

system, religious fundamentalism, customs, traditions, superstitions exist in India, extremism would be multiplied and the end would justify the things.

Words:

1. Panchabhoothamulu = The term was coined for the first time by a Greek-philosopher democritus
2. Nomadic = Feeding on raw flesh of grazing animals.
3. Anadramous = Sea-living animals ascend to land for re-production.
4. Catadramous = Land living animals descend to water for re-production.
5. Contempt = Hatred, disobey
6. Xenophobia = Hatred toward other religions and customs
7. Behead = To cut head from trunk
8. Ostracize = To banish
9. Confluence = Flowing together
10. Oppression = Slavery
11. Suppression = To inhibit
12. Alien = Foreign
13. Inhabitants = Residents, aborigines

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 — A SIGNIFICANT LEGISLATION IN COMBATING DOMESTIC VIOLENCE

By

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The family is often equated with sanctuary a place where individuals seek love, safety, security and shelter but the evidence shows otherwise. Women are often in great danger in the place where they should be safest within their families. For many 'home' is the place where they face a regime of terror and violence at the hands of somebody close to them, somebody they should be able to trust. Those victimized suffer physically and psychologically in the hands of an intimate partner and often family members mostly in the invisible form which is known as domestic violence.

Violence against women takes various forms as a result of contradictions created by age old patriarchal values and domestic violence is one of the forms of violence against women. It is one of the most pervasive of human rights violations denying women's right to life and personal liberty, equality, security, dignity, self respect and their right to enjoy fundamental freedoms. The women suffering domestic violence within the shared household where she lives is

obviously left out without any protection till recently and now this vacuum was filled by the Protection of Women from Domestic Violence Act, 2005 a significant legislation in combating domestic violence.

The object of the PWDV Act is to provide for more effective protection of the rights guaranteed under the Constitution to women who are victims of violence of any kind occurring within the family. The Act provides the aggrieved women an alternative avenue whereby she can institute proceedings herself against violence in the family without being deprived of the basic necessities of life and without disintegrating her family.

Definitions under the Act

Under the Act, an aggrieved person or a protection officer appointed under the Act or any other person can present an application to the Magistrate seeking one or more reliefs provided under the Act. The term "aggrieved person" means any women,

who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.¹ “Domestic Relationship” means a relationship between the persons who live or have at any point of time lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.²

Most significantly the Act gives a very wide interpretation to the term “domestic relationship” as to take it outside the confines of a marital relationship and even includes live-in relationships in the nature of marriage within the definition of ‘domestic relationship’. In *Chanmuniya v. Virendra Kumar Singh Kushwala and another*,³ it was held by the Supreme Court that as domestic relationship includes women in live in relationships in the nature of marriage such women in live in relationships are also entitled to all reliefs given in this Act. But in *D. Velusamy v. D. Patchaiahmmal*,⁴ the Supreme Court narrowly interpreted the term relationship in the nature of marriage and held that all live-in relationships will not amount to a relationship in the nature of marriage to get the benefit of PWDV Act 2005. The couple must have voluntarily cohabited and held themselves to the world as being akin to spouses for a significant period of time but if a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not be a relationship in the nature of marriage.

Who can file a complaint and against whom a complaint can be filed?

The complainant shall be necessarily a woman and the respondent shall be a male

but if the complainant is a married woman may also file a complaint against a relative of the husband or the male partner⁵. The Supreme Court in *Sandhya Manoj wankhade v. Manoj Bhimrao Wankhade & others*,⁶ clearly held that ‘relative of husband or male partner’ includes female relatives of the husband or male partner.

Definition of Domestic Violence

Section 3 contains almost a comprehensive definition of the term “Domestic Violence” covering every possible facet, manner and method of domestic brutality. Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it,

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or (b) or
- (d) otherwise injures or causes harm, whether physical or mental to the aggrieved person.

Physical abuse means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb or health or an act that impairs the health or development of the aggrieved person.

1. Section 2(a) of the PWDV Act, 2005

2. Section 2(f)

3. (2011) 1 SCC 141

4. (2010) 10 SCC 469

5. Section 2(q)

6. (2011) 3 SCC 650

Sexual abuse means any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women.

Verbal and emotional abuse means any insult, ridicule, humiliation, name calling, insults for not having a child or for not having a male child. Any repeated threats to cause physical pain to any person in whom the person aggrieved is interested will also be covered under this head.

Economic abuse means deprivation of all or any financial resources to which the person aggrieved requires out of necessity and depriving her rights in the property held by her.

Authorities under the Act

The Act has created two novel agencies for the implementation of the provisions of this Act and to help the victims of domestic violence. The first one is protection officer and the second one is an institution called Service provider.

Protection Officer

Sections 8 and 9 of the Act provides for the setting up and functions of Protection Officer appointed by respective State Governments. The Protection Officer functions under the control and supervision of the Magistrate and he/she is the key person entrusted with the responsibility to assist the victim and provide her justice. It is the primary duty of the Protection Officer to inform the aggrieved persons of their rights under the Act and help them to prepare and file a complaint about the domestic violence to the Magistrate, visit home and prepare a Domestic Incident Report and file it in the Court, inform the aggrieved person of her right to free legal aid, availability of Counselors, medical facilities and shelter homes, maintain a list of Service Providers, get the victim medically examined if she has sustained injuries and

forward a copy of medical report to the concerned police station and the Magistrate, ensure compliance of protection orders issued by the Magistrate and assist the Magistrate in discharge of his duty related to the Act⁷.

Service Provider

The Act also created another agency called Service Providers a vital tool in the implementation of the provisions of this Act.⁸ Service Providers are voluntary organizations registered under the Companies Act or Societies Registration Act. They have to be recognised by the State Government as a Service provider, to record the Domestic Incident Report and to get the aggrieved person medically examined.⁹ The Service Provider may also ensure the aggrieved person accommodation in a shelter home, if she so requires and there can not be any action against him for acts done in good faith, in the exercise of the powers conferred under the Act, towards the prevention of commission of domestic violence.¹⁰ The new law thus, recognizes the role of voluntary organizations in addressing the issue of domestic violence.

Procedure for Obtaining Relief

Section 12 of the Act describes the procedure for obtaining the reliefs. Either the aggrieved person or the Protection Officer or any other person on behalf of the aggrieved person can make an application in the prescribed form to the Magistrate. On receipt of the application the Magistrate shall fix the first date of hearing within three days from the date of receipt of the application¹¹. If the application is made by the aggrieved women directly to the Magistrate he may call for a Domestic

7. Section 9 of PWDA Act, 2005

8. Section 10(1)

9. Section 10(2)

10. Section 10(3)

11. Section 12

Incident Report from the Protection Officer or the Service Provider. The Magistrate can give an *ex parte* interim relief immediately on filing the application if the conditions requires such an order after considering the Domestic Incident Report filed by the Protection Officer or Service Provider.¹² The Magistrate may at any stage of the proceedings direct the parties, either singly or jointly, to under go Counselling.¹³ The Magistrate shall dispose every application within a period of sixty days from the date of its first hearing.¹⁴

Reliefs Available under the Act

As the Act is a protective legislation and not a punishing legislation different orders of reliefs are provided in the Act. The magistrate on being *prima facie* satisfied that domestic violence has taken place or is likely to take place pass a protection order in favour of aggrieved person prohibiting the respondent from committing acts of violence, aiding and abetting in the commission of domestic violence, entering the place of employment of the aggrieved person, if the aggrieved person is a child, its school or any other place frequented by the aggrieved person, alienating assets, bank accounts, stridhan or any other property they hold separately or jointly.¹⁵

Further, the Court on the proof of domestic violence is empowered to pass residence orders to remove the abuser from the shared household, restrain the abuser from entering any portion of the household where the victim resides, direct the respondent to secure alternate accommodation, restrain the abuser from alienating or disposing off the shared household.¹⁶

The Magistrate also may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and her child including but not limited to the loss of earnings, medical expenses, loss to any property, maintenance of the aggrieved person as well as her child¹⁷. The relief granted should be adequate, fair and reasonable. It may be paid in lump sum or on monthly basis. In addition to the above, the Magistrate may grant temporary custody of any child or children to the aggrieved person¹⁸. Compensation and damages for the injuries including mental torture and emotional distress, caused by acts of domestic violence may be ordered by the Magistrate.¹⁹

Under the Act if the respondent disobeys the orders of the Magistrate he is liable to be punished. The punishment for breach of a protection order or of any interim order by the respondent is imprisonment which may extend to one year or with fine which may extend to Rs.20,000/- or with both.²⁰ While framing charge for such breach, the Magistrate may also frame the charge under Section 498-A of the Indian Penal Code or any other provision of the Code or the Dowry Prohibition Act, 1961 if the facts discloses the commission of an offence under those provisions which is cognizable and non-bailable. Upon the sole testimony of the aggrieved person, the Court may conclude that such an offence has been committed.²¹

Conclusion and Suggestions

The PWDV Act 2005 is a progressive and protective legislation which provides instant justice to women suffering from domestic violence. This Act has infused confidence among the helpless woman to

12. Section 23

13. Section 14

14. Section 12

15. Section 18

16. Section 19

17. Section 20

18. Section 21

19. Section 22

20. Sections 31 and 32

21. Ibid

claim and obtain the minimum protection for their life and living.

The Act assigns a very broad and expansive definition to the term 'domestic violence' to include within its purview not only physical abuse and mental injuries but also sexual abuse, economic abuse, verbal and emotional abuse. The Act also gives a very wide interpretation to the term 'domestic relationship' as to extend the reliefs given under the Act even to the women in live-in-relationships in the nature of marriage and protects women in fraudulent and bigamous marriages.

So far as time limitation for shared household is concerned, the Act is silent as to how long a couple has to live in a shared household.

Though the Act is not free from certain drawbacks, still it is a significant legislation in combating domestic violence against women. Even though it is a significant legislation in combating domestic violence the objective can be achieved only when there is proper implementation of the provisions of the Act. The protection officer is the key person in the working of this Act. But the spirit of the Act is diluted as the powers conferred to the protection officers are entrusted to authorities of Women and Child Welfare Department without appointing the protection officers under the Act. So there is a need to appoint the protection officers exclusively under the PWDV Act for the effective implementation of the provisions of the Act.

The Act also mandates that the Courts should decide the cases within a time frame of sixty days but the matters are being dragged from one adjournment to the other. Adjournments are granted just for asking by the parties and also to suit the conveniences of the Court. Their combined effect is that

it has since become a common complaint of the parties that the Court is delaying disposal of matter in a manner which defeats the very object for which the Act is designed.

Even though the Act is intended to protect women majority of women are not having awareness about the provisions of this Act as no publicity was given to it. So the Government has to take measures to give wide publicity for this Act through public media. Then only the aggrieved persons can understand that there is an alternative avenue to the aggrieved women whereby she can institute proceedings herself against violence in the family without being deprived of the basic necessities of life and without disintegrating the family obtain reliefs provided under the Act.

There must be co-ordination among different departments of the Government who are addressing the issues of domestic violence and there must be allocation of separate fund for the purposes of this Act.

To combat the violence against women along with laws the centuries old patriarchal ideas and institutions has to be changed. So, attempts should be made both by the Government and other social organizations to introduce attitudinal changes in the society towards the woman particularly the girl child.

In our society as the domestic violence is not considered as a serious issue along with gender sensitive laws like PWDV Act it also requires sensitive judiciary, sensitive and effective machinery, vigilant women groups to prevent domestic violence against women. Hence the Government has to conduct periodic sensitisation and awareness training programmes to the enforcement authorities, police officers and members of judicial services on the issues addressed by this Act.