

T083L

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,2005

INTRODUCTION:

Protection of women from domestic violence is very important task nowadays. Women from all over the world are victims of domestic violence since time immemorial and still continued even in 21st century. Despite of social background ,irrespective of age, religion, caste, class women at large number are victims of domestic and elderly people are also victims of it. Domestic violence occurs at each level of society.

In India,30% women's are victims of domestic violence . Number can be more but not less.736 women all around the world have experienced intimate partner violence or non- partner sexual violence. A UN report has concluded that nearly 71 countries have found violence against women to be most prevalent in Ethiopia. Domestic violence is a societal issue and remains a public health and social care challenge worldwide.

The offence of domestic violence is committed by someone is committed by someone in the victim's domestic circle. It includes family members ,relatives, etc. The term domestic violence is often used when there is cohabitating relationship between offender and victim. The various types of domestic violence includes child abuse, senior abuse ,female genital mutilation ,and all forms of abuse by an intimate partner.

In India domestic violence is governed by the Protection of Women from Domestic Violence Act, 2005 and is defined under section 3 which states that any act, commission, omission or conduct of a person harms or injures or endangers the health of individual whether mentally or physically it amounts to domestic violence. Domestic violence is a threat to country's unity.

After comparing global estimation most violence against women is perpetrated by current or former husbands or intimate partners. In 2018, an estimated one in seven women had experienced physical or sexual harassment from an intimate partner or husband in the past 12 months.

HISTORICAL PERSPECTIVE:

In the field of violence against women, women's groups and organisations should take credit for introduction of laws for protection of women from domestic violence. The important question regarding violence of women arose in early 1970's. A 16 year old tribal girl from Maharashtra was being raped under police custody in 1972. In 1974, the court session let Mathura a liar and said that it was her consent for sex.

Then the Bombay high court overruled acquittal, but in 1979 as Mathura didn't raise any alarm and also her body did not show any signs of resistance, the supreme court renewed its ruling. Around two-thirds of women are victims of domestic violence and nearly women's between age of 15 to 49 are victims of marital rape which is also a kind of domestic violence. Over 55% in India are victims of domestic violence. Especially in Bihar, U.P, M.P and many

northern countries.

This is most prevalent form of crime that occurs due to orthodox thinking of society. This is the main reason why women faces such societal issues.

:NEW DELHI'S FAMOUS TANDOOR MURDER CASE IN 1995 PORTRAYED A HORRIFIC EVENT REGARDING VIOLENCE AGAINST WOMEN.

In this case husband burnt his wife in tandoor. The case suspected that man was suspecting his wife Mrs.Naina Sahni of having an extra marital affair that resulted in marital disputes and further in domestic violence.

The main causes for violence against women includes ,argue with partner ,refuse to have sex with him, neglect children, leave house without telling partner , not to take care of baby ,female infertility often leads to family members being targeted.

It also includeincluded demand for dowry by in-laws and spouse's alcoholism are important reasons for violence against women in rural area.. Also there have been horrible reports that young brides are burnt alive or continually harassed for non fulfillment of dowry demanded by in laws. A rising housewife continues to suffer violence from family and husband. Although just because as we live in an orthodox society women can't live separate from her husband as this will lead to suffering of children and also the women herself.

Thus to protect women from this orthodox society it is necessary to establish certain laws for protection of women against violence.

To keep the flames of justice alive we still need to do a lot for protection of women.

The Dowry Prohibition Act was enacted in 1961 due to social evil in undivided India identified as dowry. Under this law Dowry was banned. Dowry and Domestic violence are essentially denial of human rights and the rights of women to equal treatment. In early 1980s not only did dowry continue to raise, but also resulted in death and abuse of married women. In 1983 this was revised in IPC (Indian Penal Code). It was crime under section 498A- IPC that brought cruelty towards married woman. 498 A IPC was really helpful for women to fight against violence and to stay alive in society.

Also sec 304 B of IPC was added to IPC to introduce principle of death in a marriage home of a woman within 7 years of marriage is an offence if subjected to pre-death, suspicious and dowry related cruelty.

By incorporating sec 498 A in IPC domestic was accepted as special criminal offence. This sec is all about cruelty against women by her husband and in laws. Then parliament passed a bill Domestic Violence Protection of Women Bill in 2001. This bill aims at protecting and ensuring rights of women victims of violence of any family, including issues.

Currently Indian Constitution doesn't contain a single legislation against domestic violence. Also the DVP 2005 was also being misused

Essential provisions of the Domestic Violence Act, 2005 are as follow

Sec 4 provides moral responsibility for members of the community at large who are aware of an act that has already been committed or, if there is any possibility of committing domestic violence in future, to lodge a lawsuit on behalf of victim.

Sec 4(1) of the Protection of Women from Domestic Violence Act notes that “anyone who has reason to suspect that an act of domestic violence has been ,is or is likely to be committed may notify the “Protection Officer” .This also states that the source is not good conscience immune to civil or criminal liability.

Section 5 of Protection of Women from Domestic Violence Act provides for various legislative ,financial, judicial and administrative structures to assist victims of domestic violence.

Section 7 ,8, and 10 offer social assistance to victims such as families ,medical services , and service providers.

Right of women to Reside:

Under sec 17 which sets out a woman’s right to live in the common households, is one of Protection of Women from Domestic Violence. This sec permits women to reside in domestic household irrespective of their right/rights.

Protection Officer Duties :

Functions of Duties of protection officer ,who serve as a bridge between court and victims of domestic abuse, are defined in sec 9, sec 30, sec 33.

Then sec 8 of the act specifies that a protection officer shall be a woman as far as possible and appointed as fulltime positions .

Duties of Protection Officers:

. Assisting judge

.Making and sending and copies to police and service providers

.Protection order application

.Ensure legal aid for domestic violence victims.

.Maintaining list of service providers .

Relief for Victims:

SEC 18 TO SEC 22:

Create different forms of relief for victims. Such as protective orders , monetary relief, custody order ,residence decrees etc.

SEC 23:

Provides interim ex- parte orders.

SEC 26 AND SEC 28:

To ensure relief in any court in any civil, criminal or family matters that deal with PWDVA.

CONSTITUTIONALITY OF THE ACT:

The enactment in question was passed by parliament with recourse to article 253 of the constitution. This provision

confers parliament and it's power to make treaties, conventions etc.

PROTECTION OF VICTIMS:

The DVA is a important mission to victims of DV . The act is laid down by PROTECTION OFFICERS.

In the case of Azimuddin Abdul Aziz Vs. State of Uttar Pradesh ;

-The husband had argued that act provides for women protection of women only where wife has been transferred to another house and is no longer applicable The high court in Allahabad rejected his claim ,holding that protection order remains successful. Provided that defendants committed act as attack even after the woman had abandoned her home.

Unmarried Relationships;

The most important aspect of the act is that ,in married or family relationships even the unmarried women can filed a case against her partner. Sec 2(f) of the act clarifies this provision by describing a domestic relationship as a relationship between two people who live in common households.

In the case of M. Palani vs. Meenakshi ,the High Court of Madras best illustrates this, when man challenged the interim maintenance from women because they didn't marry and lived together in common households. The judge dismissed his claim has both partners share and intimate relationship.

As mentioned above the law does not allow for period of time or for a few days for the complainant and the respondents to stay or work together. It could be inferred that they both seem to have shared households and at least lived together at the time of their sex.

Gender Specific Law:

The act is gender -biased and can be used by women for protection.

In the case of Aruna Pramod Shah vs. Union of India, it was claimed that article 14 of the Indian Constitution was violated by DVA because it only covers women and not men. The Delhi High Court dismissed this claim and said it was baseless or unjustified.

Protection of Women and Fundamental Rights:

The act was passed by keeping in mind;

Article 14: right to equality

Article 15: prohibition on discrimination on basis of sex

Article 21: protection of life and personal property

Right to Shelter :

Chameli Singh vs. State of U.P;

Right to life would include the right to shelter, distinguishing matter at hand from Gauri Shankar v. Union of India where the question had related to eviction of a tenant under statute.

SUGGESTIONS:

:There should be no discrimination regarding gender as the act is gender biased.

:There should be true identification of victims whether case filed by her is true or false.

:Necessary changes should be made in punishment also the husband and his family should also be given warning instead of directly arresting.

:there should also be necessary changes in amendment.

CONCLUSION:

Domestic abuse is neither recent nor evolving with changing society. In all ages etc , this is present . DVPA is mandatory to protect victims of DV .Sec 498 a and 304 B inserted in IPC regarding violation against women but this

was not sufficient to curb with domestic violence. So this act was enacted in 2005 to curb with this problem and protect rights of women.. This act was master piece of legislation in entire history .But also criticized due to its gender biased nature.Protection of women is secular approach.

This act plays a vital role in Indian Legal System .Various reliefs, authorities and powers have been given to victims of DVPA. Also provides civil remedies to victims of violence .Also the act has incorporated essential steps to safeguard rights of women and also help them to have child custody ,divorce etc.

Although act provides essential remedies for women those who are victims of violence still it fails to fail remedies to male members that are victims of false cases regarding violence. Also fails to recognize relation between LGBTQ community. Hence these must be included in this act for better working of the act.

REFERENCES CASES:

AZIZMUDDIN AZIZ VS. STATE OF U.P

CHAMELI SINGH VS. STATE OF U.P

ARUNA PRAMOD SHAH VS. UNION OF INDIA

M.PALANI VS. MEENAKSHI

KEYWORDS:

DVPA:DOMESTIC VIOLENCE PROTECTION ACT

DV:DOMESTIC VIOLENCE