



DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA

Amit Saurav*

ABSTRACT

The greatest misfortune in our nation is that grave shamefulness is done to a lady who has been the establishment stone of family and society all in all, who brings birth to life, supports life, shapes it, and fortifies it, who is a transmitter of custom and an instrument through which culture is protected and communicated from one age to another. Domestic abuse affects women regardless of their age, colour, caste, social, economic, or political standing. In Indian civilization, women's vulnerability manifests itself in a variety of ways. The quiet miseries of a woman make her an ideal target for male dominance, which is aided by patriarchy. The problem is made worse by the domineering, authoritarian attitude of male members of society and the victimisation of female members of society. Pretty much every family in India has faced some sort of violence at home, with ladies, with women being mistreated physically, emotionally, and financially as daughters, daughters-in-law, or wives. As per human rights is concerned, men and women today have been on par. In this society dominated by males, ladies face segregation. As an outcome, most ladies are unmindful of their privileges and freedoms. Thus, violence at home damages ladies as well as blocks the prosperity of the nation. This dissertation discusses domestic violence against women in India in all of its manifestations, as well as the reasons and solutions to domestic violence.

Keywords: Violence, Domestic Violence, Domestic Violence Act 2005.

INTRODUCTION

Violence against women has existed from the beginning of recorded history and has been documented in practically every country and civilisation on the planet. Discrimination and oppression, which may result in physical, mental, or emotional brutality, have for quite some time been recognised as a normal aspect in the patriarchic societies across the world. Unless a

* 1st Year, BBA LLB Student at Chanakya National Law University Patna.

more contemporary mentioning can be located, domestic violence has been considered acceptable on both a social as well as at a legal level. History is framed by certain significant events, laws, and norms that offer a historical framework within which the notion of domestic abuse becomes crystal evident. Female subordination is a result of two major factors: first, male dominance and the projection of ladies as 'property,' an item having a place with men; and second, assumptions from ladies of being an ideal 'good example,' which complement each other to make her defenseless and subject to segregation, mistreatment, as well as other forms of victimisation, as a result, lead to their inferiority. "Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and the prevention of the full advancement of women..."¹

Violence at home is characterized as any sort of physical, sexual, or mental maltreatment pointed towards one's companion, accomplice, or some other relative living in the same home. At the point when a relative, mate, or ex-accomplice tries to physically or mentally control or injure another, this is referred to as domestic violence. Domestic violence happens in many cultures, and individuals of all colours, nationalities, and faiths may be perpetrators of it. It may occur in any relationship. Sexual violence done on ladies, especially violence done by their intimate partners, is one of the most serious public health concerns and an infringement of any ladies' human rights on the planet. Women worldwide have endured physical and additionally sexual intimate viciousness, including non-accomplice rape, according to a global evaluation of available data conducted in 2013. However, according to certain national violence surveys, up to 70% of ladies have been victims of physical as well as sexual maltreatment from an intimate accomplice eventually in their lives.²

No one cause accounts for all of the violence that is done against women in society. As research has progressed, it has become more focused on the interconnectedness of diverse components, which should aid in improving our knowledge of the issue in diverse cultural settings. Some complex and interwoven institutionalised social and cultural variables have contributed to the disproportionate vulnerability of women to violence aimed against them, many of which are indications of historically uneven power relations among people. Socioeconomic powers, the family organization where power relations are implemented, dread of and authority over female sexuality, faith in the inborn predominance of males, and enactment and social sanctions that

¹ UNICEF (2000), 'Domestic Violence against Women and Girls' (*Unicef-irc.org*, 2021) <https://www.unicef-irc.org/publications/pdf/digest6e.pdf> accessed 15 June 2021.

² Narwadkar, Dr. Pooja P., 'Law Relating to Domestic Violence in India 9', (2014) Hind Law House Publication.

have customarily denied ladies and youngsters an autonomous lawful and societal position are all factors that contribute to unequal power relations in society. “Following are the causes which carry on domestic violence: a) Cultural b) Economic c) Legal d) Political.”³

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

To give more powerful insurance of the privileges of ladies given by the Constitution who faces violence, regardless of whether it occurs inside the home or outside it, and to address issues that arise in connection with or as a result of such abuse. Domestic violence is a widespread occurrence, but it has remained mostly undetected in the public eye due to the stigma associated with it. According to the Indian Penal Code, 1860, if a lady is exposed to savagery by her significant other or his family, it is a criminal offence deserving of detainment under Section 498A of the Code.⁴

The result has been the introduction of legislation, which takes into consideration the rights ensured as per Articles 14, 15, and 21 of the Constitution⁵ and which accommodates a common solution for shield ladies from turning out to be survivors of violence at home and to forestall the event of domestic violence in the public arena.⁶ “Any act, omission or commission or conduct of the respondent shall constitute domestic violence when it 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 harasses, harms injures or endangers the aggrieved person 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 has the effect of threatening the aggrieved person or any person related to her by any conduct; or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”⁷

It aims to include ladies who earlier have been or even now are in a relationship with the abuser in which both of them have shared a family and are connected by affiliation, marriage, or a relationship like marriage, or selection; it additionally incorporates associations with relatives living respectively as a joint family. Sisters, widows, mothers, single ladies, and those living with are generally qualified for legitimate security under the proposed Act.

³ UNICEF (2000), ‘Domestic Violence against Women and Girls’ (*Unicef-irc.org*, 2021) <https://www.unicef-irc.org/publications/pdf/digest6e.pdf> accessed 15 June 2021.

⁴ The Indian Penal Code, (Act No. 45 of 1860).

⁵ **The Constitution of India, 1949.**

⁶ The Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005).

⁷ *Ibid*, s 3.

Domestic violence refers to physical, sexual, verbal, emotional, and monetary maltreatment, including the fear of such abuse. Pestering the lady or her family with dowry demands would also go under the term. The right of a woman to acquire housing is one of the most important aspects of the Act. Whether or not she has any rights in the family, the Act guarantees any lady to have the right of living in a married or joint family. A residency order, generally issued through court, protects this privilege. Any such order of residency is not capable of being enforced in opposition to a woman. The Act also gives the court the power to issue protection orders, which prohibit the abuser from helping or playing out a demonstration of violence at home or some other explicit demonstration, entering a work environment or other area regularly visited by the mishandled, endeavouring to speak with the person who is victim, isolating any resources utilized by both of them, and making violence against the person who is the victim. The Act establishes Protection Officers and non-governmental organisations (NGOs) to assist women with medical examinations, legal assistance, and safe refuge, among other things. The Act makes violating a protection order or a temporary protection order by the respondent cognizable and non-bailable wrongdoing deserving of a sentence of up to one year in prison or punishment of up to 20,000 rupees in fines, or both. Non-compliance or failure to fulfil obligations by the Protection Officer is also being considered as a crime as per the Act, including identical penalties.

CRITICAL ANALYSIS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Under the appearance of giving assurance, this law sabotages marriage by cultivating narrow-mindedness and unnecessary prosecution, in any event, for minor homegrown debates. This rule is established on an erroneous assumption that men are the only ones who commit domestic abuse. This is a completely false perception, and it just supports the law's sexual orientation predisposition for ladies. The law gives an advantage to a lady without forcing any obligations, however, a man is burdened with discriminatory obligations and denied any corresponding privilege.

Domestic abuse against a man is prohibited by the law, which is entirely gender-specific. This Act has allowed acknowledgement and legitimate status to extramarital or other indecent connections, which are not perceived by our general public nor by our present marriage and criminal enactment, in the eagerness to provide protection and help to women. While drafting the Act, the lawmakers overlooked the fact that having sexual relations with anybody other than one's spouse is grounds for divorce. Even sections 24 and 25 of the Hindu Marriage Act of

1955⁸, that deal with support pendente lite and perpetual divorce settlement, don't perceive any association other than that of a legitimately hitched couple. Aside from this, section 125 of the Code of Criminal Procedure, which takes into consideration the granting of help to a spouse, youngsters, father, and mother from a more extensive perspective, doesn't consider people with ill-conceived associations as being qualified for help, except if they are an ill-conceived kid. Section 125(4) of the Code of Criminal Procedure⁹ explicitly forestalls a lady living in infidelity)' from guaranteeing support from her better half under section 125(1).

Adultery has also been described as a crime as per section 497 of the Indian Penal Code¹⁰, which the legislature overlooked. As a result, although a man may be charged with adultery, he may also be ordered to pay maintenance and retain residence rights to a lady with whom he is accepted to have had an unlawful relationship. This arrangement will destabilize society's social fabric by destroying marriage connections. There has been no far-reaching law characterizing violence at home before this Act, aside from the demonstration of cold-bloodedness, which is rebuffed under area 498-A of the IPC.

Critics contend that "violence" ought not to have a particularly expansive definition. The meaning of 'economic maltreatment' in section 3 of the Act implies that regardless of whether a male relative simply misuses or discards the bit of a female relative's movable or immovable assets, he)might be charged with domestic violence. This interpretation contradicts the Act's intention as well as the underlying premise of domestic abuse. The Act, once again, makes no distinction between genuine maltreatment and the danger of misuse, giving equivalent weight to both. Also, the categories "emotional abuse," "insults," and "verbal abuse," which are all incorporated in the Act, are exceedingly relative and abstract, frequently dependent on one person's thinking, and, astonishingly, the male spouse has no remedy in the event of any maltreatment by the wife.

“If you refuse to pay any amount of money for whatever reason, you will be subject to the requirements of this legislation. Even if the spouse lacks adequate finances or is in prison, failure to pay rent connected to the shared home will be considered an economic abuse.”¹¹

The Magistrate has been entrusted with unaccountable powers in this enactment since he is responsible for taking notice of the matter and also for carrying out his instructions in favour of

⁸ The Hindu Marriage Act 1955 (Act No. 25 of 1955).

⁹ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

¹⁰ IPC, 1860, s 497.

¹¹ Nagpal, Vijay and Singh, K. P., 'The Protection of Women from Domestic Violence Act 2005 - A Critique, CBI Bulletin', (2007) Jan-March, 12 .

the injured lady, even if he is not approached to carry out his instructions. Another worrisome feature is that the Magistrate presiding over the case must consider not just the specific act of violence, but also the broader context.

The Magistrate may require the abused individual to attend counselling with the respondent and any individual from the service under Section 14 of the Protection of Women from Domestic Violence Act, 2005,¹² which is a highly hazardous clause. This goes against all known counselling norms. Because the person who is the victim and the abuser are in inconsistent situations, no collaborative therapy is conceivable. It can just prompt the inconsistent party's disempowerment. Counselling is a method for addressing oppressive conduct, consequently, it is just reasonable for the abuser to be counselled rather than the victim. The victim may be able to seek out voluntary psychotherapy.

If any party to the proceedings requests it, Section 16 of the Protection of Women from Domestic Violence Act, 2005¹³ authorises the Magistrate to conduct the proceedings in camera. However, in closed sessions, threaten the distressed party for the responder. This is especially evident when the offended party is the lone lady in a court brimming with threatening, scoffing Magistrates, lawyers, authorities, police, male responder, and so on. The goal is to change this proviso to take into consideration in-camera procedures only if the aggrieved party requests it. For moral support, the offended individual ought to be allowed to be joined by any family member/lady social worker, and so on based on her personal preference.

Non-compliance with various directives is not addressed under the Act. It eliminates the possibility of future reconciliation. The main inadvertent consequence would be that it would kill the future chance of compromise. From one perspective, the Act punishes a man who forces his better half to stop her business, yet then again, it offers to back to the same spouse. However, a guy in a comparable situation is not entitled to any such remedy under the law. When no eyewitnesses are present, the women will serve as the principal witness, and their statements will be used as circumstantial evidence to decide on the case's facts. This has effectively given all women the authority to punish males as they see fit. Because of the law's shoddy wording, crafty and unscrupulous women will be able to give a teaching to any of her male family members at her impulse whim.

¹² PWDVA,2005.

¹³ PWDVA,2005 , s 16.

Although the Act is without a doubt a watershed moment in Indian history, and the people of India have greeted it with tremendous excitement, there is concern among the public about the maltreatment of the Act against an honest spouse and his relatives. It is impossible to say that the spouse and in-laws are always the sources of difficulties and tortures of all sorts and disparities. In all instances, the married lady can't be processed to be sensible and reasonable. This Act has been manhandled in certain circumstances, where it has been utilized as a weapon by life partners and their fatherly family members to harass a guiltless spouse and his family. As a result, when enforcing the requirements of the Protection of Women from Domestic Violence Act, 2005,¹⁴ pertinent parties and specialists ought to consider the implications of their activities to guarantee that guiltless individuals, as well as their families, are not exposed to unwanted badgering

CONCLUSION

Violence at home isn't simply self-evident, however, it is additionally a piece of ladies' regular day-to-day existence in India. She is exposed to violence from the second her mom considers her in the belly, and she needs to fight for her existence in this pitiless society at each phase of her life. Since most of the ladies in our country are illiterate and unaware of fundamental legal provisions as well as their rights, they often fail to file complaints against the individuals who abuse their privileges and conduct violations against them. Absence of comprehension of the law and the rights gave to them under that enactment, yet the main issue is that ladies are unconscious of their privileges inferable from conventional practices. Casualties can't get the lawful cures that the government guarantees for women's protection.

Women are still viewed as the second sex in our way of life, which is professed to be custom bound and male-overwhelmed, causing them to endure assault in silence. The reality that women in India are subjected to gender-based human rights violations. She is often overlooked and undervalued. The Parliament approved the Protection of Women from Domestic Violence Act¹⁵ (PWDVA) in 2005 because of worldwide interest for comparative enactment and because of the continuous endeavours of ladies' associations. Women's rights and protection are guaranteed under the Act. Before the PWDVA 2005, the victim's remedies were limited to punishing the criminal under the IPC, the common cure of separation and upkeep didn't furnish her with a definitive alleviation, and the cures accessible were limited to marital proceedings and judicial proceedings.

¹⁴ PWDVA,2005.

¹⁵ Ibid.

Women had access to statutory and constitutional safeguards, but they were inadequate, and the most serious issue was a lack of understanding of their rights, which the constitution protects. Domestic violence transcends ethnicity, caste, religion, and social status. “According to Global Review Data, 35% of women throughout the globe had suffered physical and sexually intimate relationship abuse or non-partner sexual violence in 2013. According to certain National Violence surveys, up to 70% of women have suffered physical or sexual violence from an intimate partner at some point in their lives. 153 In a 2010 survey in New Delhi, 66 per cent of women said they had been sexually harassed between two and five times in the previous year.”