

A NOTE ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

By

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From birth to death, women face discrimination and violence at the hands of the State, the community and the family. Millions of women are beaten, raped, murdered, assaulted, mutilated and even denied the right to ever exist. World Health Organisation reveals that the gender violence causes more death and disability among women than all illness put together. National Crime Records Bureau, recently observed that crimes against women in India increased by 102 per cent by over the last decade. There are three specific situations where women are distinctly vulnerable - 1. Within the home, 2. While in transit, and 3. At the work place. However it is the crime perpetrated within four walls of the home that is extremely difficult to address. This is the area where reporting is minimal and where the women is often exposed to peril. NCRB records that almost for every six hours, a young married woman is being burnt alive or beaten to death or pushed to commit suicide¹.

Domestic violence is widely prevalent, but has remained largely invisible, in the public domain. Violence against women transcends boundaries, religions, cultures and income groups. Although forms of violence may vary, the basic purpose is the same - subjugate women, to maintain male dominance. The victims of domestic violence can be spouse, generally wife, children, servants, parents or anybody living in dependent situation in a

house hold, where the dependency may be physical, emotional or financial.

Incidence of Domestic Violence:

Information and analysis of the incidence and patterns of violence are necessary for making policy formulation. But, a large number of cases of family violence go unreported because family is considered a private place, severely constraining the family members from seeking outside help in the event of violence. The result is that violence within the family is ignored or trivialised since acknowledgement of its existence would infringe upon the privacy of the family. The United Nations Expert Group Committee highlighted the fact that there was paucity of data concerning the problem and even in cases where data was available it was poorly recorded. Moreover, the secrecy and invisibility of violence in the family made it difficult to understand the nature and extent of the problem due to the concept of privacy of the family. The committee felt that the role of the medical and police personnel was crucial in dealing with the victims of family violence and that they should report the cases on time and in detail so that proper statistics could be obtained².

The surveys carried out by the International Centre for Research on Women estimate that 60 percent of the women face violence at some point in their marriage and that day-to-day physical abuse of women in their

1. National Crime Records Bureau, 2000, Crime in India, Ministry of Home affairs, Govt. of India, New Delhi.

2. UN Report, 1986, Expert Group Meeting held at Vienna, 8-12 December 1986.

own homes is largely hidden. Ego clashes between spouses have been found to be one of the major reasons behind marital discords involving working women in Delhi. According to Joint Commissioner of Police, Crime (women) cell, at least 25 per cent of the cases received by the cell involve working women. In most of these cases the police have found that complications emerge out of the spouse's financial independence that give way to bitter inter-personal relationships³. The United Nations Women's Development Fund estimates that domestic violence is the leading cause of death and injury among women worldwide. It is not natural calamity or a disease but unchecked violence that is responsible for women's deaths⁴. What is frightening is the benign attitude even the women take towards every day occurrences of sexual violence against the female. Feminists believe that sexual violence suffered by women in their personal lives is directly related to the violence in the society - the inequalities in the home; the violence on the streets; wars, *etc.* The vision of feminist activism, therefore, is for a safer, non-violent, non-militaristic world, based on respect for diversity and an egalitarian sharing of resources⁵.

Studies on family violence began to emerge in India during 1980's yet empirical data on family violence is scanty. However, inferences can be drawn from the data on cognisable crimes and crimes against women as reported in crimes in India. According to Crime in India (2000) published by the National Crime Records Bureau, total cognisable crimes registered during the year 2000 were 17,71,084 as against 17,64,629 during 1999 recording marginal increase of

0.4 per cent only. The head-wise pattern of IPC crimes during 1996-2000 reveals that percentage share of crimes, such as, cheating, hurt, molestation and cruelty by husband and relatives continue to record increasing trend over the years. Crimes against women also reported an increase of 4.1 per cent and 3.3 per cent over previous years 1999 and 1998 respectively. Dowry death cases registered were 6,995 showing an increase of 4.4 per cent over 1999. Amongst the States Uttar Pradesh reported highest incidents (2,222) of dowry deaths followed by Bihar (1,085). Incidence of rape cases reported and increase of 6.6 per cent over 1999. It was observed that out of the total 16,496 rape cases, 2.2 per cent were incest cases. Infanticide cases reported increased by 19.5 per cent and increase in foeticide cases was 49.2 per cent over previous years. Cases of exposure and abandonment of children reported an increase of 11.2 per cent⁶. This clearly indicates that violence in the family is increasing and needs effective handling.

Causes of Domestic Violence:

Identifying the causes of domestic violence is important, as it will help us to find out the effective measures of prevention of domestic violence as human rights violation. The factors responsible for domestic violence are as follows⁷.

1. **Cultural and Social factors** such as gender specific practice of socialization, cultural definitions of appropriate stereotyped sex roles, expectations of proper functioning of roles, notion of the family as the private sphere, acceptability of violence as a means to resolve conflict, exposure to domestic violence since childhood are largely responsible for domestic violence.

3. The Hindu, "Ego Clashes major reason for marital discord", May 14, 2003, P.3.

4. UN Report, 1986, "Violence in the Family", Commission on the Status of Women, 31st Session, Vienna, Feb-March 1986.

5. Gandhi Nighat, A New Consciousness, The Hindu, 11 May, 2003. P.4.

6. Supra. Note.1.

7. UNCEF Report on "Domestic Violence and Girls", Innocenti Digest, 6, June, 2000.

2. **Economic factors** such as women's economic dependence on men, women's increasing economic superiority lead to domestic violence to a large extent.
3. **Legal factors** such as lack of sufficient legal protections and remedies, low levels of legal literacy among women, insensitive attitude of judiciary, advocates and police, etc. are also responsible for perpetuation of domestic violence in India.
4. **Political factors** such as under-representation of women in power, politics, media, and in legal and medical professions, also contribute for rapid rate of increase of domestic violence graph. Domestic violence is often not taken seriously.

Consequences of Domestic Violence:

To condemn domestic violence it is important to focus on the harmful consequences of the crime. Various consequences of domestic violence are as follows⁸:

1. **Health Consequences:-** Domestic violence against women leads to far-reaching physical and psychological consequences, such as fractures, burns, disfigurement, cuts, bruises, broken leg and arm, temporary or permanent disability, sexual abuse, unwanted pregnancies, gynecological problems, wounds, headaches, miscarriages, sexually transmitted diseases, depression, anxiety, eating disorders, stress, phobias, obsessions, compulsive behaviour, low self-esteem, sexual dysfunction, emotional instability *etc.*
2. **Social Consequences:-** Gender-based violence has serious repercussions for

the children who become nervous, irritable and fearful and perform poorly in the school. Daughters who have endured and witnessed domestic violence become sexually permissive and develop a hatred against men. It inhibits women from playing a role in decision-making and directly influences their participation in public activities.

3. **Economic Consequences:** Gender-based violence is a serious cause of concern because it places greater demands on general health care and emergency services and has a high economic cost for the countries where it occurs. The 1993 World Development Report of the World Bank states that in market economies it is possible to determine the number of years of life in good health lost by women during their reproductive years (15 to 44 years of age) because of premature death or illness caused by domestic violence or rape.

International Attempts to Eradicate Violence Against Women:

Domestic Violence is undoubtedly a human right issue and serious deterrent to development. At the International level, prohibition against sex discrimination was first incorporated in the U.N. Charter of 1945 and later reiterated in the Universal Declaration of Human Rights of 1948. The International covenant on civil and political Rights, 1966 guarantees equal protection of the law to both sexes. The International Covenants on Economic, social and Cultural Rights promises equality of status for both the sexes. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its general recommendations, 1989 has stated that State Parties should act to protect women against violence of any kind especially occurring within the family. The Vienna

8. Ibid.

Accord of 1994 and the Beijing platform of Action 1995 have emphasised on the issue of domestic violence.

Constitutional Provisions for the Welfare of Women in India:

Indian Constitution guarantees social, economic and political justice to all citizen under Article 14 of the Constitution. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex etc, Article 15(3) makes a special provision enabling the State to make affirmative discrimination in favour of women. Article 16 provides for equality of opportunities in the matter of public employments for all citizens. Article 39(a) lays down that the state shall direct its policy towards securing all citizens, men and women equally the right of means of livelihood while Article 39(d) ensures equal pay for equal work. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. The Constitution of India imposes a fundamental duty on every citizen through Article 51-A (e) to renounce the Practice Derogatory to the dignity of women. However, women are not able to reap the benefits provided for them under the Constitution of India.

A Note on the Protection of Women from Domestic Violence Act, 2005:

India having ratified the Convention on the Elimination of All Forms of Discrimination Against women must take the responsibility to legislate in compliance with the convention. So far, attempts to bring about legislative measures to hold offenders accountable and reduce family violence have failed. The whole process of litigation results in revictimization of the women victims and the concept of gender justice remains illusory. Presently, where a woman is subjected cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian

Penal Code⁹. The civil law does not however, address this problem in its entirety. Therefore it was thought it necessary to enact a law, keeping in view the rights guaranteed under the Constitution of India, and the Convention on the Elimination of All Forms of Discrimination Against Women 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 occurrence of domestic violence in the society. By enacting the protection of women from Domestic Violence Act, 2005¹⁰ (here after called the Act) the parliament empowered Indian women with a law to protect themselves from violence of any kind occurring within the family. This legislation seeks to protect women from all forms of domestic violence and check harassment and exploitation by family members or relatives. Women will now be able to take action against abusive husbands and those who harass them.

The Act covers 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 through a relationship in the nature of marriage or

9. Section 498-A, IPC reads : Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - for the purpose of this section, cruelty means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

10. The Protection of Women from Domestic Violence Act, 43 of 13th September, 2005.

adoption. In addition, relationships with family members living together as a joint family are also included¹¹. Even those women who are sisters, widows, mothers, single women or living with the abuser are entitled to legal protection under the Act. The Act brings the other woman within the purview of the law. It will no longer be possible for a man in a live-in relationship to treat her with cruelty or throw her out without succor. So far the second wife in a bigamous marriage could not seek succor from the law. This Act provides not just protection from violence but also ensures a roof over her head. However, whereas the Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the Act against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

The definition of domestic violence¹² has been extended to include actual abuse or threat or abuse that is 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. In determining whether any act or omission, commission or conduct of the respondent constitutes “domestic violence”, the overall circumstances of the case shall be a guiding factor.

The Act seeks to protect the rights of women to secure housing and to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household¹³. This right is secured by a residence order, which is passed by the Magistrate¹⁴. The Act, empowers the

Magistrate to pass protection Orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specific act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence¹⁵. This Act also empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person and her children including maintenance under, or in addition to Section 125 of the Cr.P.C, 1973 or any other law for the time being in force¹⁶. Further, the Magistrate may at any stage of hearing of the application for grant of any relief, grant temporary custody of any child to the aggrieved person or to the person making an application on her behalf and specifically the arrangements for visit of such child by the respondent. Magistrate may refuse to allow such visits if in his opinion such visits may be harmful to the interest of the child¹⁷.

The Act empowers the Magistrate to direct at any stage of the proceedings, the respondent or the aggrieved person either singly or jointly to undergo counselling with any member of a service provider¹⁸. This provision provides for the woman to undergo mandatory counselling with the respondent. The victim of domestic violence and the respondent (abuser) are in an unequal situation and joint counselling is not possible in that situation. It can only lead to further

11. Ibid., Section 2(f).

12. Ibid., Section. 3.

13. Ibid., Section. 17.

14. Ibid., Section. 19.

15. Ibid., Section. 18.

16. Ibid., Section. 20.

17. Ibid., Section. 21.

18. Ibid., Section. 14.

disempowerment of the unequal party. Mandatory counselling is one of the methods of correcting abusive behaviour. Therefore, it is appropriate that only abuser and not the victim should be counselled. However, the victim may have the possibility of seeking voluntary counselling.

The Act also provides for appointment of protection officers¹⁹ and registration of non-governmental organizations as service providers²⁰ for assistance to the aggrieved with respect to her medical examination, obtaining legal aid, safe shelter etc. The Act provides penalty, imprisonment up to one year or a fine up to Rs. 20,000 or both for breach of protection order by respondent²¹. The Act also provides that the protection officer can be prosecuted, up to one-year imprisonment or with fine up to Rs. 20,000 or both for failure of his duties²².

The Act aimed at empowering women and liberating them from the cycle of violence within the family not from any one individual. As for the selection of protection officers, A great care should be taken in this exercise as they are crucial for the success of this legislation. It is a significant step forward in providing women access to legal protection and relief from domestic violence. The Act fulfils a long pending demand of women's movement for a civil remedy to address this problem. It hoped proper implementation of the Act would arrest the rising graph of domestic violence in the

country. It is submitted that the government should give wide publicity to the Act and must conduct awareness training and sensitization programmes.

In a society where women's rights are often denied where the dominant structures of family are still patriarchal, the Act is a progressive piece of legislation, capable of providing much relief to victims of domestic violence. The extent of domestic violence prevalent in our society is far greater than we would like to admit. The right of residence will make it a lot easier for such woman to walk out of an abused relationship without the fear of being on the road. The protection officers drawn from NGO's will hopefully be more responsive and sensitive to their needs than the police is in most such cases. Some empowering clauses are likely to be misused by avaricious elements, but this is true of all laws. Of course laws alone can not change society, but legal protection can give women confidence to fight against the injustice they have been quietly putting up so far. However, most of the women in our country are illiterate and are ignorant of the basic law. Most of the time they do not register the cases against those persons who violate their rights or commit crimes against them. Lack of awareness, poverty, traditional oppression and customs, place an Indian woman at receiving end. To convert gender justice from de jure to de facto, educating women would play an important role.

19. Ibid., Section. 8.

20. Ibid., Section. 10.

21. Ibid., Section 31.

22. Ibid., Section. 33.