

PROTECTION OF WOMEN UNDER PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – A CRITICAL STUDY

By

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Domestic violence in India is endemic and widespread predominantly against women. Around 70% of women in India are victims of domestic violence, according to *Renuka Chowdhury* Junior Minister for Women and Child Development. National Crime Records Bureau reveal that a crime against a woman is committed every three minutes, a woman is raped every 29 minutes, a dowry death occurs every 77 minutes, and one case of cruelty committed by either the husband or relative of the victim occurs every nine minutes. This all occurs despite the fact that women in India are legally protected from domestic abuse under the Supreme Court laid down the definition of sexual harassment and gave its details to the effect that it includes such unwelcome sexually determined behaviour as follow—

- (a) Physical contact and advances;
- (b) A demand or request for sexual favours;
- (c) Sexually coloured remarks;
- (d) Showing pornography; and
- (e) Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

In the aforesaid judgment, Hon'ble Apex Court also laid down guidelines and norms and said to be treated as law declared under Article 141 of the Constitution of India. Looking the above said circumstances, it is necessary to enact such type of law which can restrict violation against women.

The Protection of Women from Domestic Violence Act 2005 differs from the earlier law, Section 498A of the Indian Penal Code, in that it explicitly defines domestic violence in addition to dowry-related cruelty. Domestic violence is defined as follows:

For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he,—

- (a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or
- (b) forces the aggrieved person to lead an immoral life; or
- (c) otherwise injures or harms the aggrieved person.

Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property.

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse

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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.

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 a 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.
- ❑ 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 anyone who is a woman.
- ❑ 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 right to medical examination, legal aid, safe shelter, *etc.*
- ❑ 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.

While “economic abuse” includes deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom whether payable under an order of a Court or otherwise or which the victim requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by her, payment of rental related to the shared household and maintenance and disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the victim has an interest or is entitled to use by virtue of the domestic relationship or which may be

reasonably required by the victim or her children or her stridhan or any other property jointly or separately held by the victim and prohibition or restriction to continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household, “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 impair the health or development of the victim and includes assault, criminal intimidation and criminal force.

This Act proposed to enact a Law keeping in view the rights guaranteed under Articles 14¹, 15² and 21³ of Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrences of domestic violence in the society. According to The Protection of Women from Domestic Violence Act, 2005 “Domestic Violence” means any harm, or injury to health, safety, life, limb or well-being or any other act or threatening or coercion *etc.*, by any member of family. An aggrieved woman who is, or has been, in a domestic or family relationship in the nature of marriage, adoption or are family members can complain. Aggrieved women, who have been subjected to any act of domestic violence by the respondent, can complain to the Protection Officer, Police Officer, Service Provider or Magistrate. The Magistrate receiving the Domestic

Incident Report (DIR) which is equivalent to FIR may take up enquiry into the case which is called DVC (Domestic Violence Case). After receiving DIR issue notice to the respondent within 2 days and fix the 3rd as the date of hearing. Meanwhile, if the Magistrate deems it fit may issue *ex parte* interim orders against the respondent such orders may be passed even after the appearance of the respondent as well pending issuance of reliefs prayed for by the aggrieved women. According to this Act after receiving the domestic incident report the Magistrate try the matter speedily and the Court has the power to ban publication of proceedings held *in camera*. The aggrieved women can seek protection orders⁴ (include orders of injunction restraining the respondent not to continue the acts of domestic violence against aggrieved women), residence orders⁵, monetary orders⁶, custody orders⁷ (*i.e.* order to made retaining the custody of children if they are with her or for restoration of children if they are not in her custody) and compensation orders⁸ (*i.e.* order directing the respondent to pay all the damages the aggrieved woman suffered physically and mentally by reason of domestic violence). The victims may be wives, sisters and mothers or any other female relative living in the share-household in domestic relationship. The respondents are males or may also be female. All orders of the Magistrate are appealable to the Sessions Court which disposes of the appeal as though it is a criminal appeal filed under Cr.P.C. There is no revision to the Sessions Court or the High Court against the orders of the Magistrate. The orders of the Sessions Court not being appealable to the High Court and the High Court may entertain

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1. Article 14 of the Indian Constitution provides that the State shall not deny to any person equally before the law or the equal protection of the laws within the territory of India.
 2. Article 15 of the Indian Constitution provides that the State shall not discriminate against any citizen on the grounds only of religious, race, caste, sex, place of birth or any of them.
 3. Article 21 of the Indian Constitution provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

4 Section 18 of The Protection of Women From Domestic Violence Act, 2005

5. Section 19 Ibid

6 Section 20 Ibid

7 Section 21Ibid

8 Section 22 Ibid

revision against the orders of the Sessions Court. The Act by itself does not punish the respondent in the domestic violence case, but if the case discloses any offences punishable under the Penal Code or any other penal law, or under the Dowry Prohibition Act. As far as this case is concerned, it runs as a civil case and in the manner the maintenance under Section 125 of Cr.P.C. or in the manner in which security proceedings are held by the Magistrate under the provisions of Cr.P.C.

Criticism

- ❑ Men's organizations such as the Save Indian Family Foundation have opposed the law, arguing that it might be misused by women during disputes.
- ❑ *Renuka Chowdhury*, the Indian Minister for Women and Child Development, agreed in a Hindustan Times article that "an equal gender law would be ideal. But there is simply too much physical evidence to prove that it is mainly the woman who suffers at the hands of man".
- ❑ Former Attorney General of India *Soli Sorabjee* has also criticized the broad definition of verbal abuse in the Act.
- ❑ According to the president of India, *Pratibha Devisingh Patil*, "Another disquieting trend has been that women themselves have not been innocent of abusing women. At times women have played an unsavory, catalytic role in perpetrating violence whether against the daughter-in-law, the mother-in-law or female domestic helps. Instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores.
- ❑ Some surveys have concluded that 6 to 10 percent of dowry complaints are false and were registered primarily to settle scores. It is unfortunate if laws meant to protect women get abused as instruments of oppression. The bottom-line therefore, is the fair invocation of legal provisions and their objective and honest implementation."

To conclude the law alone would not be able to control the will of the human behaviour. In order to reduce the offences we must change the attitude and behaviour of men; and this has to start early in boyhood. Enlightened fathers, husbands and brothers are more likely to respect daughters, wife and sisters.

TRUTH OR NO-TRUTH – PURPOSE OF PUBLICATION SHOULD MATTER IN CONTEMPT MATTERS

By

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The dilemma over 'truth' loomed large over Indian contempt law for quite considerable time. The curtain is down in

2006 in the form of Contempt of Court (Amendment) Act, 2006 amending Section 13 of 1971 Act and recognizing 'justification by