

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE - A SOCIO LEGAL STUDY

ISUKAPATLA PADMA LATHA

M.A., LL.M.



Research Director

Dr. D. SURYA PRAKASA RAO

B.Sc., M.L., Ph.D.

Professor of Law

Dr. B.R. Ambedkar College of Law
Andhra University, Visakhapatnam

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Andhra University, Visakhapatnam

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Andhra University, Visakhapatnam

CHAPTER - IX

CONCLUSION AND SUGGESTIONS

Present study is an elaborate attempt on the domestic violence the main problem which is being faced by women including India. As it is known fact that the social discrimination is meted out towards women. The women are still being regarded as second-rate citizens. The rights are granted to women on the basis of sympathy but not on the basis of the law. In the preceding pages the forms of domestic violence would be discussed which are already mentioned in the earlier chapters. The domestic violence Act whether it is useful to protect the women can be known later in this chapter. The human rights of women the recommendations of National Human Rights Commission, the observations of National Commission for Women will be discussed in form of conclusions. The conclusion chapter is a pivotal and informative one by which the reader can understand the entire work which is conducted in a sequential manner.

Primarily meant to provide Protection to the wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives, the Act extends its protection to women who are sisters, widows or mothers. Domestic violence under the Act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

Physical abuse includes beating, pushing, shoving.

Sexual abuse included forcing to have intercourse or look at pornography

Verbal abuse includes insulting

Economic abuse includes not providing for wife and children.

The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

The Act seeks to cover those women who are or have been in relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to get legal protection under the proposed Act.

'Domestic Violence' includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

Right to Secure Housing

One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against any one who is a woman.

Preventive Order

The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any

other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence. The Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman with reference to medical examination, legal aid, safe shelter, etc.

Non-bailable Offence

The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

Covering Legal Loophole

Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. The Civil law does not, however, address this phenomenon in its entirety. Therefore, it was necessary to enact a law, keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law, which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The new Act is an important step in that direction.

The entire discussion on the problem of domestic violence as contained in this work centres 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 worst forms of verbal, physical, psychological and sexual violence are committed against women in their homes. Denial of food, insistence on perverse sexual conduct, turning a woman out of house or confining her in the house and denying access to minor children constitutes mental torture. While other forms of torture are repeated physical violence or threats to that effect, taunting the woman about family, her infertility or her giving birth to female infants only, voicing suspicions about her infidelity, denying paternity of the children especially in front of the relatives, drunken behavior of the husband and assaulting children to cause mental anguish to the mother.

Low visibility and the closed door character of the problem hindered scientific investigations. The amount of hard 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. Their inability to cry out and complain about their oppression and abuse is also due to their weak structural position arising out of gender and age old disabilities. Their oppression and abuse oozes out of the closed confines of the family only when something unusual or dramatic happens, or when the incident gets reported to the police or it gets publicized in the print media being treated as a private affair (by and large), the informal measures are preferred over formal ones. Most people including criminal justice functionaries, do not want legal intervention too often. The general beliefs that law should not

be allowed to settle the private wrongs of the people. The most preferred response is the settlement of the problem within the informal structures, namely the family and its immediate reference groups.

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. This gender biasness is not only reflected at the lower level of judiciary but also in some of the High Courts and sadly even in Supreme Court. In situations of domestic violence, courts have been more in favour of compromise and adjustment of the parties. It lays more emphasis on saving the family institutions rather than saving interests of the aggrieved women. The police tend to treat violence against women as "family affair" and are often reluctant to register the case itself. Besides this, the tendency is to link day-to-day cruelty and humiliation either to 'dowry' and property-related mattes or divorce and legal separations. The magnitude of the problem is so large that police simply do not, at present, have the capacity to address the issue. Secondly and perhaps more importantly, they do not have the attitudinal basis for effective intervention.

Besides the law courts, the police, the social service agencies, counseling cells and reconciliation agencies, now there are other quasi state actors such as the National Human Rights Commission, the National and State Women's



Commissions and specialist units such as the crimes against women cells and the family courts. At least, two of these agencies, could work extremely effectively to bring about a coordinated response to violence against women. These are the National Commission for Women and the Human Rights Commissions in the States and at the Centre. These agencies are at the heart of the promotion and protection of rights. But they remain under utilized both by NGO communities and also limit themselves through their understanding of their own role and the problem of women in terms of rights. While the NCW concerns itself with the plight of women, they do not do this for the most part within the rights discourse. This weakens its efficacy. It throws them into the role of supplicant for the improvement of women's condition rather than defenders of women's rights and arbiters of accountability of the state for neglecting to protect these rights. On the other hand, the NHRC does use its authority and operationalise its own mandate within the discourse of rights but does not view the degree and scope of violence against women as a gross violation of the human rights of a class dispensable as a pattern of state dereliction of duty to provide security of person. But this is what violence against women is – a gross and continuous human rights violation. The consistent lack of women as commissioners throughout the history of the NHRC and the lack of gender parity at all levels in the composition of NHRC, must certainly be a contributing factor to the very limited attention women's human rights issues have received at the Commission. This of course reflects the situation in the States Commission where the discrimination is perhaps more acute.



Notwithstanding the documentation of violence and its effect in diminishing the realization of human rights of citizens, the NHRC has not given it central attention. The women's commissions and the human rights commissions often, seem to talk past each other or compartmentalize themselves because of the way in which they are looking at women's issues.

Single institutions working in watertight arenas cannot hope to address such a complex and pervasive a problem as violence against women.

Thus, negative socio-cultural norms and stereotypes in the Indian society directly and deliberately legalized by statutory law facilitate the non-enjoyment of the rights to human dignity by women and children within the confines of marriage. The fall out is a prevalence of inequalities and violence in our homes, made worse by the absence of a comprehensive legislative framework for its control and regulation. Such homes filled with inequalities and violence foretell danger for the larger society which in turn becomes discriminatory, brutish and unjust. We must know that a legal system that tolerates must know that a legal system that tolerates and even permits such a high degree of domestic violence represents a hidden obstacle to economic and social development. By sapping women's energy, undermining their confidence and compromising their health, gender violence deprives society of women's full participation in nation building.

As the United Nations Fund for Women observed:

'Women cannot lend their labour or creative ideals full if they are burdened with physical and psychological scars of abuse.'

The fear that surrounds women's lives prevents their free access to jobs and earning. It also curtails their movement, limits their right to associate in real



terms, curbs free speech and the right to dissent and overall reduces opportunities to partake in development or to gain equally from progress that is made. All this ensures her subordinated status as much as it deprives the nation of half the population's potential to fuel the engine of economic growth.

In the west, due to women's rights activists and human rights groups, domestic violence is no longer hidden from society. In India, however, as the social and cultural structures differ from those in the West, issues like domestic violence, marital rape, child abuse and same-sex relationships have remained taboo subjects.

In India, there is a high level of tolerance – in fact there is widespread acceptance of violence against women. We are very familiar with societal responses to violence against women. Families treat it as a private affair. They feel, it is more shameful for a woman to complain of the violence she may be undergoing than for a man to strike a woman. Beating a woman is taken as mere machismo and frequently justified in a thousand ways. Women are required to 'adjust and accommodate and to create world for herself that will either tolerate or mitigate the violence. However, years of national and international publicity given to different forms of violence suffered by women globally and, in India have begun to impact. Women are speaking out and families are more willing to address the issue both in the private and in public. This is driving the state to be more responsive – even if reluctantly so.

The legal system has always made a clear-cut distinction between the public sphere and private sphere, within which a family operates. A woman's place in India is supposedly within the four walls of a home, which is deemed



private and outside the purview of the state. Thus, a thick purdah cuts off the woman from the law's view. This blinkered view pervades the entire system and whitewashes the reality that the 'family' and marriage is based on notions of systematic inequality.

Innumerable crimes are thus committed on the woman in the privacy of her home. Fathers restricting their daughters from marrying the person they like, brothers denying sister's property rights, parents pushing back their daughters into unhappy relationships rather than encouraging them to break loose. There is no social security existing for the woman either at her natal home or at the matrimonial home.

Crime statistics on domestic violence as given by the NCRB is only the tip of the iceberg. It is more widespread, as a large number of cases are never reported. When reported, the case is not registered. If registered, it is scoffed at in courts as 'exaggerated or fictitious claims' or the blame falls on the woman for 'provoking' the man. Sometimes, it is put down to interference of her relatives or plain lying on the part of the women/relatives.

In the 'Report on the Status of Women' published in 1975, it was pointed out that even though women constitute nearly half the population, they have all the characteristics of a minority: inequality of class (economic situation), status(social position) and political power.

Domestic violence is all about power relations and the abuse of power in a household. It is perpetrated by one member or members collectively on another to gain control. In India majority of such crimes are committed by men, though we must accept that it is also caused by women on women.



There is an urgent need to recognize that domestic violence is a serious crime against society; that many women are regularly beaten, burnt, tortured, and in some cases even killed by their partners, husbands, in-laws or co-habitants. Majority of the victims of domestic violence are women and children and this form of violence cuts across all social, cultural, economic and religious backgrounds.

Women, who are victims of domestic violence, are unable to leave abusive situations due to several social and financial factors. Many of them are at risk of further violence or even being killed by their partners, when they attempt to leave the abusive relationship. Incidents of domestic violence often go unreported because the woman is reluctant to bring a complaint against members of her own family. She would rather suffer the continuous abuse (be it physical, mental, economic or sexual) at home than face social rejection and risk separation from her children. In India, most women do not get much support from their maternal family after marriage, and do not have the courage to complain against such violence because it would make her an outsider within her marital family. All these circumstances point out that the issue of domestic violence is different from other general forms of violence, and needs to be treated so because women are, as a group, placed in a weaker and more vulnerable position.

No doubt the law has tried to check it, which is evident from the various Acts passed by the legislature and the amendments made in the provisions of existing law from time to time, but it has failed to evoke the desired initiative from the victim on account of: (a) Victim's acceptance of the superiority of the



offender; (b) the denial of the charges by victims themselves due to their religious belief and social attitude; and (c) proper attention not being given to the nature and gravity of the crime in punishing the offender.

The law provides remedies for individual acts of violence against women. But as we all know these do not translate to provide practical alternatives to women in trouble. Again how the law operationalises, depends upon how much emphasis is placed on the woman's rights and how much on the family as an institution. Generally it is argued that the family as an institution is sacrosanct and must be kept intact. A woman in trouble needs alternatives. The present situation is that there is intense pressure on a woman to go back into the abusive family.

The low status accorded to women in traditional India is faithfully reflected in its laws. The Constitution guarantees equality before the law and equal protection of laws. But these provisions alone have not been able to usher in a drastic and the desired social change. Numerous other laws have been enacted to provide equal status to women, but they remain more on paper and are difficult to implement.

Few provisions are available under the Indian Penal Code, 1860 (IPC) that can be used to address the issue of domestic violence. The introduction of Section 498A in 1983 was significant in bringing domestic violence out of the closet, but this section with its specificity to dowry demands ignores other factors of violence. Other offences of assault, hurt, grievous hurt, dowry death, murder, rape, etc., are also often used against the perpetrators of violence. These criminal remedies, however, are not enough to deal with the complexities of



domestic violence because the violence inflicted is not by a stranger, but by an intimate partner of the victim. More importantly, a criminal remedy will only serve to punish the abuser and is not sufficient to address the needs of the victims of violence. A man can quite simply throw his wife out from the home and wait for her to make her long-winding way through the courts for whatever little relief she can get, or he can instill in her the fear of losing custody of her children. Therefore, one of the most important consequences of domestic violence is the homelessness of the abused women, and the criminal law remedies do not succeed in providing immediate/emergency protection that the victims need.

Several lacunae exist in the criminal justice system. Some of these problems lie in inherent shortfalls in the law, while others deal with the practice and implementation rather than the content of the law. The issue of anticipatory bail with respect to S. 498A, IPC falls under the former category of lacunae. Allowing the accused anticipatory bail defeats the purpose for which the victim has approached the courts in the first place – protection from abuse. Another such lacunae can be seen in the law relating to guardianship. By preferring the father to the mother as the natural guardian, the law is merely providing another weapon to the abuser with which to blackmail the victim – the children. It is a fact that many women choose to suffer in violent marriages only out of fear of losing custody of their children.

The options open to wives suffering domestic violence are unrealistic. It is difficult to imagine any marriage surviving a criminal trial and imprisonment.



Since at present we have only criminal laws that deal with the issue, it is a choice between tolerating the violence or ending the marriage.

When it comes to the implementation of laws, there seem to be so many hurdles that it is little wonder that most people prefer to resolve their problems outside the purview of the legal system. Right from registering an FIR to the actual trial, the system is conducive to defeating the aim of justice. A long drawn out trial gives the accused ample time to tamper with the evidence and threaten witnesses, as well as coerce the victim into changing her stance. Post-mortem reports can be bought and dying declarations are recorded as per the convenience of the investigating police. Therefore, we need to spend as much time and energy on the implementation of laws as we do on lobbying for them.

Another reason laws remain unimplementable is because often the laws are drafted in isolation from the social and cultural practices of the society in which they have to function, it is necessary to keep the backgrounds of the families targeted by legislation in mind while drafting the same.

A closer perusal of the available civil remedies reveals that the various personal law provisions that are existent deal only with marriage and breakdown of marriage, such as divorce or judicial separation. Other civil remedies include those providing maintenance for the woman seeking divorce, injunctions and counseling, whereby reconciliation is still possible.

However, it is important to note that in many situations women do not opt for a divorce, and often wish to remain in the marital relationship. It would also not be ignored that domestic violence is not an occurrence only among married partners – it also takes place with regard to children, aged parents, co-

habitants and in-laws among other relationships. Therefore, when it comes to issues within marriage such as family violence, marital rape or child sexual abuse, there is a huge gap, as these issues are not addressed by our legal system. Within our family law framework, there is a large gapping hole that needs to be law providing protection to women and children from domestic violence within the existing legal framework arises.

Laws should better the lot of battered women and children in our society. To do otherwise is to legitimatize base and powerful socio-cultural patterns that are inimical to notions of equality and human dignity of all women – a notion that has found expression in Article 1 of the United Nations Universal Declaration of Human Rights. The article states in clear terms – “all human beings are born free and equal in dignity and rights.”

The spirit of this Article is the order of modern civilization and a necessity of our present day existence. In this age of globalization, we can not afford to use laws to create unjust and British societies not suitable for residents.

There was a general consensus that a new law dealing with the issue of domestic violence is needed as the existing legal framework is insufficient to deal with the same. It is agreed that rather than have a number of provisions spread over a range of legislations it would be preferable to have a single legislation dealing with all aspects of the problem right from issuing compensation. However, the new legislation would only be in addition to the existing provisions of law, and hence any remedy not covered by the new law but available under other criminal and civil laws would still be available to the victim.



The notion of division of civil society into the 'public sphere' and the 'private sphere' should also be rejected where matters relating to the family are relegated to the private sphere and hence not appropriate for state intervention through appropriate policies and law.

We need an overarching civil law on domestic violence. However, the efficacy of such law would be severely impaired if it is not accompanied by infrastructural support built into the law such as the availability of counseling, shelters, and the provision of medical and legal aid.

For effective implementation of the Protection of Women From Domestic Violence Act 2005, the following suggestions are made.

1. Though passing of the Act is a welcome step it is not far from defects. The enforcing authorities are not entrusted proper powers to provide security to the victims of Domestic Violence. They should be brought to the security houses immediately after receiving complaints from the victims.
2. The court should not insist the women for evidence which could not be produced by them. Some of the incidents may occur in the bed rooms which could not be disclosed by cultured women.
3. Immediately after receiving the complaints from women they should be sent to the doctors for the medical checkup.
4. Some of the doctors or the health centers should be attached to Domestic Violence Courts.
5. The hearing should be conducted by the judges in Domestic Violence Courts in short time. Without further delay the cases should be disposed with a view to benefit the victims.

6. The maintenance granted by the Domestic Violence Courts to the victims should be par with the price of daily commodities.
7. The women organizations should conduct awareness campaigns to motivate the women about their rights through the department of women welfare and the Pranganams instead of allowing the NGOs to do so who are miss manage the finances being granted to them by the government for this purpose.
8. The women should be motivated for not to misuse the Act for their selfish ends.
9. The Domestic Violence Courts should establish their links with the counseling centers where the counseling can be taken by the psychiatrists both the victims and accused.
10. The implementation of the Act should be reviewed for every three years and progress report should be submitted to the central government for the amendments if any to be made to this Act.

