



The Approach To Domestic Violence In The Protection Of Women From Domestic Violence Act 2005

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Introduction:

The present act defined clearly the concepts it works with. As will be seen, the recognition of domestic violence as a crime has resulted in broadening the understanding of what domestic violence is, who may seek protection under the Act, and what type of protection may be sought. In its understanding of domestic violence itself, the present Act clearly scores over the former Bill. Under section 3 of the 2005 Act, domestic violence is defined in terms of mental, physical, sexual, verbal, emotional and economic abuse. The extent of domestic violence hence extends from physical hurt to emotional and economic blackmail and may be interpreted by courts and lawyers to include and punish marital rape as well. The 2002 Bill, however, only included habitual assault and 'cruelty', and exempted cases in which the assaulter committed the act in self defense, or in the protection of his property. The Act introduces the concept of a domestic relationship. This has broadened the scope of those who may ask for relief under the Act.

PERSPECTIVE AND FEATURES OF DOMESTIC VIOLENCE ACT:

Domestic violence is one of the gravest and the most pervasive human rights violation. Women have been treated as child bearing machines, and if I may, then preferably male child bearing machines, push-over, to nothing but animals at the hands of men. This piece of legislation, in my view has been long saver due. It is a comprehensive law and addresses all issues related to women. It is for the first time that an act has been made to address women's issues in such detail. Domestic violence is sadly a reality in Indian society, a truism. In the Indian patriarchal setup, it became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles and- the distribution of power, real or perceived, in society.

Domestic Violence: Constitutional Approach

The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. The Act encompasses all the provisions of the Specific Recommendations which form a part of General Recommendation on.19, 1992. While saying that the Act is protected by Article 15(3) from being considered discriminatory, it would help to recollect that this provision creates an exception in favour of women and children, and thus could be made use of to justify the extension of the Act to male children as well. Indeed, it would seem logical to do so. It is, however, opined that it is too early to predict the usefulness of this legislations to its target 1 beneficiaries and the society as a whole.

DOMESTIC VIOLENCE ACT AND ITS CHALLENGES:

There has been a significantly through debate during the drafting of this Act that would be easiest to implement. An example of this has been the provision of settlement of domestic violence cases in the Magistrate's courts. The reasoning behind this provision is easy access for the aggrieved. The option of Family Courts wherever they have been was also considered. However, it was noted that the Family Courts, are overcrowded due to the channeling of cases under section 125 Cr.P.C to these courts. Argument that has been brought out against the Family Courts is that they tend to shift cases of domestic violence within the field of family 'disputes'. There has been an effort in this Act to simplify and make more effective issues of the method of filing a complaint of domestic violence for obtaining relief. It also simplifies procedural matters for an aggrieved who wishes to file a complaint. For example, the Act allows anyone, perhaps a friend or an NGO that has witnessed a case of domestic violence, to file a complaint in that regard to the Protection Officer.

A further criticism of the Act is with respect to section 14, which may prescribe counseling either of the parties, and delay proceedings up to two months. As has been discussed here, redressed of domestic violence has always tended to focus on conciliation between perpetrator and the victim, even within the criminal justice system. This is due to the perceptions regarding the importance of preserving the family unity. In recognition of this fact, a provision such as section 14 can be counterproductive in two ways. First, it might jeopardize speedy disposal of the case; secondly, it may also convince the aggrieved to continue in that situation without taking further action.

Violation of Human rights of women:

Section 2(b) of the Protection of Human Rights Act, 1993 says that 'human rights' means the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution, embodied in the international Conventions and enforceable by the Courts in India." In other words the violations of the following rights of Women shall come in the category of "violation of Human Rights" :-

- Right relating to life;
- Rights relating to liberty;
- Rights relating to equality;
- Rights relating to dignity of the individual.

All the above rights have been guaranteed by the Constitution and are embodied in the International Conventions. They are also enforceable by the Supreme Court, High Courts and all other subordinate courts.

Prevention of sexual exploitation of flesh trade in family:

1. In *Vishal Jeet v. Union of India and Others*,¹ the petitioner advocate sought , certain directions, directing the Central Bureau of Investigation (1) to institute an enquiry against those police officers under whose jurisdiction Red Light areas as well Devadasi and login traditions are flourishing in the family and to take necessary action against such erring police officers and law, breakers;
2. to bring all the inmates of the red light areas and also those who are engaged in "flesh trade" to protective homes of the respective States and to provide them with proper medical aid, shelter,

¹ AIR 1990 SC 1413



education and training in various disciplines of life so as to enable them to choose a more dignified way of life and

3. to bring the children of those prostitutes and other children found begging in streets and also the girls or daughters pushed into "flesh trade" to protective homes and then to rehabilitate them. The Supreme Court held that it was neither practicable and possible nor desirable to make a roving enquiry through the CBI throughout the length and breadth of this country and no useful purpose will be served by issuing any such direction, as requested by the petitioner. Further, this malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these helpless and hapless victims most of whom are unwilling participants and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout. However, it would be appropriate if certain directions are given in this regard to State Governments and 'Union Territories

Conclusion:

The entire discussion on the problem of domestic violence as contained in this work centers round the fact that while the. Problem is as old as is the institution of family, the perception of its problematic aspects is relatively recent. The low visibility and the closed door character of the problem have hindered scientific investigations. The amount of hard (reliable) information on the magnitude of the problem is so insufficient that lot many questions remain unanswered. The difficulties arise because victims of domestic violence are a diffused lot and generally reluctant to complain about their victimization due to acceptance of the superiority of the offender and due to their religious belief social attitude and cultural norms. The criminal justice machinery, in the main, the police and the judiciary, quite often acts slowly, inappropriately and ineffectively because of its own limitations. Judiciary has shown both positive and negative response towards violence against women. Courts have not only shown patriarchal and class biasness but also concern against-discrimination and for the rights of women. It is also true that in some cases, judges have not displayed sensitiveness and sense of responsibility while dealing with cases of violence against women.

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