

Critical Overview of Protection of Women from Domestic Violence

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Abstract: *Violence against women is a complex phenomenon that is deeply embedded in Indian society. To protect women against discrimination, the law empowers women through various ways by equipping them with right and power to enable them to fight against the patriarchal nature of society. The main purpose of this paper is to probe into the provisions made under the Protection of Women from the Domestic Violence Act, 2005 (PWDVA, 2005) and to explain the roles and responsibilities of different authorities under this Act. The act aims to provide legal protection to women who experience domestic violence and to prevent such violence from occurring. The act recognizes several forms of domestic violence, including physical, emotional, psychological, and economic abuse, and provides legal remedies for victims. Therefore, this research paper aims to analyse the impact of the Protection of Women from Domestic Violence Act (2009) on women's rights in India. The study will examine the implementation and effectiveness of the act, highlighting its strengths and weaknesses. The paper will also explore the challenges faced by women in accessing justice and the factors that contribute to the continued prevalence of domestic violence in India. Finally, the study will suggest recommendations for improving the implementation and effectiveness of the act, with the goal of enhancing the protection of women's rights in India.*

Keywords: discrimination, empowers, psychological, domestic, patriarchal

I. INTRODUCTION

Domestic violence against women is an age old phenomenon, manifested from the perception that women are weak and in a position to be exploited. The root cause of domestic violence is unequal gender relations, which is often exacerbated by economic, social and cultural factors. Economic dependence has been found to be the primary reason. Without the ability to sustain themselves economically, women are forced to stay in abusive relationships and are not able to be free from violence. Due to deep-rooted values and culture, women do not prefer to adopt the option of separation or divorce. These factors make it imperative to understand the key issues that were stressed by women's rights groups, international development agencies, civil society and policymakers prior to the adoption of this legislation. Moreover, the 2005 Act was the first legislation on the issue of 'domestic violence'. It is therefore vital to examine the underlying reasons behind the adoption of a specific legislation on the subject. The first section of this report hence explores the historical background of the Act. This section will also outline the contribution of key agents and the general parliamentary process followed for adoption of the legislation.

However, merely viewing the legislation in terms of its provisions would be insufficient. It has been more than 7 years since the Act has been brought into effect. It is hence necessary to examine if the Act has sufficiently addressed the problem of domestic violence. The second section of this report analyses the provisions of the law in terms of its merits and demerits, identifies critical areas regarding implementation, scenario pre and post adoption of the Act in order to understand if there is a need for a new or improved legislation. Based on insights derived from the previous sections, the report also puts forward few policy recommendations for consideration. This report aims to provide the reader with a holistic view with respect to the 'Protection of Women from Domestic Violence Act, 2005' and its significance in dealing with the problem of domestic violence. Hence the report has been split into 3 parts: history & background, an overview of the legislation and the analysis of the legislation.

History & Background I. Domestic Violence in India: What does it constitute? In the context of violence against women, 2 terms are constantly used: Domestic Violence (DV) or more specifically intimate partner violence (IPV). Domestic violence can be described as the power misused by one adult in a relationship to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. It is a wider term that includes all physical abuse within a house, not limited to abuse to a woman from her partner, but could include abuse from in-laws, abuse of the elderly or children in the house. Intimate Partner Violence is what the man unleashes on the woman. Such DV or IPV violence can take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault. The frequency of the violence can be on and off, occasional or chronic. Like other countries such forms of violence exist in India. However as per crime reports, forms of violence such as forced abortion, widow burning, rape, dowry deaths are highly prevalent in India. Moreover, domestic violence in India is traditionally seen in the context of marriage. The National Family Health Survey-2005, indicated that 37.2% of women “experienced either physical or sexual violence” after marriage. However, the usual context in which such violence occurs also needs to be explored. Most cases of domestic violence in India have seen to exhibit the theme of ‘patriarchal ideology’. The patriarchal structure of the Indian household is seen to affect the women’s agency either through marriage, active discrimination by means of abuse and diminished women’s agency through limited economic opportunity. Most violence in the patriarchal Indian home is attributed to patriarchal beliefs and the manifestations of a culture that is tolerant of violence.

Bhatti 1990 study, reported that most of the respondents agreed that men beat women because they have to be controlled and kept in their place. As per a recent report by UNICEF, 57% of boys and 53% of girls in India think a husband is justified in hitting or beating his wife. This portrays that not only adults but also adolescents harbor patriarchal beliefs. The problem with violence within the Indian home is also the consideration that it is a ‘private matter’. In India, domestic violence often happens as a result of dowry demands. Dowry can be seen as a manifestation of the patriarchal structure in India. Dowry is exchanged in a majority of Indian weddings. Although its practice became illegal post Dowry Prohibition Act 1961, dowry flourishes among most social classes. Families of the bride and groom negotiate transfer of assets to the groom and his family in exchange for marrying the bride, often within the context of an arranged marriage. Dissatisfaction with the amount of dowry may result in abuse of the bride. Researchers have also documented this link.

A 2005 study by Srinivasan published in World Development, found that domestic violence is lower among women who bring larger dowries. A study by Mahek Singh in Family Counseling Centers (FCCs) in Chandigarh showed that dowry is a significant factor for marital discord, where around 36.2% of the married women who approached the FCCs complained of dowry-related violence. In extreme cases "dowry deaths" or the murder of the bride by her husband and his family takes place. Numerous incidents of bride burning, harassment and physical torture of newly-wed women and various kinds of pressure tactics are adopted by the husbands/in-laws pressurizing them for more dowry. In 2011 alone, the National Crime Records Bureau reported 8,618 dowry harassment deaths.

The need for legislation on domestic violence:

Of all forms of criminal behaviour, domestic violence is among the most prevalent and among the least reported. One reason for this anomaly is that till DV Act 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Sections in Indian Penal Code) were limited. Few provisions existed for the married woman to address issues of domestic violence. The existing personal laws (Hindu, Christian, Muslim) and few secular ones like the Special marriage Act deal only with marriage and the breakdown of marriage. None of these offered any safeguard or right for the woman to live in peace in the matrimonial home. This omission makes it easy to throw a woman out on the street with or without the dowry she brought with her and to coerce her into divorce or a maintenance settlement. Also, to continue receiving such settlement, the divorcee has to remain chaste and not remarry. In many cases, a woman does not opt for a divorce, as she fears losing custody of her children considering the fact that the father is considered the natural guardian of the child. Though the Dowry Prohibition Act was introduced in 1961, it did not bring much succor. Initially, the offences under the Act were made non cognizable, bailable and non compoundable. The Act has failed in its operation because of this.

For another twenty years, there was a hiatus. In the 1980s, two important provisions that brought domestic violence out of the private closet into the public domain were enacted. The first of these was the introduction of Section 498A of the Indian Penal Code brought in through Criminal Law (Amendment) Act, 1983, which criminalized violence in marriage, both physical and mental, inflicted on women. All violence faced by women within home was usually attributed to dowry. Section 498A, IPC was hence brought to address dowry related violence. Fortunately, although conceived as a protection against dowry harassment, the text of Sec 498A was wide enough to apply to other situations of domestic violence. Section 498A laid down that a “husband or relative of husband of a woman subjecting a woman to cruelty”. The second were the new provisions of Section 304B, Indian Penal Code and Dowry Prohibition (Amendment) Act, 1986 read with Section 113B of the Indian Evidence Act, 1872 creating a new offence of dowry death. Both the 1983 & 1986 amendments have amended the CRPC and Evidence Act., However, Section 498A, IPC had limitations as it did not take into account day to day violence in the household and delegitimized the violence faced by married women at the hands of other relatives. Also, mental harassment is open to subjective interpretation and as far as physical cruelty is concerned, visible evidence is preferred. Hence, in the absence of any bruising or marks, it became impossible to lodge a complaint². Also, this provision dealt with abuse of persons within the institution of marriage. The fact that the father is considered the natural guardian of the child. Though the Dowry Prohibition Act was introduced in 1961, it did not bring much succor. Initially, the offences under the Act were made non cognizable, bailable and non compoundable. The Act has failed in its operation because of this.

These issues depict that there was lacuna in the legal system. With the ongoing provisions, there was no emergency relief available to the victim; the remedies that were available were linked to matrimonial proceedings; and the court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser. Also relationships outside marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence. It is essentially to address these anomalies that the Protection of Women from Domestic Violence Act 2005 was passed. It is also important to note that the government was over-eager to pass laws even when there were adequate provisions within the IPC for crimes such as sati, obscenity and procuring minors for prostitution, in case of domestic violence instead of a new legislation, the government was content to amend the provisions of the Criminal Acts.

Evolution of the Act:

The Women's movement Protection of Women from Domestic Violence Act (PWDVA) was a part of a longer history of feminist engagement with violence against women. It is hence imperative to explore the history of the campaign. Beginning in 1970's, feminists came together in what were later termed as 'autonomous woman organizations'. These groups were independent of party affiliation although individual members often had party links. Between 1975 and 1980, the movement focused largely on economic and demographic issues. Issues of violence were given scant attention. However, in 1979-1980, the movement shifted gears. The women's movement led by autonomous women's organizations brought issues of sexual violence to the forefront of the feminist agenda. This broadening of feminist agenda was catalyzed by political mobilization around the Mathura case. Women activists undertook to organize campaigns around other key issues of gender violence – dowry deaths, rape, wife beating, female foeticide & sati. The anti rape protests were followed by anti dowry campaigns. There were accounts of what the women's movement termed ' bride burning' or dowry deaths. The agitations by feminist groups across the country were able to attract the attention of the State to the growing incidents of the so called death-by-fire. The campaign highlighted the difficulties in invoking the law in cases of dowry related violence, for a range of reasons. For instance, dying declarations by women were seldom treated as evidence against the husband and in-laws; and even cases that were registered on the basis of dying declarations were later dismissed by the courts on the ground of inadequacy of evidence. Thus, charges of murder, abetment to suicide could not be successfully invoked. Similarly, police would be reluctant to intervene, arguing that it was not the task of the police to intervene in “family quarrels”.

The women's movement campaign led to the reforms in rape law via the Criminal Law Amendment Act 1980, Criminal Law (Second Amendment) Act in 1983, which introduced Section 498A in the Indian Penal Code (IPC).

II. CONCLUSION

Though the Government of India has passed many legislations to protect women, yet they are oppressed from time to time and it has become a complex problem. As such, the efforts of educators, social workers, health workers and members of women groups, government authorities, NGOs, police, people from different professional backgrounds and the community in general, are required to combat the domestic violence to a greater extent. Further, there is an urgent need to strengthen the PWDV Act and also need to provide family counselling services and set up separate shelter homes for women and children in all districts. Sufficient budget allocation is necessary for effective implementation of the Act. Protection of Women from Domestic Violence Act is still in its infancy. No doubt it is an attempt to address a problem which is an age old practice of patriarchy society, very difficult to break the trend of male supremacy and sharing of powers with that of their so called subordinates (women). Therefore too much resistance from men, it is a fact even women are used and conditioned to such secondary status they treat this is inherent aspect of a women life so they too resist against this equality of status and violence free home. Now this is a period of transition a lot is to be done in order to achieve the desired goal.

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