which she is entitled by virtue of domestic relationship, including access to the shared household. The Act, which give all married women or female partners in a domestic relationship, the right to

reside in the shared household, applies whether or not she has any right, title or beneficial interest in the same. The law further provides that if an abused woman requires, she has to be provided alternate accommodation and in such cases, the accommodation in her maintenance has to be paid for by her husband or partner⁵.

The Act also provides for the appointment of protection officers to be appointed by the state government and will be under the jurisdiction and control of the court. The protection officer will assist the court in making a domestic incident. Report or an application for a protection order on behalf of the aggrieved woman protection officer will ensure that aggrieved person are provided legal aid, medical facilities, safe shelter and other required assistance⁶.

An important feature of the Act of 2005, is to associate service providers in the implementation of the Act. Service providers as defined in the Act are private organization recognized under the Companies Act or Society Registration Act. They will have to register with the state government as a service provider, to record domestic incident Report and to let the aggrieved person medically examined. The service provider will also ensure that the abused women is provided accommodation in a shelter crime, if she so requires. The new law thus recognize the role of voluntary organization in addressing the issue of domestic violence. NGOs working for woman's rights can now register as service providers under the Act.

The Act lays down provision for various relief which may be claimed by an abused woman. She can now get through courts protection orders, residence orders, monetary relief, custody order for her children, compensation order and interim/exparte orders. If the husband violates any of the above orders of the courts, it will be deemed to be an offence punishable with one years imprisonment and/or fine upto Rs. 20,000. In addition, he may be prosecuted for cruelty under section 498-A of Indian Penal Code⁷.

CONCLUSION :

The Act of 2005, which has come into force, needs to be implemented properly. To this end the Government should initiate a widespread campaign for public awareness, and training programmes to sensitise the police, media and judiciary and to encourage NGOs to register as service providers.

With the passage and implementation of this law, it may be hoped that the age old menace of domestic violence against women may be curbed to greater extent and the incidents of wife beating, and degrading treatment meted out to her in the family of her in laws may be tackled successfully, provided that the Act is implemented in its true letter and spirit for which it has been enacted.

References :

- 1- Towards Equality was the title of the report of the Committee on the Status of Women in India (1974-75).
- 2- Hasan, Zoya & Mennon, Ritu (2004). Unequal citizens, Oxford University Press, New Delhi, p. 166.
- 3- Section 498-A, Indian Penal Code, 1860.
- 4- Section 3 of the Protection of Women from Domestic Violence Act, 2005.
- 5- Ibid, Section 17.
- 6- Ibid, Section 8.
- 7- Ibid, Sections 18-23.