



THE DOMESTIC VIOLENCE ACT: CONSTITUTIONAL PERSPECTIVES

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ABSTRACT

Domestic violence is a terrible fact of life in Indian society. Abuse of women has become normal in the patriarchal Indian culture. There are a variety of reasons why domestic violence occurs. Domestic violence against women is a result of the patriarchal system, gender stereotyping, and the distribution of power, actual or perceived, in society, according to feminists. Domestic violence against women is an example of how she is systematically denied of her basic human rights within the four walls of her shared family. This study aims to demonstrate the simple and cost-effective procedural mechanisms available under this statute, as well as to introduce our readers to figures indicating an increase in domestic violence against women. All of these figures should serve as a wake-up call to legislators and members of civil society to speak out against gender bias.

KEYWORDS: Domestic Violence, Law, Legal, Women

INTRODUCTION:

Domestic abuse is unquestionably a human rights issue that has received insufficient attention in this country, despite the fact that the Vienna Accord of 1994 and the Beijing Declaration and Platform for Action (1995) recognised domestic violence as a human rights issue. In its general recommendations, the UN Committee on the Elimination of All Forms of Discrimination Against Women urged member nations to take action to safeguard women from all forms of violence, particularly domestic abuse, which is a common occurrence in India. When a woman is subjected to cruelty by her husband or his relatives, it is now a crime punishable under Indian Penal Code Section 498A.

It was noted that the Civil Law did not fully handle this situation. As a result, the Parliament must strengthen the protection of women's rights guaranteed under Articles 14, 15 and 21 of the Constitution. The DV Act was also passed to ensure that the rights of women guaranteed by the Constitution are effectively protected when they are victims of domestic violence of any form.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT:

The Protection of Women from Domestic Violence Act (hereinafter DV act) is a collection of 37 sections divided into 5 chapters, with Chapter I serving as a preamble, covering Sections 1 and 2, Chapter II serving as a title of domestic violence, covering definition clauses, Chapter III serving as a specific to the Protection Officer, its role and responsibilities, covering Sections 4 to 11, and Chapter IV serving as the act's operative portion, covering Sections 12 and 13.

Section 37 of the Constitution empowers the central government to make regulations, and the Protection of Women from Domestic Violence Rules, 2006 (DV Rules) are one of them. The DV rules are made up of 17 rules and 7 forms, with Rule 3 to 8 pertaining to the protection officer and the remaining rules covering emergency orders, medical, and shelter house situations. Counseling is covered by Rules 13 and 14.

Form II is a framework for making an application to a magistrate under Section 12, and Form IV provides information on the rights of a person who has been wronged.

Chapter IV is the act's heart and soul, providing different reliefs to women who are or have been in a domestic relationship with any adult male. A person who has been wronged can file an application with the concerned magistrate under Section 12 and receive the following reliefs:

1. Protection order under section 18
2. Residence order under section 19
3. Monetary reliefs under section 20
4. Temporary custody of child under section 21
5. Compensation & damages under section 22

Section 26 is a unique provision in that it allows aggrieved parties to seek these reliefs in any legal process against respondent, whether in civil court, family court, or criminal court.

Any woman who is or has been in a domestic relationship with the respondent and is alleged to have been subjected to any act of domestic abuse is an aggrieved person, according to Section 2(a).

1. What is domestic relationship
2. Who is respondent
3. What is domestic violence

The term "domestic relationship" has a fairly broad definition. It refers to people who share a home and are linked in one of four ways: blood, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. Domestic relationships involve people of both sexes and include those who are related by blood or marriage, according to this definition.

Respondent is defined in section 2(q) as any adult man who is or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person sought redress in this act. A proviso to Section 2(q) states that an aggrieved woman may also submit a complaint against her husband's or male partner's family.

Domestic abuse is defined under Section 3 of the Act, and it is obvious that it is gender-neutral. In keeping with the Act's overall goal, Section 3 intends to prohibit all forms of domestic abuse against women, regardless of gender.

CONSTITUTIONAL PERSPECTIVE:

The enactment in question was approved by Parliament using Article 253 of the Constitution as a justification. This clause gives Parliament the authority to enact legislation in accordance with international treaties, conventions, and other agreements. The Domestic Violence Act was passed in response to the UN Committee on the Elimination of Discrimination Against Women's (CEDAW) recommendations. All of the provisions of the Specific Recommendations that are part of General Recommendation no. 19, 1992, are covered by the Act.

Review of Important Provisions:

In a dramatic departure from previous legislation, the Act offers a very broad definition to the word "domestic violence," which was previously not even used in legal terminology. Domestic violence is defined broadly in S.3 of the Act, and includes physical, mental, verbal, emotional, sexual, and economic abuse, as well as dowry harassment.

Acts threatening to harm the victim or anybody associated with her.

As a result, the Act addresses forms of abuse that were either not addressed previously or were dealt in ways that were not as wide as those addressed here. For example, it encompasses sexual abuse such as marital rape, which, while prohibited under the IPC, can now be legally recognised as a type of abuse under the Act's definition of sexual abuse. The definition also includes compensation claims originating from domestic abuse, as well as maintenance identical to that provided for under S.125 of the Criminal Procedure Code (CrPC). Nonetheless, the compensation claim is not limited to maintenance, as that provision allows. It's worth noting that the maintenance offered under this provision must match to the aggrieved party's lifestyle. Finally, the Act defines emotional abuse as a kind of domestic violence, which includes insults based on the victim's lack of chil-

dren, particularly male children.

DATA AND STATISTICS:

The report Tackling Violence against Women: A Study of State Intervention Measures, published by the Ministry of Women and Child Development, states that women of all ages and social classes, as well as women of all races, religions, and nationalities experience violence against them all over the world, regardless of where they live.

Domestic violence is one of the most common, prominent, and regularly occurring crimes against women in India. It accounts for a large proportion of all violence against women in the country. As reported by the United Nations Development Programme's global data source on violence against women, around 288 percent of ever-married women between the ages of 15 and 49 years in India had experienced intimate partner physical and/or sexual assault at some point in their lives.

According to the National Sample Survey Office of India, around 103272 cases of cruelty (under Section 498 of the Indian Penal Code) were reported in 2018. A total of 150571 cases of cruelty were being examined at the time of publication. According to statistics, police were able to resolve 67 percent of the total number of cases under investigation. In addition, 58954 cases had a charge sheet filed against them.

According to several media reports, the number of reported incidences of domestic violence has increased in a number of states as a result of the state-wide lockdown. According to the West Bengal Women's Commission, a total of 70 incidences of domestic abuse have been recorded to the commission since the lockdown was imposed.

Furthermore, 663 occurrences of domestic abuse were reported to the National Commission on Women in the month of July 2020 alone, out of a total of 2913 cases of crimes against women reported to the National Commission on Women. There were 486 occurrences of crimes against women reported in August 2020, with 58 cases of domestic violence reported in a span of four days, making it the busiest month of the year.

While these figures certainly indicate that violence against women exists, they fall short of understanding the inflated reality that exists. Women who have ever experienced physical or sexual abuse by anybody, on average, have not sought treatment or told anyone about the assault, according to state-by-state information from the National Family Health Survey- 4 (2015-2016). A survey done by The Hindu found that over 86 percent of women who experienced domestic abuse in 2020 did not seek help, and that approximately 77 percent of the victims did not even report the incident(s) to anybody.

CONCLUSION AND SUGGESTIONS

After 15 years of development, the Protection of Women from Domestic Violence Act has proven to be one of the most liberal and useful pieces of legislation in the history of women's rights. Despite the fact that there are significant laws in place, many offended women believe that their rights are still a matter of privilege.

Deeper exploration of ground realities reveals that women are still a long way from attaining the status and authority that men enjoy in the community at large. Despite the fact that there are numerous laws in place to protect women and elevate their status in society, the issue goes far deeper than that. Starting with gender stereotypes and progressing to the absence of efficient implementation of these laws, the issue must be handled in a comprehensive manner, taking into consideration all of the dimensions of the situation. It is not possible to solve it in a linear fashion.

The enforcement of the law is a more serious problem in our country. Domestic abuse is a key human rights concern, and this act has made a significant number of procedural improvements. Protection officers have been selected at the district level in each state, and their contact information is generally available on an open platform.

A lady who has been wronged does not require an attorney to approach a protection officer, and the protection officer is responsible for everything. A mother who has been wronged may be able to get custody of her kid, a residency order, and maintenance. This law is extremely effective, and its enforcement is both simple and cost-effective. However, in a country like India, where illiteracy and social stigma play a significant part in society, greater access to this law through workshops, seminars, free aid, and education would be required to ensure better implementation of the law.

Under the major headings of judiciary, government, police, non-governmental organisations, health care support, counselling, awareness generation and sensitization, and media, the recommendations highlighting the roles/services of various sections for reducing the occurrence and prevalence of domestic violence are scripted below.

Judiciary:

- In order to reduce the frequency of domestic violence, strict enforcement of the laws pertaining to drug addiction should be implemented.
- Alcoholics who perpetrate domestic violence should be dealt with harshly, and appropriate measures should be taken.
- Special courts for cases of violence against women and children must be established, with the most up-to-date technology support, such as video graphing of victims of rape and child abuse giving their accounts.
- Cases of domestic violence should be taken up as soon as possible and completed as soon as possible in order to avoid the imposition of unwanted strains and stress on the victims.
- Mobile courts should be implemented as a cost-effective technique for reaching out to an increasing number of victims in rural and urban locations alike.

Government:

- The correct and effective execution of current laws affecting women should be the focus of all efforts going forward.
- Government agencies and departments should enlist the support of non-governmental organisations (NGOs) in order to raise public awareness of domestic abuse.
- All police stations should be equipped with specific legal aid cells that can assist victims of domestic violence in obtaining legal representation.

Police:

- Police officers must be educated on how to treat domestic violence crimes as seriously as they would any other type of crime.
- The police force should receive specialised training in order to deal with domestic abuse crimes.
- Their job will be more successful and efficient if they are provided with information on the support network of the judiciary, government agencies/departments, and non-governmental organisations (NGOs) that deal with domestic abuse.
- Women's affairs should be dealt with by a special arm of the police, which should be attached to all police stations and should be exempt from any other duties.
- Women should be in charge of all investigations into crimes against women.

NGOs:

- NGOs operating in a variety of industries should be encouraged to take a proactive approach to the issue of domestic violence so that victims can receive prompt assistance as soon as possible.
- In order to effectively address the issue of domestic violence, non-governmental organisations and private institutions must be included in any endeavour to do so.
- All health-care institutions should have access to information on all domestic violence-related organisations for the purpose of referring patients and providing services as and when they are required.
- Facilities such as short-term shelters for women in distress should be made available, and a strong emphasis should be placed on vocational training to help them rehabilitate themselves.
- In order to improve their schooling and social functioning, children of impacted women need receive extra care and attention from their mothers.

Health Care Support:

- Domestic violence should be recognised as a public health issue, and authorities should take steps to do so.
- Following an episode of violence, women who seek medical attention should be treated with extra consideration.
- Violence against women, including its impact on health and care for battered women, should be included in medical and nursing education.

Counselling:

- More counselling centres with professionally qualified counsellors should be established in rural and urban regions, with a particular emphasis on helping victims of domestic violence.
- The identification of vulnerable populations, as well as the provision of eas-

ily available and free services such as counselling and legal assistance, are all essential.

- In order to provide consolation to victims of domestic violence, mobile counselling should be implemented as a viable technique.

Awareness Generation and Sensitization:

- Gender sensitization and awareness generation programmes on domestic abuse should be included in the curriculum of secondary and higher education institutions.
- These efforts would aid in the transformation of future generations' perspectives.
- A list of non-governmental organisations (NGOs) and other government organisations that deal with women's concerns should be made available to the general public.

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