

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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ABSTRACT

Status of women in Indian Constitution has equal rights with men in society. With women's participation in nationalist movements, to being pushed into the domestic household space, to their resurgence as super-women today, women in our country have seen it all. There have been debates about gender discrimination in India over the years. Much of it includes women's positing in society, their education, health, economic position, gender equality etc. India has seen an increased percentage of literacy among women, and women are now entering professional fields, the practices of female infanticide, poor health conditions and lack of education still persisting still continue. Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. In a statement to the Fourth World Conference on Women in Beijing in September 1995, the United Nations Secretary-General, Boutros Boutros-Ghali, said that violence against women is a universal problem that must be universally condemned. But he said that the problem continues to grow. Violence against women and girls continues to be a global epidemic that kills, tortures, and maims – physically, psychologically, sexually and economically.

KEYWORDS: Domestic violence, Women Rights, human rights.

INTRODUCTION

The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally². It is one of the most pervasive of human rights violations, denying women and girls' equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms. Almost every home in India must be suffering from some kind of domestic violence where women either as a daughter, daughter-in-

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² <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>

law, or as a wife are abused physically, mentally, verbally economically³. It occurs in all cultures, people of all races ethnicities and religions can be perpetrators of domestic violence⁴. After independence have seen tremendous changes in the status and the position of the women in the Indian society.

Term “ Domestic Violence against women” means any act or conduct which has potential to injure or hurt women physically, mentally, emotionally, socially, and also spiritually within the four walls of house, however, such an act or conduct is done usually not by strangers⁵.

In 1993, The United Nations Declaration on the Elimination of Violence against Women identified domestic violence as one of three contexts in which women occurs, describing it as⁶:

"Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation".

The Domestic violence is defined by Section 3 of the Act as⁷ “any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

1. 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
2. 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
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
4. otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

The Act goes on, through the section *Explanation 1*, to define "physical abuse", "sexual abuse", "verbal and emotional abuse" and "economic abuse"⁸.

³ Narwadkar, Dr. Pooja P., Law Relating to Domestic Violence in India, 1st Ed. 2014, Hind Law House, Pg.No.8

⁴ Reddy, Dr.G.B., Women & the Law, Edition 2012, Gogia Law Agency, Hyderabad, Pg.No. 144-G

⁵ Tripathi Dr.S.C. & Arora Vibha, Law relating to Women and Children, Central Law Publication, 1st ed.2004

⁶ "A/RES/48/104. Declaration on the Elimination of Violence against Women". Un.org. Retrieved 2013-09-08

⁷ "Archived copy" (PDF). Archived from the original (PDF) on 1 March 2013. Retrieved 19 April 2013

Definitions in the Domestic Violence Act, 2005

(a) Domestic Violence

The term 'domestic violence' has been used in widest sense which covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to, endanger the health safety, life, limb or well-being either mental or physical of the aggrieved person.

(b) 'Aggrieved person'

The span of the term 'aggrieved person' covers not just a wife but a woman who is the sexual partner of the male irrespective of whether she is legal wife or not (includes live-in relationships as well) The daughter, mother, sister, child (male or female), widowed relative, in fact, any woman residing in the household who is related in some way with the respondent is covered by the act.

(c) 'Respondent'

The term 'respondent' implies "any male, adult person who is, or has been, in a domestic relationship with the aggrieved person". This ensures that the respondent's mother, sister and other relatives do not go scott free, the case can also be filed against relatives of the husband or the male partner.

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 them 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.

⁸ "Archived copy" (PDF). Archived from the original (PDF) on 1 March 2013. Retrieved 19 April 2013

- 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 draft Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman w.r.t 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.

Major rights recognized under this law⁹.

One of the most important features of the Act is the women'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 house hold. This right is secured by a residence order, which is passed by a court. The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situation, the accommodation and her maintenance has to be paid for by her husband. The law, significantly, recognizes the need of the abused woman for emergency relief, which will have to be provided by the husband. A woman cannot be stopped from making a complaint or application alleging domestic violence. She has the right to the services and assistance of the protection officer and service providers, arranged under provision of law a women who is the victim of the domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under section 498A of the Indian Penal Code.

Rights recognized under PWDVA: According to Kanchan Mathur¹⁰ includes the right to:

- A life free from fear of violence and living in safe environment. This includes women's right not to be subjected to physical, sexual or emotional violence inside the home by intimate partners or outside by

⁹ The Protection of Domestic Violence Act, 2005 available at - <http://www.legalserviceindia.com/article/1194- Protection-of-Women-from-Domestic-Violence-Act,-2005.htm>

¹⁰ Mathur, k., Economic and Political Weekly, 2008, JSTOR.

people including those acting on the part of the state. Spatial mobility and ability to make decisions regarding where they can go, who they go with, how they travel and the time of the day or night they can travel.

- Make informed choices regarding sexual and reproductive health including choice in marriage - whether to marry, whom to marry and when (age) to marry and to demand the provision of sexual and reproductive health services that are sensitive to their rights and needs.
- Sexual well being and the right to a healthy and self –affirming sexuality free of violence, coercion and disease, pursuing a satisfying, safe and pleasurable sexual life.

The PWDVA a woman's rights to live a violence free home identify. Reside has statutory rights are recognized under the law. Guard against illegal without the shared household women. The respondent faced with domestic violence, a woman is entitled to relief under the law of this State.

CONCLUSION

In India different types of domestic violence are rooted in society and also by deep rooted patriarchal society of gender bias and discrimination against them. Domestic violence against women it is one of the old age phenomenon and women are victims because they are considered to be weak, vulnerable and are exploited. The Protection of Women from Domestic Violence Act (PWDVA), 2005 is passed by the Parliament in response to worldwide demand for such legislation and also the outcomes of the continuous efforts of Women Organizations working for women. The Act gives right and Protection to the women's. To make a real and effective implementation of this Act and to give support to the victims of domestic violence the authorities are required to be trained. These and such other issue raises the doubts in respect of effective implementation and throws a challenge for the Government.