PROTECTION OF WOMEN UNDER THE DOMESTIC VIOLENCE LAWS IN INDIA: A CRITICAL STUDY

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Chapter 7
Conclusion and Suggestions

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CONCLUSION AND SUGGESTIONS

Conclusion

The aim of this research was to, firstly, find out if India has an adequate legal framework for providing protection to women against domestic violence. In that regard the existing legal framework was studied, the progression of laws in this area was studied, and also the awareness of women of the elementary aspects of the law related to domestic violence was checked. The aim of the research was, secondly, to find out how does Indian centre-piece legislation relating to domestic violence (PWDVA) compare with similar law in other SAARC countries. In that regard an effort was made to find out whether India has provided a lead to other SAARC countries. Using the doctrinal method (primarily) and also empirical method (for one chapter) the research was done.

It is found that the writings of the scholars and the legal framework, both national as well as international, clearly indicate that the phenomenon of domestic violence against women is now acknowledged both at national level and at the international front as a violation of human rights of women. This is now understood as an evil that impairs the overall development of the women of a country as a whole and that spirals as an impairment of the national growth. Violence against women has its roots in various things. It emanates from rituals, religion, social customs, expectations of the society and many other sources. Domestic violence, in general, is perpetrated against women, children, elderly persons and generally anyone who is vulnerable due to dependence on the others. In a wider sense, the writings of the scholars indicate that, domestic violence is perpetrated against female as well as male members of the family when they are in a dependent position. Specific to this research it is clearly indicated by the available data and writings of scholars that domestic violence is perpetrated against daughter-in-law, wife, daughter, mother, sister etc. In short, the truth is that any woman may be subjected

to domestic violence irrespective to her relation with the abuser. The higher rates of illiteracy and unemployment among women folk are directly connected to domestic violence. In India, religion is also seen as major factor in oppression of women as well as the origin of inequality. In Indian context even technology has been misused against females. The old practice of female infanticide has been replaced by female foeticide and sex selection by sperm segregation to avoid the possibility of a girl child to take birth. It is written that the impact of violence is highly complicated in its nature and it leads to lifelong problems. Scholars have also observed that due to better medical facilities and other factors the average age of a human being has increased. But the fallout of such an increase of the average age is that now in joint families middle aged children are expected to take care of their old parents for longer periods. Coupled with other job and career related stress the resultant burden causes situations leading, in some cases, to abuse of the elderly.

The research shows that prior to the year 1983, no specific legislation dealt with the issue of violence against women within her home. In cases of violence within her home and being done by her husband/any other close male relative, the general provisions of law of crimes was applicable. Cases could be filed for murder or abetment to suicide or causing hurt and wrongful confinement etc. In other words there was no difference between a case of domestic violence and a case of violence. Domestic violence was not a distinct category of offence in the eyes os law. In 1983 IPC was amended and section 498A was inserted (also necessary amendments were made in CrPC section 198A). A distinct offence was recognized by this amendment i.e. of cruelty by husband etc. In the same year Indian Evidence Act also got amended and section 113A was inserted which created presumption as to abetment of suicide. In the year 1986 IPC again got amended and this time section 304B was inserted. This amendment also recognized a distinct category of offence i.e. dowry death. At the same time the Indian Evidence Act also got amended to create a presumption as to dowry death. However, it would be wrong to say that prior to the year 1983, there never were any efforts made to uplift the status of women in India. The correct account would be to say that there were many efforts made

to make a woman's status better in society though such efforts were not properly coordinated and cannot be rightly called as efforts to completely eradicate domestic violence. Thus, Lord William Cavendish Bentick's regulation of 1829 that made practice of sati a crime; The Hindu Widows' Remarriage Act, 1856 that allowed a remarriage of a Hindu Widow and accorded legitimacy to the offsprings of such marriage; The Hindu Gains of Learning Act, 1930; The Hindu Women's Right to Property Act, 1937 conferring ownership rights on a Hindu widow; The Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946 allowing a right to separate residence and maintenance from her husband even during the subsistence of her marriage; The Hindu Marriage Act, 1955 that recognized the concept of divorce and made monogamy a rule in Hindu marriages; and The Hindu Adoptions and Maintenance Act, 1956 that allowed almost equal adoption rights to a woman are all examples of how law made intermittent efforts to bit by bit uplift the status of woman in India.

It is found during this research that as compared to their Hindu counterpart, a Muslim woman had lesser protection available under their personal law in cases of domestic violence. Muslim wife had less powers as compared to either their male Muslim counterpart or female Hindu counterpart. The 1939 legislation, The Dissolution of Muslim Marriages Act had three grounds for divorce (out of a total nine grounds) that can be said to be providing some relief to a muslim women in cases that may be called the cases akin to domestic violence. The grounds are: husband's neglect or failure to provide for her maintenance, husband's failure to perform his marital obligations, and cruelty by husband. Under her personal law, a Christian women also has the possibility to obtain divorce in cases where her husband treats her with cruelty. Similarly a very limited protection is available to Parsi women. Thus, the research indicates that protection of women has been a concern of lawmakers for considerable period of time in India and there have been efforts done to uplift the status of women in India, but the major benefit had gone to the Hindu women.

Even after the year 1983, and till 2005, there was no specific legislation passed that aimed at specifically curbing the problem of domestic violence. Thus, it is found that, in India resistance to domestic violence per se and specially in its present form is a recent phenomenon. It was only since 1990s that efforts were made to make an exclusive law on domestic violence. Collected efforts of various agencies resulted in the drafting of the Bill on domestic violence and finally The Protection of Women from Domestic Violence Act, 2005 (hereafter PWDVA) was passed. It is the most comprehensive, first of its kind legislation but this is certainly not the first piece of legislation which has attempted to provide protection to women and uplift her status.

It is also found that over a period of almost one century at the international level many international instruments have come into existence that are aimed at uplifting the position of women in society. UN Charter, ICCPR, ICESCR, European Human Rights Convention, American Human Rights Convention, African Human Rights Charter, World Conferences on Women, and CEDAW are some such examples.

Clearly the ground was already prepared for the specific law against domestic violence in India. The law came in the form of PWDVA. This law works simultaneously with other existing laws in India. The Indian Penal Code provisions, the CrPC provisions and the tort law are not ruled out by this new law against domestic violence. PWDVA works along with a whole range of other legislations. The remedies mentioned under all such legislations run parallel to PWDVA. They are not alternative remedies but simultaneous remedies available to a woman in a situation of domestic violence. The Act allows the aggrieved woman to seek the civil orders under it in any legal proceeding even where the court does not have jurisdiction under the Act. The Act allows a compensation in addition to the compensation that she may ask under other laws. For example she may be entitled to get compensation under the law of torts for the injury etc. Such entitlement for compensation shall not adversely affect her right to get compensation under PWDVA though the amount received in the form of compensation shall be set off under this law. So, effectively a victim of domestic violence may get only one amount but she may get it from two different routes and in two different

proceedings. One proceeding may be under PWDVA and another proceeding may be (for example) under the law of torts. The scheme of the legislation allows that she may proceed for judicial separation or divorce under the personal laws, and for damages under the law of torts, and also for relief under PWDVA. It is very clear that the scheme of things is such that a woman may take help of more than one legislation in case of domestic violence. And she may do so at the same time. All other legislations that provide protection to women are thus cognate legislations and are available to women simultaneously. Such other legislations are criminal legislations as well as civil legislations. Thus PWDVA is related to such other legislations and should be read in harmony with such legislations.

As far as defining the domestic violence is concerned, this Act provides a very broad definition of domestic violence. In a sense this law is very comprehensive and apparently it addresses almost all issues related to domestic violence against women. The research shows that this Act provides protection to women against the acts of domestic violence committed by men provided they are in a domestic relationship. The remedy is also available against the relative of the husband. The Act provides protection to those women also who are in a relationship in the nature on marriage. The office of protection officer under the Act is very crucial. Protection officer has a lot of powers and duties under the Act. Similarly, service providers has powers and duties albeit less than the protection officers. The Act also makes a provision for shelter homes and medical facilities. A magistrate may pass various orders like protection order, residence order, monetary relief order, custody order and compensation order. The Magistrate has the power to pass interim orders and also ex parte orders. The magistrate may also direct the parties to go for counselling. A reading of the Act reveals that it does not contain any self-contained procedure for its administration. All proceedings shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

It has been found during the research that on some aspects where there is a greater need for clarity in the Act and where there was a scope for the expansion of the coverage of this law the courts have shown some zeal. The courts have not hesitated in expanding

the scope of this law. Thus, thanks to the court judgments, now the respondent may not only be a male. It may also be a female. The Act is applied to give relief to a woman in a void marriage situation as well. Such woman is not otherwise covered under the definition of an aggrieved person. The sentiment has been rubbed while deciding the cases under CrPC as well. Thus, taking a cue from the PWDVA the court has now opined that the expression 'wife' should have a broad and expansive meaning under section 125 CrPC also. Contrary to the settled principles of interpretation in regard to criminal law the court has shown inclination to give relief under 125 CrPC without insisting on a strict proof of marriage. Section 125 CrPC is seen as a beneficial legislation rather than a criminal legislation. The researcher does not agree with such an expansion of the scope of the Act. This clearly changes the nature of the Act. The Act is a civil remedy while section 125 CrPC is a criminal remedy. If the definition of the Act is extended to CrPC then it amounts to reading CrPC provisions into this Act and thus changing the nature of remedy from civil to criminal. It also amounts to expanding the scope of CrPC. It should be kept in mind that in a criminal law situation the interpretation that benefits the accused should be adopted. The courts have been doing so in the past, and there is no reason to deviate from such settled practice.

To the research question regarding the adequacy of the legal framework for the protection of women from domestic violence, it is found that the legal framework is sufficiently wide in terms of the range of acts against which the women are now protected and also in terms of the type of remedies that are available to the victim of domestic violence. Legal framework includes not just the centre piece legislation (PWDVA) but also many other laws that are gradually empowering the women by diluting the patriarchal structure e.g. personal laws allowing equal property rights, adoption rights etc.. This is very important as only this kind of overall effort is going to solve the problem in the longer run.

However, the researcher has discovered that out of three components of domestic violence i.e. illegitimate violence, domesticity and an effort to sustain wrongful structural inequality, the focus of the legislature is more on illegitimate violence. And

therefore, all possible types of acts are covered in the definition of domestic violence: physical, emotional, sexual, economic etc irrespective of whether they are used in the particular case as an instrument of control and domination or not. Also, domesticity is considered in a very traditional sense. Thus, the relation between the perpetrator and the victim is required to be falling within the traditional range of domestic relations for a case to be covered under the PWDVA. The relation should be of consanguinity, affinity or of a similar kind. What counts is the existence of a formal relationship visible to an outsider. The insider perspective of the relationship is ignored. The cases where there is complete trust and vulnerability without there being any consanguinity, affinity etc. are not eligible for relief under PWDVA. This situation in Indian law is contrary to the modern principles accepted in the developed countries. The third component of domestic violence, i.e. an effort to sustain/reinforce the wrongful structural imbalance, is completely overlooked. Therefore, the subtle acts which are not covered in the traditional construct of violence but are meant to reinforce the wrongful structural imbalance are not addressed in law. For example, not sending the daughter to school in order to keep her in a perpetual state of dependence will not be covered under the existing framework of laws against domestic violence. From the point of view of the existing framework, though there is domesticity there is no violence in such cases. As can be seen the construct of domestic violence gets changed when we look at it from the view point of structural imbalance. Also, the questions like whether a female relative of the male perpetrator shall be covered under the scope of the law or not do arise due to an ignorance of the 'structural imbalance dimension' of domestic violence.

It is submitted that domestic violence toward women should not just be understood as it is defined in PWDVA. Domestic violence toward women should also be understood as including all such situations in which she is deliberately made dependent on others and consequently deprived of her freedom to make informed choices. Indian experience shows that there are three main ways in which a woman is deliberately made dependent on others and which contribute toward taking away her freedom to make informed choices. The first and foremost is depriving women from getting

education at par with men. The second is forcing girls into marriage at an early age. And the third is to deprive women from holding property. The first two factors are independent factors in the sense that they are in themselves sufficient to create conditions of permanent dependence for women. They are also independent in the sense that they come into operation when the girl is not in the age of discretion and she can never be blamed for those factors. (A girl cannot be blamed for not being sent to school just like her brother; and she also cannot be blamed for her marriage at the age of 8 years). The third factor is linked with the first two factors in the sense that it is a likely result of first two factors and is also an independent factor in the sense that even if first two factors are not present this factor may still be present. It is submitted that the problem of domestic violence has its roots in these three factors. There is a need to understand that depriving girls from getting education is a form of domestic violence. Getting her married at a tender age is also a form of domestic violence. And, depriving her of property is also domestic violence toward her. All these factors start a vicious spiral in her life. By any or a combination of these factors she is forced into a state of perpetual dependence and is deprived forever from the opportunity to make independent choices, which is a violence in itself and which further results into grosser forms of violence.

As far as the empirical aspect of the research question i.e. the awareness among women regarding the elementary aspects of the laws related to domestic violence is concerned, the empirical study shows that the awareness levels are not very satisfactory. Women do not generally know about their rights. More alarmingly, there is very low level of awareness about what counts as domestic violence and what agencies can be approached for the rescue. Thus, the hypothesis that 'women of our country are generally not aware of even the elementary aspects of the Domestic Violence Laws' is found true. The hypothesis that 'education and employment of women increases their awareness of at least the elementary aspects of Domestic Violence Laws' is also found true. And, the hypothesis that 'media plays an important role in increasing such awareness' is also found true.

It is submitted that there is always a requirement of an 'external' support for the efficiency of a legal norm in the longer run. Even if the norm had all the 'internal' support (e.g. various norms aiming to achieve the same result without contradicting each other) it will not be effective norm in the long run without external support. External support to a norm is the support that a norm receives from the efforts that the state/government makes by doing certain things other than lawmaking. By educating people, by convincing them through media, by popularizing the idea and by trying to convince people that to follow the norm is the right thing to do because the norm is representing a right thing are the things that are 'external' support to the norm, and without which the efficiency of norm shall always be low.

As far as the second main research question is concerned; (which is regarding the comparison of PWDVA with similar law in other SAARC countries, and also regarding India's success in providing the lead to other SAARC countries) it is found that India was the first SAARC country to pass such a comprehensive law. All SAARC countries have modelled their law on the Indian PWDVA. India has certainly provided a lead to other SAARC countries in this area.

Suggestions

On the basis of foregoing conclusions it is suggested that:

1. At the construct level, there is a need to develop a construct of domestic violence as an act of 'Domination and Exclusion' and not just any act of violence.
2. The definitions should be suitably amended to accommodate the notion of structural imbalance. The existing definition talks about any act or omission or commission or conduct of the respondent… (and then there are actions mentioned, without any reference to the motive of the respondent). This is a criminal law method of looking at a definition, where the intent to do the act counts, but not the overall motive to do the act is counted. Apparently a civil remedy is provided with a criminal law mindset. Domestic violence should be seen differently. Here the motive of maintaining structural imbalance is what

makes it a deeper and different problem from a simple criminal law like case of violence. Thus, restructuring the definition to include the motive of the perpetrator should be done.

3. The definition should be made more flexible by adding a residuary clause. E.g by adding "any other incident or pattern of incidents of controlling, coercive or threatening behaviour"; or by adding "any other act which obstructs the independence and growth of woman as a responsible agent" to the main definition.

4. The courts while dealing with cases in the light of above suggested changes should consider the definition as including domestic violence in 'strong' sense and also in 'weak' sense.

5. There is a need for better definition of who may be a 'respondent' and who may be an 'aggrieved person'. Presently the court is taking up the responsibility for defining such terms. This leaves some scope for manipulation by the lawyers who may not be much concerned about the welfare of any party.

6. The protection need not be only against the man, or even primarily against the man. Thus the respondent need not only be a male. The definition of respondent may be broadened in such a manner that even a daughter-in-law may be covered under the definition. It should be recognized that even the mother-in-law may be an aggrieved person in some cases. The Act need to recognize the possibility of violence by daughter-in-law against mother-in-law as well.

7. The adult age is not the international norm for giving relief in such matters. E.g 16 years is the age in UK when a case of domestic violence may arise against someone. Indian Juvenile law is also getting changed. Thus, the age requirement for someone to be made a respondent need to be relaxed and brought down to 16 years. Of course, the courts shall be mindful of the age while passing orders against young persons.

8. Shared household need to be properly defined. In fact there is no need for a concept of shared household if we have a construct of 'trust and vulnerability' to

meet the domesticity requirement. People can have domestic relationship without sharing same household. Still, if the concept is to be retained it need to be defined as not extending to *ad-infinitum* places where people have lived together. The courts have been putting restrictions on what may be treated as shared household, but it shall be better if the law is amended to make the matter clear.

9. It should be clearly stated that the Act does not apply to a void marriage situation unless it otherwise falls in the category of a 'relationship in the nature of marriage'.

10. Relationship in the nature of marriage need to be understood from the insider's point of view and not from outsider's perspective. Thus, requirements of holding out and a possibility of a valid marriage between the parties should be done away with. "The relationship in the nature of marriage" need to be defined keeping in mind that *D Valusamy* is not the correct law. The judgment in that case is contrary to Indian history and also not logically correct approach. The sole criteria of a "relationship in the nature of marriage" should be sexual fidelity of a woman toward a man. Thus, a relationship in the nature of marriage should include –

    i. All those relationships in which all the conditions of a valid marriage are satisfied but no solemnization, as prescribed under the law, has taken place.

    ii. All those relationships that are of the kind of void marriages due to a legal restriction as to age, prohibited degree of relationship or sapindaship.

    iii. All those non-adulterous relationships that are of the kind of bigamy or concubinage.

    Provided, in the above mentioned situations, the woman has maintained her sexual fidelity towards the man.

11. The idea of concubine need to be re-understood as suggested in the research. An exclusively kept woman who has maintained her sexual fidelity to a man, no matter what, should be allowed maintenance. Such a relationship should be recognized as a 'domestic relationship'.

12. The definitions of PWDVA should not be read in CrPC. Though it is very laudable to give expansive interpretation to the legislations which are aiming to provide relief to women suffering abuse in domestic relationship, when it comes to criminal law the age old principle of 'strict interpretation' should not be dispensed with. It is too liberal an approach to extend the principles of interpretation applicable to beneficial legislations to the criminal legislations. The PWDVA is essentially a civil law and CrPC is a criminal law. The liability under CrPC may lead to imprisonment. Thus, if there are more than one interpretations possible then the one that favours the accused should be adopted in CrPC matters.

13. We need to move toward the idea of protection to 'cohabitant' as it is in the law in California. It is Cohabitants against whom the domestic violence is mostly perpetrated and therefore it is them who need protection.

14. As a corollary to suggestion no. 13, the Act should be applied to domestic workers, at least in those cases where they live with their masters. E.g. where there are servant's quarters for the servants and they have occupied those quarters. Such a case may be treated as a case of 'cohabitants'. Any violence against them may therefore be a domestic violence. (Field survey also shows that people support this view).

15. Protection officers are presently police officers given the job to act as the protection officer as well. In view of the substantial levels of involvement required, it is suggested that protection officers should be a full-time position. It is desirable that the person has some professional qualification in law and also some experience/training in social service. She should be capable of effectively fulfilling her role as the 'outreach officer' of the court.

16. The Act need to be gender neutral. Empirical research supports this view. Overwhelming majority of people have opined that the law should be gender neutral.

17. The Act need to recognize the phenomenon of elderly abuse. Elderly abuse is emerging as a matter of concern in modern India. This is an area that should be treated as being covered under domestic violence law.

18. There is a need to give more teeth to the law. The Act may include some penal provisions as well. Empirical work supports this view as well. People who have participated in the survey have demanded penal provisions for domestic violence. People do not think that victims of domestic violence should be only compensated monetarily.

19. The Act should be applied prospectively. There is no travesty of justice to apply such a law prospectively. Presently, past acts are raised in courts as domestic violence. It is suggested that this may lead to misuse of the process of law. This may also amount to open up the floodgates of litigations.

20. There should be stringent consequences for the misuse of this law otherwise this will also be reduced to the level of other laws (like dowry related laws) which are seen as instruments of exploitation in the hands of some women. The aggrieved woman should not be allowed to include all and sundry as respondents. Presently bona-fide complaints are protected. Which, it is submitted, is the correct approach. But false accusations need to be dealt with very seriously.

21. The State's resources should be used in ensuring that women get education at par with men; in ensuring that girls are not forced into marriage at an early age; and in ensuring equal property rights for women. It is suggested that in order to solve the problem of domestic violence it is in these three areas that the State's resources should be used.

22. The State should educate people; convince them through media; popularise the idea; and try to convince people that to follow the law against domestic violence is the right thing to do because the law is representing a right thing.

23. The State may focus on TV as the primary disseminator of information. As the field work indicates media has contributed in spreading awareness. Especially TV has made a difference in this matter. The State may take note of the fact that women need to know at least some finer details of the law. it can be done through media.